

December 4, 2023

The Honorable Shalanda Young, Director
Office of Management and Budget
Administrator Richard L. Revesz
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th St NW
Washington, DC 20503

Re: Agency Information Collection Activities; Submission for OMB Review; Comment Request; Federal Insurance Office Climate-Related Financial Risk Data Collection for U.S. Homeowners Multi-Peril Underwriting Data, Document Citation: 88 FR 75380 Document 2023-24248

Dear Director Young and Administrator Revesz:

On November 2, 2023, the Federal Insurance Office (FIO) of the U.S. Department of the Treasury submitted a Notice of Information Collection and Request for Comment¹ (the 2023 Notice) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA). The public was invited to submit comments on this request. The National Association of Mutual Insurance Companies (NAMIC) welcomes the opportunity to respond to this request for comments.

NAMIC is the largest property/casualty insurance trade group with a diverse membership of more than 1,500 local, regional, and national member companies, including seven of the top 10 property/casualty insurers in the United States. Our members account for 58 percent of homeowners and 30 percent of the business insurance markets. Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

¹ Agency Information Collection Activities; Submission for OMB Review; Comment Request; Federal Insurance Office Climate-Related Financial Risk Data Collection for U.S. Homeowners Multi-Peril Underwriting Data, available at <https://www.federalregister.gov/documents/2023/11/02/2023-24248/agency-information-collection-activities-submission-for-omb-review-comment-request-federal-insurance>

Summary

The Dodd Frank Act (Dodd Frank) and the PRA specify requirements and conditions that direct how and when FIO may collect information from insurers and affiliates. FIO's 2023 Notice does not comply with these requirements and conditions in important ways, detailed below.

First, under Dodd Frank, prior to collecting data from insurers, FIO must coordinate with insurance regulators and "any publicly available sources to determine if the information to be collected is available." In the 2023 Notice, FIO does not state that it has coordinated with these sources on the 2023 Notice data call and acknowledges that some of the data sought is otherwise available. Its authority under Dodd Frank is for "collection." However, the data call detailed in the 2023 Notice mandates that insurers create and report data in a defined FIO format and time that we believe exceeds a reasonable definition of "collection" and constitutes "the general supervisory or regulatory authority over the business of insurance" by FIO, which Dodd Frank expressly prohibits.

Secondly, the PRA provides conditions on data collections with respect to practical utility of the data sought, confidentiality of collected data, and limitations on unnecessary duplication and burdens. The purpose of the data collection is vague, at best, and FIO has not provided any analysis required under the PRA of the actual, not merely the theoretical or potential, usefulness or the accuracy, validity, adequacy, and reliability of the information sought. The proposed FIO data collection conflates weather with climate, improperly applies postal delivery routes as geographic standards, and requests policy data that includes information that is unrelated to weather or climate. These unique data choices, made and acknowledged by FIO to not exist anywhere else, would require significant insurer resources and expense to create new data sets, rather than FIO collecting existing data.

In conclusion, the results of these collective statutory deficiencies require that the OMB not approve the data collection requested by FIO.

Part 1 – FIO's Request Does Not Comply with the Statutory Requirements of Dodd Frank

A. FIO is Required to Coordinate with State Insurance Regulators and Publicly Available Sources Prior to Collecting Data from Insurers.

The portion of the Dodd Frank Act outlining the process FIO must follow before collecting data is Subsection 313(e)(4), reads:

(4) ADVANCE COORDINATION.

Before collecting any data or information under paragraph (2) from an insurer, or affiliate of an the shall coordinate with each relevant Federal agency and State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) and any publicly available sources to determine if the information to be collected is available from, and may be obtained in a timely manner by, such Federal agency or State insurance regulator, individually or collectively, other regulatory agency, or publicly available sources. If the Director determines that such data or information is available, and may be obtained in a timely manner, from such an agency, regulator, regulatory agency, or source, the Director shall obtain the data or information from such agency, regulator, regulatory agency, or source. If the Director determines that such data or information is not so available, the Director may collect such data or information from an insurer (or affiliate) only

if the Director complies with the requirements of subchapter I of chapter 35 of title 44, United States Code (relating to Federal information policy; commonly known as the Paperwork Reduction Act), in collecting such data or information. Notwithstanding any other provision of law, each such relevant Federal agency and State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

Both types of coordination required under this subsection – (1) coordination with state insurance regulators as well as (2) coordination with potential sources of available information – are discussed below in turn.

First, Section 313(e)(4) of Dodd Frank provides that before collecting any data or information from an insurer, FIO must coordinate with each relevant federal agency and state insurance regulator and review any publicly available sources to determine if the information to be collected is available from, and may be obtained in a timely manner by, such federal agency or state insurance regulator, individually or collectively, other regulatory agency, or publicly available sources. If the FIO director determines that such data or information is available and may be obtained in a timely manner from any source, the director must obtain the data or information from the source. If the director determines that such data or information is not available, the director may collect such data or information from an insurer only if the director complies with the requirements of the PRA in collecting such data or information.

In FIO’s earlier 2022 Notice and request for comments for a Climate-Related Financial Risk Data Collection² (2022 Notice), it detailed its efforts to determine if the information to be collected is available from these sources and able to be obtained in a timely manner. FIO stated in the 2022 Notice that it had determined that the specific data requested was either not available or unable to be obtained in a timely manner from any state of federal source. However, it also reported that some of the required insurance policy-level data was available from statistical agents and that aggregate data could be obtained by state insurance regulators from insurance companies but noted that acquiring the data would require significant fees.

