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Submitted via https://www.reginfo.gov/public/do/PRAMain

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Senior Insurance Regulatory Policy Analyst
Federal Insurance Office
Department of the Treasury

Re: Comment Request on Federal Insurance Office Climate-Related Financial Risk Data Collection for U.S. Homeowners Multi-Peril Underwriting Data

Dear Ms. Brown:

On behalf of the National Association of Professional Insurance Agents (PIA)[1], thank you for the opportunity to comment on the Treasury Department's Notice of Information Collection and Request for Comment (NIC/RFC) on the Federal Insurance Office (FIO) Climate-Related Financial Risk Data Collection for U.S. Homeowners Multi-Peril Underwriting Data.[2]

PIA appreciates the chance to provide the FIO with feedback on its data collection regarding climate-related financial risk. By this letter, PIA is responding to the NIC/RFC issued by the Treasury Department and the FIO seeking comment on the FIO's recent request for approval from the Office of Management and Budget (OMB) to collect six years' worth of homeowners' insurance underwriting data from an estimated 240 homeowners' insurance entities domiciled in 29 states.

I. Introduction

The FIO has issued this data collection announcement and solicitation of public input despite ongoing concerns that the data collection will be overly burdensome to insurers, ignore the existing state insurance regulatory infrastructure, and result in the collection of data that is poorly suited to enabling the federal government to better understand the complex issue of climate risk and its impact on the insurance sector. For its part, the FIO claims the proposed data collection will provide the FIO with a nationwide view of homeowners' insurance necessary to its

[1] By way of background, PIA is a national trade association founded in 1931. It represents member insurance agents in all 50 states, Puerto Rico, Guam, and the District of Columbia. PIA members are small business owners and insurance professionals providing insurance products and services in communities across America.
[2] Comment Request on Federal Insurance Office Climate-Related Financial Risk Data Collection for U.S. Homeowners Multi-Peril Underwriting Data, available at https://www.govinfo.gov/content/pkg/FR-2023-11-02/pdf/2023-24248.pdf#page=1 (last viewed on Dec. 3, 2023).

understanding of the effect of climate-related financial risks on families and individuals across the nation and how those effects may bear on the broader financial system.

The proposal, which is one element of the Biden administration's strategy to address climate-related financial risks, will be disseminated to insurers with at least a one-percent stake in the U.S. homeowners' insurance market, as determined by each carrier's 2022 percentage of direct written premium. Each in-scope insurer will be instructed to divulge detailed ZIP code-level data for the insurance years from 2017 to 2022. If approved, the data call will collect loss- and claims-related data, along with premium-related data and policy information.

A year after laying out its initial plan for collecting climate risk data from insurers and following considerable criticism from members of the insurance industry, including PIA, the FIO's revised plan purports to mitigate the burden on insurers, particularly for smaller in-scope carriers. However, the data call remains both overly intrusive and poorly designed for nationwide analysis at a ZIP code level. The FIO is urged to carefully consider the critical public comments it will no doubt receive during the exposure period; concerns expressed herein and by other commenters will be crucial in limiting the FIO to supporting a state-based regulatory approach that informs national resilience activities without unfairly constraining the insurance industry.

PIA has concerns about both the efficacy and appropriateness of this proposed data collection.

II. Background

As you may know, PIA opposed the existence of the FIO from the time it was created in 2010 as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). In 2016, PIA became the first national insurance association to call for the repeal of the FIO, and ever since, we have supported either repealing the FIO or substantially reducing its power. As sweeping as the legislation was, even Dodd-Frank acknowledged the importance of state-based insurance regulation; the law requires its newly created FIO to seek out information and data from publicly available sources, relevant federal agencies, and state insurance regulators before attempting to unilaterally collect it.[3]

Insurance is regulated by the states because state regulators have comparatively greater familiarity with and dexterity to address their residents' specific geographic and economic needs. For over a century, the state insurance regulatory system has worked well for regulators, consumers, and members of industry. The existence of the FIO is inherently a threat to the primacy of state-based insurance regulation, and, as long as it continues to exist, it will remain a threat. Over the years, in a pattern that repeats itself throughout the federal administrative state, the FIO has been permitted to accrue power and thus demand an ever-increasing but improper federal role in insurance regulation. Throughout its thirteen years, the FIO has sought to expand its mandate in ways that constitute repeated overreaches by the federal government into an area already properly and well-regulated by the states.

[3] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, available at https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf (last viewed on Dec. 3, 2023).

