

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE**  
45 Fremont Street  
San Francisco, CA 94105

June 22, 2009

REG-2008-00024

**TITLE 10. INVESTMENTS  
CHAPTER 5. INSURANCE COMMISSIONER  
SUBCHAPTER 3. INSURERS**

**SUMMARY AND RESPONSE TO COMMENTS**

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**I. Summary and Response to Written Comments Provided During Initial 45-day Public Comment Period Ending August 14, 2008**

*Commenter: Margaret M. Serrano-Foster on behalf of LandAmerica Financial Group, Inc.  
Date of Comment: Document dated August 14, 2008; received August 14, 2008*

**Comment Summary (comment letter p. 1):**

This passage summarizes the commenter's interest in these proceedings and the nature of the organization that the commenter is affiliated with. This portion of the comment also generally expresses support for the proposed repeal of much of the existing regulations.

**Response:**

This portion of the comment either expresses support for, or is not specifically directed at, the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. No response is, therefore, necessary. (Gov. Code section 11346.9.)

**Comment Summary (p. 2):**

The commenter incorporates by reference the comments of the California Land Title Association, and states the commenter's support for those comments.

**Response:**

The Commissioner incorporates by reference his summary and response to the comments presented by the California Land Title Association.

**Comment Summary (p. 2):**

The commenter believes that the initial date for reporting data in accordance with the statistical plan regulations should be mid-2011, for data beginning January 1, 2010.

**Response:** The Department has considered the comment and in order to allow sufficient time for affected companies to reconfigure their systems the Department amended the date to begin collecting information for the initial filing to January 1, 2011 and the due date for the initial filing to May 31, 2012.

**Comment Summary (p. 2 and Exhibit A):**

The commenter states that the current state of the economy has had a detrimental effect on the title insurance industry's ability to pay for new data collection. By way of example, the commenter notes that her company has reduced California staff by 39% and has reduced non-personnel expenses by 46% in California over a one-year period from the first quarter of 2007 to the first quarter of 2008. The commenter attached "Exhibit A" to her comments. "Exhibit A" consists of a slide show of graphs and charts which reflect increases in foreclosures, a decline in home prices, a growth in borrowing costs for banks and the Federal government, as well as the title insurance industry's generally declining financial performance. The commenter's general point is that, due to real estate cycles, the title insurance business is a volatile business.

**Response:**

This portion of the comment either expresses support for, or is not specifically directed at, the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. No response is, therefore, necessary. (Gov. Code section 11346.9.) Nonetheless, it is with this comment's consideration in mind that the Department is not only amending these proposed regulations, but repealing the statistical plan and financial reporting requirements, along with the rate formula in the existing regulations.

**Comment Summary (p. 3):**

The commenter states that her company and other title insurance companies have reduced their rates and have made other changes in California in recent years that have achieved the cost reductions that California regulators sought. The economy, according to the commenter, has forced these changes in competitive practices more than anyone anticipated two years ago.

**Response:**

This portion of the comment either expresses support for, or is not specifically directed at, the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. No response is, therefore, necessary. (Gov. Code section 11346.9.)

**Comment Summary (p. 3):**

After re-emphasizing the commenter's general support for the proposed regulations, the commenter highlights some of the issues that are most important to data collection.

Because Form 9 data is already required to be reported on a nationwide basis, the commenter suggests that some elements of the statistical plan should be revised to correlate to the reporting required by the Form 9.

An example of such a revision would be to remove the separate reporting of "temporary personnel and contract personnel." The commenter believes that this separate reporting would not provide any significant regulatory benefit, and in any event would require reporting that is different from the reporting required by Form 9.

**Response:**

The Department agrees with that portion of the comment that suggests amending the proposed regulations to make many line items of countrywide data correlate to line items in the NAIC Annual Statement ("Form 9") and has done just that. The Department disagrees with that portion of the comment's example which suggests combining the two line items regarding "Temporary Agency Expenses" and "Contract Workers/Consultants." While roughly similar, these expense items are discreet and distinct, which requires their separate reporting. For example, a "temp" may be a minimum wage type expense while a consultant may be a million dollar per year expense. A few such consultants would skew the data in a combined line item. Thus, failing to delineate them would unacceptably muddle or mask the data. Also, for ease of reporting the Department limits this reporting requirement to California-only amounts.

