Captives & SPV Use (E) Subgroup

Call for Comment - Survey Results

OBJECTIVE: The Captive and SPV Use Subgroup of the Financial Condition (E) Committee requested each Department to respond to a request for comment (in part or in total), as applicable to commercial insurers domiciled in the state that transfer risk to captives or Special Purpose Vehicles ("SPVs") domicile either in the U.S. or elsewhere, and/or for captives or SPVs licensed in the state that accept or cede third party risk of commercial insurers.

RESULTS: The Request for Comment was sent to all 50 states and the District of Columbia, of which 31 responded. A summary of those responses is provided below.

STATE LAW - (Questions 1-2a)

	QUESTION	RESPONSES	DETAILS OF RESPONSES (IF APPLICABLE)
1	**How does your state's law define a captive? If it is defined in your state law, has the definition changed over the years?**	23 Define Captives 8 Do Not Define Captives **Of the States that Define Captives:** 13 No Change in Law in Last 10 Years 6 Change in Law in Last 10 Years 4 No Response to Change in Law	**Types of Captives Identified in Responses:** 23 Pure; 23 Association/Group; 11 Industrial; 8 Sponsored; 7 Special Purpose 5 Branch; 4 Agency; 3 Reinsurance; 2 RRG; 2 Protected Cell 1 Incorporated Cell; 1 Segregated Account; 1 Rental Captive
1a	**How does your state's law define an SPV? If it is defined in your state's law, has the definition changed over the years?**	9 Define SPVs 22 Do Not Define SPVs **Of the States that Define SPVs:** 9 No Change in Law in Last 10 Years 0 Change in Law in Last 10 Years 0 No Response to Change in Law	**Of the States that Define SPVs:** 5 SPVs defined as a "special purpose financial captive" which is limited to issue only special purpose financial captive insurer contracts which provide insurance or reinsurance protection to the counterparty. 2 Indicated that the only definition of SPVs within its laws is a "special purpose reinsurance vehicle" and has limited certificate of authority. 1 Legislation includes a definition of a "limited purpose subsidiary," which is a domestic reinsurer that meets certain specific licensing requirements—these entities may act as a reinsurer of XXX reserves which can only be assumed from their affiliated life insurance companies. 1 SPVs defined as a "special purpose captive insurer" that is established for one specific purpose or transaction, and where it is desirable to isolate the purpose or transaction from the other activities of a party or parties involved in the transaction, or where the transaction dictates that the vehicle should not be treated as controlled or owned by any other party to that transaction.
2	**Does your state's law allow for the formation of captives or SPVs? If so, list the types of captives or SPVs that currently assume third party risk from insurers.**	18 Allow Formation of Captives/SPVs 8 Allow Formation of Captives but not SPVs 7 Do Not Allow Formation of Captives/SPVs 1 Not Addressed in Laws **Of the States that Allow the Formation of Captives/SPVs:** 8 Captives/SPVs Assume Third Party Risk 8 Captives/SPVs Do Not Assume Third Party Risk 6 Did Not Respond to Assuming Third Party Risk 5 Did Not Respond to Assuming Third Party Risk	**Types of Captives/SPVs that Assume Third Party Risk:** 7 Pure; 3 Special Purpose; 2 Sponsored; 2 Association/Group 1 Industrial; 1 Any Type of Captive; 1 Special Purpose Finance; 1 Limited Purpose Subsidiary 1 Agency; 1 Branch; 1 Protected Cell; 1 Life Insurer

2a	**Has your state approved transactions allowing your domestic insurers to cede third party risk to captives or SPVs? If so, list the types of captives or SPVs that they currently transfer third party risk to.**	17 Approved Transfer of Risk 14 Have Not Approved Transfer of Risk **Of the States that Approved Transfer of Risk:** 13 Identified Types of Captives/SPVs 4 Did Not Identify Types of Captives/SPVs	**Types of Captives/SPVs that Have Been Approved:** 5 Special Purpose Finance 4 Reinsurance 4 Pure 2 Offshore 2 Sponsored

TYPE OF PRODUCTS - (Questions 3-5a)

