2015 Spring National Meeting
Phoenix, Arizona

Workers’ Compensation (C) Task Force

March 30, 2015
Attachment One
Consider Adoption of its November 18, 2014, Minutes
The Workers’ Compensation (C) Task Force met in Washington, DC, Nov. 18, 2014. The following Task Force members participated: Merle D. Scheiber, Chair, and Larry Deiter (SD); William W. Deal, Vice Chair (ID); Lori K. Wing-Heier (AK); Jim L. Ridling represented by Charles Angell (AL); Dave Jones represented by Emma Hirshhorn and Jill Jacobi (CA); Chester A. McPherson represented by Robert Nkojo (DC); Ralph T. Hudgens represented by Steve Manders (GA); Andrew Boron represented by Jim Stephens (IL); Sharon P. Clark represented by Rob Roberts (KY); James J. Donelon represented by Warren Byrd (LA); Joseph G. Murphy represented by John Turchi (MA); Eric A. Cioppa (ME); Mike Rothman represented by Tammy Lohmann (MN); John M. Huff represented by Angela Nelson (MO); Monica J. Lindeen represented by Carol Roy (MT); John G. Franchini (NM); Scott J. Kipper represented by Alexa Emmermann (NV); John D. Doak represented by James Mills (OK); Laura N. Cali represented by Annette Boyce (OR); Joseph Torti III represented by Paula Pallozzi (RI); Julie Mix McPeak represented by Chloralindley-Myers (TN); Todd E. Kiser represented by Tracy Klausermeier (UT); Jacqueline K. Cunningham represented by Don Beatty (VA); and Michael D. Riley (WV).

1. **Adopted its Sept. 25 and Aug. 18 Minutes**

   Director Deal made a motion, seconded by Mr. Roberts, to adopt the Task Force’s Sept. 25 (Attachment One) and Aug. 18 (see NAIC Proceedings – Summer 2014, Workers’ Compensation (C) Task Force) minutes. The motion passed.

2. **Heard a Report on TRIA**

   Aaron Brandenburg (NAIC) said that there is no definite plan to renew the federal Terrorism Risk Insurance Act (TRIA) at this time. The Terrorism Insurance Implementation (C) Working Group continues to monitor activity in the U.S. Congress and is prepared to take action when and if TRIA is renewed with extensive revisions, or whether it is just extended “as is” for some period of time.

3. **Discussed TRIA**

   Director Scheiber asked if there were additional comments from the audience regarding TRIA. Mona Carter (National Council on Compensation Insurance—NCCI) commented that the NCCI has already supplied its member companies with endorsements that inform policy holders what will happen if TRIA is not renewed. Coverage for terrorism will continue to be provided by workers’ compensation policies; however, no backstop protection will be provided to insurance companies. This may result in companies refusing to renew coverage and a growth in residual workers’ compensation market. The NCCI is conducting rate-modeling studies to determine how much rates would have to increase to cover the increased exposure if the backstop is removed.

4. **Voted to Update the Workers’ Compensation Large Deductible Study**

   Mr. Brandenburg read a report prepared by NAIC staff regarding the use of mega-deductibles in workers’ compensation. He mentioned a 2006 white paper drafted by the NAIC/IAIABC Joint (C) Working Group that addressed regulatory concerns with the use of large deductibles. Superintendent Cioppa made a motion, seconded by Director Deal, to have the NAIC/IAIABC Joint (C) Working Group update the 2006 Workers’ Compensation Large Deductible Study with a focus on the use of mega-deductibles. The motion passed. NAIC staff will coordinate making updates to the white paper.