The National Association of Insurance Commissioners (NAIC) did *not* agree with FIO’s position that the office had met its statutory obligation and coordinated with the state insurance regulators. In a November 2022 letter³ to the assistant secretary for Financial Institutions at the U.S. Department of Treasury, the NAIC stated that, “FIO has failed to demonstrate a good faith effort to engage with state regulators and has exhibited their intention to forgo a collaborative effort to identify and collect accurate and useful data.” The letter went on to state that, “Treasury’s approach was to pose an intentionally and unnecessarily complex hypothetical question to states whether wide ranging data could be collected in 30 days, in a format neither the regulators nor industry was likely to have on hand” and “Treasury has chosen to justify bypassing and ignoring offers for joint efforts by regulators and ignore the realistic time required for the industry to produce the data regardless of who requests it.”

Section 313(e)(4) provides that FIO may collect such data or information from an insurer, but *only if* the director determines that such data or information is not so available. The 2023 Notice states that the seven data fields that FIO is requesting from insurers includes four fields to collect nationwide ZIP code-level

² Agency Information Collection Activities; Proposed Collection; Comment Request; Federal Insurance Office Climate-Related Financial Risk Data Collection, available at <https://www.federalregister.gov/documents/2022/10/21/2022-22880/agency-information-collection-activities-proposed-collection-comment-request-federal-insurance>

³ Available at <https://content.naic.org/sites/default/files/government-affairs-letter-fio-climate-related-financial-risk-data-comments-221122.pdf>

information regarding premiums, claims, and losses that correspond to four state-level data fields reported by U.S. insurers to state insurance regulators in annual filings. FIO's position appears to be that it cannot leverage existing data but rather has the authority to demand the exact information – in the exact format – that it desires for its specific purposes, which have not been demonstrated to be useful for evaluating the stated goal.

Moreover, in the 2023 Notice FIO acknowledges that it was aware in August 2023 that the state insurance regulators plan to issue a data call including data on weather events that were creating insurance availability and affordability issues but stated that it was unclear when that data call may be implemented and whether all state insurance regulators will participate. Respectfully, FIO's lack of clarity on these matters emphasizes the point that requisite coordination efforts have not been satisfied. The magnitude of the NAIC's forthcoming data collection effort cannot be understated: as far as NAMIC understands, it is expected to be the largest and most granular-level data collection in the history of insurance regulation. To act responsibly, the NAIC is preparing carefully before launching this enormous initiative. One would expect FIO to respect and applaud this effort, yet in its June 2023 report, "Insurance Supervision and Regulation of Climate-Related Risks,"⁴ containing recommendations to the NAIC, FIO discussed its own data collection intentions rather than inviting worthwhile collaboration the primary functional regulators – state insurance commissioners – with respect to data.

While on its face it may appear that FIO met its obligation to coordinate with state insurance regulators, this was not a meaningful engagement but rather reflects pro forma steps. Considering FIO's sparse interactions with the state regulators⁵, the decision to proceed with a data call – separate from yet concurrent with the NAIC data call – indicates that the coordination requirements in Section 313(e)(4) of Dodd Frank have not been satisfied. The statutory requirement to coordinate perhaps would be best served if FIO allows the state insurance regulators at the NAIC to complete their data call and then determine whether it still needs to proceed.

Additionally, this section of Dodd Frank also requires that prior to any data collection from insurers FIO coordinate with publicly available sources. FIO acknowledges in the 2022 Notice that it made inquiries of these publicly available sources, but there is no reference in the 2023 Notice that it made any such inquiries of publicly available sources with respect to the narrower focus of the 2023 Notice of proposed data collection. To satisfy the advance coordination diligence requirement as it relates to available sources, FIO should clearly establish that it has met the required obligation to assess the viability of those options fully and genuinely. Various companies collect and report information on property/casualty insurance companies; it may be the case that they may have some or all the data FIO is seeking in 2023, and FIO is statutorily required to coordinate with those publicly available sources and making a good faith determination of availability prior to collecting data from insurers directly. Even if the OMB determines that FIO may have made sufficient gestures to the state insurance regulators to satisfy the "coordination" threshold for the minimum compliance with Section 313(e)(4) as it relates to regulators, there is no indication that FIO has met

⁴ <https://home.treasury.gov/system/files/136/FIO-June-2023-Insurance-Supervision-and-Regulation-of-Climate-Related-Risks.pdf>

⁵ Ibid. "we are disappointed and concerned that Treasury chose not to engage insurance regulators in a credible exercise to identify data elements gathered by either the industry or the regulatory community indicative of climate risk. The unilateral process Treasury employed thus far is a missed opportunity to work collaboratively with regulators on an issue we have both identified as a priority. FIO has failed to demonstrate a good faith effort to engage with state regulators and has exhibited their intention to forgo a collaborative effort to identify and collect accurate and useful data."

that requisite level of compliance with the required coordination with available information sources as required before proceeding with a data collection from insurers.

FIO acknowledges that before it seeks to collect data directly from insurers, Dodd-Frank requires it to coordinate with any publicly available sources. The 2023 Notice states that FIO did contact sources in 2022, and the 2022 Notice states that data *was* generally available from the sources for a significant fee. FIO has not provided any information about the level of that fee, nor does it make any claim that it is in any way limited in paying fees. In fact, FIO does pay sources fees for data in connection with the Terrorism Risk Insurance Act program.