	QUESTION	RESPONSES	DETAILS OF RESPONSES (IF APPLICABLE)
3	**What types of products involving third party risk are allowed to be transferred from an insurer to a captive or SPV in your state (Life, Health, P&C, etc.)?**	24 Allow Transfer of Risk 1 Do Not Allow Transfer of Risk 6 Not Applicable	**The Following Products Were Identified As Being Allowed To Be Transferred:** 9 Life 9 Any (Subject to Approval) 5 Property/Casualty 2 Health
3a	**What types of products involving third party risks has your state allowed your domestic insurers to transfer to a captive or SPV (Life, Health, P&C,**	19 Have Allowed Transfer of Risk 6 Have Not Allowed Transfer of Risk 6 Not Applicable	**The Following Products Were Allowed To Be Transferred:** 17 Life 5 Property/Casualty 2 Health
4	**Does your state's captive law have specific limitations on the types of products that captives or SPVs that assume third party risk from insurers can accept?**	10 Have Limitations 10 Do Not Have Limitations 11 Not Applicable	**The Following Products Were Specifically Identified As Not Allowed:** 2 Personal Auto; 1 Critical Care; 1 Homeowners 1 Long-Term Care; 1 Workers' Compensation; 1 Directors & Officers **The Following Products Were Specifically Identified As Allowed (Limited):** 3 Life; 1 Marine Prot. and Indemnity; 1 Surety Title 1 Casualty; 1 Property; 1 Credit Life 1 Marine and Transportation; 1 Liability; 1 Credit Disability 1 Other (As Approved)
4a	**Are there any products involving third party risk that your state does not allow to be transferred to a captive or SPV?**	11 Do Not Allow Specific Products to be Transferred 12 Allow Any Product to be Transferred 8 Not Applicable	**Products that Are Specifically Not Allowed:** 2 Workers' Compensation; 1 Critical Care; 1 Directors & Officers 2 Only Allows Life Products; 1 Personal Auto; 1 Property/Casualty 1 Long-Term Care; 1 Homeowners; 1 Only Allows Liability Products
5	**Have the types of third party products allowed to be transferred to captives or SPVs licensed in your state been expanded during the last five years?**	1 Have Expanded Types of Products 19 Have Not Expanded Types of Products 11 Not Applicable	
5a	**Has your state seen an expansion of the types of third party products being transferred by your insurers to captives or SPVs?**	5 Have Seen An Expansion 16 Have Not Seen An Expansion 10 Not Applicable	**Products That Have Been Expanded:** 3 Life 1 Property/Casualty

AFFILIATES - (Questions 6-6a)

QUESTION	RESPONSES	DETAILS OF RESPONSES (IF APPLICABLE)
6 Are the captives or SPVs licensed in your state that third party risk from an insurer is transferred to limited to accepting risk from affiliated insurers?	8 Limit From Affiliates Only 6 Do Not Limit From Affiliates 3 Only Limit Certain Types of Captives/SPVs 14 Not Applicable	
6a Has your state approved a domestic insurer to cede third party risk to unaffiliated captives or SPVs?	3 Have Approved Transfer to Unaffiliated Captives/SPVs 18 Have Not Approved Transfer to Unaffiliated Captives/SPVs 6 Have Not But Could Approve Transfer to Unaffiliated Captives/SPVs 4 Not Applicable	

RETROCESSIONS - (Questions 7-7a)

QUESTION	RESPONSES	DETAILS OF RESPONSES (IF APPLICABLE)
7 Are captives or SPVs in your state allowed to insure third party risks that have been assumed by the cedent?	15 Allow 6 Do Not Allow 1 Did Not Respond 9 Not Applicable	
7a Has your state allowed your domestic insurers to cede third party risk that they assumed from other insurers to captives or SPVs?	10 Have Allowed 10 Have Not Allowed 7 Have Not But Could Allow 4 Not Applicable	

BUSINESS PURPOSE - (Questions 8-10a)

QUESTION	RESPONSES	DETAILS OF RESPONSES (IF APPLICABLE)
8 In general what is the business purpose for captive insurers and SPVs licensed to insure third party risk from insurers in your state?	16 List Business Purpose 4 Did Not List Business Purpose 11 Not Applicable	**Business Purposes Noted:** • To manage a certain book of business that was not part of a sale of the insurance business unit, segregating business sold by different units into protected cells or to access capital through the financial/banking system. • Risk sharing/risk spreading purposes. • Meet certain tax considerations. • Flexibility in coverage level by the insurance program. • Cost reduction from other options. • Expanded access to the reinsurance market. • Financing for affiliates. • Accounting treatment. • Greater control over risk management. • Control over selection of litigation counsel. • Supervision of the claims settlement process. • Ability to keep profits in the group. • Finding lower costs of capital through the use of the captive. • Funding of excess reserves resulting from various regulatory requirements. • Realizing embedded economic value. • Exiting a line of business or geographic location.

