

PROJECT HISTORY - 2011

TITLE AGENT STATISTICAL DATA PLAN IMPLEMENTATION GUIDELINE (#1650)

1. Description of the Project, Issues Addressed, etc.

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...”

The Title Statistical Plan (C) Working Group of the Title Insurance (C) Task Force first developed a *Title Insurance Agent Statistical Report*. This statistical report contains the various data elements title agents are to report on an annual basis to each jurisdiction. After developing the *Title Insurance Agent Statistical Report*, the Working Group developed a *Title Agent Statistical Data Plan Implementation Guideline* as a resource for regulators to implement the *Title Insurance Agent Statistical Report*.

2. Name of Group Responsible for Drafting the Model and States Participating

The Title Statistical Plan (C) Working Group of the Title Insurance (C) Task Force was chaired by Colorado with members participating from Arkansas, Florida, Maryland, Michigan, Missouri, Oregon and Washington.

3. Project Authorized by What Charge and Date First Given to the Group

During the NAIC Winter 2008 National Meeting the Title Insurance Issues (C) Working Group, later became the Title Insurance (C) Task Force, decided a statistical plan for title insurers should attempt to measure, on a state-by-state basis, the profitability and competitiveness of the title industry and the reasonableness of title rates and charges. In addition to title insurance, the data captured would include non-regulated items such as escrow, closing and settlement revenues and charges. In order for the data to be meaningful, mandatory reporting would be needed. The Title Insurance Issues (C) Working Group was first charged by the Property and Casualty Insurance (C) Committee in 2009 to complete a study on the ability to undertake a uniform data collection system to capture title insurance premium and expense data that would allow for cross-jurisdiction premium comparisons. The data would include commissions and fees. The Working Group decided a survey of all jurisdictions needed to be completed. The survey was conducted in the autumn of 2009 of state laws on the collection of title agent data and other information. The survey results indicate that 61% of the states are authorized to require data reporting by title agents, and the Working Group believed it could assist states in developing data requests that will help in analyzing the marketplace. The Working Group became a Task Force in January 2010 and the Title Insurance (C) Task Force appointed the Title Statistical Plan Working Group to develop a nationwide title statistical plan that would include, if feasible, title agent data.

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated

The *Title Insurance Agent Statistical Report* was developed by the Working Group. All conference calls were open to interested parties who participated in the development of the project throughout the process. The American Land Title Association (ALTA) reached out to member title insurance companies, title agents and to software vendors to participate in the conference calls.

After developing the *Title Insurance Agent Statistical Report*, the Working Group decided to proceed with drafting a guideline for jurisdictions to use in collecting and keeping the data confidential. Because some jurisdictions will not collect the data and some have the authority to collect the data, the NAIC membership will not be able to meet the requirements to promulgate a model law. The Working Group agreed the guideline will include a section with suggested wording for jurisdictions that need a statute or regulation to be able to implement the reporting requirements.

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)

The Title Statistical Plan (C) Working Group adopted an Aug. 6, draft of the *Title Insurance Agent Statistical Report*. The Property and Casualty Insurance (C) Committee adopted the report during the Summer 2010 National Meeting including the accompanying Single-State Agent, Multi-State Agent, Attorney Agent and Underwriter Direct Instructions. The report was subsequently adopted in the consent agenda of the Plenary Committee during the Fall 2010 National Meeting and is available on the Web site at www.naic.org/documents/committees_c_title_stat_plan_tasp_final.xls.

Many of the same regulators and interested parties participated with the Working Group when it focused on developing the *Title Agent Statistical Data Plan Implementation Guideline* in September 2010. Ten conference calls produced eight drafts for review and consideration culminating in the July 28, 2011, draft.

The *Title Agent Statistical Data Plan Implementation Guideline* was adopted Sept. 1, by the Title Insurance (C) Task Force and the Property and Casualty Insurance (C) Committee Sept. 16, 2011.

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response)

After reviewing information and hearing from interested parties the Working Group realized the data gathering of information regarding rate setting and profitability was not practical. During the conference call of March 18, 2010, the Working Group decided the focus is to collect data for market analysis and market regulation. There is recognition that the performance of the title business is based on the title agent, rather than the underwriter, in most jurisdictions. The current reporting is from title companies, and that reporting does not give regulators a complete picture of the profit, loss and expenses in the title insurance business. Because of this, jurisdictions need to obtain data from agents. The agent statistical plan should be a unique plan to capture critical data with the least amount of reporting. In addition, five basic categories of information would be collected: general information and agency information; risk assumption; income; expenses; and loss, loss mitigation.

The Working Group agreed that each jurisdiction would issue a statistical plan data call requesting the information. Completion of the form is expected by every agent/producer, and alternatively, a firm or agency can submit the information for each of the covered agents in an entity. Information would be collected from all agency operations, whether direct or independent and include attorney agents. Interested parties believed

small operations and even attorney agents should be exempted from reporting, but the Working Group believed that leaving these smaller entities out would not provide the regulator with sufficient information of the marketplace as the aggregate amount of the proposed exempted entities would be significant. The Working Group decided the goal of the statistical report is to capture granular data that will be meaningful to regulators and yet not overly burdensome on the industry, particularly to small businesses.

The Working Group agreed that national data would not be collected, and each jurisdiction is to collect data uniformly if they choose to collect data. The statistical plan needs to be uniform no matter what the structure or unique nature is in a particular jurisdiction.

Another significant issue in developing the statistical plan is the Working Group agreed the plan would not be able to collect data on all issues avoided during the search and exam process (title problems avoided). The reason for this is that it would prove to be overly burdensome and costly to small agents, especially since there is no current technology that would make such collection feasible.

In developing the guideline, the Working Group conducted a survey in mid-2010 of all jurisdictions to determine what each jurisdiction needs to implement a data call, such as a statute or rule change to collect data and to keep the data confidential. The survey from 31 jurisdictions indicated: some jurisdictions do not plan to implement the data call; some jurisdictions currently have the authority to collect the data; jurisdictions generally have the technology available for electronic collection and compilation of data; jurisdictions need a statute and/or regulation change to collect the data; and jurisdictions need a statute and/or regulation change to keep the collected data confidential. The survey revealed the need to proceed with drafting a guideline for jurisdictions to use in collecting and keeping the data confidential. Because some jurisdictions will not collect the data and some have the authority to collect the data, the NAIC membership will not be able to meet the requirements to promulgate a model law.

7. Any Other Important Information (e.g., amending an accreditation standard).

The Working Group decided to include a confidentiality section and regulators will still be able to share individual agent information with other states.

The guideline includes language to clarify the intent of the report and the guideline is not to collect all the information that some jurisdictions may need for developing rates.