5. **Heard a Report on Workers’ Compensation Residual Market**

   Jim Nau (NCCI) provided a third quarter year-over-year update on the residual market. The residual market remains stable and the growth rate is slowing. There are now 131,000 polices in the 22 plan states administered by NCCI. Director Scheiber commented that there seemed to be less growth in the number of large premium accounts in the residual market. Mr. Nau confirmed that recent growth reflects a larger number of smaller premium policies. This reverses the trend seen in 2012 and 2013 of larger premium polices being written in the residual market.
6. **Heard a Report on Policyholder Disputes/Appeals Board Results**

Ms. Carter reported that, out of the 2.7 million policies issued by NCCI-member companies, there were 365 policyholder disputes in 2013. Through May 2014, there were 148 disputes, most of which were resolved at the first level. Superintendent Cioppa noted that a high percentage of the complaints came from insureds in the residual market. Ms. Carter confirmed that his observation was accurate. Ms. Pallozzi commented that many of the companies in the residual market are contractors who may have been misclassified by their agents. Many of these contactors dispute their classifications especially if changed during the premium audit process.

7. **Adopted the Report of the NAIC/IAIABC Joint (C) Working Group**

Mr. Brandenburg reported that the NAIC/IAIABC Joint (C) Working Group would not be meeting at the fall or spring national meetings. However, the Working Group will participate in a joint meeting at the NCCI Annual Issues Symposium in May 2015.

8. **Discussed Uncooperative Insured Audit**

Ms. Pallozzi asked NCCI how many states had approved “uncooperative insured audit” wording. The NCCI will research this and advise the results.

9. **Discussed NCOIL’s PEO Model**

Superintendent Cioppa asked Mona Carter to discuss the National Conference of Insurance Legislators’ (NCOIL) Model Act Regarding Workers’ Compensation Insurance Coverage in Professional Employer Organization (PEO) Relationships. She said that, of the states that have enacted a PEO model, none have enacted the NCOIL’s PEO model. One problem the NCCI and state insurance regulators realized was that the NCOIL model did not address issues related to calculation of experience modifications. Some PEO customers were joining PEOs in an effort to “wash” their experience modifications and avoid higher premiums. The states that enacted the NAIC Guidelines for Regulations and Legislation on Workers’ Compensation Coverage for Professional Employer Organization Arrangements (#1950) have included language prohibiting this practice. NCOIL is expected to discuss some of the issues with its PEO model at its annual meeting later this week.

Wes Bissett (Independent Insurance Agents and Brokers of America—IIABA) encouraged the Task Force to work with NCOIL on revisions to its PEO model. Director Scheiber will ask the Task Force to re-engage with NCOIL on this issue. NAIC staff will report on this issue at the 2015 Spring National Meeting.

10. **Discussed Multiple Rating Organizations in Workers’ Compensation**

Director Scheiber reported that the practice of using multiple rating organizations in a single state was previously discussed on one of the Task Force’s conference calls. He asked the Task Force members to express their ideas about the role of this Task Force regarding this issue. Mr. Brandenburg discussed the issues that arise when a state does allow multiple workers’ compensation advisory organizations, citing from the 2000 Report of the Multiple Rating Organization Study Group to the Workers’ Compensation (C) Task Force. Director Scheiber asked if any states would like to discuss the issue at the 2015 Spring National Meeting. Because several Task Force members said they were not familiar with the report, Director Scheiber asked Mr. Brandenburg to send all members a link to the report. He also asked if the Task Force should consider updating the 2000 report to reflect the 2015 workers’ compensation marketplace. Director Deal suggested that this issue be tabled until Task Force members have had the opportunity to review the 2000 report. Mr. Mealer suggested that if this is a single-entity issue in a single state, the Task Force may not need to review the report, but the states need to act on their own based on their own situations. Ms. Lindley-Myers said the states should look at the report, but need to act on their own based on their own situations. The report will be sent to Task Force members and further discussion will take place once members have had an opportunity to review the 2000 report.

