

## 2011 TITLE AGENT STATISTICAL DATA PLAN IMPLEMENTATION GUIDELINE

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### Part A. Introduction

The purpose of the Title Agent Statistical Data Plan (the “stat plan”) is to give information that is more useful to state regulators about the business of title insurance at the agency level. In the 2007 United States Government Accountability Office (GAO) Report on Title Insurance, Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers (GAO-07-401), it was noted that “large insurers [tend] to use local or regional title agents to conduct their business.” Additionally, the GAO stated “potentially understanding the relationship between costs and the amounts consumers pay could help regulators improve their ability to protect consumers.” Finally, the report recommended that:

State regulators take action to (1) improve consumers’ ability to shop for title insurance and (2) improve their oversight of title agents. As part of this process, we are recommending that these regulators consider evaluating the competitive benefits of publicizing complete title insurance cost information... including the collection of data on title agents’ operations...

While annual financial reporting by insurers (also called underwriters) captures the overall picture of premiums and losses, there are many factors of the business which are only experienced by the ground-level title agent, including actual operating costs and losses not typically paid by an underwriter. This lack of information about the role of agencies in providing title insurance products and related services makes the business of title insurance particularly susceptible to question about the amount of premium retained by agencies, profitability of the industry, and the value of title insurance in general.

Although the stat plan attempts to capture comprehensive information on the title agency experience, the plan in its current form does not capture all information regarding the daily experience of title agencies. In the course of searching and examining land records, title agencies fulfill their main role in the title insurance process of identifying actual and/or potential clouds or defects on the title that may lead to future losses. Agents may work to correct or eliminate the title defects that can be fixed, and inform the insured of which ones cannot be cured by the agent and will be listed as exceptions in the policy. Title agents may also cure defects at the direction of the buyer, the lending institution, or the title insurer. Depending on the state, this function may be performed by an escrow agent, a title agent, or another third party. Sometimes, an entity will spend numerous hours evaluating and eliminating risk before the premium is even paid.

This statistical plan does not differentiate between the resources spent to correct or eliminate title defects and the resources spent to identify title defects and to perform other policy acquisition activities. This is one of the fundamental differences between title insurance and casualty insurance. While technology helps to some extent, automated land records do not eliminate the cost of searching for and addressing defects in title. In most jurisdictions, automated land records are no more than automated indices and images of documents. Although these systems can reduce the time and effort necessary to search land records, the actual process is unchanged,

and title insurance producers or abstractors still must search all records, find those related to a property, and manually examine each document. While some software systems collect and store information, they can be prohibitively expensive for many agencies. In an effort to keep the burden of completing the stat plan as low as possible, information on specific defects found and/or fixed in each search is not collected at this time. Therefore, the stat plan should not be viewed as a fully accurate picture of the profitability of title insurance agencies, but rather as a tool to better understand the economics of the industry.

### **Part B. Mechanism for Reporting and Collection of Data/Implementation**

Although the actual data points collected in the stat plan are points that should be readily available to reporting entities, it is important to note that most have not been previously required to collect and report this data in the current form. Title insurance agencies will need time to develop and put in place systems for collecting and organizing the data, which may involve purchasing new or updating existing software systems, developing tracking mechanisms, and other administrative tasks involved with the collection of requested data.

Therefore, it is suggested that state regulatory agencies provide as much notice as possible prior to the actual expected dates for collecting required data for reporting in the following year. A regulator looking to implement the stat plan should provide sufficient notice prior to January 1 of the year that collection will begin, thereby ensuring enough time for agencies to adopt and adapt their systems before having to track and collect the data. After that, title agencies will track the data points through the year, on an ongoing basis, enabling them to easily compile, prepare, and submit the data plan each year to their regulatory agency. The Task Force recommends a yearly reporting date of June 1 for the previous year's data.

Prior to implementation, regulators should also examine the values, labels, and instructions in the stat plan and make any necessary modifications to conform the plan to local practices and customs. Although it is recommended that the plan remain substantially similar, it is recognized that not all terms and values in the plan will translate well from jurisdiction to jurisdiction.

If feasible, the regulator should establish a web-based reporting site for electronic collection of stat plan data, as well as to disseminate important information about the stat plan. A web-based reporting site should include anticipatory and experientially based FAQs. In the absence of a web-based reporting system, the regulator should develop a system for manually reporting data which can be used by all reporting entities, that prescribes a format and set parameters common to the industry and consistent with other data collection requirements.

The state's data reporting and collection system should include controls that prevent the entry of data that are invalid or internally inconsistent. The system should be designed to meet the needs of various types of reporting entities, many of which have not been accustomed to reporting any kind of information to the commissioner.