FIO confirms that the sources it is statutorily required to consult with had data responsive to the more extensive 2022 Notice data call. The 2023 Notice does not state that FIO contacted any sources required under Dodd Frank for coordination after 2022 or in relation to the proposed 2023 Notice data call. FIO does not indicate whether the 2022 fee quote, or any other subsequent fee quote, was more or less than the estimated burdens on insurers responding directly to FIO as proposed in the notices.

Based on the above, it is clear that FIO has neither reasonably explored workable alternatives nor adequately coordinated with state regulators and available data sources as required under Section 313(e)(4) of Dodd Frank.

B. Dodd Frank Allows for FIO Collections from Insurers But Prohibits FIO From General Supervisory or Regulatory Authority Over the Business of Insurance.

Although Sections 313(e)(2)-(5) of Dodd Frank authorize FIO to collect information from insurers and affiliates under a limited set of specific conditions, it is not without a broader context, and it is not untethered from Congress’s vision for the office and its narrow role. Dodd Frank was not intended to create a parallel set of insurance regulators. The law is clear that state insurance regulators retain primacy and have exclusive authority over the business of insurance. Section 313(k) clearly provides:

“Nothing in this section or section 314 shall be construed to establish or provide the Office or the Department of the Treasury with general supervisory or regulatory authority over the business of insurance.”

Despite this statutory limitation, through its proposal, FIO would be issuing a standing and independent annual demand for direct insurance information outside of collaboration with state insurance regulators. This large step is the type of demand one would expect of a general supervisor with authority over the business of insurance – it appears that through this data collection FIO would be advancing into the role of a general supervisory or regulatory authority. Indeed, its request would even get to requirements around formatting of data, and it would not allow insurers to provide FIO with data in the way in which the insurer keeps it in the normal course of its business. Rather, under its proposal, FIO will force insurers to create new data elements, formats, and reporting templates. The 2023 Notice provides that “reporting under this data collection would be mandatory for all Representative Sample Insurers.”

This raises the fundamental question of whether FIO’s proposal in the 2023 Notice is rightly categorized as a “collection;” i.e., bringing or gathering of information under Dodd Frank or whether the mandated creation of an annual report that does not presently exist at the insurer is supervision or regulation of the business of insurance.— Accordingly, it is not clear that the data call proposed by FIO is a permissible simple data collection under the PRA or whether FIO requirements that insurers create a specific report – rather than

provide existing data – are more than a “collection” and constitute a regulatory reporting requirement, prohibited under section 313 (k) in Dodd Frank.

The level of granularity and the scope of the proposed collection would be on an order of magnitude that would be unexpected from an agency without regulatory authority. FIO has provided the form on which it intends to require reporting by 240 designated insurers.⁶ That form has seven fields that must be completed for each of 41,090 ZIP codes, which totals entry and verification of 287,630 separate data cells. No insurer maintains this data in this format or would have any reasonable business purpose to have such data in this format.

For example, FIO’s instructions for Cells D11-D41101 require insurers to report the number of policies in-force exposures and “[p]rovide the total number of homeowners policies in force at the end of the reporting period (December 31) corresponding to the calendar year.” Note that FIO is not “collecting” the number of policy-in-force exposures that the insurer maintains on their books or has reported that number, but rather it is demanding that the insurer create and report data in a FIO-designated format and time frame. If an insurer keeps that data on a basis other than the calendar year, it would not be exempt from complying with the 2023 Notice, and it would be required to revise and report the data as directed by FIO. As another example, the Instructions for Federal Insurance Office (FIO) Climate Data Collection: U.S. Homeowners Multi-Peril Form requirement for incurred losses requires matching the approach for the statutory financial statements. Those financial statements contain “Incurred But Not Reported Reserves,” which is an actuarial estimate of losses that is allocated at the state and product levels, not at the ZIP code level— This would require the creation of new data and information report for every insurer.

The difference between collecting existing data and requiring creation of specific annual reports is not merely semantics. Section 313(e)(6) under Dodd Frank provides FIO with additional authority to subpoena data or information from insurers that do not otherwise provide data or information requested by FIO. A subpoena, however, applies to documents as they are kept in the ordinary course of business. A subpoena generally does not require the recipient to create or assemble new records that the recipient otherwise does not maintain.⁷ It is not reasonable to assume that Congress intended to allow FIO to obtain information as a “collection” that could not be available in compliance with a subpoena.

For the OMB to accept FIO’s claim of statutory authority for the proposed data collection would require the OMB to affirm FIO’s position that Congress, in creating FIO under Dodd Frank, intended FIO to have the authority to define the exact narrow data, format, or information it wants, and if that exact data or format is not available instantaneously to FIO, then the office has latitude to “monitor” insurance and “collect” data and is empowered to demand the creation of that exact data and format by insurance companies on FIO forms at FIO’s specified time. However, this interpretation would seem to circumvent the safeguards that Congress put in place through clear congressional language in Dodd-Frank that “Nothing ... shall be construed to establish or provide [FIO] or the Department of the Treasury with general supervisory or regulatory authority over the business of insurance.”

⁶ Federal Insurance Office Climate Data Collection: U.S. Homeowners Multi-Peril Form, available at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/reports-notices>

⁷ Federal Rule of Civil Procedure 34(a)(1) specifies that parties may only request the production of documents or electronically stored information “in the responding party’s possession, custody, or control.”

