Coalition for Competitive Insurance Rates

The Honorable Dave Camp
341 Cannon House Office Building
Washington, DC 20515

The Honorable Sander Levin
1236 Longworth House Office Building
Washington, DC 20515

The Honorable Max Baucus
511 Hart Senate Office Building
Washington, DC 20510

The Honorable Orrin Hatch
104 Hart Senate Office Building
Washington, DC 20510

February 14, 2011

Dear Chairmen Camp and Baucus and Ranking Members Levin and Hatch:

We are writing to express our concern about a proposal within the Obama Administration's FY 2012 Budget which would create a discriminatory reinsurance tax that will harm US consumers. This is similar to legislation introduced in the 111th Congress by Rep. Richard Neal (D-MA) - legislation which was widely opposed by consumer advocates, insurance industry experts, and trade analysts. Unfortunately, this proposal is being advocated as a possible tax revenue offset by a small group of very large U.S. insurance companies. With the enactment of this tax, these companies intend to create a U.S. market share advantage for themselves at the expense of individual and commercial insurance consumers. We oppose these proposals.

The Proposals are Bad for Consumers

This budget proposal would disallow a deduction for certain reinsurance premiums paid by a U.S. insurer to an international affiliate. In effect, this is designed to punish international insurers by imposing additional taxes on their U.S. operations. It essentially imposes an isolationist tariff on international insurance companies conducting business in the U.S. Moreover, this punitive tax change on international insurers would foreclose their use of a business model that U.S. insurers will continue to widely use. In fact, today in Brazil, the same U.S. insurers that promote this tax are opposing a similar proposal which would restrict the use of affiliated reinsurance between their Brazilian subsidiaries and their U.S. parents - essentially shutting down their operations in that country.

Reinsurance is an important tool used by insurers to manage risk. The U.S. requires a large amount of reinsurance capacity to cover such events as natural disasters, large scale industrial accidents and acts of terrorism. A substantial part of this reinsurance is supplied by non-U.S. reinsurance companies. The effort to create a punitive tax regime on international carriers will result in less insurance capacity and increased costs for U.S. consumers. A robust insurance market open to as many competitors as possible is essential to consumers. This is particularly understood by those in states more exposed to natural disasters where there has been a crisis of insurance availability and affordability and by those who buy certain classes of commercial insurance that have historically suffered from contractions in availability of coverage. That's why insurance regulators from Florida, Louisiana, Mississippi, North Carolina, South Carolina and the Florida Insurance Consumer Advocate have gone on the record opposing this proposed tax.

An economic impact study published in 2009, updated in 2010, and reviewed in 2011 by the Brattle Group, an economic consulting firm based in Cambridge, Massachusetts, found that the tax proposed by the Neal bill would cost consumers more than $10 billion per year ($100 billion over the decade) and would reduce U.S. reinsurance capacity by 20 percent. The study was co-authored by the nation's leading

insurance scholar— Dr. J. David Cummins, the Harry J. Loman Professor Emeritus of Insurance and Risk Management at the Wharton School of Business.

The Proposals Violate Longstanding U.S. Tax and Trade Policy

The Obama budget proposal violates longstanding U.S. tax policy that calls for the application of an arms-length standard for related party, cross border dealings. In the insurance business, related party transactions are well documented; they are subject to approvals by state insurance regulators. Abundant comparative market information is available to enforce the so-called transfer pricing rules. The IRS has authority to enforce these laws as they relate to reinsurance transactions. The changes proposed are contrary to decades of U.S. tax and trade policy and inconsistent with existing U.S. tax treaty obligations. They could spur retaliatory actions by other countries and ultimately damage relationships with important U.S. trading partners.

Additionally, this tariff would violate World Trade Organization (WTO) commitments. While one of the basic principles of the WTO is that a country cannot treat a foreign company worse than it treats its own companies, these proposals clearly single out foreign reinsurers for treatment worse than U.S. reinsurers. Specifically, they subject foreign reinsurers – but not U.S. reinsurers – to an arbitrary test to limit the tax deductibility of reinsurance premiums paid to them by their U.S.-based affiliates. Just as foreign countries cannot protect their insurance markets for their domestic insurance companies and treat U.S. companies unfairly, the U.S. cannot protect the U.S. market for domestic insurance companies and treat foreign companies unfairly. This is why the European Union and countries like the United Kingdom, Switzerland and Germany have complained that this tax would violate WTO commitments and tax treaties.

Congress Should Make the U.S. More Competitive, Not Punitive to Some Competitors

Rather than considering punitive taxes on affiliated reinsurance transactions, Congress should seek to make the U.S. system more competitive to attract companies to form and grow in the U.S. Penalizing the efficient economic allocation of capital by internationally diversified companies is not in the best interest of the U.S. economy; it will lead to decreased capacity and upward pressure on rates. We urge you to oppose legislation that is supported by a small group of self-interested U.S. insurance companies. U.S. policyholder groups have urged opposition to such proposals because of their effect on the availability and affordability of insurance. These proposals are isolationist measures aimed at benefiting some competitors in the market at the expense of others. Ultimately U.S. consumers will suffer if this change is approved.

Sincerely,

Florida Consumer Action Network (FCAN)
Consumer Federation of the Southeast
Risk and Insurance Management Society (RIMS)
Organization for International Investment (OFII)
Competitive Enterprise Institute (CEI)
Americans for Tax Reform
Americans for Prosperity
American Legislative Exchange Council
Dublin (Ireland) International Insurance and Management Association (DIMA)
National Risk Retention Association (NRRA)
National Taxpayers Union

Captive Insurance Council of the District of Columbia
Captive Insurance Companies Association (CICA)
Coalition for Competitive Insurance Rates
Florida Insurance Council
Association of Bermuda Insurers and Reinsurers
Vermont Captive Insurance Association
XL America
Arch Capital Group Limited
Ace Group, Ltd.
Argo Group
Zurich