The regulator should strive to be as clear as possible about the requirements of reporting, including by issuing FAQs and other formal guidance for reporting agents to rely upon when reporting data under the stat plan. To promote efficiency of reporting and quality of data, regulators should make the operation and format of the stat plan's data reporting and collection system consistent with other uniform data collection conventions and those of other states. In order to facilitate uniformity among states, regulators are encouraged to share with other states any information available regarding the design and operation of each state's system.

### **Part C. Confidentiality of Data**

Due to the sensitive nature of individual agent data, including income, expense, and loss experience, it is strongly recommended that regulators keep individual responses on the stat plan confidential. While such data may already be protected as proprietary, financial, or other sensitive information, it is highly recommended that states determine whether they can hold the stat plan information confidential, and enact any statutory or regulatory amendments necessary to do so. However, nothing herein should be construed as attempting to limit the sharing or publication of aggregate data, since such publication may in fact make important disclosures regarding the experience of title agents in a particular geographic area or business demographic (i.e. by county, state, or by agency type). Additionally, the sharing of data among regulators should be exempted from any confidential protections given to collected data.

### **Part D. Uses of Data**

Because the data collected as part of the stat plan does not fully capture the agent experience as it pertains to items caught and corrected prior to issuance of policy, caution should be taken if regulators intend on using the stat plan to set rates or analyze entities' justifications of rates and fees. Although rate and fee setting is a conceivable use of the data collected, regulators need to be aware of the shortcomings of the plan, and willing to accept data and justifications provided beyond the scope of the stat plan.

Other uses of the data collected include:

- Fulfilling GAO recommendations of increased title agent data collection
- Comparison of relationship of costs to title agents and prices consumers pay
- Quantitative analysis of differences between title insurance and other lines of insurance (particularly in operating costs vs. loss costs)
- Comparison of FTEs in agencies vs. total licensees in a jurisdiction
- Agent premium experience
- Market share analysis
- Marketing expense ratios (compared to market share)
- Premium vs. agency claims loss experience
- Agent experience by locality (county, city, etc.)
- Develop Market Conduct Base Line Market Analyses

### **Part E. Insurance Department Outreach Efforts**

Under the stat plan, regulators are responsible for collecting data from entities not traditionally required to provide annual data statistics to insurance departments. To ensure efficient implementation and timely compliance with annual reporting requirements, regulators should engage in outreach and training initiatives. Some of the groups to contact during outreach efforts include:

#### **Industry Associations**

- State land title associations
- National land title associations
- National Title Insurance Computer System Providers
- Title Insurance Data Collection and Consulting firms

## Other Organizations

- Title insurance underwriters' state offices
- Other state departments of insurance
- National Association of Insurance Commissioners

The organizations listed above can help regulators make reporting entities aware of the state's annual title agency statistical reporting requirements. Training programs conducted by regulators and accessibility to members of these organizations will improve the timeliness and quality of data submitted by reporting entities.

## **Part F. Suggested Statute Language**

### **Title Agent Statistical Data Plan.**

- (1) Every title agency doing business in this state, on or before the last day of May in each year, shall submit to the commissioner a report, signed and certified by an owner, officer, partner, or director of the agency, of the specific information listed in the NAIC Title Insurance Agent Statistical Data Plan.
- (2) Information relating to the individual agencies filed with the commissioner under subsection (1) shall be kept confidential and not subject to public disclosure. However, nothing in this subsection (2) shall prohibit the commissioner from publishing data collected in an aggregate form, so as not to identify individual agencies' data, or from sharing particular agency data with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the information.
- (3) The commissioner may establish rules, including rules providing statistical plans, for use by all title insurers and title insurance agents in the collection and reporting of demographic, revenue, expense and loss experience data in such form and detail as is necessary to aid him or her in the evaluation of the title insurance industry at the agency level.

**Drafting note:** States that require the data to be submitted electronically should establish a method of electronic signature verification that is acceptable to the commissioner.

## **Part G. Suggested Regulation on Reporting Requirements**

**Drafting Note:** This is not a model regulation, but a suggested regulation/best practice for any necessary rules that may need to be promulgated for the implementation of the stat plan. When drafting regulations, take into account local statutes, practices, and customs and modify this regulation accordingly.

Section 1.	Statement of Purpose
Section 2.	Statutory Authority
Section 3.	Applicability and Scope
Section 4.	Definitions
Section 5.	Data Required
Section 6.	Due dates/Time Periods for Collection
Section 7.	Method of Submission
Section 8.	Confidentiality

- Section 9. Enforcement
- Section 10. Severability
- Section 11. Effective Date

## **Section 1. Statement of Purpose**

This regulation is intended to provide standards and direction for the collection and reporting of title agent data in accordance with the NAIC's Title Agent Statistical Data Plan. The regulation specifies the data required, due dates and time periods for collection and submission of data, methods of submission, and addresses the confidentiality of the data submitted.

## **Section 2. Statutory Authority**

This regulation is issued based upon the authority granted the commissioner under (cite any enabling legislation and state law corresponding to market analysis, market regulation, and/or title insurance regulation).