Having no further business, the Workers’ Compensation (C) Task Force adjourned.
Attachment Two
Consider Adoption of its Working Group Reports
The NAIC/IAIABC Joint (C) Working Group of the Workers’ Compensation (C) Task Force met via conference call March 6, 2015. The following Working Group members participated: Eric A. Cioppa, Chair (ME); Ron Dahlquist, Patricia Hein and Giovanni Muzzarelli (CA); Cyndi Cooper (FL); Colin Hayashida and Grant Shintaku (HI); John Gatlin and Caryn Carmean (IL); Martin Hazen (KS); Robin Coombs (KY); Walter Horn (MA); Tammy Lohmann (MN); Angela Nelson (MO); Gennady Stolyarov (NV); Cuc Nguyen and Donald Ashwood (OK); Laura Keller (PA); Paula Pallozzi (RI); Frank Marnell (SD); Kathy Archeleta (UT); and Kwok NG (VT). Also participating were: Michael Ricker (AK); Charles Angell and Gina Hunt (AL); Steve Manders (GA); Ramona Lee (IA); Tom Donovan (ID); Warren Byrd and Tom Travis (LA); Robert Wake (ME); David Dahl and Suna OH (OR); Mike Shinnick and Chlora Lindley-Myers (TN); Brent Hatch (TX); and Robert Grishaber (WV).

1. Discussed the Large/Mega Deductible Study

Superintendent Cioppa explained that the Working Group had received a request from the Nevada Insurance Department to see if other states had received notifications that workers’ compensation policies were being written with deductibles as large as $1 billion. Nevada was concerned that these policies were really self-insurance without the protections that self-insurance has built-in to protect against insured and carrier insolvencies. He also explained that the Workers’ Compensation (C) Task Force has been notified by the Receivership and Insolvency (E) Task Force that there have been three insolvencies of insurance companies this year. In some cases, it appears that these companies had been issuing large deductible policies without confirming that supporting collateral was adequate and viable. Superintendent Cioppa also indicated that there seemed to be a lessening of collateral requirements by insurance companies competing for additional business.

David Keleher (NAIC) explained that the research would be divided into several key component areas led by a subject matter expert for that section. This person would develop a team to work with them to develop current information on that topic. Each subject matter team would then submit their information to the NAIC and IAIABC for editing and assembly of the final study document.

Superintendent Cioppa asked Mr. Keleher to outline the focus areas for the Large Deductible Study update. Mr. Keleher said the paper will focus on:

- Current buying trends in workers’ compensation. What types of products are larger employers using today and why?
  - Large deductible
  - Mega-deductible
  - Retro
  - Self-insurance
- Solvency concerns
  - Recent workers’ compensation carrier insolvencies
  - Possible causes
  - Lessons learned about large deductibles and collateral from the Reliance and other insurance company insolvencies
- Data reporting concerns
  - Claims
  - Premiums
- Unpaid claims concerns
  - Delays before guaranty funds take over claims.
- State filing requirements: Do these need updating?
  - Exempt commercial policyholder (ECP) laws
  - Large risk rating option provisions (LRRO)
- Use of large deductibles by professional employment organizations (PEOs)
- Why were recommendations from the 2006 white paper not adopted by a majority of states?
Mr. Stolyarov pointed out that Nevada is considering whether the use of large or mega-deductibles is really just regulatory arbitrage. He stated that companies using mega-deductibles are essentially self-insuring their risks. He pointed out that in a mega-deductible contract, the insurance company pays the claim and is reimbursed by the named insured. These large deductible programs do not experience the same level of regulatory oversight that a self-insured company would experience. He pointed out that Nevada does not have any limit to the size of a deductible that an insurer can offer. He said the study should explore the regulatory arbitrage issue and address the differences between mega deductibles and true self-insurance.

Ms. Pallozzi said that the Commercial Lines (EX) Working Group is also looking at the ECP rules. She said that Rhode Island does not allow workers’ compensation to fall under the ECP exemption.

Superintendent Cioppa suggested that the outline be expanded to include information on PEOs using large or mega-deductibles.

Coombs mentioned NPR reports based on a ProPublica paper dealing with the erosion of workers’ compensation benefits. Mr. Keleher said this would be an agenda item at the Spring National Meeting and would not be a focus of this paper.

Mr. Hazen mentioned that fee schedule increases are being discussed in Kansas at this time. He said that benefit reductions have caused challenges to workers’ compensation as the “sole remedy” for injured workers in a number of states.

