

***Collection of Data from Property and Casualty Insurers for
Reports Concerning the Terrorism Risk Insurance Program***

The Centers for Better Insurance, LLC (CBI) is an independent organization committed to enhancing the value the insurance industry delivers to all stakeholders (including policyholders, employees, and society at large). CBI does so by making available unbiased analysis and insights about key regulatory issues facing the industry for use by insurance professionals, regulators, and policymakers. CBI published *The Terrorism Risk Insurance Act: Policies Process and Controls* (2020) which focuses on compliance with the requirements of the program. Additional information regarding CBI is available on the web at www.betterins.org or by email request at info@betterins.org.

These comments respond to Treasury's Notice appearing at 90 FR 11355 (March 5, 2025) seeking comments in advance of its collection of data for the 2026 Report on the Effectiveness of the Terrorism Risk Insurance Program.

For many years, CBI has raised concern that only a small number of captive insurance companies participating in the program respond to Treasury's compulsory data calls such as the one subject to this Notice. Treasury has been generally dismissive of CBI's concerns. CBI again raises this concern coupled supported by data from the National Association of Insurance Commissioners and Treasury's own analysis suggesting that Treasury's data collection reaches at most one-third of all participating captive insurers.

Captive insurance companies are insurers formed to insure the risks of their corporate owners. Because only large businesses have the resources to form captives, captive insurance company performance under the program is a fair proxy for determining the extent to which program benefits flow to large corporations (i.e., through their participating captives) or to small and medium businesses (i.e., through traditional insurers).

While representing a relatively small amount of direct written premium covered by the program, captives play an outsized role in the receipt of potential benefits under the program. Based on Treasury's own reporting, captives represent a mere 5% of the program's premium but are expected to receive up to 95% of any benefits paid out under the program. Given the low response rate of captives to Treasury's data call, even this extraordinary proportion understates the dominance of captive insurance companies (and of their large corporate parents) in the consumption of program benefits.

More complete collection of data from captive insurers would surely reveal that closer to 99% of program benefits flow to large corporations through their participating captive insurance subsidiaries, while small and medium sized businesses receive nearly no benefits under the program. CBI suggests that through outreach to state licensed or registered captive managers Treasury would be in a better position to fulfill its statutory mandate to report on the effectiveness of the program.

Participating Captive Insurers

All state-licensed insurance companies writing direct insurance in one of the covered lines of insurance are required to participate in the program.¹ These participating insurance companies include state-licensed captive insurance companies.²

Since the outset of the program, Congress and Treasury have expressed concern regarding the participation of captive insurance companies.³ Specifically, Treasury raised concerns early on that large corporations could use captive insurance companies to “game” the program.⁴ Over the last decade, Treasury has largely ignored evidence developed from its own data calls that such gaming is rife throughout the program.

Prior Data Collections

While Treasury collects data from at least 99% of non-small insurers, it has been unable to confirm the response rate of captive insurers to its mandatory data calls.⁵ Treasury explains that it has engaged with the NAIC and insurance brokers to determine the appropriate number of captive insurers participating in the program.⁶ Based on this input, Treasury believes a “significant majority” of participating captive insurance companies comply with mandatory data calls.⁷

Treasury believes that in 2023 there were 615 captive insurers participating in the program, generating direct writings of \$14 billion in covered premium.⁸ Treasury found that these captives also write about \$16.2 billion in premium not covered by TRIA (i.e., non-covered lines and reinsurance).⁹ Treasury reasons that across this sample, 46% of total earned premium from captives is subject to the program.

NAIC Data Proves Treasury Collection of Captive Insurer Data is Inadequate

Most recently in September 2023, NAIC published detailed data on state-licensed captives as of the end of 2022.¹⁰

The NAIC reports that there were 4167 active state-licensed captives at the end of 2022.¹¹ In contrast, Treasury believes there are only 3365 active state-licensed captives.¹² In other words, Treasury understanding of the universe of captives is understated by 24% as

¹ TRIA § 103(a)(30).

² 31 CFR § 50.4(o)(1)(i)(A).

³ See TRIA § 103(f).

⁴ Interpretive Letters (March 2, 2004) (September 21, 2004), (September 24, 2004), and (October 19, 2006).

⁵ Report on the Effectiveness of the Terrorism Risk Insurance Program (June 2024) at page 11.