The most appropriate administrators of climate risk data collections are state insurance departments or the National Association of Insurance Commissioners (NAIC). States discuss and share information on best practices and emerging issues in numerous existing venues. Moreover, state insurance regulators use their considerable expertise to evaluate the suitability of other states' strategies, and, where appropriate, adapt those strategies to meet the needs of the consumers in their own states. For these reasons, the FIO, and the federal government more broadly, are not needed to facilitate either industry data collection or regulatory information-sharing. This data collection will only serve to gratuitously expand the FIO portfolio.

The FIO's domain, particularly in the area of financial risk, has been expanding since the beginning of the Biden administration, as demonstrated by its promulgation, early in the administration, of its May 20, 2021 Executive Order (EO) on Climate-Related Financial Risk.[4] The May 2021 EO gave the FIO the task of assessing "climate-related issues or gaps in the supervision and regulation of insurers," among other tasks, even though the insurance industry has enjoyed a long, successful history of being regulated by the states, not the federal government. When the EO was issued, PIA protested on the basis that any necessary climate assessment should be conducted by state insurance regulators, and PIA stands by that position today.

III. State-Based Regulatory Activity on Climate-Related Risk

To the extent state insurance regulators have deemed climate-related risk examinations necessary, they have embarked on them persistently and without hesitation via, among other organizations, the NAIC.[5] The NAIC "provides expertise, data, and analysis for insurance commissioners to effectively regulate the industry and protect consumers. … The [NAIC] is governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories."[6]

In collaboration with 50 state insurance departments and their 5 U.S. territorial counterparts, the NAIC established a climate-focused working group more than ten years ago, and that group evolved into the NAIC's current Climate and Resiliency Task Force, which coordinates all NAIC engagement on climate-related risk and resiliency issues.[7] Most recently, the NAIC's Property and Casualty (C) Committee announced plans to create a long-term framework for collecting

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[4] Executive Order (EO) on Climate-Related Financial Risk, available at https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/20/executive-order-on-climate-related-financial-risk/ (last viewed on Dec. 3, 2023).

[5] The NAIC, National Council of Insurance Legislators (NCOIL), and National Conference of State Legislators (NCSL) provide venues in which state insurance regulators and legislators routinely collaborate to develop best practices and model laws, regulations, and guidelines to serve the needs of the state-based insurance regulatory system. Different combinations of these entities regularly form *ad hoc* partnerships as needed to ensure their efforts on similar issues are coordinated. As a result, the state-based insurance regulatory system is robust and comprehensive, and it often identifies and addresses emerging issues ahead of Congress and federal regulators.

[6] https://content.naic.org/sites/default/files/government-affairs-letter-fio-climate-related-financial-risk-data-comments-221122.pdf (last viewed on Dec. 3, 2023). "NAIC Climate-Related Financial Risk Data Collection Comments," November 22, 2022.

[7] Id.

granular data from insurance carriers related to climate-intensified wildfires, floods, hailstorms, convective storms, earthquakes, atmospheric rivers, and other events.[8]

Considering the NAIC's long, successful history of ensuring the 55 state and territorial insurance departments are all working toward the same goals, the FIO's choice to forego collaboration with NAIC in this data collection effort appears to demonstrate a disdain for the state-based insurance regulatory system. Moreover, partnering with the NAIC would have demonstrated that state and federal regulators share the goal of assessing climate-related risk exposures. In fact, the Department has historically collaborated with the NAIC on similar projects, including, for example, Superstorm Sandy data collection.[9] Instead, the Treasury Department has proceeded with this effort without securing the cooperation of the state-based regulatory system that has served consumers, the industry, and the national economy well for over a century.

Indeed, in its own June 2023 report, the FIO commended efforts by the NAIC and state insurance regulators to incorporate climate-related risks into state insurance regulation.[10]

IV. Federal Insurance Office Overreach and Failure to Collaborate with State Insurance Regulators

By this NIC/RFC, the FIO now announces its intent to collect ZIP code-level data from potentially more than 200 specific homeowners' insurance entities, domiciled in 29 states, collectively underwriting approximately 70 percent of premiums nationwide. The Treasury Department press release suggests the FIO data collection will enable the federal government to ultimately improve "insurance availability and affordability for consumers."[11] The announcement of this data collection pointedly ignores the numerous warnings from the NAIC and individual insurance departments that the data being requested could be misleading and inadvertently misused to reach inaccurate conclusions.

Most recently, the New Hampshire Department of Insurance (DOI) expressed its trepidation with the FIO's NIC/RFC by noting the likelihood that the DOI and the FIO will unintentionally duplicate efforts and the potential that independent work by multiple regulatory authorities could result in an overall failure to comprehensively understand the climate-related challenges facing homeowners. The DOI noted that the FIO's proposed data call overlaps with ongoing efforts by

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[8] See the NAIC's draft "National Climate Resilience Strategy for Insurance," available at https://content.naic.org/sites/default/files/national_meeting/CRTF%20-%20Materials%2012032023%20Updated20231202.pdf, located on pages 42-52 (last viewed on Dec. 3, 2023).

