



SIIA Captive Member Advocacy Results in Congress Passing PATH Act Clarifications

Two years of diligent advocacy by SIIA members of the Enterprise Risk Captive (ERC) Task Force and government relations staff came to fruition when clarification of how a captive insurance company can qualify for IRS Code 831(b) tax status was included in the 2018 Omnibus Appropriations Act passed by Congress early this spring.

ERCs are a self-insurance solution used by increasing numbers of smaller and mid-sized companies to insure a variety of risks for which coverage by the traditional market is considered too expensive or is not available. Smaller captives are part of the growing trend of companies using multiple self-insurance aspects as part of their overall risk management strategy.

SIIA's bulletin announcing the PATH Act clarifications cited three ways they can help ERC owners and managers operate the companies:

- Clarifies “look-through” language to the insured policyholders regarding the first diversification test. The original PATH Act language specified that no more than 20% of risk could attach to a single policyholder. Now the test will “look through” to the captive’s underlying policyholders for this purpose.
- Clarifies the definition of “specified asset” under the second diversification test. In considering relevant specified assets for purposes of establishing captive ownership, unrelated premium won’t dilute the ownership percentages.
- Removes spouses of captive owners from consideration regarding specified ownership of the captive, a clarification to address concerns surrounding community property and spousal attribution issues.

Members of SIIA’s ERC Task Force worked tirelessly to educate members of Congress about the need for vital clarifications of the PATH Act. They met with members of the House Ways and Means Committee, Senate Finance Committee, the Joint Committee on Taxation (JCT), other relevant Congressional committees, plus key agency staff.

ERC Task Force chairman Jeff Simpson of law firm Gordon Fournaris & Mammarella, P.A. of Wilmington, Delaware, said that inclusion of the PATH Act clarifications in the Omnibus

Bill was cause for celebration in the small captive industry: “It provides a better understanding of how the law works – it’s a big step forward in knowing how to operate these captives.”

Simpson noted, *“It’s extremely gratifying to see how well SIIA is received and viewed now by members of the federal government. Members of Congress, particularly in meetings of the JCT, were interested in getting the law right. They were receptive to our information on how these companies should work, and on making that possible.”*

Simpson credited the dozen members of the ERC Task Force who participated in many Congressional meetings. “Over a two-year period they did a great job of identifying issues and boiling them down to explain and present them. They educated Washington, D.C. on how ERCs work.”

“This was very good news for owners and managers of ERCs, following on the earlier passage of the Protecting Americans from Tax Hikes (PATH) Act of 2015,” said Ryan Work, SIIA’s vice president of federal government relations.

“SIIA has been the leading voice in the drafting and passage of the PATH Act, including these recently passed clarifications,” Work said.

SIIA’s efforts on behalf of ERCs will continue, Work said. “We don’t know when the Treasury Department and the IRS will come out with guidance on how the clarified PATH Act will work,” he said. “Over the next few months we’ll be working toward regulatory language that reflects the intent of the law.”

Work invites SIIA members’ queries or comments at rwork@siia.org. ■



Jeff Simpson