**Comment Summary (p. 3):**

As a means to reduce the cost of reporting, the commenter suggests that the statistical plan should not require companies to report countrywide data for items in the income statement that are not "standard Form 9 data."

**Response:**

The Department has considered the comment and has amended the regulation to greatly limit countrywide line item reporting that does not correspond with NAIC Annual Statement ("Form 9") line items. For the vast majority of line items the countrywide data corresponds to the equivalent NAIC Annual Statement data. Also, for most line items that do not request NAIC Annual Statement equivalent data, the Department requires only California data.

**Comment Summary (p. 3):**

The commenter supports the concept of removing separate reporting for Incurred But Not Reported (IBNR) losses and loss adjustment expenses. The commenter believes that this reporting requirement will be costly to title insurers and will not provide any value to the Commissioner in any event.

**Response:** The Department has considered the comment and has deleted INBR data reporting.

**Comment Summary (p. 3):**

Rather than requiring companies to report the “prior three years of data,” the commenter asks that the statistical plan require reporting on a “going forward basis,” except for loss data that has historically been maintained for prior years. This will remove “unwarranted expense” from the statistical plan, according to the commenter.

**Response:** The Department has considered the comment and has removed the requirement to provide “look back” data. Specifically, although the proposed regulation requires current year and some previous year reporting, the previous year data is not required in the initial submission.

**Comment Summary (p. 3):**

The commenter believes that the Commissioner should develop standard definitions for “orders opened,” “orders closed,” and “orders cancelled.”

**Response:** The Department has considered the comment and has developed accepted standard definitions for “Open(ed) Orders,” “Close(ed) Orders,” and “Cancelled Orders.”

**Comment Summary (p. 4):**

The commenter states that “policy types” needs to be defined in clear terms. Additionally, the commenter states that reporting rate distributions in \$10,000 increments is difficult to do for filed rates. As an alternative, the commenter recommends that companies should be required to report their rates in the same increments as are used by the individual companies in filing premiums and rates. If the Commissioner wants companies to have rates vary at \$10,000 bands, the commenter objects to this requirement as an unfair restriction on competition.

**Response:** The Department has considered the comment and has developed accepted definitions for each of the policy types. Furthermore, the Department has deleted the requirement for reporting in \$10,000 bands and replaced them with \$25,000 bands in the lower amounts, \$50,000 bands in the higher amounts, and \$100,000 bands for amounts over \$1 million.

**Comment Summary (p. 4):**

With respect to the requirement in 2359.4, concerning the disclosure of discounts, the commenter states that the regulation should be amended to only require that the customer be given a list of discounts “available under the filing.” The commenter believes that “[w]ithout information from the customer, the insurer is not in a position to know” all of the discounts that a customer may qualify for. Consequently, giving the customer the list of available discounts will place the duty upon the customer to inquire about applicable discounts. Additionally, the disclosure of the discounts, according to the commenter, should be made prior to the closing.

**Response:** The commenter seems to imply that the existing regulation requires the disclosure of “discounts that a customer may qualify for” (quoting the above) rather than disclosure of discounts “available under the filing.” (quoting the above). The Department disagrees with this premise. The existing regulation requires the disclosure of discounts “available under the rate filing.” (quoting the existing regulation). This implies that the disclosure need not be tailor-made for any particular customer and may simply be a list of all available discounts, without regard to an individual purchaser’s circumstances. Additionally, the Department agrees with the comment regarding the timing of the disclosure and has amended the proposed regulation to require disclosure before the closing.

**Comment Summary (p. 4):**

Rather than require regulated entities to retain the discount disclosure documents for three years, the commenter recommends that the regulations provide that disclosure documents must be retained for the same length of time that the closing documents are retained by the company.

