COALITION FOR COMPETITIVE INSURANCE RATES

The Honorable Kevin Brady
301 Cannon Building
Washington, DC 20515

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

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

The Honorable Ron Wyden
221 Dirksen Senate Office Building
Washington, DC 20510

February 9, 2016

Dear Chairmen Brady and Hatch and Ranking Members Levin and Wyden:

The undersigned members of the Coalition for Competitive Insurance Rates and others are writing to express our concern about a proposal within President Obama's FY 2017 budget which seeks to deny a tax deduction for certain reinsurance premiums paid to foreign-based affiliates by domestic insurers. These domestic insurers are examples of the foreign direct investment that our government's economic policies encourage.

The President's budget proposal closely resembles legislation from the 113th Congress (H.R. 2054 and S. 991) introduced by Reps. Richard Neal (D-MA) and Bill Pascrell (D-NJ) and Sen. Robert Menendez (D-NJ) that would limit US insurance capacity and drive up the cost of insurance, compelling homeowners and small businesses, particularly those in disaster-prone states, to shoulder the burden of this anti-competitive tax. The proposal has remained under active consideration in the Congress, having been included in former Ways and Means Committee Chairman Dave Camp's tax reform legislation (H.R. 1) in 2014. We would note that it was not proposed by the Senate Finance Committee's International Tax Reform Working Group in 2015.

A growing, bipartisan chorus of state and federal officials has consistently and vocally opposed the discriminatory measures found in these legislative proposals. In recent years insurance commissioners representing Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, Pennsylvania and South Carolina have all publicly rejected the proposals, as have agriculture commissioners from Florida, North Carolina and Tennessee, and Florida Governor Rick Scott.

A robust insurance market open to as many competitors as possible is essential to consumers. Global reinsurers are financially strong and have substantial capacity to support US insurance companies. For example: losses from Hurricane Sandy reached nearly $19 billion; international insurance companies covered close to 50 percent of the losses.

In a 2015 report issued by the Tax Foundation on the consequences of a tax on the foreign reinsurance industry found that United States' GDP would experience $1.35 billion in losses over the long term, which is approximately twice the revenue it would collect. In an economic impact study of previously introduced related legislation by Rep. Neal and Sen. Menendez, the Brattle Group, a leading economic consulting firm, found such legislation would have reduced the net supply of reinsurance in the US by 20 percent, forcing American consumers to have paid a total of $11 to $13 billion a year more for their same coverage.

A tax on foreign affiliate reinsurance would only serve to limit US insurance capacity and drive up the cost of insurance, a major threat to homeowners and businesses. The only potential winners are the select few firms that stand to profit from decreased market competition.

This budget proposal would deny a deduction for certain reinsurance premiums paid by a US insurer to an international affiliate, or effectively delay it where there are payments of the associated losses. In effect, this is designed to punish international insurers by imposing additional taxes on their US operations. It essentially imposes an isolationist tariff on international insurance companies conducting business in the US, ultimately denying them a key risk management tool everyone else uses. They would have to either replace affiliate reinsurance with non-affiliate reinsurance or raise more capital. One final alternative would be for individual insurers to reduce the size and scope of their US offerings to fit with their existing subsidiary capital bases. Above all, any of the options would increase the cost of reinsurance, making the underlying insurance coverage more expensive for the companies and consumers that depend on it the most.

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

A 2015 study published by Arthur Laffer, "Do We Want Special Interest Trade Protectionism in the Tax Code?" warns that the reinsurance tax "involves trade protectionism implemented through the tax system, done at the behest of domestic insurers and reinsurers seeking protection from foreign competition," in violation of several US trade agreements and international tax treaties. As Laffer points out, this tariff would violate World Trade Organization (WTO) commitments. 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 US reinsurers. Specifically, they subject foreign reinsurers – but not US reinsurers – to an arbitrary test to limit the tax deductibility of reinsurance premiums paid to them by their US-based affiliates. Just as foreign countries cannot protect their insurance markets for their domestic insurance companies and treat US companies unfairly, the US cannot protect the US market for domestic insurance companies and treat foreign companies unfairly. The European Union and individual countries like the United Kingdom, Switzerland and Germany have asserted that this tax would violate WTO commitments and tax treaties.

We ask you to weigh the unintended consequences of a tax on foreign reinsurers. These proposals are isolationist measures aimed at benefiting some competitors in the market at the expense of American consumers and business owners.

Sincerely,

American Consumer Institute
Americans for Tax Reform
Florida Consumer Action Network (FCAN)
Risk and Insurance Management Society (RIMS)
Organization for International Investment (OFII)
Competitive Enterprise Institute (CEI)
Associated Industries of Florida
Florida Chamber of Commerce
Dublin (Ireland) International Insurance and Management Association (DIMA)
Insurance Europe
National Risk Retention Association (NRRA)
National Taxpayers Union
Munich Reinsurance America
Chubb

Captive Insurance Council of the District of Columbia
Captive Insurance Companies Association (CICA)
Coalition for Competitive Insurance Rates
Florida Insurance Council
R Street Institute
Association of Bermuda Insurers and Reinsurers
Montana Captive Insurance Association
Vermont Captive Insurance Association
XL Catlin America
Arch Capital Group Ltd.
Argo Group
Zurich
Allianz of America
International Underwriting Association of London Ltd.
Swiss Re America
Policyholders of Florida
Taxpayers Protection Alliance
Consumer Federation of the Southeast