		• Reduce capital strain related to acquisition costs. • Protection from catastrophic events. • More efficient use of capital. • To finance the capital strain of the ceding company from reserves required under regulation XXX in excess of those needed on an economic basis.
8a In general what is the business purpose given by your domestic insures for utilizing captive insurers and SPVs to transfer third party risk?	20 List Business Purpose 1 Did Not List Business Purpose 10 Not Applicable	**Business Purposes Noted:** • Tax efficient financing of reserve requirements. • For reinsuring AXXX redundant reserves. • Allows agent to participate in underwriting results. • Increase capacity and spread risk. • Flexibility in coverage level by the insurance program. • Cost reduction from other options. • Expanded access to the reinsurance market. • Greater control over risk management. • Control over selection of litigation counsel. • Supervision of the claims settlement process. • Ability to keep profits in the group. • Finding lower costs of capital through the use of the captive. • Free up capital. • Surplus adjustment on XXX. • More efficient use of capital. • Isolate risk and blocks of business in order to facilitate business transactions. • To finance the capital strain of the ceding company from reserves required under regulation XXX in excess of those needed on an economic basis.
9 What are the primary advantages given for the utilization of captives or SPVs licensed to assume third party risk from insurers in your state?	16 Listed Advantages 2 Did Not List Advantages 13 Not Applicable	**Advantages Listed:** • Risk sharing/risk spreading purposes. • Allows agent to participate in underwriting results. • Increase capacity and spread risk. • Flexibility in coverage level by the insurance program. • Cost reduction from other options. • Expanded access to the reinsurance market. • Greater control over risk management. • Control over selection of litigation counsel. • Supervision of the claims settlement process. • Ability to keep profits in the group. • Finding lower costs of capital through the use of the captive. • Captives/SPVs are subject to fewer regulations and limitations than other domestic insurers. • Gain access to the capital markets by isolating a pool of liabilities. • Federal tax benefits. • Surplus adjustment on XXX. • Financing of redundant statutory reserves associated with the use of certain long-term life insurance products like XXX and AXXX reserves for universal life policies with secondary guarantees and term life insurance. • Surplus relief.

			• Excess reinsurance financing/securitization. • Segregate the economic reserves from the non-economic reserves. • Separation of different products and financing tranches.
9a	**What are the primary advantages given by the insurers in your state for the utilization of captives or SPVs to cede third party risk?**	18 Listed Advantages 3 Did Not List Advantages 10 Not Applicable	**Advantages Listed:** • Tax efficient financing of reserve requirements. • Allows agent to participate in underwriting results. • Increase capacity and spread risk. • Flexibility in coverage level by the insurance program. • Cost reduction from other options. • Expanded access to the reinsurance market. • Greater control over risk management. • Control over selection of litigation counsel. • Supervision of the claims settlement process. • Ability to keep profits in the group. • Finding lower costs of capital through the use of the captive. • Surplus adjustment on XXX. • Financing of redundant statutory reserves associated with the use of certain long-term life insurance products like XXX and AXXX reserves for universal life policies with secondary guarantees and term life insurance. • Lack of financial reporting to NAIC. • Segregate the economic reserves from the non-economic reserves. • Separation of different products and financing tranches.
10	**What are the primary disadvantages given for the utilization of captives or SPVs licensed to assume third party risk from insurers in your state?**	7 Listed Advantages 3 Did Not List Advantages 5 Disadvantages Were Not Noted 16 Not Applicable	**Disadvantages Listed:** • Domestic insurers that do not utilize captives/SPVs have indicated that they are disadvantaged in the market (pricing, capital requirements, etc.) by competitors that utilize captives/SPVs to obtain lower reserves or lower capital requirements. • Transactions may expose insurers and/or their holding companies to a variety of risks (e.g., liquidity risk, rollover risk, re-pricing risk, credit risk). • Cost associated with setting up the captive program, legal, actuarial, etc. • Cost of letters of credit used to secure redundant reserves. • Ongoing costs of operating a captive, such as audit, actuarial, financial filings, taxes, fees. • Captive or SPV not required to comply with similar regulatory requirements as a domiciled traditional • Solvency risk.
10a	**What are the primary disadvantages given by the insurers in your state for the utilization of captives or SPVs to cede third party risk?**	6 Listed Advantages 4 Did Not List Advantages 10 Disadvantages Were Not Noted 11 Not Applicable	**Disadvantages Listed:** • Additional filing/reporting/tax requirements. • Disadvantage to admitted insurers due to the treatment of the captive reinsurer as a non-authorized reinsurer. • Complexity and expense to form. • Current economic environment is proving difficult to secure new letters of credit or increase existing letters of credit or enter into securitization arrangements. • Different reporting requirements for captives. • Cost associated with setting up the captive program, legal, actuarial, etc. • Cost of letters of credit used to secure redundant reserves. • Ongoing costs of operating a captive, such as audit, actuarial, financial filings, taxes, fees.

