

The 2015 Florida Title Insurance Agency Data Call

A Report Prepared by the Office of Insurance Regulation

Background

In September 2008, Florida's Office of Program Policy Analysis and Government Accountability (OPPAGA) published a report entitled, *Florida's Current Regulatory Framework Creates Challenges for State's Title Insurance Regulation*. The report was written at the direction of Florida's legislature to assist a Florida Title Insurance Advisory Council convened by the Governor to study the state of the title insurance industry in Florida. Recommendations submitted by this Advisory Council influenced the subsequent 2012 statutory changes and new data calls.

Pursuant to S. 627.782, F.S. title insurance rates in Florida are set by the Office of Insurance Regulation (Office) using the administrative rulemaking process. The goals of the data calls also are set out in S. 627.782, F.S. They are to gather sufficient data about the revenues, losses, and costs of the Florida title insurance industry to allow the Office to fulfill its statutory duty of analyzing the condition of the title insurance industry and to set title insurance rates at a level that ensures they are sufficient to allow underwriters, agents, and agencies to earn a rate of return on capital high enough to attract investment into the industry. Further, to protect Florida's consumers, the statute requires that the rates not be excessive, inadequate (to protect title insurers' solvency), nor unfairly discriminatory.

To facilitate the analysis for meeting these rate-making requirements, S. 627.782, F.S. was changed in 2012 to clarify that the Office must collect data from not only title insurance underwriters, but also from title insurance agencies. This was necessary because, generally speaking, the Office regulates only title insurers, while the Department of Financial Services (DFS) regulates only title agencies. The revised statute mandates that the Office collect this data annually from title insurers and roughly 2,000 title insurance agencies by means of two data calls

(one for agencies and one for underwriters). The data calls also must be created using the administrative rulemaking process.

Other statutory changes implemented in 2012 to facilitate the data calls were the addition of S. 626.84195, F.S., allowing the data call information submitted by agencies and insurers to be made confidential and an amendment to S.626.8437, F.S., providing for the enforcement of the agency data call requirement.

The Office worked with the title insurance industry, including representatives of both the title underwriter and agency community, to devise data calls that met the statutory requirements. Much attention was given to the title insurance agency data call, because the bulk of Florida title insurance premium, which totaled almost \$1.1 billion in 2014, goes toward covering the agencies' cost of providing unique title insurance loss prevention services. Further, title insurance agents indicated a desire to document the services they provide during the real estate purchase transaction, along with their actual costs, in order to offset what they perceive to be public misunderstandings about the title insurance industry.

Process

Since the administrative rule required to create the title insurance agency data call forms affected many small businesses, costing them well over the \$1 million-over-five-years threshold set forth in Chapter 120, F.S., the Office had to garner not only the Governor's and the Cabinet's approval of the data call, it also had to get the data call forms approved by both houses of the legislature. These tasks were accomplished by 2014 and the first mandatory title insurance data call including title insurance agencies was set with a June 1, 2015 deadline for reporting 2014 data.

Title insurance underwriters and the Florida Land Title Association lent the Office tremendous help in publicizing the data call and in training agencies on how to prepare and collect data for filling out the forms throughout 2014. The data call submission process ran smoothly for the majority of agencies. Although clarifying

changes to the data call instructions could be included next year, it is not anticipated that substantive changes requiring a rule change will be made to the 2016 data call for 2015 calendar-year data.

As of mid-July, over 1,800 title insurance agencies have submitted their data call information. DFS has been notified of the agencies that have not responded for further follow up and the possible imposition of penalties. Also, a number of agencies surrendered their licenses in 2014 to avoid responding to the data call. The rule requires an agency licensed at any time during 2014 to respond, so DFS will require that this happen before these agencies will be considered for re-licensing.

Unique

In October 2011, The National Association of Insurance Commissioners (NAIC), in consultation with the American Land Title Association (ALTA), published a sample Title Agent Statistical Data Plan, upon which the Florida Title Insurance Agency Call was based. The stated purpose of the NAIC Title Agent Statistical Data Plan was to give information that “is more useful to state regulators about the business of title insurance at the agency level”. However, NAIC’s Implementation Guidelines further said that, “Because the data collected as part of the state 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 state plan to set rates or analyze entities’ justifications of rates and fees.”

It is believed Florida’s Title Insurance Agency Data Call is unique among all such data calls in the nation because it does “capture the agent experience as it pertains to items caught and corrected prior to issuance of policy”, and much more. Some of the unique information captured by the Florida data call is found in Schedule B, which was included at the specific request of Florida title agents. In order to answer the question of why title insurance agents should receive the

bulk of the premium in exchange for services they provide, Schedule B asks for the amount of time agency employees spend on the following functions:

1. The Title Search,
2. The Examination of the Documents Found in the Title Search,
3. The Determination of Insurability of Title Based on the Examination of Documents,
4. Curative Efforts Spent in Clearing Underwriting Objections and Requirements, and
5. Providing Closing Services, including Escrow.

In completing Schedule B, agencies are given the choice of actually tracking their hours, to which they apply a unique hourly cost, or estimating the percentage of total time their employees spend on each function.

Going Forward

The Office has engaged two consultants who are familiar with the title insurance industry to analyze the data collected during the 2015 data call, and to recommend changes in the rating and other rules if they are warranted by the information collected. They are Dr. Nelson R. Lipshutz, Economist and President of the Regulatory Research Corporation, as well as author of the book, *The Regulatory Economics of Title Insurance*; and Dr. Mark Crawshaw, Actuary and President of the Madison Consulting Group, Inc. Dr. Lipshutz has been consulting about the title insurance industry since the 1970s and he and Dr. Crawshaw have been involved in title insurance rate-setting in Texas and New Mexico, both of which are promulgated-rate states.

Before the data is given to the Office's consultants, each data call submitted will be validated by the Office's Market Research and Technology Department. That department has developed years of experience in administering data calls for other lines of insurance, such as homeowners, workers' compensation, and health insurance. Under the validation program, title insurance data call responses

lacking in any material way will be sent back for correction before the aggregated data is compiled. Although the title insurance data call is more complex than many, it is expected that the validation process will be completed in the fall of 2015.

Any changes to title insurance rules, including the rate rule, must go through the administrative rulemaking process. Any significant changes in rates will, in all probability, affect small businesses sufficiently to trigger the \$1 million threshold in Chapter 120, F.S. If rates go up, small businesses buying title insurance will be affected. If rates go down, small business agencies will be affected.

Conclusion

The Florida Title Insurance Agency Data Call was devised using the nationwide wisdom of the NAIC and ALTA combined with the more focused experience and knowledge of Florida title insurance agents, underwriters, and the Office. It was executed with a 17-month effort of publicity and education given in webinars and frequently-asked questions provided by the Office and Florida's title insurance industry, including its agencies, underwriters, and state association (FLTA).

The Florida Title Insurance Agency Data Call is now an annual event. Its results will be analyzed by two Office consultants and a consultant for the Florida title insurance industry. Any substantive change in the data call or to title insurance rates must be accomplished through Florida's rulemaking process. The outcome of these data calls will help to ensure title insurance rates and premiums are not excessive, inadequate, or unfairly discriminatory, as well as sufficient to attract capital into Florida's title insurance industry.

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