⁶ Id.

⁷ Id. at 12.

⁸ Id. at 66.

⁹ Id.

¹⁰ Insurance Department Resources Report (Sept. 2023), Vol. II at page 12.

¹¹ Id.

¹² Report on the Effectiveness of the Terrorism Risk Insurance Program (June 2024) at page 66.

compared to the understanding of the state Departments of Insurance that actually license these captives. In any event, Treasury only collects data from 615 captives or less than 15% of the total number of state-licensed captives according to the NAIC.

The NAIC reports that captives wrote a total of \$110 billion of premium in 2022. Treasury’s data call only reached \$30 billion of that premium – or just 27% of the total state-licensed captive market.¹³ Using Treasury’s calculation that 46% of premium written by captives is subject to the program (i.e., after excluding reinsurance and uncovered lines), the total captive market subject to TRIA should be around \$50 billion. Yet, Treasury received reports consisting of just \$14 billion in covered premium. In other words, Treasury is collecting data on just 28% of the captive insurance premium subject to the program.

In fact, NAIC reports that state-licensed captives write \$45 billion in direct written premium (i.e., excluding reinsurance). Even if 10% or 20% of that premium is written in excluded professional liability lines, Treasury’s reporting to Congress understates captive insurance company participation in the program by a factor of at least two or three.

Why Treasury’s Undercount of Captive Participation Matters

In each data call since 2017, Treasury asks participating insurers to estimate their respective losses and expected program recoveries under different terrorism attack scenarios. Treasury then reports the aggregate losses and program recoveries by insurer class.

Captive insurers make about only about 5% of the program by premium. However, Treasury’s reports to Congress show that captive insurers (and their large corporate owners) expect to receive 6x – 19x their program “market share” in program benefits. In contrast, traditional insurers (and their small and medium sized policyholders) make of 95% of the program by premium but stand to gain as little as 4% or 5% of program benefits.

Data Call	Scenario	Share of Program Benefits	
		Traditional Insurers	Captive Insurers
2024	Atlanta	8.7%	91.3%
2023	Las Vegas	3.6%	96.4%
2022	Miami	63.3%	36.7%
2021	D.C.	10.3%	89.7%
2020	Dallas	55.6%	44.4%
2019	San Francisco	24.0%	76.0%
2018	Chicago	4.8%	95.2%
2017	New York City	67.6%	32.4%

¹³ Id.

This dismal picture of large corporate domination of the program is overwhelmingly evident even with Treasury's recent data calls capturing a mere third of the total captive insurance market. Should Treasury make a diligent effort to collect data from the other two-thirds of the captive insurance market in future data calls, the full scale of the exploitation of the program by large corporations – and the near uselessness of the program for small and medium sized businesses – would present in even more grim relief.

The program is scheduled to expire on December 31, 2027. Treasury has one last shot to provide Congress and other stakeholders with an accurate picture of the program through its 2026 Report on the Effectiveness of the Terrorism Risk Insurance Program. The only way Treasury can fulfil this mandate is to compel compliance with its annual data calls from the two-thirds of the captive insurance market that participates in the program but have refused to comply with their obligations.

Outreach to Captive Managers

Every captive has a captive manager. These captive managers are approved or licensed by the respective state Departments of Insurance. Most of these Departments of Insurance publish a list of such captive managers on their websites.¹⁴ The remaining Department of Insurance would provide the list to Treasury on request. CBI is more than willing to assist Treasury in compiling a list of captive managers.

For the 2025 and 2026 data calls, Treasury should reach out to each of the state approved captive managers with directions to complete the data call with respect to the captives they manage.

Only with a complete picture of the role of captive insurance companies – the dominant participants in the Terrorism Risk Insurance Program – will Congress be equipped to thoughtfully deliberate whether to extend, modify or terminate the program at the end of 2027.

¹⁴ For example, Vermont (the largest captive domicile in the world) publishes its list of approved captive managers at <https://dfr.vermont.gov/document/approved-management-companies>. Utah (the second largest captive domicile in the US) publishes its list of approved captive managers at <https://insurance.utah.gov/captive/providers/#approved-providers>. North Carolina (the third largest captive domicile in the US) publishes its list of approved captive managers at <https://ww2.ncdoi.com/ApprovedManagers>.