C. FIO is Requiring Insurers to Provide Information Without the Confidential Protections Required in Dodd Frank.

Another way the FIO proposal falls short of the language of and expectations under Dodd-Frank is with respect to the statements surrounding confidentiality. Section 313(e)(5) of Title V requires that data obtained by FIO from insurers be subject to confidentiality provisions. The 2023 Notice states that “FIO will seek to maintain the data submitted in a confidential manner.” This wording appears aspirational rather than offering assurances consistent with the law. Specifically, it “seeking to maintain” does not convey that it will provide the level of protection required under the statute.

Confidentiality of data is essential; additional and advanced clarity is needed with respect to FIO’s intentions to aggregate the information, protect confidentiality, and avoid information sharing. Insurers have contractual and regulatory responsibilities to keep policyholder data confidential. As discussed above, the proposed data collection would be sweeping with an extraordinary amount and range of information collected.

Concerns relating to data release are not limited to the general public. The extent to which collected information could be shared with other federal, state, and international agencies also raises concern. For example, there is the potential that other entities might either misinterpret and utilize data in a fashion that is not how it was intended or understood within the context of the scope of the data call or the overall comprehensive nature of insurance operations and regulation. The public release of this data (or even limited release) could allow reverse-engineering of how an insurance entity or group does business. There are also litigation considerations, as this type of information is sometimes sought during lawsuits. Finally, in some of the least populated /most rural ZIP codes, there is always the chance that protected private information of individual policies may be disclosed.

Another concern stems from possible confidentiality protection gaps and possible cyber-attacks. Submission and protections of this data should be clear and transparent under the auspices of congressional authority.

To be consistent with the statutory standards of Section 313(e)(5) of Dodd Frank and to manage expectations of all stakeholders, the 2023 Notice should provide more details concerning the following: whether FIO will share this information, with whom, and for what intention; whether and how this information can be made public; the specific protections it will afford the information, and whether and how insurers may be subject to repercussions from other federal agencies. To ensure the appropriate protections while providing FIO the data that is requested, FIO should utilize a third-party aggregator that could ensure sensitive business and privacy information are protected. It is important that the data challenges outlined above are addressed. Without the ability to functionally aggregate the data, identities of the corresponding insureds may not be as well protected. The kinds of reasonable protections Congress had in mind when it drafted Section 313(e)(5) and the kinds of appropriate safeguards and assurances that facilitate the constructive dialog around information collection should be bolstered before FIO may proceed.

Part 2 – FIO’s Request Does Not Comply with the Statutory Requirements of PRA

Demonstrating compliance with the PRA is a precondition to FIO advancing an information collection effort. Evidence of compliance has not been provided.

Section 313(e)(4) of Dodd Frank provides that FIO may only collect information from insurers *if* the FIO director complies with the requirements of the PRA. The FIO 2023 Notice requests OMB review and

clearance in accordance with the PRA. The essential matter before the OMB is whether FIO has met the standards of the PRA; our concerns outlined below indicate that FIO has not.

According to §3501 of the PRA, the purposes are defined to include minimizing the paperwork burden resulting from the collection of information by or for the federal government, ensuring the greatest possible public benefit from and maximizing the utility of information collected.

The PRA requires an analysis of the actual, not merely the theoretical or potential, usefulness, accuracy, validity, adequacy, and reliability of the information sought. In determining whether information will have “practical utility,” the OMB should consider whether the agency demonstrates actual timely use for the information to carry out its functions.

A. The Proposed Data Collection Lacks Practical Utility.

Under the PRA, before moving forward with data collection, the director must show necessity and practical utility consistent with the requirements of 4 U.S.C. Sec. 3508:

Before approving a proposed collection of information, the Director shall determine whether the collection of information by the agency is ***necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.*** Before making a determination, the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary for any reason, the agency may not engage in the collection of information. (*Emphasis added.*)

Section 3508 of the PRA provides that before approving a proposed collection of information, the OMB must determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information has practical utility. [5 U.S.C. §1320.3\(l\)](#) defines that “practical utility” means the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its accuracy, validity, adequacy, and reliability, and the agency's ability to process the information it collects (in a useful and timely fashion).

(1) The Policy Data That FIO Requests Lacks Practical Utility

Data analysis relies on common definitions and a clear understanding of where there may be differences in approaches. Yet, the foundation of the proposal – homeowners’ multi-peril insurance – can mean many things. Homeowners policy uniformity should not be assumed, even when limited to a particular type of insurance policy. HO-3 policies are not sufficiently uniform to use as a basis for climate-related exposure.

Based upon these and other possible variables, underwriting and pricing practices may vary from company to company and potentially even differ within the same company in different states. This all means that there should be no data requests in the absence of determinations that the data elements will reflect the same information across policy types, within policy types, and within a particular company.

FIO appears to be seeking this uniformity in the Instructions for Federal Insurance Office (FIO) Climate Data Collection: U.S. Homeowners Multi-Peril Form that states:

“Data should include Information associated with the Homeowners Multi-Peril Line of Business and only HO-3 policies. FIO requests ‘Total Direct Losses Paid and Total Direct Incurred Losses’ from the HO-3 policies.”

The collection of HO-3 data could be accurate, valid, adequate, and reliable information for FIO if HO-3 policies were standardized and uniform. However, as NAMIC explained to FIO in the 2022 comments, HO-3 policies are not sufficiently uniform to use as a basis for climate-related exposure. In fact, some insurers do not even use HO forms. Typically, an HO-3 policy will cover the home’s structure, as well as provide coverage for personal belongings and personal liability, if someone is injured on the insured property. Companies write various HO-3 policies that can deviate from one another in significant ways. For example, they may exclude various perils, offer different deductible levels, vary the claim coverage approaches (e.g., actual cash value, replacement cost, or guaranteed/extended replacement cost), as well as offer various pricing for bundling and other variables. Additional variation may result from different stakeholder engagement, such as state regulatory requirements/restrictions, mortgage lender requirements, and policyholder demands.

