

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21st Floor  
San Francisco, California 94105**

**June 17, 2008**

**REG-2008-00024**

**NOTICE OF PROPOSED ACTION AND  
NOTICE OF PUBLIC HEARING**

**SUBJECT OF HEARING**

California Insurance Commissioner Steve Poizner (Commissioner) will hold a public hearing to discuss the proposed addition of sections 2355.1 and 2355.2 to Title 10, Chapter 5, Subchapter 3, Article 7.1 of the California Code of Regulations; and the repeal of Subarticle 1 (sections 2355.1, 2355.2, 2355.3, 2355.4, 2355.5, 2355.6, 2355.7, and 2355.8); Subarticle 2 (sections 2356.1, 2356.2, 2356.3, 2356.4, 2356.5, 2356.6, 2356.7, 2356.8, and 2356.9); Subarticle 3 (sections 2357.1, 2357.2, 2357.3, 2357.4, 2357.5, 2357.6, 2357.7, 2357.8, 2357.9, 2357.10, 2357.11, 2357.12, 2357.13, 2357.14, 2357.15, 2357.16, 2357.17, 2357.18, and 2357.19); Subarticle 4 (sections 2358.1, 2358.2, 2358.3, 2358.4, 2358.5, 2358.6, 2356.7, 2358.8, and 2358.9); and portions of Subarticle 5 (sections 2359.1, 2359.2, 2359.3, 2359.6, and certain portions of 2359.5) to Title 10, Chapter 5, Subchapter 3, Article 7.1 of the California Code of Regulations. The proposed regulations will implement, interpret and make specific certain provisions of Division 2, Part 6, Chapter 1 of the California Insurance Code, entitled "Title Insurance."

The purpose of the regulations, specifically, is to collect certain financial data relating to title and escrow rates and rating systems in order to generate statistical information that will aid uniform review and evaluation of such rates and rating systems.

**AUTHORITY AND REFERENCE**

The Commissioner proposes to adopt the proposed regulations under the authority of Insurance Code sections 12401, 12401.3, and 12401.5, which recognize the Commissioner's authority to ensure uniform administration of rate regulatory laws through the aid of a statistical plan used to review and evaluate individual rate filings and industry financial experience and ensure that rates and rating systems are fair and reasonable.

The proposed regulations will implement, interpret, and make specific Insurance Code sections 12340.3, 12340.7, 12340.8, 12401, 12401.1, 12401.3, 12401.5, 12401.7, 12401.71, 12401.9, and 12404.1.

## **PUBLIC HEARING**

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

**Date and time:** August 14, 2008 - 10:00 a.m.

**Location:** Department of Insurance Hearing Room  
45 Fremont Street, 22<sup>nd</sup> Floor  
San Francisco, CA 94105

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

## **PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS**

All persons are invited to present oral and/or written comments at the scheduled hearing. Written comments not presented at the hearing must be addressed to the following contact person:

Alec Stone, Staff Counsel  
California Department of Insurance  
45 Fremont Street, 21st Floor  
San Francisco, CA 94105  
[stonea@insurance.ca.gov](mailto:stonea@insurance.ca.gov)  
Telephone: (415) 538-4113  
Facsimile: (415) 904-5490

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the above contact person. If the contact person is unavailable, inquiries may be sent to the backup contact person:

Bryant Henley, Senior Staff Counsel  
California Department of Insurance  
45 Fremont Street, 21st Floor  
San Francisco, CA 94105  
[henleyb@insurance.ca.gov](mailto:henleyb@insurance.ca.gov)  
Telephone: (415) 538-4111  
Facsimile: (415) 904-5490

## **DEADLINE FOR WRITTEN COMMENTS**

All written materials must be received by the Commissioner, c/o the contact person at the

address listed above, by no later than **5:00 p.m. on August 14, 2008**. Any materials received after that time will not be considered.

### **COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION**

The Commissioner will accept written comments transmitted by e-mail, provided they are sent to the following e-mail address: [stonea@insurance.ca.gov](mailto:stonea@insurance.ca.gov), or [henleyb@insurance.ca.gov](mailto:henleyb@insurance.ca.gov). The Commissioner will also accept written comments transmitted by facsimile. All comments sent by facsimile must be directed to the attention of Alec Stone using the following fax number: (415) 904-5490. Comments sent to e-mail addresses or facsimile numbers, other than those provided herein will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above. Written comments shall be submitted by one method only.

### **ACCESS TO HEARING ROOMS**

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed above) for this hearing in order to make special arrangements, if necessary.

### **INFORMATIVE DIGEST**

#### **Summary of Existing Law and Policy Statement Overview**

Existing law requires entities that conduct the business of title insurance to collect, maintain and report detailed information concerning title and escrow transactions. This detailed information includes information concerning the premium, expenses, claims, amounts paid to or received from other entities and related information concerning the transaction of title and escrow business.

Generally, existing statutory law authorizes the Commissioner to collect financial data as a further aid to uniform administration of rate regulatory laws and to review and evaluate regulated entities' rates and rating systems and ensure that they are fair and reasonable. Existing regulatory law prescribes the form and details of the financial data to be submitted. The proposed regulations will replace the existing regulations that currently require regulated entities to collect and report such data.