Mr. Hatch (TX) said that insurance companies writing deductible contracts in Texas must agree to provide “first dollar” coverage even if they are not reimbursed by the named insured. He said Texas has detailed collateralization requirements. Texas has a potential workers’ compensation company insolvency being worked at this time. He cited the Reliance bankruptcy and asked if the Working Group would be interested in looking at that case as an example of what can go wrong with large deductibles. Mr. Keleher encouraged Mr. Hatch to submit relevant information from this case for the section of the paper dealing with insolvencies.

Mona Carter (National Council on Compensation Insurance—NCCI) commented that there were several recommendations that were produced after the original study was published in 2006. She suggested that these recommendations be reviewed and considered by Working Group members as they develop their sections of the study.

Barbara Cox (National Council of Insurance Guaranty Funds—NCIGF) and Tom Jenkins (council to Illinois Guaranty Fund) said they have a slide presentation that they would like to present on a future call.

Superintendent Cioppa asked that the Working Group revise the draft white paper outline based on the comments received on today’s call and send it out to all parties.

Ms. Carter asked if the Working Group should set up a separate subgroup to work on this project. Mr. Keleher advised that establishing a new separate working group was not necessary as this project was the major focus of the NAIC/IAIABC Joint (C) Working Group for 2015.

Superintendent Cioppa and Mr. Keleher asked for volunteers to participate in the study and drafting effort. Mr. Keleher suggested those interested in participating send an e-mail to dkeleher@naic.org indicating which areas they would like to work on. If a sufficient numbers of volunteers do not step forward, Mr. Keleher and Jennifer Wolf-Horejsh (International Association of Industrial Accident Boards and Commissions—IAIABC) will call parties attending the call and solicit their participation.

Having no further business, the NAIC/IAIABC Joint (C) Working Group adjourned.
Hear a Report about Recent Workers’ Compensation Insurer Insolvencies
Attachment Three
Hear a Report on the Growth of the Residual Market in Independent Bureau States
Residual Market Data

Independent Rating Bureaus

**Massachusetts**  Policy count from year-end 2013 to year-end 2014 shows an increase of +2.9%. Premium volume up +14.1%.

**Michigan**  Policy count from January 1, 2014 to January 1, 2015 is up 8%. Premium volume during same period up 4%.

**Minnesota**  Policy count from year-end of 2013 to year-end of 2014 is up 3.7%. Premium volume during same period up 1%.

**New Jersey**  Policy count (number of risks) from end of 2013 through year-end of 2014 increased 1.6%. Premium increased 1.3% during this same period.

**North Carolina**  Policy count (number of risks) from end of 2013 through end of 2014 increased 9.6%. Premium increased 11.3% during the same period.

**Wisconsin**  Policy count from January 1, 2014 to January 1, 2015 increased 1.1%. Premium increased 0.8% during same time period.

**Delaware**  Policy count mid- 2014 is 1.64% greater than mid-2013. Premium volume is 1.32% less mid-2014 than it was mid-2013.

* no update since last report.
Attachment Four
Discuss Proposed “Opt-Out” Legislation in Tennessee and Legal Challenges to “Oklahoma Option”
Sen. Mark Green and Rep. Jeremy Durham are proposing to allow employers to opt out of the state's workers' compensation program and design individual plans.

Story Highlights

- Tennessee would be third state to allow opt-outs.
- Employer-designed plans would have to meet minimum benefits.
- Claims would not be heard in the state's workers' compensation courts.