SOLVENCY STANDARDS - (Questions 11-12a)

QUESTION	RESPONSES	DETAILS OF RESPONSES (IF APPLICABLE)
11 What are the differences in solvency standards for captives and SPVs that assume third party risk from insurers as compared to a commercial insurer that would write a similar product in your state? Some examples include, statutory accounting, reserving requirements, asset & investment requirements, financial reporting and disclosure, etc.	14 Listed Differences 4 Differences Were Not Noted 1 Reaffirmed Examples Noted in Question 12 Not Applicable	**Differences Noted:** • Statutory accounting and financial reporting and disclosure.—some captives provide GAAP financial • More flexibility in reserving requirements. • Non-RRG captives are subject to a prudent man investment standard, but are not subject to the Model Investment Act. • Non-RRG captives do not make quarterly filings. • Allowed the only state captive to combine policyholder and stockholder dividends for purpose of dividend regulation. • Allowed the company to exceed the normal limit of 10% exposure of surplus to a single risk so that the company could operate as a single policyholder insurer. • No statutory deposit requirements exist for any type of captives. • Lower minimum capital and surplus requirement. • Not subject to RBC requirements. • The state ensures that the transactions of interest are subject to adequate solvency standards. • Captives are subject to much higher deposit requirements. • Capitalization requirements differ, e.g., allowance of letter of credit. • Held to higher minimum capital requirements. • More specific actuarial requirements related to excess XXX reserves; methodology and assumptions used; demonstration of sufficient risk-based capital and invested admitted assets equal to reserves specified by • Confidential treatment of captive financial information. • Lack of mandatory examination.
11a What differences in solvency standards are you aware of for captives and SPV's that assume third party business from insurers in your state? Some examples include, statutory accounting, reserving requirements, asset & investment requirements, financial reporting and disclosure, etc.	18 Listed Differences 3 Differences Were Not Noted 10 Not Applicable	**Differences Noted:** • Capitalization requirements differ, e.g., some captive states allow capitalization using a letter of credit. • Statutory accounting and financial reporting and disclosure.—some captives provide GAAP financial • Not subject to RBC requirements. • No statutory deposit requirements exist for any type of captives. • Lower minimum capital and surplus requirement. • Not subject to investment limitations. • Lack of mandatory examination. • Confidential treatment of captive financial information. • Held to higher minimum capital requirements. • More specific actuarial requirements related to excess XXX reserves; methodology and assumptions used; demonstration of sufficient risk-based capital and invested admitted assets equal to reserves specified by
12 Please explain how the differences in solvency standards are appropriate for captives and SPV's that assume third party risk from insurers.	10 Explained How Differences Are Appropriate 2 Did Not Explain How Differences Are Appropriate 1 Differences Are Immaterial 2 Believes Differences Are Not Appropriate 4 Did Not Respond 12 Not Applicable	**Differences Noted:** • In addition to the quantitative financial reporting and actuarial projections, the state also considers prudent principles based regulations, including but not limited to corporate governance and financial strength of organizers for captives and SPVs that assume related third party risk from ceding insurers. • Competitive disadvantage to domestic insurers if captives/SPVs were not approved factored into the state's decision to allow the formation of captives. • Allowed the use of a letter of credit. • Only appropriate if the ability of the direct writer to pay claims is not diminished.

