January 11, 2021

Submitted by Federal eRulemaking Portal http://www.regulations.gov

Federal Insurance Office
Attention: Richard Ifft
Room 1410 MT
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: 2019 TRIA Reauthorization Proposed Rules Comments

Dear Mr. Ifft:

These comments are submitted on behalf of the Captive Insurance Companies Association (CICA), the Vermont Captive Insurance Association (VCIA) and the Captive Insurance Council of the District of Columbia (CIC-DC). CICA is the leading domicile-neutral trade association representing the global captive insurance industry. VCIA is the largest trade association for captive insurance in the world and represents the captive insurance industry in Vermont. CIC-DC is the trade association representing captive owners and captive insurance professionals in the District of Columbia. Many members of CICA, VCIA and CIC-DC rely on captive insurers to obtain coverage for terrorism risks.

The Terrorism Risk Insurance Program (TRIP or the Program) established under the Terrorism Risk Insurance Act, as amended (TRIA) was designed to "provide a framework for market stability to facilitate the underwriting of terrorism insurance risk following the terrorist attacks of 9/11/2001."[1] Captive insurers have played a critical role in achieving this goal by providing insurance for terrorism risks for which coverage from other insurers is insufficient or wholly unavailable. This is especially true with respect to coverage for properties and operations in higher-risk areas and for nuclear, biological, chemical and radiological (NBCR) risks. Changes to TRIP that would limit the access of captive insurers to the Program would seriously undermine the stability provided by TRIA and be directly contrary to Congress's purposes in enacting and reauthorizing TRIA.

[1] Advisory Committee on Risk Sharing Mechanisms, Initial Report of the Committee, at p. 8 (May 11, 2020) (ACRSM 2020 Initial Report).

180 Battery Street
Burlington, Vermont 05401
phone: 802-658-8242
e-mail: smith@vcia.com

4248 Park Glen Road
Minneapolis, MN 55416
phone: 952-928-4655
e-mail: dtowle@cicaworld.com

1401 Eye Street, N.W.; Suite 600
Washington, D.C. 20005
phone: 202-408-5153
e-mail: jholahan@mmmlaw.com

Congress enacted TRIA following the 9/11 terrorist attacks to address market disruptions resulting from the attacks and ensure the continued availability and affordability of property casualty insurance for terrorism risk. Nearly 20 years on, TRIA continues to serve this vital function, and captive insurers have proven to be an important component in providing the market stability TRIA was intended to ensure. The role of captive insurers is especially important with respect to providing insurance for higher-risk properties and operations and for NBCR risks, where coverage from other insurers is lacking or, in the case of NBCR, often entirely unavailable. We want to emphasize that the insufficiency of terrorism coverage in this respect is not limited to certain "trophy" or "iconic" properties. Rather, the problem extends to a variety of higher-risk geographical areas, including urban centers and areas in proximity to nuclear facilities or other high-risk facilities; various types of properties, including sports facilities and other public venues; and various industries, including transportation, telecommunications and utilities. Captive insurers play a critical role in providing coverage for all of these risks.

It also is important to note that the stability provided by TRIA must be considered with a view to changing market conditions. The insurance and reinsurance markets for U.S. risks have evolved in an environment where the nation has gone for years without a terrorist attack of significant magnitude. The posture of these markets would change dramatically if there were a serious attack, at which point the stability provided by captive insurers would be even more critical than it is today. In addition, the global insurance and reinsurance markets are currently undergoing a "hardening" phase. The last year has seen dramatic increases in the price of insurance and reinsurance for all types of risks, including terrorism risk, accompanied by a reduction in capacity. The stability provided by captive insurers is important in this environment, where existing problems with the availability and affordability of terrorism insurance and reinsurance are exacerbated. Limiting the access of captive insurers to TRIP would greatly weaken the Program by making it difficult for the Program to respond effectively and quickly to future disruptions in the market, whether caused by a terrorist attack, normal market cycles or some other unforeseen circumstance.

The discussion below reproduces the questions concerning captive insurance posed by Treasury in its November 10, 2020 Notice of Proposed Rulemaking and Request for Comments and provides our comments with respect to each.

