

SUPPORTING STATEMENT  
Terrorism Risk Insurance Program – Rebuttal of Control Submission

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Sections 103(a) and 104 of the Terrorism Risk Insurance Act of 2002 (Pub.L 107-297) (and unchanged by the Terrorism Risk Insurance Extension Act of 2005, Pub.L 109-144) authorize the Department of Treasury to administer and implement the temporary Terrorism Risk Insurance Program established by the Act. The definition of control in 102(3) of the Act provides for Treasury to determine whether an insurer directly or indirectly exercises a controlling influence over the management or policies of another insurer. Among other things, if one insurer controls another insurer, then the insurers are deemed “affiliates” under the Program, and their direct earned premium must be consolidated for purposes of calculating the “insurer deductible” that in turn forms the basis for ascertaining federal payments made by Treasury under the Act as well as applicable surcharges.

Treasury established by interim final rule (68 FR 9804, February 28, 2003), certain rebuttable presumptions of controlling influence. Treasury thereafter published a notice of interim guidance (68 FR 15039, March 27, 2003) explaining the procedure an insurer must use in the event the insurer wished to rebut one or more of these presumptions of controlling influence. The procedure provides an insurer with the opportunity to rebut the presumption by making a written submission to Treasury that contains an explanation or relevant facts and circumstances and other relevant information in support of why the controlling influence presumption should not apply.

On July 11, 2003, Treasury issued a final rule (68 FR 41250) that, in response to comments on the interim final rule, modified the rebuttable presumptions of controlling influence slightly. Treasury replaced the notice of interim guidance by §50.8 in the final rule which provides comparable procedural guidance to an insurer that may wish to rebut a presumption of controlling influence.

2. USE OF DATA

Treasury will use the information submitted by the insurer to evaluate and then make a determination of whether the presumption of controlling influence by an insurer over another insurer has been rebutted for purposes of the Program. As of June 15, 2006, Treasury has received and made determinations on two submissions.

3. USE OF IMPROVED INFORMATION TECHNOLOGY

The rebuttal submission procedure does not require or restrict electronic submissions.

4. EFFORTS TO IDENTIFY DUPLICATION

Complete information necessary to make a determination that a controlling influence presumption has been rebutted is not available from any source other than the affected insurer.

5. METHODS TO MINIMIZE THE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES  
Not applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

If the rebuttal procedure is not continued then there is no other means under the federal Terrorism Risk Insurance Program by which an insurer may rebut a regulatory presumption of controlling influence and no efficient and effective method by which Treasury (which does not generally regulate these insurers for any purpose other than the temporary Terrorism Risk Insurance Program) may obtain necessary information may obtain necessary

information to make a determination of whether there is a controlling influence by one insurer over another if disputed by the affected insurers.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS AND DATA ELEMENTS

Treasury has closely consulted with the National Association of Insurance Commissioners (NAIC) concerning the statutory definition of control and the regulatory rebuttable presumptions. As described in item number 1, the rebuttal procedure was initially issued as a notice of interim guidance in the Federal Register (68 FR 15039, March 27, 2003). It included language inviting comment on the paperwork burden. No comments were received. The rebuttal procedure was thereafter incorporated as §50.8 of a final rule. The preamble to the final rule also invited comment on the paperwork burden. No comments were received.

A 60-day notice was published in the Federal Register soliciting public comment for the renewal of this information collection on January 8, 2013, at 78 FR 1937, and no comments were received.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

No assurance of confidentiality has been provided, although applicable exemptions under the Freedom of Information Act could apply, e.g., to any confidential business or trade secret material submitted.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The number of insurers that may seek to rebut a presumption of control is not known but based on available information we estimate the number to be 10. We estimate that the hour burden for each submission will be 40 hours, for a total of 400 burden hours.

13. ESTIMATED TOTAL ANNUAL COST TO RESPONDENTS

The cost to submitters will depend on many factors, including the availability of information, size of the ownership structure of the insurer, whether counsel is used to prepare the submission, etc.

14. ESTIMATED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASON FOR CHANGE IN BURDEN

Not applicable.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

Not applicable.

18. EXCEPTIONS TO CERTIFICATION REQUIREMENT OF OMB FORM 83-I  
Not applicable.