**Response:** The Department disagrees with the comment. As provided in the comment and summary directly above, it may be that there is only a single document to retain. The Department does not believe that it is overly burdensome to retain a copy of the document for three years.

**Comment Summary (p. 4):**

The commenter recommends that the discount disclosure requirement should be limited to residential real estate transactions involving 1-4 family units and should not include commercial customers who have a better understanding of the title insurance process.

**Response:** The Department agrees with the comment and has amended the proposed regulation to provide that the disclosure applies only to “transactions involving property improved with a one to four family residential dwelling.”

**Comment Summary (pp. 4-5):**

While the commenter supports the proposed revision to delete the second sentence of subsections (b) and (c) of section 2359.5, the commenter believes the “actuarial and economic analysis” requirement is not industry practice and should be deleted. The commenter believes this requirement is not appropriate because the unusual risk or unusual service will be a charge for a single risk or service that is rare. Consequently, rather than relying upon actuarial or economic analysis, the charge for unusual risks should be based upon the judgment of an operational manager, “consistent with underwriter policies.” Because the Department’s form requires a verification that the work relating to the unusual risk or service is commensurate with the charge imposed, no further verification is required here.

**Response:** The Department has considered the comment and has decided to delete section 2359.5 in order to streamline these proposed regulations and because Insurance Code section 12401.8 continues to regulate the use of excess charges and unusual risks and services.

**Comment Summary (p. 5):**

While the commenter supports requiring insurers to disclose charges for unusual risks or services and to obtain the customer's consent to an excess charge, the requirement that this disclosure take place 15 days prior to closing may not always be feasible. In order to address circumstances under which an insurer may discover the need for an unusual risk or service less than 15 days before closing, the commenter requests that the 15 day requirement be revised so that the disclosure must be made "as soon as the need for the charge becomes clear."

**Response:** The Department has considered the comment and has decided to delete section 2359.5 in order to streamline these proposed regulations and because Insurance Code section 12401.8 continues to regulate the use of excess charges and unusual risks and services.

*Commenter: Craig Page; on behalf of California Land Title Association*

*Date of Comment: Document dated August 11, 2008; received August 11, 2008*

**Comment Summary:** Introductory comments (comment letter pp. 1-2)

**Response:** No response necessary because this portion of the comment is not specifically directed at the Department's proposed regulations or to the procedures followed in proposing the regulations. To the extent the comment generally describes the focus of the comments, a detailed response is provided below in connection with the summary of and response to the more detailed comments.

**Comment Summary:** Implementation timing of the proposed regulations is not reasonably attainable. (pp. 2-4)

**Response:** The Department has considered the comment and has pushed the implementation timing back by two years.

**Comment Summary:** Costs to implement the proposed regulations would be substantial. (p. 4)

**Response:** The Department has considered the comment and has significantly scaled back the regulations such that the reporting requirements will be much less costly to implement, in terms of both time and expense.

**Comment Summary:** Although the Department states that the proposed regulation would "result in no cost or savings to any state agency" (Notice of Proposed Action, dated June 17, 2008), the CLTA believes that the proposed regulation would indeed result in increased costs to the Department. Therefore, the Department should rethink imposing such costs on themselves. (p. 5)

**Response:** The Department disagrees. The Department's collection and review of the data required by the regulations will be performed by previously existing employees. Further, there will be no additional equipment, contracting, consulting or other costs.

**Comment Summary:** The financial condition of the title insurance industry is adversely affected by the severe real estate downturn. Therefore, the Department should limit the reporting requirements of the proposed regulations in order to limit the costs imposed. (p. 5)

**Response:** It is in consideration of the current market conditions, amongst other reasons, that the Department is repealing the existing regulations' statistical plan and financial data reports

along with the rate formula, as well as amending these proposed regulations to limit the reporting requirements.