(1) With respect to captive insurers:

(a) *Whether, in light of the size and operation of captive insurers and the current structure of TRIP, captive insurers are likely to obtain larger payments under the Program in a large loss event as compared to traditional insurers that assume similar risk exposures*

We do not have data that are responsive to this question, but we note that modeling of insured terrorism losses done by the Federal Insurance Office has shown that the coverage provided by captive insurers participating in TRIP is important to ensuring the effectiveness of

180 Battery Street
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phone: 802-658-8242
e-mail: smith@vcia.com

4248 Park Glen Road
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e-mail: dtowle@cicaworld.com

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e-mail: jholahan@mmmlaw.com

the Program, especially with respect to NBCR risks.[2] It is unsurprising that captives insurers would account for a significant amount of claims in the modeled scenarios, particularly in the scenario involving an NBCR component, because they provide important capacity that is unavailable from other insurers.

(b) *Whether there are administrative rule changes that could be made to the Program rules and administration for captive insurers that would result in recovery percentages for captive insurers that may be more consistent with those indicated in modeled loss analyses for other industry segments.*

We do not believe any administrative rule changes to the Program with respect to captive insurers are advisable at this time given the importance of captive insurers to TRIP and the instability that could result if their access to the Program is restricted.

(c) *Whether the Program should attribute some amount of captive parent revenues to captive insurers for TRIP deductible calculation purposes.*

We do not believe the Program should be changed to attribute captive parent revenues to captive insurers for TRIP deductible calculation purpose. Such a change could make terrorism insurance provided by a captive insurer unaffordable for many insureds, thereby reducing capacity for terrorism insurance and threatening the stability of the market. We note that captive insurers, like other insurers, are required by state regulators to set premium rates in accordance with accepted actuarial principles and maintain the financial capacity to pay expected claims, including claims for losses resulting from terrorism. In addition, captive insurers have less access to reinsurance for terrorism risks than large, conventional insurers because they do not have the same spread of risks as these larger entities.

Nor do we believe changes that would single out captive insurers for differential treatment would be consistent with the plain language of TRIA or Congressional intent. Under TRIA and the regulations implementing TRIP, captive insurers are insurers "licensed or admitted to engage in the business of providing primary or excess insurance in any State,"[3] and therefore should be eligible to participate in TRIP on the same basis as other insurers.

(d) *Whether changes to the Program structure for captive insurers could prevent policyholders (who may be unable to obtain terrorism risk insurance in the conventional market for a reasonable price) from obtaining such insurance from captive insurers.*

As discussed above, changes to the Program structure for captive insurers could prevent policyholders from obtaining terrorism insurance from captive insurers. This problem is

[2] *See* Federal Insurance Office, U.S. Department of the Treasury, Report on Effectiveness of the Terrorism Risk Insurance Program**,** at pp. 49-55 (June 2020).
[3] TRIA § 102(6)(A)(i). *See* 31 CFR § (o)(1(i)(A) ("insurer" eligible to participate in TRIP includes an entity that is "is licensed or admitted to engage in the business of providing primary or excess insurance in any state (including, but not limited to, state licensed captive insurance companies...").

especially acute with respect to coverage for NBCR. In many cases, captive insurance is the only way policyholders may obtain this coverage.

(2) Whether FIO should make public financial information regarding participating captive insurers, taking into account whether this additional transparency would be beneficial to the terrorism risk insurance market and the administration of TRIP.

We see no justification for FIO to make public financial information regarding the participation of captive insurers in TRIP. Singling out captive insurers for the disclosure of sensitive information would be detrimental to TRIP and contrary to the purposes of TRIA. Congress intended to maintain the confidentiality of information reported by insurers, including captive insurers, in response to TRIA data calls by having a statistical aggregator collect the information and provide it to the Secretary of the Treasury in aggregate, anonymized form or otherwise in a manner that would protect the confidentiality of insurers submitting such information.[4] Even if TRIA granted authority to the Secretary to disclose confidential information provided by captive insurers, we can see no benefit to be derived by doing so. Indeed, we are concerned that disclosing such information in anything other than an aggregate, anonymized form could present a security risk to policyholders who purchase terrorism insurance from captive insurers.

As the Advisory Committee on Risk Sharing Mechanism noted in its 2020 report, "TRIP is critically important in providing market stability and without it, a functioning insurance market for terrorism risk would not exist."[5] We agree with this assessment and would add that the participation of captive insurers in TRIP is essential to maintaining this stability and functionality. We urge Treasury not to adopt measures that would limit the access of captive insurers to TRIP.

Sincerely yours,

Richard S. Smith	Daniel D. Towle	Joseph T. Holahan
President	President	President
VCIA	CICA	CIC-DC

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[4] TRIA § 104(h).

[5] ACRSM 2020 Initial Report, at p. 14.

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