A proposal to allow employers to opt out of the state's workers' compensation program and design individual plans that met minimum requirements has been filed by Sen. Mark Green and Rep. Jeremy Durham. The bill would make Tennessee the third state to give employers the option to set up individual workers' compensation programs for employees who sustain injuries because of work. Texas and Oklahoma are the only two states that have opt-out programs. The bill, SB0721 in the Senate and HB0997 in the House, would cap benefits to 156 weeks or three years unless medical expenses hit $300,000. The current program allows for coverage for as long as treatment is needed. The bill is scheduled to be heard
in the Senate Commerce and Labor Committee on March 10, according to Green, R-Clarksville.
An employer would have to prove it is financially able to establish its own program. The bill — unlike Texas — delineates the minimum benefit requirements for an employer-designed program. The proposal is more similar to Texas than Oklahoma, according to the legislators as well as workers' compensation experts.
Both Green and Durham said Texas employers see workers' compensation costs that are roughly half of what Tennessee employers pay. "It gives Tennessee businesses the same chance to save money on workers' compensation," said Durham, R-Franklin.
Tennessee's workers' compensation program saw substantial legislative reform in 2013 — most changes took effect in July while some will take effect next year. The reforms were designed to make the benefit system equitable for both employees and employers, said Abbie Hudgens, workers' compensation division administrator for Tennessee.

As part of the reform, cases are now heard by judges who only hear workers' compensation cases. However, the bill would change the legal recourse for those who work at companies that design their own programs.
"Since they allow the employer to decide the rules of the benefits and of what they offer to employees they would not be able to go to our court," Hudgens said.
The proposal would allow an employee to bring a legal suit against the employer. "We put in there some recourse because we felt if we were going to lower the minimum (benefits) the businesses need to be held accountable (to payouts). Employees can bring a tort," Green said.
Municipalities, counties and school boards are able to opt out of the workers' compensation program. Hudgens said that 98 percent of municipalities do, however, participate in the program. Statistics are not available on the number of counties that participate.
Green and Durham want the ability to opt out to extend to private employers.
The proposal stemmed from conversations with employers in the legislators' districts. Green said he has had conversations with employers who do business in both Texas and Tennessee, who say there is greater employee satisfaction and cost savings for the company. One reason that "employees feel better taken care of," he said, is that
employers have more input on medical care so the employee back to work in a shorter amount of time.
"This is about both the employer and the employee. If we can decrease costs, the employer will be able to pay higher wages and take better care of the employee," Green said.
Durham, R-Franklin, said in addition to supporting programs that decrease costs for employers, he is co-sponsoring the bill after hearing from employers who were dismayed over the 2013 reforms.
Durham added that employers in his district want the same flexibility on workers' compensation as they have in offering health insurance. Companies can offer health insurance through a third-party insurance company, such as BlueCross BlueShield of Tennessee, or self-insure, meaning the employer takes on greater financial risk.

Employers in the state can currently self-fund workers' compensation programs as long as they have a contractual agreement with an insurance company that can be shown to state officials. This practice is known as "fronting" because the employer fronts its contract with the insurer to officials. The employer is the entity that pays benefits in the event of an injury.

Fronting is expensive for companies because it requires collateral and fees paid to the insurance company, said Jeff Parrish, partner and lobbyist who works for health care companies at Nashville law firm Waller Lansden Dortch & Davis. The ability to opt out "would bring significant benefit" to companies that already choose this route, he said.

The proposal will likely find opposition from a variety of entities, including insurance companies and worker advocates, such as labor unions.

Reach Holly Fletcher at 615-259-8287 or on Twitter @hollyfletcher.

Minimum benefits under the proposal

• Medical expenses covered for up to 156 weeks or three years, up to $300,000 per employee.
• Temporary disability starting on the fourth day of disability of at least 70 percent of the employee’s average weekly wages but up to 110 percent of the state’s average weekly wage for at least 156 weeks.
• Death and scheduled dismemberment benefits up to $300,000 per employee.
• A combined single limit that is at least $750,000 per employee and $2 million per occurrence.
Attachment Five
Discuss Legal Challenges to “Exclusive Remedy Doctrine”
Senate Bill 167 proposes to strike the language in the Kansas Workers’ Compensation Act which became effective January 1, 2015 requiring the use of the sixth edition of the American Medical Association’s Guide in the evaluation of permanent and permanent partial impairments. If passed, Senate Bill 167 would restore the previous language requiring the use of the fourth edition of the AMA’s Guide.