**Comment Summary:** Other states have coordinated their title insurance financial data collection which allows streamlined reporting while the proposed regulation asks for new data relevant to not only California, but in other states as well. Similarly, the Department should consider limiting the financial reporting requirements imposed by the proposed regulation. As an example, the commenter attaches (as “Appendix A”) a data call requested by the state of New Jersey. (p. 6)

**Response:** The Department has considered the comment and has greatly revised the proposed regulations to require line items equivalent to the standardized NAIC Annual Statement line items.

**Comment Summary:** Requiring the collection of “task-based” expenses is unduly burdensome because it is not currently collected, would be difficult to collect, and would be of limited value to the Department. Therefore, the Department should consider limiting the requirement for “task-based” information. (p. 7)

**Response:** The Department has considered the comment and has greatly limited the requirement for “task based” information.

**Comment Summary:** Requiring a “look-back” (the submission of prior years’ experience data) is unduly burdensome in the first few years. It would be readily available in future years. (p. 8)

**Response:** The Department agrees and the “look-back” requirement has been deleted. Specifically, the proposed regulations now only require one prior year of data, which is not imposed in the initial year of reporting.

**Comment Summary:** The proposed regulation’s Balance Sheet and Income Statement reports requests data already reported by the regulated companies in their annual reports. Therefore, such duplicative requirements should be eliminated. (pp. 8-9)

**Response:** The Department has considered the comment and has deleted the Balance Sheet report. The Department disagrees with the comment to the extent that it discourages collection of data equivalent to NAIC Annual Statement data. Instead, the Department agrees with the commenter’s other comments, as reported herein, which request that the proper collection of countrywide data should correspond with the equivalent NAIC Annual Statement data.

**Comment Summary:** Attention is directed towards more detailed comments in “Appendix B” which refers to specific provisions of the proposed regulations. (p. 9)

**Response:** No response necessary because this portion of the comment is not specifically directed at the Department’s proposed revised regulations or to the procedures followed in proposing the revised regulations. To the extent the comment generally describes the focus of the comments, a detailed response is provided below in connection with the summary of each comment.

**Comment Summary:** Comment directs attention towards “Appendix A” which is a New Jersey’s version of title insurance industry financial data reporting requirement. Commenter

suggests that the Department adopt a regulation that more closely resembles New Jersey's requirements. (p. 9)

**Response:** The Department has considered the comment and disagrees. In order to fulfill its legislative mandate, the Department needs more information than is required in the New Jersey example. Nonetheless, the Department has reduced and streamlined the existing reporting requirements.

**Comment Summary:** The Balance Sheet portion of the proposed regulation requires GAAP accounting in some instances and SAP accounting in some instances, which will result in inconsistent reporting. (p. 9)

**Response:** The proposed regulation no longer contains a Balance Sheet reporting requirement.

**Comment Summary:** The regulation should include an instruction that where neither GAAP nor SAP accounting is specified, the default is SAP. (p. 9)

**Response:** The Balance Sheet report, to which this comment refers, has been deleted in its entirety.

**Comment Summary:** The "Summary of Transaction Activities" portion of the proposed regulations would be costly to comply with. (p. 10)

**Response:** The Department has considered the comment and has greatly revised the report in accordance with other more specific comments from the commenter.

**Comment Summary:** The "Summary of Transaction Activities" portion of the proposed regulations should require the reporting of direct business only. (p. 10)

**Response:** The Department has considered the comment and has revised the reporting requirement to include information from Direct Operations and Affiliated UTC's, but not independent UTC's. Since most business is transacted through agents/UTC's, limiting the reporting to direct only would reveal too little data, but at the same time, the Department is cognizant of potential difficulties obtaining data from independent UTC's and therefore does not require such data.

**Comment Summary:** The reporting implementation timing should be delayed. (p. 10)

**Response:** The Department agrees and the reporting implementation timing has been delayed two years.

**Comment Summary:** The "Summary of Rate Distribution by Type of Policy" portion of the proposed regulation would be costly for the regulated industry to implement because the information required to be collected is not currently collected. (p. 10)

**Response:** The Department has considered the comment and has greatly amended the report. The policy types were amended to agree with industry practice and definitions were supplied. Further, the dollar increment bands have been modified to accommodate industry practice.

