

The American Land Title Association appreciates the opportunity to comment on the proposed Draft Title Standardized Data Requests for inclusion in the reference documents of the Market Regulation Handbook. ALTA does not support adoption of the two data requests as drafted and requests a meeting with the Market Conduct Examination Guidelines Working Group to discuss the data title insurers have readily available to provide to examiners.

The draft data request would be difficult for title insurers to produce and implement for two main reasons. First, much of the information requested is not currently collected by or accessible to title insurers. While title agents may have access to some of the data, it would be costly and complicated for the insurer to start collecting that data. Second, a significant portion of the information requested, which is accessible to title insurers, is not in a single consolidated system. Thus, to produce the data request report, the insurer would need to utilize notable manual efforts.

Background about Title Industry

Title insurance insures against the risk of a total or partial loss due to a defect in title to real property.¹ “There are two primary types of title insurance policies that are issued to two different actors in the real estate transfer process . . . the owner's policy, which insures the buyer against property loss due to a title defect . . . [and] the lender's, or loan policy, which insures the lender against a loss of the security for its security instrument due to a title defect.”²

An owner's policy insures the purchaser against financial loss or damage that may arise from defects in the title as insured, including the assertion of liens and claims against the property that are not otherwise excepted from policy coverage. A loan policy insures the lender that it will have a valid, enforceable lien on the property in accordance with the mortgage interest created by the loan; that the person to whom it is making the mortgage loan has title to the property being mortgaged; and that no other claimant, other than those specifically noted in the policy, has a prior, superior claim. Under both policies, the title insurer is obligated to pay for the costs of defending the title as insured against any covered claim. In virtually all areas of the country, if an owner's policy is issued in the transaction, the cost of a loan policy that is “simultaneously issued” with the owner's policy involves a relatively small additional charge to the cost of the owner's policy.

Unlike agents in other lines of insurance, who primarily perform and are compensated for sales-related functions, title insurance agents generally perform all of the steps in the underwriting and issuance of the majority of title insurance policies. In addition, title insurance agents often operate a second and distinct business related to the closing of a home sale or loan. Most (if not all) of the agency agreements in the industry are limited and specify that the title agent is ONLY the agent of the insurer for purposes of issuing title insurance policies and specifically provide that they are not the agent of the insurer for purposes of facilitating the closing.

Insurers Do Not Collect Data Related to the Closing

The closing process is outside the scope of the title insurer's relationship with the agency. Thus, the insurer has no reason to have access to or collect data related to the closing for its own purposes. Given this reality, the insurer would not have access to the data necessary to complete a number of the items in the proposed in force report including:

- Closing File Number

¹ Palomar, Title Insurance Law (2012), § 1:8, p 22.

² Frantze, Equity Income Partners LP v. Chicago Title Insurance Co. and Recovery Under a Lender's Title Insurance Policy in a Falling Real Estate Market, 48 Real Prop Tr & Est LJ 391 (Fall 2013), citing Burke, The Law of Title Insurance, (3d ed supp 2012), § 2.01.

- Date commitment issued
- Date transaction closed
- Date deed is recorded
- Date deed was presented for recording
- Date policy delivered to insured
- Disbursement date
- Closing or other title service charges that are not considered part of premium
- Name of the seller
- Name of the real estate agent
- Address of the insured property (unless it is included in the legal description)
- 2nd mortgage indicator

Insurers Only Have Access to Data that is on the Face of the Policy

Title insurers typically only collect data about their policies in force that would be captured on the face of the issued policy. This often includes the name of insured, the property covered, date of policy, amount of insurance, and a policy number. If data is not contained on the face of the policy, it may be available in another system or from the agent. However, this will require significant manual efforts to provide to examiners.

In reviewing the policy in force request, many of the details are not on the face of the policy. Beyond the items outlined in the previous section, items related to the filing of the policy form with the state department of insurance and information about the agent (such as their name, status and id numbers) would require significant manual efforts to append to the data from the policy in force system.

Given that most of the information in the policy in force request is largely inaccessible without time consuming research, there could be major costs in producing each request. If these requests require insurers to alter the data they obtain from agents, that could 1) be impossible given the contractual relationship between the insurer and agent and 2) results in additional costs put on these small businesses.

Due of the issues cited above, an easier process would be for an examiner to request a limited amount of policy data. From there the examiner could determine their sample meaning that the insurer would need to compile the additional data (where available) for a much smaller set of policies. Further, various data fields should account for “Not Applicable” where information gaps may occur. Insurers should not be penalized or have negative findings if data is not available in their systems.

Requests for Clarification

Lastly, there are a number of fields where it is unclear of what is being asked, and clarification is needed. For the Policy in Force Standardization Request, this includes:

- Type of policy
- Risk rate classification
- National producer number
- Basis for premium credit/loan payoff – prior
- Transaction code

For the Claims Standardization Data Request, this includes:

- Date reserves established for claim, if applicable
- Date referred for legal counsel
- Aggregate amount of reserves established for claim

- Aggregate amount of claim expenses
- Claim payment amount

Also, it appears various fields are repetitive and ask for the same data. Other fields, including the “Risk rate classification,” ask for information that is not related to title insurance.

Thank you for the opportunity to submit comments on the proposed guidelines. While it is important to provide data that verifies companies follow appropriate procedures, please take into consideration the significant amount of time and manual preparation this would entail, as well as the possibility agencies will not have the information being requested. For further questions, please reach out to Steve Gottheim at sgottheim@alta.org.