

October 27, 2022

FIO Requests Comments on a Proposed Data Call for Homeowners' Insurance Underwriting Data to Aid in Assessment of Climate Risk

Granular Data Proposed to Be Collected from Over 200 P&C Insurers Intended to Aid FIO's Assessment of Potential Impact of Climate-Related Risks on Availability and Affordability of Insurance

SUMMARY

On October 21, 2022, the U.S. Department of the Treasury's Federal Insurance Office ("FIO") published a notice and request for comment¹ in the Federal Register (the "FIO Notice") that it proposes to collect certain underwriting data on homeowners' insurance from a total of approximately 213 property and casualty ("P&C") insurers for purposes of assisting FIO's assessment of climate-related exposures and their potential effects on availability and affordability of insurance coverage (the "Climate Data Collection"). The proposal includes a data collection template² and the instructions for completing it.³ The level of granularity of the data proposed to be collected by FIO as part of the Climate Data Collection is at the ZIP Code level, and a total of five years of data (for Accident Years 2017 through 2021) are proposed to be collected—all of which may require insurers to undertake significant efforts to comply with the data call. The FIO Notice estimates that an insurer would need to expend between 100 and 350 hours total in order to comply with the requirements of the Climate Data Collection as proposed.⁴

The Climate Data Collection proposal is subject to a 60-day public comment period, which ends on December 20, 2022.⁵ Given the scope of information proposed to be collected, insurers should review how the Climate Data Collection would affect them if adopted as proposed, and consider commenting on any aspects that would present particular challenges, either on an individual basis or through trade associations.

BACKGROUND

On May 20, 2021, President Biden issued an Executive Order on Climate-Related Financial Risk, which emphasized the importance of “consistent, clear, intelligible, comparable, and accurate disclosure of climate-related financial risk” in achieving the a net-zero emissions economy by no later than 2050.⁶ Among other things, the Executive Order requires the Secretary of the U.S. Department 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 the U.S. states, the potential for major disruptions of private insurance coverage in regions of the United States particularly vulnerable to climate change impacts. The FIO Notice states that the Climate Data Collection is part of FIO’s efforts to further its work on this charge, and represents an initial step intended to “consolidate foundational knowledge that can be used in future years to develop more comprehensive approaches to address climate-related financial risks”.⁷

The FIO Notice represents another step in the Biden Administration’s “whole-of-government” approach for addressing climate change and, more specifically, increasing the availability of data on climate-related risk and impact. In March 2022, the Securities and Exchange Commission (“SEC”) proposed expansive climate-related disclosure rules (the “SEC Climate Proposal”), which would, if adopted, require all SEC reporting companies (other than Canadian issuers using Form 40-F) to significantly expand the breadth and specificity of climate-related disclosures in their SEC periodic reports and registration statements.⁸ The SEC Climate Proposal would, among other things, require companies to publicly disclose material physical risks at the ZIP Code level, as well as granular information about exposure to risks of flooding or water stress, if material. In addition, in September 2022, the U.S. Federal Reserve announced that, starting in early 2023, six of the U.S.’s largest banks will participate in a pilot scenario analysis, and that the Federal Reserve anticipates publishing insights gained from the pilot on climate risk management practices at an aggregate (rather than institution-specific) level.⁹

SCOPE OF THE CLIMATE DATA COLLECTION

The FIO Notice proposes that underwriting data be collected by FIO from a total of approximately 213 P&C insurers domiciled in 34 U.S. states, including the following: (i) nationwide insurers that reported over \$100 million in 2021 homeowners’ insurance premiums, and (ii) additional insurers, in order to achieve an 80% market share threshold in ten states that may potentially be the most vulnerable to climate-related disasters based on Federal Emergency Management Agency (“FEMA”) data from the National Risk Index.¹⁰ Providing the data required by the Climate Data Collection to FIO would be mandatory for all such insurers. The FIO Notice states that, while multiple lines of insurance may be impacted by climate-related risks, the Climate Data Collection is proposed to focus on homeowners’ multi-

peril insurance since it is “the largest personal line of business impacted directly by weather-related events and is the most relevant in determining potential effects on policyholders”.¹¹

The data proposed to be collected by FIO as part of the Climate Data Collection includes both: (i) data that corresponds to data fields that are reported by P&C insurers in their statutory financial statements, and (ii) other data fields that are not reported in statutory financial statements, such as premium renewals, replacement values, deductibles and coverage limits.¹² The data to be collected by FIO is proposed to be reported at a ZIP Code level, a level of granularity at which—as the FIO Notice acknowledges—underwriting data “is not uniformly collected in every state”, and, even where it is collected, “is not collected in a standardized format and, in some instances, lacks elements necessary for FIO’s analysis of climate-related risk”.¹³ An insurer subject to the Climate Data Collection would be required to submit underwriting data for all U.S. Zip Codes in which it operates.¹⁴ A total of five years of underwriting data (*i.e.*, underwriting data for the years 2017 through 2021, on an Accident Year reporting basis) are proposed to be within the scope of the Climate Data Collection.¹⁵ The collected data would be associated only with weather-related hazards (*e.g.*, convective storms, drought, wildfires, etc., but not natural catastrophes unconnected to weather, such as earthquakes, volcanoes or tsunamis) and would focus only on property damage exposures (*i.e.*, liability, additional living expenses and other coverages not associated with physical damage to the property would not be included).¹⁶ The FIO Notice also proposes to exclude from the scope of the Climate Data Collection flood insurance policies provided through the National Flood Insurance Program (NFIP) and by private insurers, since FEMA is conducting its own parallel analysis of flood insurance data and since typical homeowners’ multi-peril policies do not cover flood insurance.¹⁷ The Climate Data Collection would focus only on direct business written by insurers, without considering the effects of reinsurance.¹⁸

