

May 31, 2016

Via 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: 2015 TRIA Reauthorization Proposed Rule (RIN 1505-AC53) –  
Comments of the American Bankers Insurance Association**

Dear Mr. Ifft:

The American Bankers Insurance Association<sup>1</sup> (ABIA) appreciates the opportunity to submit these comments on the proposed rule issued by the Federal Insurance Office (FIO) of the U.S. Department of the Treasury to implement recent changes to the Terrorism Risk Insurance Act (TRIA).

As a general matter, ABIA supports FIO's effort to comprehensively update the regulation implementing TRIA. The proposed rewrite of 31 CFR Part 50 would eliminate outdated provisions and conform the regulation to current law. Our specific comments on the proposed rule follow.

*Subpart A, Definitions of Captive Insurer and Small Insurer*

Proposed §50.4(g) defines the term “captive insurer” for purposes of implementing TRIA. This definition is included in the proposed rule in order to give effect to a proposed exclusion of captive insurers from the definition of “small insurer” that is in proposed §50.4(z). In other words, the combined effect of these two definitions is to treat small captive insurers differently than other small insurers for purposes of the data collection requirements otherwise proposed in the rule.

In justifying the exclusion of captive insurers, FIO states that “captive insurers typically insure only the exposures of corporate parents or of other related policyholders, . . . [so] the establishment of a captive insurer is a risk management decision that is not compelled by TRIP, and the corporate parent or other source of strength of the captive insurer is ultimately positioned to manage any potential risk presented to the captive by its participation in TRIP.” We believe it is inappropriate to differentiate between small captive insurers and other small insurers based on the potential source of strength argument.

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<sup>1</sup> ABIA is the leading trade association for banks selling insurance products and services. ABIA's members include bank-affiliated insurance agencies and insurance companies that work with those agencies. Several of its bank members have captive insurers.

Some corporate parents of captive insurers are themselves small, which would diminish the source of strength available to the captive insurer held by a smaller parent. Additionally, there are other types of captive insurers that are not subsidiaries of a corporate parent or related policyholders. For example, several states define “captive insurer” to include, “in the case of any group or association, any insurance organization owned by the insureds whose only purpose is to insure risks to any member-organization, group member or affiliate of the member.”<sup>2</sup> The “source of strength” justification does not hold for captives related to groups or associations.

Therefore, we respectfully request that the definition of captive insurer be deleted from the proposed rule and that the definition of small insurer be revised accordingly. In the alternative, we ask that the definition of “captive insurer” not include insurers held by groups or associations.

#### *Subpart E, Captive Insurers*

In reserving Subpart E for future additional provisions related to captive insurers, FIO has asked about the current role of captive insurers (both state-licensed entities and otherwise) in providing insurance in TRIP-eligible lines. Captive insurers are significantly involved in TRIP-eligible lines of insurance, particularly with respect to nuclear, chemical, biological, and radiological (NCBR) risks. In fact, without access to coverage through captive insurers for NCBR risks, many companies would have to go without insurance coverage for those risks.

State insurance regulators regulate captive insurers. They are required to develop business plans and perform actuarial analyses of their risks; consequently, they calculate their own requirements for capital and reserves and factor into those calculations risks that are covered risks under TRIA. State insurance regulators examine captives and monitor them closely to keep abreast of how they are performing and any potential risk that might need to be addressed.

That said, captive insurers differ from other insurers in their relationship to their insureds, so we support the reserving of Subpart E in considering whether and how to regulate them in the context of TRIA.

#### *Subpart F, Data Collection*

Subpart F of the proposed rule establishes procedures for the collection of data by Treasury in connection with the claims process in the event that an act of terrorism has been certified. Proposed §50.52 specifically addresses the data collection requirements for small insurers, which are defined in §50.4(z) to exclude captive insurers. As discussed above, ABIA believes that captive insurers should be treated the same as other insurers for purposes of the data collection requirements in the proposed rule. Accordingly, we believe that small captive insurers should be included in the data collection requirement established in this section of the rule.

In conclusion, captive insurers play a useful, unique role in helping companies manage their terrorism risk. In many ways, they are similar to typical insurance companies. Therefore,

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<sup>2</sup> E.g., Conn. Gen. Stat. § 38a-91(2); K.S.A. § 40-37a02(b); N.J. Stat. § 17:22D-1.

we urge FIO to reconsider its proposal to exempt captive insurers from the definition of “small insurer,” as the assumptions in the proposed rule for doing so appear questionable. We also look forward to working with FIO when it begins to address captive insurers in Subpart E.

Sincerely,