

Department of the Treasury
Terrorism Risk Insurance Program (TRIP)

Supporting Statement – Information Collection Requirement

OMB Control Number - 1505-0208

Terrorism Risk Insurance Act Cap on Annual Liability

1. Explain the circumstances that make the collection of information necessary.

This information collection is made necessary by the provisions of the Terrorism Risk Insurance Act of 2002 (the Act) and the Department of Treasury regulations for its implementation.

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (the Act) (Public Law 107-297, 116 Stat. 2322). The Act was effective immediately. The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving state insurance regulation and consumer protections. The Program was originally set to expire on December 31, 2005. On December 22, 2005, the President signed into law the Terrorism Risk Insurance Extension Act of 2005 (Pub. L. 109-144, 119 Stat. 2660), which extended the Program through December 31, 2007. The Terrorism Risk Insurance Program Reauthorization Act of 2007, was signed into law on December 26, 2007, and extended the Program through December 31, 2014.

Title I of the Act establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program (the Program), including the issuance of regulations and procedures. The Program provides a federal backstop for insured losses from an act of terrorism.

The Reauthorization Act, among other Program changes, revised the provisions of the Act with regard to the cap on annual liability for insured losses of \$100 billion. This section now requires the Secretary of the Treasury to notify Congress not later than 15 days after the date of an act of terrorism as to whether aggregate insured losses are estimated to exceed the cap. TRIA, as amended by the Reauthorization Act, also requires the Secretary to determine the *pro rata* share of insured losses to be paid by each insurer incurring losses under the Program when insured losses exceed the cap, and to issue regulations for carrying this out.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

In order to comply with the liability cap provisions of the Act, a data call for insured loss and deductible information may be required to accurately assess aggregate industry losses and determine if the \$100 billion cap is to be exceeded as well as to determine and adjust the "*pro rata* loss percentage" (PRLP) to be applied against claim payments. In the event of imposition of a PRLP, loss payment information will be collected by a nominal revision to a currently approved Treasury form, Certification of Loss "Schedule C", or "Bordereau" (OMB 1505-0200) that collects information about individual underlying claims made for the Federal share of compensation for insured losses.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Treasury has not prescribed that the records be automated, electronic or mechanical for insurers. Treasury will accept any such recordkeeping that meets the regulatory requirements as stated in 31 CFR 50 Subpart G and that enable the insurer to maintain these records. Regulations will also provide for Treasury access to all books, documents, papers and records of an insurer that are pertinent to any Terrorism Risk Insurance Program (TRIP) claims and the application of the PRLP for the purpose of investigation, confirmation, audit and examination. Treasury would approve the use of improved information technology for the maintenance of required records. All submissions to Treasury, e.g., the data call, reporting and remittance forms, are expected to be fully electronic and web-based.

4. Describe efforts to identify duplication.

The required records do not duplicate any existing records. However, systems for the generation of these data and the reporting and recordkeeping are usual and customary for insurers.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

The record keeping is expected to impact insurers rather than small businesses or other small entities. Moreover, the recordkeeping can be accomplished using the entity's normal modes.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

Failure to collect insurer claims and deductible information could make it impossible to determine the need for or to properly adjust a PRLP and consequently impossible to comply with the Act and for the Program to properly account for payments to insureds.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

There are no special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. Data calls are a recognized insurance industry practice. Moreover, the proposed implementation requirements simply call for the inclusion of three additional data elements with the loss information already required by Treasury. These added elements should be a simple transcription of information in the insurer's file and are needed to permit proper auditing of Treasury payments.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Treasury published a proposed a rule in the Federal Register on September 17, 2008, adding a Subpart J to 31 CFR Part 50, establishing the requirements with respect to implementing the statutory cap on annual liability. Treasury consulted with the National Association of Insurance Commissioners early in the process of formulating the proposed rule. As part of the Paperwork Reduction Act requirements for this rulemaking, comments on the collection of information in the proposed rule were solicited for submission to OMB with a 60-day comment period. Treasury specifically invited comments from the general public on: (a) whether the proposed collection of information is necessary for the proper performance of the mission of Treasury, and whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the collections of information (see below); (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to minimize the burden of the

information collection, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

Treasury proposed in §50.94 of the proposed rule that it may issue a data call to insurers for the submission of insured loss information. We explained that we anticipate requesting summary level information on insured losses and insurer deductible information. In the Notice of Proposed Rulemaking, Treasury provided estimates of burden hours to comply with data requests as well as specific data elements for summary level loss information that is contemplated under a data call. This included initial information requested in the immediate aftermath of an act of terrorism as well as further information that might be requested as claims processes progressed.

No comments were submitted specifically addressing the PRA-related questions; however, two entities provided comments regarding the data call authority. Both recognized the appropriateness of Treasury collecting insurer loss data in order to meet Program obligations.