		• The captive is being regulated in accordance with the risk that it is accepting and in line with who would be hurt if the transaction failed. It is known that statutory reserves for term life business are excessive and principals based reserving has been in the works for year to ultimately address the issue. In all of these arrangements the actuarially determined economic reserves with a small margin for variance is held by the ceding company to pay claims. • The key purpose of insurance regulation is to protect policyholders first and foremost. A typical captive is different from a commercial insurance company as it serves its parent company. Therefore, captives are typically regulated differently than traditional insurance companies that serve the public. • Permits the state with the flexibility to evaluate and assess risk for each captive; despite lower statutory surplus requirements, the state is permitted to set capital and surplus above the statutory minimum based on the type, volume and nature of insurance offered; able to condition a captive's license as the state deem appropriate based on their business plan; exam is able to be called if necessary; able to share captive's financial information with other regulators in order to assist the ceding insurer's domestic regulator with their review of any reinsurance agreement.
12a With these known differences in solvency standards for captives and SPV's that assume third party risk from insurers please explain what factors led to your state's decision to approve the insurers ceding business to Captives and SPV's?	14 Factors Explained 1 Factors Not Explained 16 Not Applicable	**Factors Noted:** • Programs adequately address concerns regarding credit for reinsurance and risk transfer requirements. • The state has the authority to allow its captives to assume reinsurance from ceding insurers, but does not have the authority over the ceding insurer to cede risks to a captive or SPV. • The state approved its captives/SPVs to assume related risks from traditional insurers domiciled outside of the state because the captives/SPVs have met the credit for reinsurance requirements of the ceding insurer's by maintaining the appropriate minimum capital and surplus, supported the loss reserve on a funds withheld basis, letter of credit, and/or through a trust arrangement. • Each affiliated transaction is reviewed individually under the Holding Company rule. • The state evaluates each proposal on a case by case basis in order to ensure appropriate capitalization, supervision, and suitable transfer for risk. Financial projections, projected growth, impact on the insurance company and captive, whether or not audited financial statements will be required, trust agreement applicability, reinsurance, and reserve credit based upon the circumstances. • Competitive disadvantage to domestic insurers if captives/SPVs were not approved factored into the state's decision to allow the formation of captives. • Required domestic to hold collateral of at least the economic reserves ceded. • The fact that the reinsurance is fully collateralized with assets. • Ensured that the captive had the ability to meet its obligations. • Excessive reserves related to XXX – principals based reserving has been in the works for years to ultimately address this issue. The ceding company withholds assets for expected claims reserves or economic reserves through funds withheld arrangements and credit for reinsurance requirements are met for the redundant portion as well so that if for some unknown reason all statutory reserves became payable, the policyholders would be covered. • The flexibility of captive statutes, capital adequacy standards set by the state on the captive's licenses; remove risk involved; and being the domestic regulator for both the traditional insurer and the captive enables the state to understand the transactions impact on both entities and regulate accordingly.

MITIGATION OF THE RISKS - (Question 13)

QUESTION	RESPONSES	DETAILS OF RESPONSES (IF APPLICABLE)
13 **In your opinion, what are the risks associated with captives and SPV's insuring 3rd party business from insurers, are there factors that mitigate the risk or any special regulatory actions taken to mitigate this risk?**	22 Provided Opinion 3 Did Not Provide Opinion 6 Not Applicable	**Opinions Provided:** • Solvency Risks • Captive/SPV may not have the resources to meet its obligations under the reinsurance agreement; the risk is mitigated by the facts that the captive/SPV owner is obligated to maintain its minimum capital and surplus requirement by infusing additional capital and/or letter of credit as necessary and that the ceding insurer still needs to meet the applicable credit for reinsurance requirements-otherwise the ceding insurer will be required to reduce surplus. • Arrangement may facilitate undermining of the reserving and financial reporting requirements placed on traditional insurers. • Direct writer remains liable to policyholders. • Most transactions are affiliated-affiliated reinsurers are less likely to not pay a claim given the company is affiliated with the group. • The actual reliability of statutory reserving methodology is a risk associated with captives/SPVs. • Risks are generally the same as for a traditional insurer. • Regarding a captive that has assumed third party business from its domiciled parent, the Department reviews and approves both sides of the transaction prior to its implementation. Any risks, present or future, are analyzed and submitted to the parent for explanation. • Accounting method arbitrage. • Risks are the same as with any reinsurance agreement, but more heightened because there may be no regulatory oversight of the reinsuring entity. • Risk that the domestic carrier does not adequately access the risk of ceding to a captive insurer and does not take appropriate measures to mitigate the risk. • The fact that the reinsurance credits are fully collateralized is a mitigating factor. • The type and quality of the collateral permitted is a regulatory action used to mitigate risk. • Concerns about the systems that usher in less robust financial security and oversight. • Concerns that there is no way to drain value away from policyholders. • Captives must have financial ability to meet its obligations. • Collateral must meet credit for reinsurance guidelines. • Excessive reserves could be payable. • There is little difference in risk between admitting a letter of credit as an asset and granting credit for reinsurance ceded to a traditional reinsurer. In either case, consideration is given for a promise to pay should certain future events occur. In either case, the primary risk associated with the transaction is the credit risk of the financial institution or the reinsurer. Also in both cases, the ceding company remains primarily liable for the losses. There are a number of factors or regulatory tools that help mitigate the risk involved: capital maintenance agreements, surveillance of the issuing LOC banks, etc. • Some concerns that the reserving methodology of Triple X was producing over redundant reserves. • In terms of risk - the direct writer is still obligated to perform, the terms of the reinsurance agreement, approved by the domestic regulator, still govern the transaction, and the risk involve is remote - redundant reserves. Risks are mitigated by the affiliate relationships, our being the dual regulator of the insurer and the captive, and the flexibility of our captive statutes in setting capital and other conditions. • Relying on captive regulator for solvency monitoring.

