

To: Joe Bieniek, NAIC
From: Lee Barclay and Lisa Smego, Washington Office of Insurance Commissioner
Subject: Collecting Title Agent Expense Data
Date: November 5, 2008

We appreciate the Title Insurance Issues Working Group's interest in developing a nationwide plan for collecting data from title insurers and title insurance agents. We believe this effort will be helpful to many states as they seek to regulate title insurance in a way that promotes a healthy, competitive, and efficient marketplace.

In particular, here in Washington, we are currently engaged in the research needed to implement Substitute Senate Bill 6847, which was passed by the Legislature in 2008. Among other things, this new law requires title insurers to submit with their rate filings sufficient information to demonstrate that the proposed rates are not excessive, inadequate, or unfairly discriminatory. Our office intends to adopt rules that define "sufficient information" in the context of a rate filing. Because title insurance agent commissions can be 85-90% of premiums, we expect that "sufficient information" to support rate filings will include detailed expense data from title insurance agents. We hope that the Title Insurance Issues Working Group's progress on data collection issues will be both thoughtful enough and fast enough to inform and support our state's rulemaking process.

As the working group considers data collection issues, we believe it would be helpful to deal with two main questions:

1. What are the most appropriate mechanisms for collecting the data?
2. What kinds of data should be collected?

In this memo we will segregate our comments into these two primary areas.

Mechanisms for collecting data

- The traditional method for collecting statistical data for property and casualty lines of business is through statistical plans used by statistical agents. The working group should evaluate whether this is feasible for title insurance. Our particular concern is that statistical agents generally establish contractual relationships with insurers rather than with agents.
- If states are reviewing rates, it is important to have timely expense data that is directly related to the title insurance agencies that are producing the business associated with each particular rate filing. Data that is collected annually under a statistical plan may be very difficult to tie to a particular rate filing in a way that provides support for the proposed rates. What is needed is a way to estimate the expected expenses associated with a particular title insurer's business in a particular state or county.
- If states (rather than statistical agents) are collecting data directly from title insurers and title insurance agents, the working group should consider developing best practices for that data collection effort.
- The working group should review state laws to determine whether the states generally have statutory authority to collect the data the working group believes to be necessary. If not, the working group should consider development of an appropriate model law or regulation.

Identification of data to be collected

- Data elements must be identified, defined, and reported in a systematic and consistent manner. Otherwise, the process will become costly, and the data collected will be of poor quality.
- Several states are already collecting data from title insurance agents, and the working group should review the types of data these states collect and determine their usefulness for the purposes the working group has in mind. We found that the Texas Department of Insurance website contains detailed expense information for every title insurance agent in that state.

- Data used to justify title insurance rates should not include escrow income or expenses. It is important to consider how expenses should be allocated between title operations and escrow operations of each title insurer or title insurance agent.
- It is important to collect not only data relating to title insurance agents' expenses but also data relating to their efficiency. If total salaries are reported, to how many employees (FTEs) were those amounts paid? For the money that was spent, how many title searches of various kinds were performed? What processes are used for title searches, and how efficient are they?

(At the 2006 Winter National Meeting in San Antonio, a number of regulators were treated to a tour of a nearby title plant. Some of us were troubled to find that the title records in many cases were not electronic. They were available only in very old books and files containing paper that was crumbling as it aged. The title search process seemed cumbersome and inefficient.)

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