The Bill was proposed as a result of Florida and Oklahoma cases where trial courts ruled that the States’ workers’ compensation law was unconstitutional because it no longer provided adequate benefits to injured workers in exchange for the injured workers giving up their right to sue.

Some businesses in Kansas are concerned that the use of the sixth edition dramatically reduces payments for many injured workers and that these changes could get the law overturned in court, potentially exposing businesses to multimillion-dollar lawsuits that they’re now shielded from. They feel that were this to happen, it could bring down the entire compensation system and throw workers’ cases into the courts, where damage awards could run into the millions, rather than the thousands they’re capped at now.
Others, including Kansas and Wichita Chambers of Commerce disagree, and feel that lower payouts to injured workers result in lower insurance premiums for businesses. They don’t feel that the changes mean that the courts are going to say the Act is not constitutional and overturn the workers’ compensation system based on inadequate payments to injured workers.
Attachment Six
Discuss Federal Terrorism Risk Insurance Act (TRIA) Renewal Challenges and the U.S. Department of the Treasury Guidance
NOTE: This document is the notice that the Department of the Treasury will publish in the Federal Register. The Department of the Treasury posts this document on its website so that the notice may be immediately and widely available to the public. To the extent any inconsistency could arise between this document and the document published in the Federal Register, the public should rely on the version published in the Federal Register.

Billing Code 4810-25-P

DEPARTMENT OF THE TREASURY

Interim Guidance Concerning the Terrorism Risk Insurance Program Reauthorization Act of 2015

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice.

SUMMARY: This notice provides interim guidance concerning the Terrorism Risk Insurance Program (Program) under the Terrorism Risk Insurance Act of 2002, as amended (TRIA). In this notice, the Department of the Treasury (Treasury) addresses issues that have arisen under Treasury’s regulations for the Program (Program regulations) due to the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015 (2015 Reauthorization Act).

FOR FURTHER INFORMATION CONTACT: Kevin K. Meehan, Policy Advisor, Federal Insurance Office, 202-622-7009; Thomas E. Scanlon, Senior Counsel, Office of General Counsel (Banking and Finance), 202-622-8170.

SUPPLEMENTARY INFORMATION:

This notice provides interim guidance addressing the application of certain provisions of TRIA\textsuperscript{1} and the Program regulations\textsuperscript{2} following enactment of the 2015 Reauthorization Act.\textsuperscript{3}

\begin{footnotesize}
\begin{enumerate}
\item 15 USC 6701, note.
\item 31 CFR part 50.
\item Pub. L. 114-1, 129 Stat. 3.
\end{enumerate}
\end{footnotesize}
Treasury expects to issue a proposal to amend the Program regulations; this interim guidance may be relied upon by members of the public until superseded by the Program regulations, as amended, or by subsequent guidance.\(^4\)

I. Background

TRIA was enacted following the attacks on September 11, 2001, to address disruptions in the market for terrorism risk insurance, to help ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private markets to stabilize and build insurance capacity to absorb any future losses for terrorism events. Title I of TRIA creates the Program, requires insurers to “make available” terrorism risk insurance for commercial property and casualty losses resulting from certified acts of terrorism (insured losses), and provides for shared public and private compensation for such insured losses. Pursuant to TRIA, the Secretary of the Treasury administers the Program. The Federal Insurance Office assists the Secretary of the Treasury in administering the Program.

The Program was originally scheduled to terminate on December 31, 2005; however, the Terrorism Risk Insurance Extension Act of 2005\(^5\) extended the Program through December 31, 2007, and the Terrorism Risk Insurance Program Reauthorization Act of 2007\(^6\) further extended the Program through December 31, 2014. On January 12, 2015, the President signed into law the 2015 Reauthorization Act; Section 101 of that Act amends the Program’s termination date to December 31, 2020.