CREDIT FOR REINSURANCE - (Questions 14-15)

QUESTION	RESPONSES	DETAILS OF RESPONSES (IF APPLICABLE)
14 Does your state allow traditional insurers domiciled in your state to cede third party insurance to captives and SPV's in your state? If yes, do you impose the same credit for reinsurance requirements for business ceded to traditionally licensed insurers?	20 Allow 3 Do Not Allow 8 Not Applicable **Of the States that Allow:** 20 Impose the Same Credit for Reinsurance Do Not Impose the Same Credit for Reinsurance	**Additional Comments:** • Law is based on the NAIC model credit for reinsurance act. • Same credit rules apply. • The captive/SPV must be affiliated with the traditional domestic insurer. • On a case-by-case basis. • If captive/SPV complies with the similar requirements as a licensed liability insurer. • Reinsurance recoverables have been fully secured by trust funds.
14a Do you require that credit for reinsurance requirements be met when insurers domiciled in your state cede third party business to captives and	26 Require - Do Not Require 5 Not Applicable	
15 Are the credit for reinsurance requirements the same whether the captive or SPV is a domestic of your state or of another state or jurisdiction?	18 Credit for Reinsurance Are the Same 6 Credit for Reinsurance Are Not the Same 7 Not Applicable	**Additional Comments:** • If a domestic cedes reinsurance to a domestic captive/SPV, credit for reinsurance is allowed because the captive/SPV is an authorized insurer licensed to transact insurance in the state. However, if a domestic cedes to a non-domestic captive/SPV, the no-domestic captive/SPV must maintain not less than $20M in surplus and submit to the authority of the state to examine its books or maintains a trust fund with a surplus of not • A domestic captive that possesses a limited certificate of authority issued by the state is considered

IMPACT ON INDUSTRY - (Questions 16-17)

QUESTION	RESPONSES	DETAILS OF RESPONSES (IF APPLICABLE)
16 Do you believe captives and SPV's create a possible competitive advantage or disadvantage for insurers transferring third party risk to captives or SPV's? Explain why.	17 Creates Competitive Advantage - Creates Competitive Disadvantage 7 Neither 3 Unknown 4 Not Applicable	**Creates Competitive Advantage Comments:** • Possibly due to special licensing requirements or permitted practices are allowed regarding capitalization requirements for captives, such as letters of credit or parental guarantees. • Increased capacity, risk sharing/risk spreading, and possibly lower funding costs. • Less regulatory requirements. • If the parties are affiliated there could be lower cost associated with administration, servicing, claims payment and better service. • Utilizing captives enables companies to securitize blocks of business and therefore an additional way to generate income in a creative but fiscally responsible way. • If captives/SPVs are not required to follow the same rules as a traditional insurer, particularly if the standards vary by captive jurisdiction and state of domicile of the ceding insurer. • Due to federal taxation and currently different accounting standards. • Captives may create a competitive advantage (and not necessarily an unfair one) for insurers that transfer risk through this mechanism. Skilled use of captive reinsurance allows transfer of risk to the general capital markets on terms that are much more favorable than raising capital through debt or equity. • Avoids collateral requirements (when a domestic insurer cedes to a domestic captive/SPV), which lowers required reserves. • Larger companies have the resources and capability to utilize a captive/SPV arrangement whereas many smaller companies do not have those same resources.