CONFIDENTIALITY

The FIO Notice states that the U.S. Department of the Treasury expects to provide “appropriate levels of confidentiality” to the insurers that will submit underwriting data to FIO as part of the Climate Data Collection and will not publish confidential firm-specific data collected.¹⁹ The FIO Notice also reminds the industry that the Federal Insurance Office Act of 2010 requires FIO to maintain the privacy or confidentiality of submissions of non-publicly available information to FIO and provides that such submissions will not constitute a waiver of, or otherwise affect, any privilege arising under federal or state law to which the information is otherwise subject.²⁰ FIO may, however, publish aggregated analyses of the information provided by insurers as part of the Climate Data Collection.²¹

FIO'S REQUEST FOR COMMENTS

The FIO Notice requests public feedback on a total of 14 matters related to the proposed Climate Data Collection, including, *e.g.*, the scope of the data collected, the selection of insurers from which this data is proposed to be collected, the granularity of the data collection (including whether collection of data at the ZIP Code level is appropriate), and an assessment as to whether FIO's estimate of the potential burden on P&C insurers in compiling and submitting this data is accurate and whether there are further ways to minimize such burden.²² More broadly, the FIO Notice also requests public comment on how FIO should assess the impact of climate-related risks on the availability and affordability of insurance and whether the Climate Data Collection should be undertaken by FIO on an annual basis.²³ Any public comments on these matters must be submitted to FIO by December 20, 2022 (*i.e.*, within 60 days of the publication of the FIO Notice in the Federal Register).

* * *

ENDNOTES

- 1 See Department of the Treasury, Agency Information Collection Activities; Proposed Collection; Comment Request; Federal Insurance Office Climate-Related Financial Risk Data Collection (Oct. 21, 2022), 87 Fed. Reg. 64134, *available at* <https://www.govinfo.gov/content/pkg/FR-2022-10-21/pdf/FR-2022-10-21.pdf>.
- 2 See FIO Underwriting Data Call: U.S. Homeowners' Multi-Peril Template, *available at* <https://home.treasury.gov/system/files/311/FIO-Proposed-Climate-Data-Call-Template.xlsx>.
- 3 See Instructions for FIO Underwriting Data Call – U.S. Homeowners' Multi-Peril, *available at* <https://home.treasury.gov/system/files/311/FIO-Proposed-Climate-Data-Call-Instructions.pdf>.
- 4 See FIO Notice, at p. 64139.
- 5 See FIO Notice, at p. 64134. Comments on the proposed Climate Data Collection may be submitted electronically through the Federal eRulemaking Portal (<http://www.regulations.gov>) or by mail to FIO by following the instructions set forth on page 2 of the FIO Notice.
- 6 See The White House, Executive Order on Climate-Related Financial Risk (May 20, 2021), *available at* <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/20/executive-order-on-climate-related-financial-risk/>.
- 7 FIO Notice, at p. 64135.
- 8 See Sullivan & Cromwell, SEC Proposes Expansive Climate-Related Disclosure Rules (Mar. 28, 2022), *available at* <https://www.sullcrom.com/files/upload/sc-publication-sec-proposes-expansive-climate-related-disclosure-rules.pdf>.
- 9 See Board of Governors of the Federal Reserve System, Federal Reserve Board announces that six of the nation's largest banks will participate in a pilot climate scenario analysis exercise designed to enhance the ability of supervisors and firms to measure and manage climate-related financial risks (Sept. 29, 2022), *available at* <https://www.federalreserve.gov/newsevents/pressreleases/other20220929a.htm>.
- 10 See FIO Notice, at p. 64136. These states are: (1) Texas, (2) California, (3) Florida, (4) Louisiana, (5) North Carolina, (6) New Jersey, (7) Missouri, (8) Illinois, (9) Iowa, and (10) Oklahoma.
- 11 FIO Notice, at p. 64136.
- 12 See FIO Notice, at p. 64135. More specifically, the FIO Notice states that data fields that are not included in P&C insurers' statutory financial statements include the following: (i) the number of policy in-force exposures, (ii) total dollar value of coverage for dwelling and/or other structures and personal property, (iii) total dollar value replacement cost value, (iv) total dollar amount of insurance deductible, and (v) amount of direct premiums written, renewed or retained. See FIO Notice, at p. 64136.
- 13 FIO Notice, at p. 64140.
- 14 See FIO Notice, at p. 64139.
- 15 See FIO Notice, at p. 64138.
- 16 See Instructions for FIO Underwriting Data Call – U.S. Homeowners' Multi-Peril, *available at* <https://home.treasury.gov/system/files/311/FIO-Proposed-Climate-Data-Call-Instructions.pdf>, at p. 1.
- 17 See FIO Notice, at p. 64137. The FIO Notice states that FIO plans to further coordinate with FEMA on flood insurance data analysis. See *id.*

ENDNOTES CONTINUED

- 18 See FIO Notice, at p. 64139.
- 19 FIO Notice, at p. 64140.
- 20 See *id.*
- 21 See *id.*
- 22 See FIO Notice, at pp. 64140-64141.
- 23 FIO Notice, at p. 64141.

SULLIVAN & CROMWELL LLP

ABOUT SULLIVAN & CROMWELL LLP

Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 875 lawyers on four continents, with four offices in the United States, including its headquarters in New York, four offices in Europe, two in Australia and three in Asia.

CONTACTING SULLIVAN & CROMWELL LLP

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers or to any Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future publications by sending an e-mail to SCPublications@sullcrom.com.