December 20, 2022

Attn: Elizabeth Brown
Senior Insurance Regulatory Policy
Analyst Department of the Treasury
1500 Pennsylvania Ave
NW Washington, DC
20220

Re: **Agency Information Collection Activities; Proposed Collection; Comment Request; Federal Insurance Office Climate-Related Financial Risk Data Collection**

United Policyholders strongly supports the information collection referenced above for the reasons we've set forth in previous submissions[1], restated below. United Policyholders (UP) is a national 501(c)(3) based in California that has been educating and assisting insurance consumers and advancing policyholders' rights and interests since 1991.

Through our work in regions that have been impacted by severe weather events and large scale natural disasters, we know that homeowners in those regions that have been directly *or indirectly* impacted by those events chronically face extreme home insurance price increases and reduced options/availability in their aftermath. Before the advent of predictive risk modeling and risk scoring (akin to credit scoring), and the current recognition that climate change is exacerbating severe weather events, competitive forces were largely "healing" the markets in those regions. Over time, availability and affordability generally returned.

Things are very different today. One need only look at the growth of residual markets in the Gulf Coast states and California, and the availability problems beginning to manifest in Colorado to know that competitive forces are not solving the home insurance availability and affordability problems in those regions. In addition, most insurers are making substantial reductions to the extent of the coverage they're providing to homeowners in windstorm/hurricane/tornado, wildfire, hail and flood-prone regions. This is creating an increasing burden on residual market mechanisms, (insurers of last resort) and taxpayers, reducing home values and property tax revenues and making home ownership less viable for an increasing number of people.

[1] https://uphelp.org/wp-content/uploads/2021/11/United-Policyholders-FIO-Comments-11-15-21-2.pdf, June 24 2013 letter from United Policyholders to then-Commissioner McRaith and staff.

The U.S. Treasury has a clear and compelling interest in gathering data that will inform the agency and the U.S. Congress on the financial protection adequacy, availability and affordability of residential property insurance policies in regions throughout the United States that have been impacted by or that are vulnerable to wildfire, windstorm/hurricane/tornado, hail and flooding events.

It is our hope that the Federal Office of Insurance will undertake this data gathering by coordinating with individual state insurance regulators and the National Association of Insurance Commissioners to the fullest extent feasible.

United Policyholders is struggling to help homeowners keep their assets protected

Through numerous engagements at the local, state and federal level, UP works to help solve problems that are impacting consumers in the here and now while working toward big picture and longer term solutions to widespread problems in the sale and delivery of insurance promises.

Insurance companies are highly sophisticated gamblers. Gamblers will take risks in return for money, but only to a degree. They like predictable risks. The unpredictable, scary aspects of climate change are a challenge for us all, but the insurance sector was among the first to recognize its impact and take action. In anticipation of the extreme weather events associated with climate change, insurance companies are reducing what they cover, increasing premiums, dropping long time customers and pulling out of entire regions in order to protect their profits and shareholders. From their business perspective, these actions are logical, but from the perspective of regulators and consumers they must be limited in order to preserve a balanced and fair insurance marketplace.

Through a Roadmap to Preparedness program, a Wildfire Risk Reduction and Asset Protection Project, and various education and advocacy activities, UP is helping Americans keep their assets affordably insured. We are promoting and working to facilitate risk reduction and insurance rewards, savvy shopping and sound financial decision-making. We are advocating for appropriate regulations and legislation and more measured and balanced actions by insurers.

In our roles with the Federal Advisory Committee on Insurance and the National Association of Insurance Commissioners, we are engaging with industry leaders and lawmakers to increase mitigation incentives and insurance rewards to property owners. Through our Restoring Insurance Safety nets Coalition initiative we are working to close the protection gaps that are leaving disaster victims short on funds for repairs and rebuilding and increasing dependency on government aid and charitable resources.

Data will assist FIO in documenting and evaluating actions that insurers have already taken in response to the threat of increased economic losses from climate-related disasters.

Although the business of insurance has largely been regulated by the individual states since1868, recent events have given us good reasons why federally initiated data gathering and actions are needed to complement state regulation of the property/casualty marketplace. We hope that FIO can partner with state regulators on the data gathering and analysis we recommend.

It is imperative that FIO gather national data on revisions that insurers have implemented and are continuing to implement to their products and practices to shield themselves from increased risks and potential claim paying obligations associated with climate change.

Households impacted by recent disasters are encountering high deductibles, reduced and eliminated coverage for exterior damage to roofs and siding from hurricanes and hail, interior damage from backed up sewers and drains, water, mold and wildfire smoke. These coverage reductions are impacting stakeholders throughout the United States including lenders, real property owners, and local, state and federal agencies including FEMA.

When it comes to the impact of climate change on insurance, state regulators have largely been focused on solvency and affordability concerns – less so on the wording changes insurers have been making to their policy forms to reduce claim payouts in order to maintain profitability. Insurers justify these reductions by contending that as risk increases, their customers must bear more of it along with them. That may be true to some extent, but in United Policyholders' view, it is imperative that property insurance policies yield enough funds to restore assets, which by definition requires that hazard/home insurance policies continue to provide basic coverage.