		• Life insurers transferring XXX reserves improve operating performance and lower RBC charges. • Life insurers an take advantage of surplus relief. **Creates Competitive Disadvantage Comments:** None **No Special Advantage Comments:** • No special advantage because of safeguards built into the law. • Captives may have an advantage if not subject to the same reserving, investment, capital, etc., standards; but there are many competitive advantages/disadvantages in the market among competitors. • None if they are held to the same collateral requirements as licensed reinsurers in the state.
17 In your opinion what would be the affect upon insurers, consumers and the industry if captive or SPV arrangements such as these were unwound or usage severely limited?	21 Provided Opinion 1 Did Not Provide Opinion 3 Unknown 6 Not Applicable	**Opinions Provided:** • May address certain limited arrangements, such as excess XXX reserves that are widely acknowledged to result in redundant reserves. Thus, unwinding these arrangements may hurt the industry and consumers by actually requiring an increase in reserves and the associated strain on surplus. • The cost to the consumer may be higher because of the lack of alternatives and competition. • The securitization process will continue, but the SPVs will probably be organized and operated outside of the • More concentration of risk and a significant decrease in capacity. • Level the playing field. • It would make sense to be on a going forward basis rather than unwinding prior transactions. Unwinding previously executed arrangements, if even legal, would be onerous and would also require legislative changes in many states. • Effect would be minimal or nonexistent. • Could be a serious adverse effect on the financial condition of the ceding insurers if alternative sources of capital and/or reinsurance were not readily available. • Life insurers would be required to post their full AG 38 reserves. • Some P/C contracts would not be written or the numbers would be reduced. • Prices would have to increase or capital would need to be raised to absorb stain over a longer period of time. • Cost to company in finding another authorized reinsurer. • In the absence of a captive, the transactions of interest would require reserve financing either in the form of equity or debt. If financed with debt they would yield excess leverage. • Reinsurance captives affect would be limited. • Might see an increase in contingent commissions. • If no changes in the current reserving requirements for life companies, companies would be forced to change the products it offers or increase the cost of insurance to consumers. • Prices would most likely need to increase to compensate for the additional capital that would need to be maintained. Writings would have to be severely limited due to the increased capital requirements. More needed reinsurance but the capacity of the reinsurers probably could not support the capital requirements and reinsurance would be priced high. Many companies would probably stop writing affordable term products and attempt to run these lines of business off. • The captive/SPV should be subject to all insurance laws of its state of domicile.

ACCREDITATION - REGULATORY STANDARDS - (Questions 18-20a)

QUESTION	RESPONSES	DETAILS OF RESPONSES (IF APPLICABLE)
18 In your opinion should captives and SPV's be subject to accreditation standards. If so describe which laws and regulatory practices they should be subject to and explain why?	15 Yes 9 No 3 Not Sure 4 Not Applicable	**"YES" Comments:** • All accreditation standards should apply. Except, however, reform issues that have already been recognized by the NAIC should be exempt from accreditation review so long as the state can demonstrate that a common framework exists that includes stringent controls. • Captives/SPVs should be subject to periodic examinations and financial reporting and disclosure • In general, a need exists to evaluate minimum standards for staffing and basic regulatory oversight among captive domiciles. Further, specific captive types and structures should be evaluated for increased regulatory oversight, including insurer owned/affiliated special purpose reinsurers and financial captives & group health/employee benefit captives. • If captives are acting as insurers, they should be held to all standards. • All of them-there should be a level playing field. • Most of the Part A and Part B standards would generally be applicable to the arrangements. There may be some legitimate reasons to make exceptions if the captive is a mono-line insurer with a closed block of business that has been fully funded with financing that does not expose the ceding company, the captive insurer, or the holding company parent to undue rollover, liquidity, credit, or other risk. • In November 2011 the F accreditation committee adopted accreditation standards for captives which are probably also applicable to SPVs. • Similar to those for RRGs now. • The same laws and regulatory practices should apply. • Should be subject to SSAP. • Credit for reinsurance. **"NO" Comments:** • No, assuming the accounting guidance is not tied to SSAP. • The onus should be placed on regulation of the direct writing domestic insurer. The domestic/admitted insurer should be required to demonstrate that ceding risk to a captive does not weaken its ability to pay • financed within the holding company structure. The regulation of how insurance holding companies use captives should be at the commercial carrier level through review of the transactions through holding company filings and analysis. This will ensure that captives used in the entire group are encompassed as part of the review. If you subject a captive to accreditation standards in the state, what would be done about the captives in Bermuda, Barbados or other jurisdiction, how can these companies be made to meet accreditation standards? • SPFC business represents a single transaction between the ceding company, the SPFC subsidiary, and the financial institution. In addition, the ceding life insurer is already subject to accreditation standards, so there would be no additional benefit. • To the extent it is determined that specific legitimate issues exist that need to be addressed, subjecting all of these single state entities to accreditation is not, in my view, a focused or cost effective path to resolution.