## **Section 3. Applicability and Scope**

Under this regulation, all operating title insurance agencies and underwriter direct operations are required to provide yearly report of their policy issuance, business income and expense, and loss experience (excluding losses forwarded to or paid by an underwriter). Agencies include independent title agencies, affiliated business arrangement (AfBA) title agencies, attorney firms/title agencies, and underwriter direct operations.

**Drafting Note:** Types of entities may vary by state.

## **Section 4. Definitions**

1. Affiliated Business Arrangement (AfBA) – an arrangement in which a settlement producer, such as a real estate broker, developer, mortgage loan originator, or bank, or any other individual or entity that is in a position, directly or indirectly, to refer settlement business to a title entity, also maintains a direct or beneficial ownership interest in that title entity.
2. Affiliated title agency - a title agency that is owned, either wholly or in part, by a title insurance company/underwriter, but does not operate as an underwriter direct agency.
3. Attorney firm/title agency - a title agency that is owned and operated by an attorney or law firm.
4. Independent title agency - a title agency that is not part of an ownership arrangement with a real estate settlement producer, or with a title insurance company/underwriter.
5. NAIC title agent statistical data plan - also known as the "stat plan", this is the data reporting plan developed by the National Association of Insurance Commissioners Title Agent Statistical Data Plan Working Group, incorporated by reference herein.
6. Reporting entity - any title agency that is required to submit the information required under the stat plan, including independent, AfBA, attorney, and underwriter direct agencies.
7. Reporting period - the calendar year immediately preceding the current stat plan due date.

8. Stat plan due date - the due date for reporting entities to submit data to the commissioner. The standard due date under the stat plan is May 30 of each year.
9. Underwriter direct agency - a title agency that is wholly owned and operated by a title insurance company/underwriter.

**Drafting Note:** Individual states may have different definitions for some of the above items, or may have more or fewer definitions to include. In addition, definitions under Real Estate Settlement Procedures Act (RESPA) may vary from those listed above. States should update, add, or delete definitions, as well as add relevant statutory citations as necessary.

## **Section 5. Data Required**

Incorporate reference to stat plan here, rather than including the actual plan (to accommodate for future amendments to plan)

## **Section 6. Due Dates/Time Periods for Collection**

All reporting entities are required to submit the data referenced in Section 5 of this regulation on or before May 30 for the immediately preceding reporting period.

## **Section 7. Method of Submission**

All reporting entities shall submit the data in a manner prescribed by the commissioner.

**Drafting Note:** States should develop a method for collecting data electronically, either through a database in which entities can log in to report or through a dedicated email address, as well as methods of communicating requirements and any changes to the industry. Such method should be noted in Section 7.

## **Section 8. Confidentiality and Sharing**

Information filed with the commissioner relating to the experience of a particular agent shall be kept confidential unless the commissioner finds it in the public interest to disclose the information required of title insurers or title insurance agents under this section.

In order to assist in the performance of the commissioner's duties under this chapter, the commissioner may share data and information submitted by title insurance entities, including agencies, insurer direct operations, and title agent attorney firms, pursuant to Title Agent Statistical Plan data calls and collections, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the information. Additionally, nothing contained herein shall prohibit the commissioner from sharing or publishing data in an aggregate form with the above parties or any other stakeholder.

**Drafting Note:** States should ensure that the language that they use does not, nor can be construed as attempting to, limit the sharing or publication of aggregated data, since such publication may in fact make important disclosures regarding the experience of title agents in a particular geographic area or business demographic (i.e. by county, state or by agency type.)

Furthermore, States should contemplate whether or not they intend to publish aggregated data and the extent to which they are prepared to be required to publish or just may publish, etc.

**Section 9. Enforcement**

The commissioner may require that the information provided under this section be verified by oath of the insurer's or agent's president or vice president or secretary, as applicable. The commissioner may further require that the information required under this section be subject to an audit conducted by the commissioner. The commissioner shall have the authority to establish a minimum threshold level at which an audit would be required.

Noncompliance with this regulation may result, after proper notice and hearing, in the imposition of any of the sanctions available in the [insert state] statutes pertaining to the business of insurance or other laws which include the imposition of fines, issuance of cease and desist orders, and/or suspensions or revocation of license. Among others, the penalties provided for in [cite appropriate state laws concerning failure to respond, unfair business practices, etc.] may be applied.

**Section 10. Severability**

If any of the provisions of this regulation shall be held invalid or unenforceable, this regulation shall be construed as if not containing such provisions and the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired in any way.

**Section 11. Effective Date**

This regulation is effective on [insert date] and applies to all transactions entered into after the effective date.

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*Chronological Summary of Actions (all references are to the Proceeding of the NAIC)*

*2011 Proc. 3<sup>rd</sup> Quarter, Vol. II 204, 208 (adopted).*