[9] https://content.naic.org/sites/default/files/government-affairs-letter-fio-climate-related-financial-risk-data-comments-221122.pdf (last viewed on Dec. 3, 2023). "NAIC Climate-Related Financial Risk Data Collection Comments," November 22, 2022.

[10] FIO Report on Insurance Supervision and Regulation of Climate-Related Risks, available at https://home.treasury.gov/system/files/311/FIO-June-2023-Insurance-Supervision-and-Regulation-of-Climate-Related-Risks.pdf (last viewed on Dec. 3, 2023).

[11] Treasury Department Press Release, located at https://home.treasury.gov/news/press-releases/jy1867 (last viewed on Dec. 3, 2023).

the NAIC and state regulators, pointing out that the NAIC has been working for the past six months to develop a targeted climate-related data call to address these same issues.[12]

Importantly, the DOI letter also raises questions about whether the FIO properly executed its statutory responsibility to coordinate with the NAIC and state regulatory authorities pursuant to the 2010 Dodd-Frank Act. As noted above, Dodd-Frank prohibits the FIO from issuing a data call directly to insurers without attempting to collaborate with the NAIC and state regulators first.

While the FIO NIC/RFC lauds its revised scope as more manageable for affected carriers, the DOI notes that it would include only about half of the New Hampshire homeowners' market, excluding local and regional insurers and potentially omitting entire categories of homes, like mobile homes, which, in New Hampshire, are primarily served by carriers that would fall outside the FIO threshold for inclusion. Naturally, these concerns represent only a tiny fraction of the unintended consequences that the FIO NIC/RFC will have on the states whose domiciliary companies' data is being sought.

The expertise of state regulators is essential to the value of a data call intended to inform public policy on climate risk. State-specific regulatory guidelines may influence the suitability of the data being requested, and state regulators are best equipped to understand and explain the interplay among those details. Also, the NAIC has spearheaded numerous post-catastrophe data calls over the past several years, the results of which have routinely been shared with Treasury. The sharing of similar data now could have obviated the need for this improper inquiry.[13]

V. Unnecessary Burden on Respondents

The FIO NIC/RFC claims its recent revisions clarify its reporting framework's "alignment with the format of statutory filings."[14] However, it still seeks data at the zip code level rather than the state level and both premium and loss data, though not in alignment with one another. The NAIC and the New Hampshire Department of Insurance have both expressed a preference for aligning loss data with earned premium and focusing on premium and renewal trends, rather than attempting to gather as much granular data as possible without regard to the relationships among the collected datasets.

The scope of the data being requested, and the degree to which it deviates from the content and format of the data reported on annual statutory filings, demonstrate that the FIO has not sufficiently tailored its request to meet its purported needs.

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[12] New Hampshire Department of Insurance Press Release, located at https://www.nh.gov/insurance/media/pr/2023/documents/20231128-fio-letter.pdf (last viewed on Dec. 3, 2023).
[13] https://content.naic.org/sites/default/files/government-affairs-letter-fio-climate-related-financial-risk-data-comments-221122.pdf (last viewed on Dec. 3, 2023). "NAIC Climate-Related Financial Risk Data Collection Comments," November 22, 2022.
[14] Comment Request on Federal Insurance Office Climate-Related Financial Risk Data Collection for U.S. Homeowners Multi-Peril Underwriting Data, available at https://www.govinfo.gov/content/pkg/FR-2023-11-02/pdf/2023-24248.pdf#page=1 (last viewed on Dec. 3, 2023).

VI. Conclusion

PIA recognizes and appreciates the administration's attention to the potential effect of climate change on consumer protection and carrier solvency issues and conceptually supports the identification of risk factors in the insurance industry that could exacerbate the effects of climate change. However, the FIO does not have the statutory authority or the expertise to make inquiries into climate-related gaps in insurance industry regulation, especially in the absence of full partnership with state regulatory authorities, and it should withdraw this proposal in favor of pursuing cooperation with state regulators and the NAIC.

The regulation of insurance is vested in the states because they are best positioned to protect consumers; this data collection proposal underscores the need for the federal government to stay out of the regulation of insurance. It further demonstrates the unacceptable and persistent expansion of the FIO portfolio and epitomizes the reasons PIA has spent the past several years calling for the FIO's repeal or a substantial reduction in the scope of its authority.

As always, we are grateful for the opportunity to provide the independent agent perspective. Please contact me at Lpachman@pianational.org or (202) 431-1414 with any questions or concerns. Thank you for your time and consideration.

Sincerely,

Lauren G Pachman

Lauren G. Pachman
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