The proposed regulations will simplify existing regulations and implement, interpret, and make specific those laws which generally authorize the Commissioner to require the collection and timely reporting of information. Specifically, the proposed regulations will implement and make specific the application of these laws to the collection, reporting and review of title and escrow ratemaking data.

The Commissioner's efforts to ensure uniform administration of the rate regulation laws and to review and evaluate individual rate filings and generate statistical information are aided by the Commissioner's authority to develop a statistical plan that includes financial data relating to economic performance and rates and rating systems in use within the state.

The Commissioner proposes to enact sections 2355.1 and 2355.2 to subchapter 3, chapter 5, title 10 of the California Code of Regulations. The proposed regulations will provide the Commissioner with an efficient statistical plan to aid the generation of statistical information and the review and evaluation of rates and charges assessed by entities engaged in the business of title insurance. The proposed regulations are necessary to ensure that rates and rating systems are fair and reasonable.

The proposed regulations will replace existing regulations which require the reporting of financial information in a manner deemed more detailed than currently necessary. The proposed regulations instruct title insurers to collect and report to the Commissioner information relating to the company's California and countrywide assets, liabilities, equity for the current report year and the two previous years. They also require an Income Statement which requests the company's California and countrywide revenue, expenses (including personnel expenses, loss and loss settlement expenses, title plant maintenance expenses, title order processing expenses, closing and settlement service expenses, marketing and general expenses) for the current year and the previous two years. They also require rate distributions and summarized title and escrow transaction activities in California and countrywide, by county and policy type.

The proposed regulations incorporate by reference multiple statistical plan financial data reports. The reports will be available for review (see "Website Postings" subheading below) and public comment. The statistical plan financial reports and accompanying documents (Instructions, Certification page, etc.) will be deemed to be regulations subject to all relevant provisions of the Administrative Procedures Act found in the Government Code. The documents to be incorporated by reference are identified by title and date of publication as follows:

- (1) Instructions for Completing the Title Insurance Statistical Plan; June 27, 2008
- (2) Signature Page; June 27, 2008
- (3) Certification; June 27, 2008
- (4) Interrogatory; June 27, 2008
- (5) CATI – R1 Balance Sheet; June 27, 2008
- (6) CATI – R2 Income Statement; June 27, 2008
- (7) CATI – R3 Summary of Transaction Activities; June 27, 2008
- (8) CATI – R4.1 Summary of Rate Distribution by Type of Policy – Personal – Base Rate: Owner's Policy; June 27, 2008
- (9) CATI – R4.2 Summary of Rate Distribution by Type of Policy – Personal – Base Rate: Lender's Policy; June 27, 2008
- (10) CATI – R4.3 Summary of Rate Distribution by Type of Policy – Personal – Refinance Policy; June 27, 2008
- (11) CATI – R4.4 Summary of Rate Distribution by Type of Policy – Personal – Home Equity Line Policy; June 27, 2008
- (12) CATI – R4.5 Summary of Rate Distribution by Type of Policy – Commercial – Base Rate: Owner's Policy; June 27, 2008
- (13) CATI – R4.6 Summary of Rate Distribution by Type of Policy – Commercial – Base Rate: Lender's Policy; June 27, 2008

- (14) CATI – R4.7 Summary of Rate Distribution by Type of Policy – Commercial – Refinance Policy; June 27, 2008
- (15) CATI – R4.8 Summary of Rate Distribution by Type of Policy – Commercial – Equity Line Policy; June 27, 2008
- (16) CATI – R4 Total – Summary of Rate Distribution by Type of Policy; June 27, 2008
- (17) CATI – R5.1 Escrow Fee Distribution by Amount of Transaction (By County); June 27, 2008
- (18) CATI – R5.2 Summary of Escrow Fees by County; June 27, 2008

### **Comparable Federal Law**

The Real Estate Settlement Procedures Act (RESPA) is a federal statute that sets forth disclosure requirements for residential real estate transactions. (Title 12, U.S. Code, sections 2601-2617.) The RESPA requires, among other things, that borrowers must be informed of all closing costs, lender servicing and escrow account practices, including business relationships between closing service providers and other parties to the real estate transaction. The RESPA also outlines the settlement/closing process for the real estate loan transaction and prohibits illegal activity such as kickbacks and referral fees among settlement service providers.

By contrast, the proposed regulations prescribe the form and detail of the financial data that title insurance entities are required to report. The Commissioner’s purpose in receiving, reviewing and evaluating such information is to generate statistical information and to ensure that title and escrow rates and rating systems are reasonable.

The proposed regulations do not create any duties to disclose information to borrowers. To the extent that illegal activity such as kickbacks and referral fees are regulated by the Commissioner, those standards are not set forth in these regulations. While the RESPA contains particular prohibitions and disclosure requirements for the real estate transaction, the required disclosures do not conflict with, or duplicate, the requirements set forth in these proposed regulations.