\(^4\) 31 CFR 50.7.
II. Interim Guidance

Treasury considers the Program regulations to be in effect, except to the extent that any provision of the Program regulations is inconsistent with TRIA, as amended by the 2015 Reauthorization Act. In the case of an inconsistency, the provision(s) of TRIA, as amended by the 2015 Reauthorization Act, shall apply. Furthermore, Treasury recognizes that the 2015 Reauthorization Act introduces ambiguities regarding application of certain sections of the Program regulations. This interim guidance is designed to address certain requirements under the Program regulations and TRIA, as amended by the 2015 Reauthorization Act.

Interim Guidance One (Documentation)

Due to requirements under state law regulating rates and forms, an insurer may need additional time to provide disclosures and offers of coverage for insured losses in compliance with the Program regulations and TRIA, as amended by the 2015 Reauthorization Act. An insurer should provide disclosures and offers that comply with the Program regulations and TRIA, as amended by the 2015 Reauthorization Act, as soon as possible and not later than April 13, 2015.

Interim Guidance Two (Form of Disclosure)

Section 50.17(c) of the Program regulations provides that an insurer may use NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2, or other disclosures that meet the requirements of the Program regulations. NAIC Model Disclosure Form No. 1 and NAIC Model Disclosure Form No. 2, as amended in 2015, are consistent with the disclosure requirements of the Program regulations and TRIA, as amended by the 2015 Reauthorization Act.
Interim Guidance Three (Timing of Disclosure)

As amended by the 2015 Reauthorization Act, TRIA no longer requires an insurer to provide to a policyholder certain disclosures at the time of a policy’s “purchase,” but still requires the insurer to provide such disclosures at the time of “offer” and “renewal.” The timing of an insurer’s disclosures may conform with either subpart B of the Program regulations or Section 103(b)(2) of TRIA, as amended by the 2015 Reauthorization Act.

Interim Guidance Four (Content of Disclosure)

An insurer that offered coverage for insured losses prior to January 12, 2015, using the then-current NAIC Model Disclosure Form No. 1, NAIC Model Disclosure Form No. 2, or other disclosures consistent with the Program regulations, is not required to provide a revised disclosure to the policyholder. Subject to Interim Guidance One, disclosures on or after January 12, 2015 provided in connection with a new or mid-term offer of coverage for insured losses should be based on the requirements of the Program regulations and TRIA, as amended by the 2015 Reauthorization Act.

Interim Guidance Five (New Offers of Coverage)

(a) Except as described herein, Treasury expects that an insurer will make a new offer of coverage for insured losses with respect to any in-force policy that does not provide coverage for insured losses.

(b) An insurer is not expected to make a new offer of coverage for insured losses if—

   (i) the policy incorporates a conditional exclusion or change of terms and conditions relating to coverage for insured losses and, because the Program is in effect, the insurer forbears effective January 1, 2015 (or as of the effective date of the policy, if later) on the exercise of the conditional exclusion or change in terms and conditions. Not later than April 13,
2015, an insurer should provide to the policyholder written notice of the insurer’s forbearance or
written notice of the insurer’s withdrawal of any previous exercise of the conditional exclusion
or change in terms and conditions. In the written notice, the insurer should state that the
insurer’s forbearance or withdrawal, as applicable, is effective January 1, 2015 (or as of the
effective date of the policy, if later); or

(ii) the policyholder declined coverage for insured losses, so long as the insurer’s
offer did not materially differ in price from that which the insurer would have offered following
enactment of the 2015 Reauthorization Act.

(c) If a policyholder declined coverage for insured losses but the insurer’s offer did
materially differ in price from that which the insurer would have offered following enactment of
the 2015 Reauthorization Act, then the insurer should consider making a new offer to that
policyholder.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act,7 the information collections contained
in this document have been approved by the Office of Management and Budget (OMB) under
control number 1505/0197. Any agency may not conduct or sponsor and a person is not required
to respond to a collection of information unless it displays a valid OMB control number.

Dated: February 4, 2015

/s/
Michael T. McRaith
Director, Federal Insurance Office

7 44 U.S.C. 3501 et seq.
Attachment Seven
Hear a Presentation on Medical “Tail”
in Workers’ Compensation
# Medical Tail Development Factors

From NCCI's Annual Statistical Bulletin

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