May 31, 2016

Federal Insurance Office
Attention: Richard Ifft
Room 1410 MT
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Proposed Rules to the Terrorism Risk Insurance Program (TRIP)

Dear Sir:

The Department of Treasury has requested comments in anticipation of rules concerning the participation of captive insurers and other self-insurance arrangements in the Terrorism Risk Insurance Program (TRIP or “the Program”).

The Association of Governmental Risk Pools (AGRiP) respectfully submits these comments on behalf of its membership.

AGRiP members include more than 200 public entity risk pools in the United States. Based upon AGRiP member data, it is estimated that more than 70,000 public entity bodies in the United States participate in one or more risk pools. Approximately 80 percent of the more than 90,000 public entities in the country cover at least a portion of their risk through risk pooling.

**TERRORISM EXPOSURES IN LOCAL GOVERNMENTS, SCHOOLS, AND PUBLIC ENTITY POOLS**

Most local public entities are small. 90 percent of the incorporated cities, towns and villages in the United States have population of 10,000 or fewer. Given their small size, the vast majority of these public bodies do not have risk exposures that are themselves likely to trigger the Program.
A few larger local government entities or schools might have more significant terrorism exposures. Regardless of size, public bodies and their public entity pools may have risk exposures that would be impacted by a terrorism event that on the whole triggers the Program.

Public entity pools are comprised primarily of small to mid-sized public bodies.

**COMMENTS RELATING TO NOTICE 2016-0005-0001**

In anticipation of possible development of rules for the participation of captive insurers and other self-insurance arrangements in the Program, including municipal self-insurance arrangements, AGRiP offers the following comments on behalf of its members:

- Pools are the prevalent method of risk management and risk transfer among public entities.

- With a few minor exceptions, pools are not “captives.”

- There is not significant exposure of terrorism risks within public entity pool membership likely to trigger a TRIP-eligible event; however, public entity pools may have exposure in an industry-wide event that meets the Program criteria.

- Some pools offer terrorism coverage to their members, although the definition of terrorism may be different under a pool’s coverage document than under the Program. Unlike TRIP, a pool’s definition of terrorism is likely to include smaller acts of politically motivated violence, such as an act intended to influence local decision-makers.

- Should the Program be extended to include public entity pools, there is no easy way to evaluate the likely overall impact of the Program’s assessments, deductibles, copays, etc. There is no common public entity pool structure upon which implications of the Program’s coverage, assessments, or reimbursements can be applied and measured.

- There is reasonable availability and adequate pricing of terrorism coverage available from the commercial insurance market for pools, and adequate coverage already available for public entities either through the pools or through the commercial insurance market.

- Developing a mechanism to apply the Program under different parameters than currently exist for assessments, deductibles, copays, reimbursements, etc. so as to avoid adverse impact any particular group (such as individual self-insureds, captives, pools, risk retention groups, etc.) would be difficult.
Upon survey by AGRiP, no public entity pools responded they believed it necessary or desirable to extend the Program to include them.

If public entity pools were included in TRIP at a future date, it might seem advantageous to develop an alternative deductible or assessment schema for smaller captives, pools, or self-insured entities; however given the wide variation of pooling structures any methodology is likely to have adverse impact on one or more groups.

1. What is the current role of captive insurers (both state-licensed entities and otherwise) in providing insurance in TRIP-eligible lines?

A small number (estimated fewer than 25) public entity pools are organized as captive insurers. Those that are structured as captives provide coverage to public entities in TRIP-eligible lines.

2. Should captive arrangements that insure U.S.-based risks, other than those involving state-licensed insurers, participate in the Program? Upon what basis should such participation take place?

In the current market environment, there is adequate availability of terrorism coverage to public entity captives, at reasonable pricing. Therefore, the Program does not appear necessary at this time to ensure coverage availability or affordability.

The only other rationale for including captive arrangements other than state-licensed insurers is to create parity among captives regardless of state licensure. State legislatures had specific intent and purpose when they created public entity captive structures outside the traditional insurance regulatory schemas. The goal in most cases was to recognize the unique nature of closed, self-funded, public entity insurance methods, which adequately address and fund member risks. In other words, such arrangements were created to distinguish their purpose from traditional insurance operations that operate under state licensure and are already covered by the Program.

3. Should separate rules address the criteria for which captives, of any type, qualify for reimbursement under the Program? In response to this question, please address whether and/or how the relatively small TRIP-eligible premiums of such insurers should affect their insurer deductible.

Although it may seem advantageous to develop an alternative deductible or assessment schema for smaller captives, pools, or self-insured entities, any methodology is likely to have adverse impact on one or more groups.
4. Given the relatively small size of some captive insurers, should some assessment be made of their capital and claims paying ability in connection with their participation in the Program? If so, how should Treasury consider and address such issues?

Capital, contribution, and claims paying structures in public entity captives vary widely in accordance with state law and governing documents such as bylaws and captive agreements, and may be subject to some degree of Board discretion. Fair allocation of and resulting impact from differing methods of deductibles, copays, assessments, etc. is difficult to evaluate on a widespread basis.

5. To what extent are captives being relied upon to insure so-called “trophy risks” that might be deemed to be subject to a heightened risk of terrorism?