Individual state insurance regulators and the National Association of Insurance Commissioners have the ability to issue data calls and exercise varying degrees of data gathering authority, (e.g. https://content.naic.org/industry_state_disaster_reporting_data_calls.htm). Those data calls focus on claims closed with and without payment. They do not focus on whether the claimant recovered enough money to repair or replace their damaged or destroyed property.

To our knowledge there is currently no national effort to survey the extent to which traditional Insurance Services Office (ISO) and standard fire insurance forms are being supplanted by modified versions that cover far less than those traditional/standard forms. United Policyholders is receiving a steady stream of consumer complaints and samples of policies with carved out coverage. This research is imperative.

A national survey of residential insurance policy forms that elicits data from leading insurers on wording and benefit formula changes they've made in the past ten years will be enormously helpful in assessing how insurers' adaptations to climate change in the form of coverage reductions are impacting people's ability to restore damaged real property assets.

States have not been able to keep up with variations in policy language and forms. Even in California, a state with a robust insurance regulatory system, a new, unfair and unexpected limitation on smoke damage got by the Department of Insurance's scrutiny and is now the subject of litigation.

By 2010, as reported by the Property Casualty Insurers Association of America, thirty-eight states and the District of Columbia had less restrictive rating laws in place, which include different forms and methods of filing such as flex-rating, file-and-use, use-and-file, no-file or no rating law. [1] These types of less restrictive filing requirements offer insurers the ability to insert newer language into policies that limits coverage to homeowners. Regulators often do not get the opportunity to review the rates and policy language until or unless there is a complaint. This problem is only worsening.

Historically, insurance policies were drafted in accordance with forms created by the Insurance Services Office, Inc. ("ISO"). Those forms are characterized by type of policy, i.e., General Commercial or Homeowners [GC, HO], and then by type of coverage, [01,02,03, etc.] and lettered and numbered accordingly. Policy reviewers could reasonably rely on the letter and number codes to ascertain applicable coverages.

As noted by scholars and regulators,[2] deviations from these forms over the years have left regulators, insurance brokers and policyholders with less guidance as to what is actually covered or excluded from a particular policy. "Some of the most prominent national insurers employ policy language that is systematically less generous than that provided in the standard ISO policy. These downward deviations are just not limited to policy terms that are designed to avoid judicial determinations of ambiguity but also include unambiguous and purposeful reductions in coverage" These "downward deviations" leave homeowners underinsured for many losses that were previously covered. Unless the buyer gets conspicuous notice of a reduction in coverage or a significant premium reduction that draws their attention to a potential coverage gap, it goes unnoticed until a claim arises and the policy fails to provide adequate funds for asset restoration.

Strategies or solutions that U.S. regulators should consider in light of the actions referenced in 1) above to restore basic coverage to residential property insurance policies for restoring owned and mortgaged assets through repairs and rebuilding in the aftermath of natural disasters.

The aggregation of individual contributions in the form of premium payments and the insurer investments that make those contributions grow have long supported the mortgage system that facilitates home ownership. Just as home ownership is woven into the fabric of the US economy, so is the purchase and function of property insurance.

But the purpose of hazard insurance is not just for there to be insurance in place on the homes that are the collateral for the $16+ billion of outstanding mortgage debt in this country.[3] The purpose of hazard insurance is to provide the money to pay for repairs and rebuilding when those homes become impaired/damaged or destroyed (most often due to a severe weather event). A primary purpose of hazard insurance is to restore assets. Assets that are the collateral on which a lender issues a mortgage.

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[1] *Analysis of Property /Casualty Insurance Rate Regulatory Laws*, Property Casualty Insurers Association of America, November 29, 2010, *available at* https://www.leg.state.nv.us/Session/76th2011/Exhibits/Assembly/CMC/ACMC279L.pdf

[2] *Reevaluating Standardized Insurance Policies,* Schwarcz, Daniel B. October 5, 2010. University of Chicago Law Review, Vol. 78, p. 1263, 2011, Minnesota Legal Studies Research Paper No. 10-65, *available at* SSRN: https://ssrn.com/abstract=1687909.

We encourage FIO to propose a national minimum uniform standard for residential property insurance policies: A standard setting a coverage floor below which no residential policy may fall and that would protect consumers in situations where their state regulator lacked the resources or will to disapprove a policy form that unduly limits coverage for property damage or destruction. The Fannie Mae servicing guidelines requirement that hazard insurance provide replacement value coverage is a solid base line.

A national standard should draw a line in the sand to preserve essential protections that must remain in residential property insurance policies to finance critical repairs, restore homes and uphold the reasonable expectations of US property owners and the lending community. The way things are going, fewer losses are being covered by the private insurance sector and there is growing reliance and demands on public assistance programs. As a nation, we can't afford to allow private insurers to continue collecting premiums but avoid contributing to the cost of repairing and replacing homes after disasters.