One commenter noted that proposed §50.91 stated that the initial reporting obligation to Congress would be met based on loss information “compiled by insurance industry statistical organizations and any other information the Secretary in his or her discretion considers appropriate.” Further, Treasury indicated in the description of this section of the proposed rule that a data call may not be timely enough to meet the reporting obligation. The commenter stated that Treasury should consider adding clarifying language to §50.94 reflecting this view. In the publication of the Final rule, we reiterate that our intention is to meet the initial reporting obligation through data obtained from statistical organizations and other sources of general loss information. However, we also explain that we do not wish to unnecessarily restrict the use of a data call if that became the only way for us to meet our statutory reporting obligation. Therefore, §50.94 of the final rule has not been revised.

Both commenters asserted that data requested be “relevant and accessible” and that the request should minimize disruptions to insurer claims handling during a catastrophic event.

In past development of information collection requirements associated with the Terrorism Risk Insurance Program, Treasury has benefited from both the formal processes and informal contacts with members of the insurance industry. We will continue both of these types of efforts in further development of the data call requirements. As system capabilities are developed for the anticipated electronic submission of data, Treasury will contact insurance trade and statistical organizations for expertise in reviewing the web-based capabilities.

Concerning the data calls contemplated by proposed Section 50.94, one commenter requested that Treasury recognize that the claims data should be considered proprietary information of the submitting insurers and suggested that provisions be added to the regulation similar to what was included in H.R. 5840 (“The Insurance Information Act of 2008”).

In the publication of the final rule, Treasury explains that it does not intend to make insurer-specific data public. We further explain that the regulation does not override other law that would otherwise be applicable. Any information submitted to Treasury would be subject to the Freedom of Information Act (FOIA) and Treasury would handle any request for information that has been submitted by an insurer in response to a data call in accordance with Treasury’s FOIA regulations at 31 CFR Part 1. This would include consideration of the applicability of FOIA exemptions, including those applicable to commercially or financially sensitive information.

In the Notice of Proposed Rulemaking, Treasury explained that in the event of imposition of a PRLP, it will be necessary to determine insurer compliance when Treasury is processing insurer claims for payment of the Federal share of compensation. This would be accomplished by revision to the currently approved Treasury form TRIP 02C, revised April 2006 (OMB 1505-0200, expiration February 28, 2014). This form, the “Bordereau” or “Schedule C” is submitted in support of the insurer’s certification of loss and provides detailed information about individual underlying claims. Treasury provided the specific data element revisions for comment. No comments were received in regard to form TRIP 02C.

One comment on the proposed rule raised an issue concerning workers compensation claims. It is possible under the rules for application of the PRLP and computation of the Federal share of compensation, that an insurer might not get fully compensated for payments it already made when its estimates of losses wind up significantly higher than the actual final claim settlements. The final rule has been modified by adding a provision in §50.93(a) allowing a workers' compensation insurer to submit for review information justifying an appropriate adjustment in the calculation of the Federal share of compensation. This is anticipated to be a low frequency exception to the normal reporting requirements and well within the existing burden estimates for insurer submission of Certifications of Loss in order to get the Federal share of compensation.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

There will be no payments or gifts to respondents other than claims payments made to those insurers with losses meeting the criteria set by the Act.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

No assurances of confidentiality have been made to respondents for submissions that constitute the records to be kept by the insurers. (However, submissions would not be disclosed as they are considered to be exempt from the provisions of the Freedom of Information Act (FOIA)).

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Responses of a sensitive nature are not required.

12. Provide an estimate in hours of the burden of the collection of information.

The burden associated with the collection of information in the proposed rule is comprised of two elements: (1) the "data call" for insured loss and other information; and (2) the addition of three data elements to the approved TRIP claims reporting form, "Schedule C" – "Bordereau". It is estimated that 200 insurers would be subject to either requirement. Treasury estimates that an insurer would require approximately 5 hours to respond to a data call for a total burden of 1,000 hours (200 insurers X 5 hours). Treasury believes that there would be virtually no increase in the currently estimated burden for the Schedule C.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

The cost of a data call, if performed is estimated to be \$85,000, i.e., 1,000 hours at a blended, fully loaded hourly rate of \$85. There is thought to be essentially no cost to the change to claims reporting that would be required if a PRLP were put in effect.

14. Provide estimates of annualized cost to the Federal government.

There is no cost to the Federal government of insurer implementation and recordkeeping development. There will, however, be costs to the Treasury if the PRLP requirement is imposed on insurers.

15. Explain the reasons for any program changes or adjustments to previously identified annual reporting and recordkeeping burden hours or cost burden.

This is a new collection.

16. For collections whose results will be published, outline the plans for tabulation and publication.

The results of this collection of information are not to be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

We will display the expiration date of OMB approval for this collection.

18. Explain each exception to the certification of compliance with 5 CFR 1320.9 statement.

There are no exceptions to the certification statement.

19. Describe the use of statistical methods such as sampling or imputation.

This collection does not employ statistical methods.