The accuracy, validity, adequacy, and reliability of the HO-3 data that FIO is requesting to assess climate-related risk is further diminished by the fact that most named perils – the term used to define the specific type of damage or loss that is stated by “name” in an HO-3 policy – can be climate-related or completely unrelated to climate. Fire and smoke damage reported under an HO-3 policy might be related to a climate issue, but it also could be completely unrelated wiring, chimney, or cigar-related damage. The loss information that it is requesting will also include losses from perils such as vandalism, theft, plumbing accidents, and other losses completely unrelated to climate. There is no way for FIO to associate what, if any, amount of “Total Direct Losses” relates to these perils and what, if any, amount of that peril losses is climate related.

For these reasons, the HO-3 policy data that FIO is requesting to assess climate-related risk does not provide the practical utility required under the PRA for the OMB to approve this collection.

(a) FIO Could Consider Technical Recommendation to Improve Utility

Further impacting the practical utility of the data requested in the 2023 Notice, FIO’s Instructions for Federal Insurance Office (FIO) Climate Data Collection: U.S. Homeowners Multi-Peril Form has challenges and the data specified by it needs some revision.

For example, as proposed, for Cells G11-G41101, FIO would require insurers to provide data in accordance with direct premiums written as defined for state regulatory purposes on the annual statement at Exhibit of Premiums and Losses for States, Line 4, Column 1. While this may have been accurate for the 2022 Notice data call, the 2023 Notice data call has been reduced to Homeowners Multi-Peril HO-3 only, and FIO should not expect a match between this reporting annual statement Line 4.0 that includes other property forms in addition to HO-3.

Similarly, FIO’s directions for Cells F11-F41101 for the Number of Policies Not Renewed or Retained (CY), it comments that this should match the definition for the group’s Market Conduct Annual Statement but that will also include policy forms other than HO-3.

FIO requests in Cells E11-E41101 for the Total \$ Value of Coverage for Dwelling, Other Structures, Personal Property, and Loss of Use (CY) that insurers provide “the aggregate estimated value of the insured exposure(s) recorded at the effective date of the policy or most recent renewal.” For Loss of Use, there are some programs in the country that have no dollar limit or percentage limit for this coverage. Those are based

on a time duration, for instance No Dollar Limit – 24-month duration. It is not clear how those should be reported, including whether they should be assessed as of December 31 of each reported calendar year, as required for the other data elements.

In the general instructions, FIO states “For all fields reported on an accident year (AY) basis that are associated with homeowners’ businesses divested prior to the 2022 Annual Statement filing, data should be provided up to the last year that results for that business were reported.” It would be clearer to provide “For all fields reported on an accident year (AY) basis that are associated with homeowners’ businesses divested prior to the 2022 Annual Statement filing, data should be provided up to 2023.”

To avoid misleading data, it would be important to keep discontinued lines out of scope. Data for migrated policies will create anomalies as a non-renewal on one subsidiary became a new policy on its sister company. High non-renewals may be interpreted to imply an action by the insurer leaving the policyholders uninsured, which is not the case. The FIO instructions state to follow the Market Conduct instructions for these counts, but within Market Conduct, insurers have the ability to explain unusual values in the tool, where the FIO report would not allow an insurer to explain anomalies.

Surplus lines will also provide misleading data and should be excluded. The notice discusses the use of the data call to understand availability, disproportionate price increases, and impacts to lower income consumers. These policies underwritten by surplus lines carriers are for specialty cases and unusual underwriting circumstances that are not the target of the data call. The targeted market of underserved and disadvantage communities for which this data call is being developed would utilize Fair Access to Insurance Requirements plans rather than surplus lines carriers if they cannot get coverage.

The instructions for incurred losses should be revised. The instructions require matching the approach for the statutory financial statements. Those contain Incurred But Not Reported Reserves (IBNR). IBNR is an actuarial estimate of losses that is allocated at the state and product levels but not at the ZIP code level. This would require a new field for all insurers.

Additionally, coverage E for liability is excluded. Insurers may be able to exclude it from the loss data but since HO is a package, insurers will not be able to keep it out of the underwriting data. Also, claim count reports will be limited to first time closure. Reopens and subsequent payments would not be counted, but the dollar amounts of the payments would.

Given these numerous technical hurdles and need for further clarity, the time allowed to respond to the data call should be extended to 180 days, from the current 90 days, due to the number of years of data requested and potential unknown obstacles in filling out this new data request.

(2) The ZIP Code Data That FIO Requests Lack Practical Utility

Under the heading of “Geographic Scope” in the Notice, FIO proposes “to collect data at a ZIP code level for all U.S. ZIP Codes in which the homeowner’s insurance entities within the representative sample insurers have written owner-occupied multi-peril homeowners multi-peril policies corresponding to policy form HO–3 during the Reporting Period in order to conduct a granular, nationwide assessment to advance its statutory mandates.” FIO states that the 2022 Notice provides reasons why ZIP code-level data is critical for FIO’s analysis.

The first reason FIO offers in the 2022 Notice is that physical risk assessment related to weather events have localized effects. As detailed below, weather is not climate and climate is not localized. FIO states that ZIP

codes are more stable than sub-state boundaries, which is contradicted by the U.S. Postal Service website⁸ that details monthly ZIP code changes.