### **MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630**

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

### **COST OR SAVINGS TO ANY STATE AGENCY**

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

## **ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH OTHER STATES**

The Commissioner has made an initial determination that the adoption of this regulation may have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business while remaining effective and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

The types of businesses affected by the proposed regulations are insurers, underwritten title companies and controlled escrow companies that are engaged in the business of title insurance within the meaning of California Insurance Code section 12340.3. The proposed regulations may affect those businesses that fail to maintain detailed records of their business activities.

## **POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES**

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## **BUSINESS REPORTING REQUIREMENT**

The Commissioner finds it is necessary for the health, safety, or welfare of the people of this State that these regulations which require a report apply to businesses.

## **EFFECT ON JOBS IN CALIFORNIA**

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of businesses, and the expansion of businesses currently operating in the state.

The proposed regulations provide the form and detail of the financial data regulated entities are statutorily required to collect and report. The proposed regulations are less burdensome than the existing regulations they will replace. To the extent that regulated entities already collect and report such data, the proposed regulation will have little effect on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses currently operating in the state.

Regulated entities which do not currently collect or report the financial data required in the proposed regulations may face increased data collection and reporting duties. This could create jobs as necessary to comply with the increased reporting requirements. Should new or existing regulated entities face difficulty complying with the proposed regulations, they could decide to forego the creation of new jobs or eliminate jobs in the State of California. However, in the Commissioner's assessment, this rulemaking action will foster competition by reducing the regulatory reporting requirement currently in effect. Reducing the regulatory burden, which the proposed regulations accomplish, could have the effect of creating new jobs or new businesses in the State of California.

### **IMPACT ON HOUSING COSTS**

The proposed regulations will have no significant effect on housing costs.

### **ALTERNATIVES**

The Commissioner must determine that no reasonable alternative considered by the Commissioner, or that has otherwise been identified and brought to the attention of the Commissioner, would be more effective in carrying out the purposes for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action. The purpose of the proposed regulations is to implement a statutory mandate. The proposed regulation implements the statutory mandate in an effective and least burdensome manner. No reasonably effective and less burdensome alternative to the proposed regulations is apparent. The Commissioner, however, invites public comment on alternatives to the regulation.

### **IMPACT ON SMALL BUSINESS**

The Commissioner has not identified any reasonable alternatives that would lessen any adverse impact on small businesses. Nor have any such reasonable alternatives otherwise been identified and brought to the attention of the Commissioner that would lessen any impact on small business. Nevertheless, the Commissioner invites public comments on the proposed changes and reasonable alternatives which would be as effective to carry out the proposed changes. To the extent that the proposed regulations affect insurance companies and escrow-related services where the annual gross receipts for the business exceed two million dollars, the proposed regulations do not affect small business. (See Gov. Code § 11342.610.)

### **TEXT OF REGULATIONS AND STATEMENT OF REASONS**

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. The Commissioner also has available all the information upon which this proposed action is based and the express terms of the proposed action, including the documents to be incorporated by reference. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the documents to

be incorporated by reference, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, 21st Floor, San Francisco, California, 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or questions regarding this proceeding should be directed to the contact persons listed above.

### **FINAL STATEMENT OF REASONS**

The Commissioner has prepared an initial statement of reasons for the proposed regulations. The initial statement of reasons will be subject to amendment, and at the conclusion of this rulemaking process a final statement of reasons will be prepared.

Upon **written or e-mail** request, the rulemaking file, including the final statement of reasons, all information upon which the regulations are based and the express terms of the proposed regulation will be made available for inspection and copying once it has been prepared. Written requests for the rulemaking file should be directed to the contact person listed above.

### **AUTOMATIC MAILING**

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Commissioner's mailing list.

### **WEBSITE POSTINGS**

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. On the right-hand column of the page, click the drop-down menu under the heading 'For Insurers.' In this section, scroll down until you see the subheading 'Regulations.' Below this subheading, click on the 'Proposed Regulations' link and then click on the 'Search for Proposed Regulations' link. When the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "REG-2008-00024" (the Department's regulation file number for these regulations) in the 'Search for' field. Alternatively, search using as your search term the California Insurance Code number of a code section that the regulations implement (for instance, "12401.5"), or search by keyword ("title insurance," for example). Then, click on the 'Submit' button to display links to the various filing documents.

To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the 'Title Insurance Statistical Plan -- 2008' link, and click it. Links to the documents associated with these regulations will then be displayed.

**AVAILABILITY OF MODIFIED TEXT OF REGULATION**

In response to public comment, the Commissioner may determine that changes to the proposal are appropriate. If those changes are sufficiently related to the original text, such that the public had adequate notice of the proposal, as amended, copies of the amended text will be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. Thereafter, the Commissioner will accept written comments, arguments, evidence and testimony, concerning the changes only, for a period of at least 15 days prior to adoption.

At least 45 days notice will be given if the changes are not sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.

Dated: June 17, 2008

STEVE POIZNER  
Insurance Commissioner

By \_\_\_\_\_  
Alec Stone  
Staff Counsel