

COALITION FOR COMPETITIVE INSURANCE RATES

October 12, 2011

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

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

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

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

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

The undersigned parties (including members of the Coalition and others) are writing to express our concern about legislation recently introduced by Rep. Richard Neal (D-MA) and Senator Robert Menendez (D-NJ), which would create a discriminatory tax on insurers and reinsurers that will harm US consumers. Similar legislation has been introduced in previous sessions of Congress and has been widely opposed by consumer advocates, insurance industry experts, and trade analysts. The state legislatures of Texas, Louisiana and Florida have passed memorial legislation openly opposing this dangerous and unnecessary tax. Unfortunately, this proposal is being advocated as a possible tax revenue offset by a small group of very large U.S. insurance companies. Ironically, these very companies who are proponents of this tax here at home are actively fighting a similar provision in Brazil that would threaten their ability to compete in that country.

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 legislation would disallow a deduction for 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 charge on international insurers would foreclose their use of a business model that U.S. insurers will continue to widely use.

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 Neal bill 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 insurers and reinsurers for treatment worse than U.S. insurers and reinsurers. Specifically, they subject foreign insurers and reinsurers – but not their U.S. counterparts– to an arbitrary test eliminating 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
The American Consumer Institute
Risk and Insurance Management Society (RIMS)
Organization for International Investment (OFII)
Competitive Enterprise Institute (CEI)
Americans for Tax Reform
Americans for Prosperity

Dublin (Ireland) International Insurance and Management Association (DIMA)
Heartland Institute
National Risk Retention Association (NRRRA)
National Taxpayers Union
Captive Insurance Council of the District of Columbia
Captive Insurance Companies Association (CICA)
Coalition for Competitive Insurance Rates
European Insurance and Reinsurance Federation (CEA)
Florida Insurance Council
Association of Bermuda Insurers and Reinsurers (ABIR)
Association of British Insurers (ABI)
Vermont Captive Insurance Association
XL America
Arch Capital Group Limited
Ace Group, Ltd.
Argo Group
Zurich
Allianz of America
Swiss Re America
Munich Reinsurance America