FIO states ZIP code-level data to provide for “Geographic Scope and Granularity.” But Census Information Centers note that ZIP codes do not conform to geographic schemes. Most geographic units are part of some hierarchical system, and frequently they will recognize other boundaries such as counties or states, but ZIP codes follow no rules with respect to other geographic factors. ZIP codes can and do cross state lines. Using a ZIP code approach would not allow for consistent and correct alignment where insurance policies are regulated at the state level, as in some cases there may be different state regulators reviewing different insurance products within the same ZIP code.

Further, ZIP codes differ dramatically in the size of the area they cover and would provide dramatically diverse types of weather and climate data. The smallest ZIP code area is 00906, which is only 0.0032 square miles, while the largest ZIP code area is 99557 with 13,431 square miles. There are also vast differences in population size, which would skew any data regarding availability or affordability. The most populated ZIP code is 00725 with more than 144,000 residents, while the least populated ZIP code is 59921 with a population of just one resident. There could be tremendous volatility in any exposure data collected at ZIP code level.

For the fields for which it may be feasible, providing information at the ZIP code level would be a significant undertaking for many insurers because it is not in line with long-established state statutory reporting requirements. Consider several important examples from the proposed data template elements related to insurers’ policies, claims, premiums, and losses, many of which are not part of required statutory filings.

Data at the ZIP code level is at the same time too granular to assess broad impacts of climate change. Since weather-related claims data is volatile from a state, regional, and/or country-wide basis, collecting data at an even more granular level may exacerbate this volatility and reduce the ability to draw credible conclusions from the analysis. Further, many of the data fields being requested could be considered confidential and trade secrets at the ZIP code level, which will unnecessarily stress insurance markets without consumer benefit and impact the confidentiality of the data as discussed in other sections of this comment.

The proposed data call has limited or no practical utility as there is no comparable data upon which FIO can assess the data it intends to collect. In the 2023 Notice, FIO states that the primary goal of this data collection is to enable it to assess the impact that climate-related physical risks have had on the homeowner’s insurance market since 2017 at a ZIP code level. The proposed purpose of the data collection then is for FIO to assess the collected data since 2017 at a ZIP code level in relation to a comparable and reliable data set of climate-related physical risks since 2017 at a ZIP code level. However, there is no reliable and useful climate-related physical risk data set since 2017 at a ZIP code level against which the collected data can possibly be assessed. To our knowledge, there is no federal, state, or local government authority or academic or scientific organization that has collected any reliable data set of climate-related physical risks since 2017 at a ZIP code level. FIO does not provide any information that would indicate that there is such a resource. But without a comparable and reliable data set of climate-related physical risks at a ZIP code level, it is not clear how any analysis of the actual usefulness, accuracy, validity, adequacy, and reliability of the information sought can be reasonably performed.

⁸ Postal Bulletin Changes <https://postalpro.usps.com/postal-bulletin-changes>

Overall, the use of ZIP codes for applications other than postal delivery can present many challenges.⁹ The United States Postal Service updates its ZIP codes regularly. It is not uncommon for postal delivery routes to be realigned or for ZIP codes to be split, discontinued, added, or expanded between months/years. Another difficulty associated with ZIP code areas is the significant variation in geographic extent. The average size of a ZIP code area in Wyoming is 1,430 square kilometers, while the average size of a ZIP code area in New Jersey is 12.8 square kilometers.

For the reasons provided here, the use of ZIP codes proposed by FIO for homeowner insurance risk, affordability, or availability then is particularly inaccurate, invalid, and unreliable¹⁰.

(3) FIO's Conflation of Climate and Weather Preclude Practical Use of the Data Requested

The 2023 Notice provides that FIO will analyze trends in paid losses, incurred losses, and claims frequency and severity to better understand how underwriting metrics may reflect weather-related events. The notice does not distinguish between climate and weather, creating some discrepancy. The National Center for Environmental Information (NCEI) at the National Oceanic and Atmosphere Administration makes it clear that weather and climate are quite different.¹¹ Whereas weather refers to short-term changes in the atmosphere, climate describes what the weather is like over an extended period of time in a specific area. Different regions can have different climates. The 2023 Notice implies that FIO intends to utilize weather data with a climate-related goal. Weather is the mix of events that happen each day in our atmosphere. Whereas weather refers to short-term changes in the atmosphere, climate describes what the weather is like over an extended period in a specific area, typically averaging more than 30 years.

More reliable climate data is maintained by the NCEI in the U.S. Climate Normals, which are calculated for a uniform 30-year period, and consist of annual/seasonal, monthly, daily, and hourly averages and statistics of temperature, precipitation, and other climatological variables from almost 15,000 U.S. weather stations. NCEI has an extensive array of geographical maps tracking climate – Climate Divisions, Climate Regions, Weather Service Regions, and Census Division – and neither NCEI nor any other authority uses ZIP code. FIO states that it considered multiple geographic levels at which insurance data could be collected for this proposed data collection and provides no reason the existing climate geographic granularity captured by other federal agencies was insufficient for its assessment of climate-related risk.

For FIO to perform an assessment of the potential for any major disruptions of private insurance coverage in regions of the country particularly vulnerable to climate change impacts, the data that it uses in that

⁹ Twenty-two percent of ZIP codes are P.O. boxes; 640 are military ZIP codes; 42 New York City buildings have their own ZIP codes, as does the president of the United States and Smokey the Bear. At least three separate nations have U.S. ZIP codes: Micronesia, Marshall Islands, and the Republic of Palau.