**Comment Summary:** The term "base rate" used in the proposed regulation is ambiguous. (p. 10)

**Response:** The term "base rate" has been deleted.

**Comment Summary:** The “Summary of Rate Distribution by Type of Policy” portion of the proposed regulation requires reporting in \$10,000 increments, which is contrary to industry practice. (p. 11)

**Response:** The Department has considered the comment and has deleted the requirement for reporting in \$10,000 bands and replaced them with \$25,000 bands in the lower amounts, \$50,000 bands in the higher amounts, and \$100,000 bands for amounts over \$1 million.

**Comment Summary:** The timing of the regulations should be delayed while a suitable alternative is studied. (p. 11)

**Response:** The timing has been pushed back by two years to allow a generous amount of time to reconfigure systems and allow the cycle to progress. The Department disagrees with the comment insofar as it implies that the proposed regulations are unsuitable because after a great deal of consideration the Department has decided that the regulations are both reasonable and necessary in order to fulfill the Department’s legislative mandate to regulate rates and ensure the sound financial basis of the industry.

**Comment Summary:** In the “Escrow Fee Distribution” portion of the proposed regulation, the terms “Sale Escrow” and “Loan Escrow” are ambiguous. (p. 11)

**Response:** The Department has added definitions for the terms.

**Comment Summary:** Reporting in \$10,000 increments is problematic is contrary to industry practice. (p. 11)

**Response:** The Department has considered the comment and has deleted the requirement for reporting in \$10,000 bands and replaced them with \$25,000 bands in the lower amounts, \$50,000 bands in the higher amounts, and \$100,000 bands for amounts over \$1 million.

**Comment Summary:** The timing of the regulations should be delayed while a suitable alternative is developed. (p. 12)

**Response:** The Department has considered the comment and in order to allow sufficient time for affected companies to reconfigure their systems the Department amended the date to begin collecting information for the initial filing to January 1, 2011 and the due date for the initial filing to May 31, 2012. Further, the Department has considered all the industry’s comments, as well as the suggested Statistical Plan and Financial Reporting requirements and has greatly revised the originally proposed regulation to accommodate the current market conditions and the industry’s current reporting abilities.

**Comment Summary:** The “Signature Page” and the “Certification” portions of the proposed regulations are duplicative and should be combined. (p. 12)

**Response:** The Department agrees and has combined the two.

**Comment Summary:** The certification language should require officers to verify the accuracy of the reports based on their knowledge and belief, consistent with the signature requirements for other corporate documents from other state and federal regulatory bodies. (p. 12)

**Response:** The Department has considered the comment and has amended the certification page to require signatories to verify based on their knowledge and belief.

**Comment Summary:** The information required to comply with existing regulation section 2359.4 is “not currently available and would cost a significant amount of money to produce.” (p. 12)

**Response:** This section, since proposed to be renumbered as 2355.3, has been substantively amended to apply to residential only. Further, the information required by this section is already possessed by each reporting company – they currently are required to provide it in their rate filings.

**Comment Summary:** The regulation should be amended to require disclosure of “only discounts that are both available and applicable to the type of transaction involved.”

**Response:** To the extent that the comment implies that the regulation should apply to residential transaction only, the Department agrees and has amended the proposed regulation accordingly. To the extent the comment implies that the regulation should require individual disclosures tailored to the circumstances of each transaction, the Department disagrees. The Department believes that a disclosure of all discounts in the insurer’s rate filing, without regard to individual circumstances, provides the consumer with useful information while limiting the administrative burden on the complying party (the regulated company).

**Comment Summary:** Existing regulation section 2359.5 should apply “only with respect to residential property transactions.” (p. 13)

**Response:** The Department has considered the comment and has decided to delete section 2359.5 in order to streamline these proposed regulations and because Insurance Code section 12401.8 continues to regulate the use of excess charges and unusual risks and services.