There is no viable estimate of the size of public entity “trophy risks” within captives. Much of the public entity infrastructure within the United States, including possible (although limited) trophy risks, are covered via self-insured public entity mechanisms including single entity self-insurance, single or multi-entity captives comprised of public entities, and public entity risk pools.

6. What is the current role of self-insurance arrangements in providing workers’ compensation reimbursement for losses that could be subject to the Program?

Self-insurance arrangements are prevalent, and likely primary, for local government and school workers’ compensation risks.

7. What is the current extent of self-insurance arrangements in other TRIA-eligible lines apart from workers’ compensation insurance?

Self-insurance arrangements are prevalent for local government and school property and liability risks.

8. Should self-insurance arrangements, apart from state-licensed captives, qualify for participation in the Program? Do self-insurers wish to participate in the Program? If self-insurers were to participate in the Program, how would such participation be structured, including in terms of deductibles and potential liability for the recoupment of surcharges?

Upon request to our membership, AGBiP received no interest from public entity pools to be included in the Program.

If Treasury nevertheless decides that public entity pools will be required to participate in the Program, the difficulty will lay in structuring that participation given the diverse nature of pools. As a practical matter, it is likely impossible to tailor deductibles and potential liability for the recoupment of surcharges to fit the wide variety of pools.
**BACKGROUND – PUBLIC ENTITY POOLS**

Public entity pools are self-insured risk sharing groups with members restricted to public bodies such as cities, towns, villages, counties, school districts, special districts, transit authorities, and related public bodies. Public entity pools are governed by Boards of Directors representing their members.

Pools and their public entity members share the goal of effectively transferring risk to contain and stabilize long-term costs of coverage. To this end, pools also offer a variety of supportive services to their members. Pools work in close concert with members, offering coverage to support the work of public bodies rather than as a commodity.

Although public entity pools share common goals, each pool is uniquely structured and delivers coverage specifically tailored to local needs. Public entity pools are generally enabled by state legislation, but take many different structural forms depending on the state's own needs, preferences, and regulatory environment.

Public entity financial contributions to a risk pool provide funds from which covered claims against any member can be paid, similar to premiums charged in traditional insurance. These contributions come, ultimately, from taxpayers. To the extent pool contributions and reserve funds exceed the amount needed to pay claims at any given time, contributions remain within the public domain. To protect against very large and catastrophic claims, many pools transfer excess risk to commercial reinsurers and excess insurers.

There is wide variation among public entity pooling structures, membership, coverage, rating methods, contributions, and more. Heterogeneity within public entity pooling is intentional to allow local control over the risk sharing mechanism that will best meet public purpose in any given state or for any given set of public entities.

Understanding pooling variation may not help decide whether the Program should be applied to public entity pools; but does suggest that applying the Program to public entity pools would not equate to easy or singular evaluation of any impacts. **AGRiP encourages the Department of Treasury to consider the difficulty of effectively assessing any “common” or “likely” impact to public entity risks should the Program be applied to any self-insurance arrangements for municipalities or other public entities, regardless of structure (such as captive, risk retention group, intergovernmental agreement, etc).**

Examples of the variation in public entity pooling environments may help illustrate the difficulty in assessing universal impact of any particular application of the Program:

- Some public entity pools serve only certain entities (such as school districts or municipalities). Other pools may serve a combination of two or more types of public entities.

- Some pools offer only one line of coverage (e.g. workers’ compensation) while others might offer two or more coverage areas including property, liability, work comp, health,
unemployment, and other lines of coverage.

- Some pools are state-licensed insurers; most are not. A very small number of pools are state-licensed captives.

- Each pool’s terrorism risk profile is different depending on its membership, its coverage, and other factors.

- Some pools protect themselves and their members against very large claims by purchasing excess insurance policies that are themselves subject to TRIP; other pools purchase reinsurance, which is not subject to TRIP.

- Some pools develop and design their own coverage documents, rating methods, job class codes, underwriting metrics, etc. Other pools rely on industry-standard methods or documents such as NCCI rates or ISO forms.

- Pools are subject to varying degrees of financial oversight, rate development reporting, and other regulation by state.

- Pools have different methods for pooling the contributions and claims among members. Member and pool retained loss profiles vary greatly from one pool to the next, depending on coverage and other factors, in order to best serve the needs of underlying public entities.

- Some states have only one public entity pool, while others have several pools serving local government and school interests. A few states have 10 or more public entity pools operating within their boundaries. Even pools that operate within the same state may be structured wholly differently or have unique risk profiles because of their coverages and membership.

Pooling variation results from the intentional acknowledgement that public entity risk needs are far from a “one size fits all” approach. The environment that created and allows for public entity pools provides deference for each state to engage public entity pooling as appropriate, given its unique environment and local government or school needs.

More information about the mission, structure, and benefits of public entity pools can be found at [www.agrip.org](http://www.agrip.org).
Thank you for considering our comments. If you have any questions or would like to discuss these comments further, please contact me at (518) 220-0336 or agergen@agrip.org.

Sincerely,

[Signature]

Ann Gergen
Executive Director
Association of Governmental Risk Pools