¹⁰ The ZIP code list that FIO provides in its Climate-Related Financial Risk Revised Data Collection Form includes the ZIP codes of the independent nations of Micronesia (96941, 96942, 96943, 96944), the Marshall Islands (96960, 96979), and the Republic of Palau (96940). It also includes the ZIP code for the White House (20500) and for Smokey the Bear (20252).

¹¹ What's the Difference Between Weather and Climate? <https://www.ncei.noaa.gov/news/weather-vs-climate#:~:text=Whereas%20weather%20refers%20to%20short,regions%20can%20have%20different%20climates.>

assessment must be related to climate, not weather. The limited time duration and analysis of weather in different postal delivery routes does not have practical utility to a climate assessment.

B. Much of the Data Requested by FIO is Unnecessary Duplication

The U.S. General Services Administration and the OMB have stated that before collecting information an agency must determine if there is already accessible information that could serve the same purpose or need.¹² If existing information sources has the level of detail needed to meet the purpose and can be meaningfully analyzed together with other collected responses or are already available for purposes and needs, then much of the information gathered is unnecessary and duplicative.

FIO's data call requests existing data that is duplicative and contrary to the purposes of the PRA. It acknowledges in the 2023 Notice that "Data of the type it seeks is, at present, generally available at the national or state level, but more granular level data is limited. The 2023 Notice provides that the data FIO is calling for includes four fields to collect ZIP code-level information nationwide regarding premiums, claims, and losses that correspond to four state-level data fields reported by U.S. insurers to state insurance regulators in annual filings.

FIO is aware that the state insurance regulators have an effort underway to collect the data that it proposes to collect as well. it acknowledged that the 48 days before it published the 2023 Notice, it knew that the NAIC announced a plan to issue a climate data call to assist state insurance regulators to collect data from insurers to better understand property markets and coverages and protection gaps, citing the "increasing frequency and severity of weather events, rising reinsurance costs, and inflationary pressures" that were creating insurance availability and affordability issues.

In the 2023 Notice, FIO dismisses the NAIC efforts as lacking certainty of when it would be implemented and whether all state insurance regulators will participate in any proposed NAIC data call. It does not provide any reasons as to why it doubts the NAIC commitment. The NAIC publicly announced in August 2023 that "insurance regulators representing at least 30 states have begun preliminary scoping work to identify regulatory issues and considerations related to affordability and availability for which regulators lack data. The group intends to develop a data template to meet the specific needs of state regulators. The goal will be to develop a long-term, robust data collection strategy to help regulators more nimbly respond to inquiries related to their property markets versus a one-time data call."¹³

Section 3501(4) of the PRA provides that a purpose of the act is to "strengthen the partnership between the federal and state governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained." That partnership would be better strengthened, and the utility maximized if FIO allowed the existing state insurance regulators to apply their proven experience and expertise to do their work.

As noted above, the 2023 Notice does not offer several pieces of important information that could help demonstrate minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained, such as if FIO contacted any sources after 2022 and whether such sources could provide the revised data, or what, if any, fees were quoted. Further, it does not provide any information

¹² A Guide to the PRA <https://pra.digital.gov/clearance-process/supporting-statement/>

¹³ NAIC to Issue Data Call to Help Regulators Better Understand Property Markets <https://content.naic.org/article/naic-issue-data-call-help-regulators-better-understand-property-markets>

about whether the 2022 significant fee quote, or any other fee quote, was more or less than the estimated burdens it proposed in the notices. 5 U.S.C. § 1320.5(d)(1)(iii) requires that the agency must also seek to minimize the cost to itself of collecting, processing, and using the information but will not do so by means of shifting disproportionate costs or burdens onto the public.

C. The Data FIO Requests Lacks the Required PRA Confidentiality

As noted above, the 2023 Notice states that “FIO will seek to maintain the data submitted in a confidential manner.” FIO “seeking to maintain” may not provide the requisite protection under the PRA. The PRA was enacted, at least in part, to “ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including law relating to ... privacy and confidentiality,” including the [Privacy Act of 1974](#). 5 U.S.C. § 552a. “With respect to privacy and security, the Director shall ... develop and oversee the implementation of policies, principles, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for agencies.” [44 U.S.C. § 3504\(g\)](#).

As stated earlier, the 2023 Notice should provide more information concerning the following: whether FIO will share this information; with whom and for what intention; whether and how this information can be made public; the specific protections that it will afford the information; and whether and how insurers may be subject to repercussions from other federal agencies. To the extent that FIO intends to aggregate findings and to protect the data of individual insurers, it is important that the data challenges outlined above are addressed. Without the ability to functionally aggregate the data, identities of the corresponding insurers may not be as well protected, including consideration of using a third-party data aggregator would be an appropriate protection.

PART 3 – The Burden Estimate in the 2023 Notice is Not Reasonable

The PRA’s purpose, as stated in the first provisions of the first Section 3501(1) and in the preamble of the act is to reduce the burden of collections of information by the federal government. Section 3502(2) defines “burden” as the time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a federal agency, including the resources expended for reviewing instructions; acquiring, installing, and utilizing technology and systems; adjusting the existing ways to comply with any previously applicable instructions and requirements; searching data sources; completing and reviewing the collection of information; and transmitting or otherwise disclosing the information.