An example of a state standard that draws a line in the sand related to minimum coverage required to be in a residential insurance policy is California's Ins. Code 2080:

All fire policies on subject matter in California shall be on the standard form, and, except as provided by this article shall not contain additions thereto. No part of the standard form shall be omitted therefrom except that any policy providing coverage against the peril of fire only, or in combination with coverage against other perils, need not comply with the provisions of the standard form of fire insurance policy or Section 2080; provided, that coverage with respect to the peril of fire, when viewed in its entirety, is substantially equivalent to or more favorable to the insured than that contained in a standard form fire insurance policy. https://codes.findlaw.com/ca/insurance-code/ins-sect-2070.html

Data that will assist FIO in addressing the Executive Order on Climate-Related Financial Risk with regard to major disruptions of private insurance coverage that are already occurring in regions of the country particularly vulnerable to climate change impacts.

Coastal regions in Florida, Louisiana, New York, Massachusetts, Alabama, Texas and Mississippi and Wildland Urban Interface regions throughout California have all encountered severe home insurance market disruptions since climate change began to manifest. From the perspective of consumers, those disruptions are better described as home insurance availability and affordability crises.

Surveying related market place developments as well as regulatory and legislative strategies that have been tried in those states makes sense. We recommend that FIO examine innovations and strategies that have been attempted in those regions including adjustments to residual market plans, non-renewal limitations and moratoriums.

[3] https://fred.stlouisfed.org/release/tables?rid=52&eid=1192326

Strategies or solutions that U.S. regulators should explore to help insurers, individuals and local governments mitigate the impact of climate change and build resilience.

Individual states are establishing mitigation standards, developing technical and financial support programs and requiring insurers to reflect risk reduction in their rates. FIO can help develop a National Risk Reduction/Hazard Mitigation Clearinghouse to support the states.

Insurers have had to be compelled by state actions to adjust their underwriting and rating practices to take mitigation actions into account. If FIO evaluates the two most commonly used wildfire scoring models it will see that the models basically focus on fuel load, slope, and access to the property under review with no consideration of mitigation actions that the property owner or community may have taken to greatly reduce the risk of loss despite the local environment. It is critical that insurers track mitigation actions and reward effective actions with eligibility and/or discounts as warranted.

FIO may want to focus a case study that includes direct interaction with rural counties such as in California's Wildland Urban Interface, many of which are located along the foothills of the Sierras and other mountain ranges throughout the state. Government officials, probably most notably county tax assessors, in these counties can attest that when home insurance policies become unavailable or unaffordable, or even less comprehensive, the local economy suffers, home prices decline, and government programs that provide critical infrastructure themselves become underfunded as the tax base falls. Choose any impacted county and hear what its public officials have to say about the impacts of the homeowners insurance market on their region county.

Related Considerations

Assessing the impacts of climate risk on the financial stability of the insurance industry requires a focus on three key activities: The underwriting process, transfer or diversity of risk, and insurers' investment portfolios. To follow an insurer's underwriting process in detail would require a year over year comparison of the insurers own data for each line of coverage and in total. For example, for property coverage – particularly homeowners coverage, that would data detail where an insurer writes business (typically tracked by zip code), what total limits are in play, etc. In California, you would also be able to track increasing or declining policy counts by wildfire scores to determine if or where the insurer is writing or nonrenewing policies. If the insurer is not nonrenewing policies in areas with high wildfire scores, there is likely a significant growth in premium as rates have accelerated due to recent wildfire loss events. In most at-risk areas, the insurer is doing both non-renewals and steep premium increases – so premiums may be increasing while policy counts are decreasing. Choose any major homeowners insurer and review data to track its policy counts and premiums by wildfire score over the last 5 years.

Investments

Solvency review is arguably the primary focus of state regulation. There is a significant amount of detail available about insurer's investment choices and transfer of risk to reinsurers. However, it may not be so clear how much of an insurer's investments are related to fossil fuels either directly or in other enterprises which themselves may be invested in fossil fuels. Investments are

graded but there can be biases in regard to how long fossil fuels maintain top status before they topple over the edge as a key economic driver. A precipitous plunge in fossil fuel stocks could have a drastic impact on the insurance industry. There is little pressure on insurers to change their investment practices and move away from fossil fuel centric investments to help the United States achieve its climate risk goals. That would likely require the labeling of certain investments as restricted or off limits despite the strength or quality of the investment. (Reference – California Department of Insurance review of Fossil-Fuel Investment by the Insurance Industry directed by Commissioner Dave Jones 2016) This is an issue that is bigger than insurance but would have its own catastrophic impacts if not understood.

Residual Markets and Federal Government Backstops

One particular focus should be on the solvency and capacity of existing state-run or state mandated residual market mechanisms such as the California Fair Plan. These entities are adverse risk pools that frequently must take all comers with few to no underwriting restrictions. They are very vulnerable to catastrophe loss – driving up their premiums along with losses and reinsurance costs. These mechanisms need backstops in order to keep some level of affordability for the insureds who are so often from regions under significant economic and climate stresses.

Conclusion

The bottom line is that the indemnification purpose of insurance is woven into the fabric of national economy and – as climate risk and its physical impacts cause insurance products to become scarce in various regions of the country, the nation suffers. Individuals and communities are already suffering financially because of availability and affordability issues with insurance.

Respectfully submitted,

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