STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

George E. Pataki
Governor

Howard Mills
Superintendent

Circular Letter No. 1 (2006)
January 18, 2006

TO: ALL PROPERTY/CASUALTY INSURERS AND RATE SERVICE ORGANIZATIONS DOING BUSINESS IN NEW YORK STATE, NEW YORK PROPERTY INSURANCE UNDERWRITING ASSOCIATION, STATE INSURANCE FUND, NEW YORK AUTOMOBILE INSURANCE PLAN, AND EXCESS LINE ASSOCIATION OF NEW YORK

RE: GUIDELINES AND PROCEDURES FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE TERRORISM RISK INSURANCE EXTENSION ACT OF 2005

STATUTORY REFERENCE: ARTICLES 21, 23, 34, 54 AND 63 OF THE INSURANCE LAW; TERRORISM RISK INSURANCE EXTENSION ACT OF 2005

Circular Letter No. 25, issued December 23, 2002, and Supplement No. 1 issued January 19, 2003, provided an explanation of the Terrorism Risk Insurance Act of 2002 (the Act) as well as instructions and guidance to insurers to assist them in meeting their dual responsibilities under both Federal and New York Law. The purpose of this Circular Letter is to advise insurers and to provide information and guidance on revisions that were enacted by Congress in the Terrorism Risk Insurance Extension Act of 2005 (the Extension Act) (Public Law 109-144, 119 Stat. 2660).

The Act was scheduled to expire on December 31, 2005. On December 22, 2005, the President signed into law the Extension Act, which extends the TRIA framework through December 31, 2007. In doing so, the Extension Act adds Program Year 4 (January 1 – December 31, 2006) and Program Year 5 (January 1 – December 31, 2007) to the Program. In addition, the Extension Act made other significant changes to TRIA that include:

- A revised definition of "Insurer Deductible" that adds new Program Years 4 and 5 to the definition. The insurer deductible is set as the value of an insurer's direct earned premium for commercial property and casualty insurance (as now defined in the Act) over the immediately preceding calendar year multiplied by 17.5 percent for Program Year 4 and 20 percent for Program Year 5.

- A revised definition of "Property and Casualty Insurance" that now excludes the following types of insurance:

  Commercial automobile insurance
  Burglary and theft insurance
  Surety insurance
  Professional liability insurance

Farm owners multi peril insurance

(Though the definition excludes professional liability insurance, it explicitly retains directors and officers liability insurance.)

- Creation of a new “Program Trigger” for any certified act of terrorism occurring after March 31, 2006, that prohibits payment of Federal compensation by Treasury unless the aggregate industry insured losses resulting from that act of terrorism exceed $50 million for Program Year 4 and $100 million for Program Year 5.

- A change to the Federal share of compensation for insured losses. Subject to the Program Trigger, the Federal Share is 90 percent of that portion of the amount of insured losses that exceeds the applicable insurer deductible in Program Year 4 and decreases to 85 percent of such amount in Program Year 5.

- Revisions to the recoupment provisions. For purposes of recouping the Federal share of compensation under the Act, the “insurance marketplace aggregate retention amount” for the two additional years of the Program is increased from the level in Program Year 3. For Program Year 4 the “insurance marketplace aggregate retention amount” is established as the lesser of $25 billion and the aggregate amount, for all insurers, of insured losses during Program Year 4. The “insurance marketplace aggregate retention amount” for Program Year 5 is the lesser of $27.5 billion and the aggregate amount, for all insurers, of insured losses during Program Year 5.

- A statutory codification of Treasury’s litigation management regulatory requirements in section 50.82 of title 31 of the Code of Federal Regulations (as in effect on July 28, 2004), which requires advanced approval by Treasury of proposed settlements of certain causes of action involving insured losses under the Program.

<u>Disclosure Forms</u>

The U.S. Department of the Treasury issued an interim guidance notice to assist insurers in meeting their obligations under the Extension Act pending the issuance of final regulations. In Circular Letter No. 25 (2002) and Supplement, the Insurance Department addressed filing requirements and disclosure obligations as they apply to policies issued on New York risks. Those instructions remain largely applicable for policies issued after the effective date of the Extension Act. With respect to disclosure requirements, this Department’s previous Circular Letter deemed acceptable the model disclosure notice forms adopted by the NAIC, which Treasury deemed to be in compliance with the Act. The model notice forms may continue to be used pending further guidance from Treasury, which we understand it intends to issue in the near future.

<u>Exclusions</u>

In Circular Letter No. 25 (2002), the Department stated the following:

“In recognition of the limited definition of "insured loss" under the Act and the requirement that insurers must make available such coverage, the Superintendent will consider for approval, on an expedited basis, policy provisions that exclude coverage, or limit the amount thereof, for an "insured loss", provided that the insurer has first satisfied the "make available" requirements of the Act; the exclusion or limitation applies solely to "insured loss" under the Act; the language of the exclusion or limitation mirrors the definition of "insured loss"; and the policy language is otherwise clear and not misleading. Such exclusions and limitation provisions remain subject to the applicable prior approval and all other statutory and regulatory requirements of the Insurance Law."

Insurers and rate service organizations subsequently submitted exclusion forms which this Department approved in conformity with the foregoing and which were intended to be used only with respect to insured losses. Inasmuch as commercial automobile insurance, burglary and theft insurance, surety insurance, professional liability insurance and farm owners multi peril insurance are no longer included within the definition of "property and casualty insurance" and losses from these lines are no longer included within the definition of "insured loss" under the Extension Act, the continued use of the exclusion endorsements that had been specifically approved for use under the original Act for these lines would be misleading. The Department would consider the issuance or renewal of policies by an insurer with such endorsements to be an unfair trade practice. Accordingly, the exclusion endorsements are not to be used for these lines of insurance for new and renewal policies with effective dates on and after January 1, 2006, the effective date of the Extension Act.

Insurers and rate service organizations should make appropriate form and/or rule filings to recognize that the lines of insurance listed above are no longer covered under the Extension Act, but may, pending submission and approval of such filings, continue to use previously approved forms solely with respect to lines of insurance for which coverage remains in effect under the Extension Act.

Questions regarding this Circular Letter may be addressed to Martin Schwartzman, Assistant Chief, Property Bureau at (212) 480-5563 or Martin Schwartzman.

Very truly yours,

Mark Presser
Assistant Deputy Superintendent & Chief
Property Bureau