<table>
<tr><td>19</td><td>Do you have any recommendations for changes in the current regulatory standards applicable to the insurers who use captives or SPV’s to transfer third party risk to make these transactions more transparent and allow for effective monitoring without directly requiring the captive or SPV to be subject to accreditation?</td><td>16 Recommendations Provided
15 Did Not Provide Recommendations</td><td>Recommendations:
• There should be greater transparency and disclosure required of both the ceding company and captive/SPV in its financial statements and notes. This could be satisfied by public filings made with the NAIC utilizing the NAIC convention blank.
• Domiciliary states of the ceding insurer should require that the credit for reinsurance requirements are met by the reinsurer, whether that reinsurer be a captive, SPV, or traditional reinsurer. If it is not met, then the ceding insurer should not be allowed to take credit for reinsurance ceded. Those ceding to affiliated captives/SPVs, the ownership and transactions/agreements should be properly disclosed in accordance with insurance holding company requirements.
• Increase transparency among states and standardization of structure and financial standards applicable to these types of reinsurance agreements.
• Publicly available financial statements for the affiliated captive/SPV (disclosing differences from NAIC accreditation requirements) would help make these situations more transparent.
• Captives could be required to disclose their business plan and annual/quarterly statements, MD&As, etc.
• Better disclosure of transactions and the effect on ceding company surplus if the transaction were not done.
• Transactions above a certain material threshold be fully disclosed in the annual statement to include whether or not the transaction has been approved by the state regulator. Domestic insurers be required to obtain prior regulatory approval for transactions above material threshold.
• Captives need to file statutory financial statements in compliance with the NAIC APP.
• Captive disclosure in Note 10 to Financial Statements that acknowledges that the insurer utilizes affiliated captive insurance. This could include a summary of premiums, reserves ceded, surplus relief, and reserve credit arrangements.
• The holding company FAH be revised to include a review and summary of affiliated captive transactions. Captive states can provide insurer profiles or any information needed, so long as regulators keep it confidential. Unfortunately offshore captive's domiciles are not transparent and this type of information would need to come from the companies.
• More disclosure in Schedule S and the Notes to Financial Statements.</td></tr>
<tr><td>20</td><td>For states allowing Captives & SPVs, please describe the regulatory safeguards or supervision mechanisms, such as solvency or regulatory standards that are present within your law.</td><td>16 Response Provided
15 Not Applicable</td><td>Regulatory Safeguards:
• Captive laws and regulations provide for triennial examinations, annual financial statement, annual CPA certified financial statement, and annual actuarial opinion. Captives are subject to the same statutory reinsurance standards as commercial insurers. The initial business plan and any subsequent changes to the plan must be submitted for approval prior to implementation.
• Regulatory safeguards include periodic examinations and annual filing requirements.
• The state has rigorous licensing standards, has minimum capital requirements, a requirement for companies to provide an annual statement, annual actuarial opinion, keep current plan of operation on file, and are subject to onsite examinations.
• Subject to the state's Insurers Supervision, Rehabilitation, and Liquidation Act. Also, captives/SPVs are subject to the Insurers Examination Act.
• For SPFCs, regulatory standards are like those for traditional companies.
• Subject to the same supervision & receivership statutes as traditional insurers.
• State law generally applies the same solvency standards to captives that are applicable to traditional P/C
• Special Purpose Life Reinsurance Captives report quarterly on the Blue Book under statutory accounting, any permitted practices are disclosed in Not 1 to Financial Statements.</td></tr>
</table>

			• Quarterly analysis is conducted to determine if the captive meets the requirements of the captive law and is operating in according with its plan and projections.
20a	**For domestic insurers, what types of safeguards or supervision are you providing to ensure that captive or SPV arrangements are properly established and monitored?**	18 Response Provided 13 Not Applicable	**Regulatory Safeguards:** • They are subject to the same level of regulatory review. • Programs involving domestic companies all use affiliated captives, which are subject to review under holding company laws. These programs are reviewed within the context of the statutory examinations. We receive copies of the financial statements of captives and periodic updates from the domestic insurers, and review any changes in the plan of operations. • Domestic insurers which use affiliated captives/SPFCs have such arrangements reviewed for approval prior to execution. This ensures that policyholders should not be negatively affected. Also, there is the ongoing monitoring of the financial condition of the holding company. • Form D reviews of affiliated arrangements, annual review via holding company analysis, inclusion in examination risk identification. • Require our insurers to follow credit for reinsurance laws and use funds withheld agreements. • Captive/SPV arrangements are holding company transactions and are thoroughly reviewed and approved at inception. Oversight of the arrangements is done as part of the examination and analysis performed on the domestic insurer. • The state ensures that captives are properly capitalized and have saved projections; and monitor closely over the life of the contracts. • level of premium is being ceded we would request audited financial statements of the affiliated captives. Analysis of non-admitted insurance and credit taken is conducted as part of the financial analysis. During examinations we may verify letters of credit or reinsurance trusts arrangements as part of the reinsurance examination process.