The burden captured in the burden estimate in the 2023 Notice is low and unrealistic. The amount of time necessary to report and the level of work required that FIO proposes do not accurately reflect the time and expertise necessary for the mandatory compliance. As noted in several sections above, the information requested by FIO is not kept in the normal course of business in the FIO format by insurers nor do insurers have the processes and systems in place to obtain, validate, and report such data.

For this initial data collection, FIO plans to collect data from the top homeowner insurance groups that have 1 percent or more of the U.S. homeowner insurance market as measured by aggregate insurance direct premiums written in 2022. It has identified 14 homeowner insurance groups that meet this criterion and has provided the form on which it intends to require reporting by 240 designated insurers, but the instructions provide that all data should be aggregated and reported on a consolidated insurer group basis, unless reporting for a single insurer

Insurance companies do report financial and risk information via the group capital calculation or the Own Risk and Solvency Assessment report at the group level. The specific data that FIO is requesting is not kept in normal business; it must be created. There may be systems of reporting this to allow insurance consolidated insurer groups to create this new data and roll it into a group-level report. But even this presumption, which has not been established, results in additional efforts to create new reports and is an underestimation of the reporting burden.

In the 2023 Notice, FIO states that the 14 representative sample insurers have 240 homeowner insurance entities, with the number of entities per group ranging from one to 44, so the burden for each representative sample insurer would vary. The overall estimated burden hours are 14,400 (240 entities x 60 hours) to 48,000 hours (240 entities x 200 hours). The reporting form that it proposes has seven fields that must be completed for each of 41,090 ZIP codes, which totals entry and verification of 287,630 separate data cells. For the seven years that FIO is requesting, that would total more than 2 million separate data cells to be completed. At 200 hours to complete, that would require the sample insurer with only one entity to complete more than 10,000 entries per hour or 166 entries per minute.¹⁴ Recall that this data is not normally kept in the course of an insurer's business and would require validation prior to reporting to a federal government office.

Additionally, it seems probable that FIO underestimates hourly rate of the insurers' subject matter experts in actuarial and finance roles that will be required to respond to the collection requirements completely and accurately. Although it acknowledges that commentators have raised this issue, it summarily dismisses these concerns stating that "the FIO data collection is largely an operational task focused on data already collected by insurers."

As noted above, the proposed 2023 Notice data collection is not for data insurers presently maintain in the normal course of business, but rather a demand by FIO for various data elements that likely exist in some format at different and varying levels at each insurer that must be compiled, sorted, and reported in a specific FIO format that exists nowhere else. Insurers do not have defined processes or systems to collect, validate and fully report the exact data in the exact format. FIO's reduction of the level of work required as merely "an operational task" indicate either a lack of understanding or appreciation for the operational requirements of property/casualty insurance.

The 90 days that FIO proposes for insurers to respond is unreasonably short. Section 3502(2) of the PRA provides that the term "burden" means *time*, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a federal agency, including the resources expended for "(A) reviewing instructions; (B) acquiring, installing, and utilizing technology and systems; (C) adjusting the existing ways to comply with any previously applicable instructions and requirements; (D) searching data sources; (E) completing and reviewing the collection of information; and (F) transmitting, or otherwise disclosing the information." The response time proposed by FIO is an undue burden and should be extended at least to 180 days.

Finally, with respect to the burden of the proposed data call, OMB should consider the alternative cost of FIO obtaining the data. It acknowledges in the 2022 Notice that it did contact publicly available sources in 2022 for the more extensive data call, and the 2022 Notice states that the more extensive data was generally available from the sources for a significant fee. As referenced above, FIO has not provided any information about the level of that fee; it makes no claim that it is in any way limited in paying fees; and it pays sources

¹⁴ The sample insurers with only 44 entities would be required to combine 88.4 million separate data cells into the groups-level report.

fees for data in connection with the TRIA program. Prior to approving the burden of the data call, FIO should disclose fee estimates provided by publicly available sources.

PART 4 – Executive Order 14030 Does Not Revises the Statutory Requirements of Dodd Frank or the PRA

In the 2023 Notice, FIO states that this information collection is necessary for it to advance its statutory mandates and to fulfill the second undertaking for it under Executive Order 14030. FIO also states that it plans to use the information obtained from this data collection to advance its statutory mandates and respond to the executive order. It also states that the collection of data at a ZIP code level will advance its statutory mandates and respond to the second undertaking described in that order.

There is nothing in Dodd Frank that affords FIO with any specific mandate related to climate, but that act does authorize FIO to “monitor all aspects of the insurance industry,” which this administration has determined to include an undefined “climate-related risk.” Section 3(b)(i) of Executive Order 14030 directs the secretary of the Treasury to direct FIO to assess climate-related issues or gaps in the supervision and regulation of insurers, including as part of the Financial Stability Oversight Council’s analysis of financial stability, and to further assess, in consultation with states, the potential for major disruptions of private insurance coverage in regions of the country particularly vulnerable to climate change impacts.

It is important to note, however, that nothing in that expanded mandate interpretation of “monitoring” or the executive orders provide FIO or the OMB with any additional authority or any exemption from the requirements of Dodd Frank or the PRA.

Conclusion

For the reasons detailed above, the FIO 2023 Notice proposed data call does not comply with the statutory requirements of either Dodd Frank or – and more directly relevant to the OMB – the requirements of the PRA. Accordingly, the request by FIO that the OMB clear the proposed data collection pursuant to the PRA must be denied.

If you have any questions or require further information, please contact me at tkarol@namic.org. Thank you for your time and consideration.



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