**Comment Summary:** Existing regulation section 2359.5 should be amended to allow the consumer to have the ability to waive the 15 day period at their discretion.

**Response:** The Department has considered the comment and has decided to delete section 2359.5 in order to streamline these proposed regulations and because Insurance Code section 12401.8 continues to regulate the use of excess charges and unusual risks and services.

**Comment Summary:** Summary listing of highlights of previous comments. (pp. 13-15)

**Response:** To the extent this comment merely summarizes prior comments, specific responses are provided above in connection with each specific comment.

**Comment:** Regarding originally proposed regulation report CATI-R1, line-item R1.20 – INBR reserve: “The description indicates that this number should be based upon current data only. We believe that a more accurate representation is obtained by a five-year average.” (Appendix B)

**Response:** This comment refers to a line item in the Balance Sheet report, which has been deleted from the proposed regulation.

**Comment:** Regarding originally proposed regulation report CATI-R1, line-item R1.21 – Premium Reserve less INBR reserve: “This line item forces reserves to equal statutory premium reserves, not GAAP. Therefore, the balance sheet produced will be GAAP except for loss reserves.” (Appendix B)

**Response:** This comment refers to a line item in the Balance Sheet report, which has been deleted from the proposed regulation.

**Comment:** Regarding originally proposed regulation report CATI-R1, line-item R1.29 – Equity Total: “By using a mixture of statutory and GAAP accounting in addition to the result of the formula in this row, assets will not equal liabilities plus equity.” (Appendix B)

**Response:** This comment refers to a line item in the Balance Sheet report, which has been deleted from the proposed regulation.

**Comment:** Regarding originally proposed regulation report CATI-R2 – Instructions: “Instructions for the Income Statement should be amended to make clear that only revenue and expenses directly received or incurred by the reporting company should be shown.” (Appendix B)

**Response:** The Department disagrees. Since title insurance is sold primarily through agents/UTC’s, limiting the reporting to direct business would exclude most transactions.

**Comment:** Regarding originally proposed regulation report CATI-R2, line item R2.2a – Escrow: “No definition is provided for "full escrow" v. "escrow," leaving a possibility that there is some service missed between such terms. Better definitions would be helpful. Suggested modifications to wording: Change the word "funds" to "fees.”” (Appendix B)

**Response:** Definitions of “escrow fee” and “Sub-escrow” have been added for clarification. Also for clarification, the word “funds” has been changed to “fees” as the latter more accurately reflects the nature of the transaction to be reported.

**Comment:** Regarding originally proposed regulation report CATI-R2, line item R2.2b – Sub-Escrow: “The line item instructions should include the following phrase included in the row above: "Report sub-escrow fees only for transactions in which the reporting company was the initial recipient of fees.”” (Appendix B)

**Response:** Although the Department had always understood that companies would report sub-escrow fees only for transactions in which the reporting company was the initial recipient of fees, for explicit clarification the phrase has been added.

**Comment:** Regarding originally proposed regulation report CATI-R2, line item R2.3 – Settlement Service Charges: “Better definitions and instructions regarding the difference between "full escrow" to be reported on R2.2a above and "settlement services" to be reported on this line would be helpful.” (Appendix B)

**Response:** The countrywide reporting requirement in the line item to which the commenter refers has been amended to conform to the equivalent NAIC Annual Statement line item thus providing clarification regarding the intended data entry.

**Comment:** Regarding originally proposed regulation report CATI-R2, line item R2.4 – Other Title Fees and Service Charges: “The charges on this line would combine revenues from both title and escrow activity, making any data practically unusable. Also all ancillary charges, even though contained in the rate manuals, for both title and escrow would need to be consolidated into this number, separate and apart from "full escrow" (undefined) and sub escrow charges. Better definitions and instructions would be helpful.” (Appendix B)

**Response:** The Department disagrees with the comment. Reporting companies do not need to enter anything in the line item titled “Other Title Fees & Service Charges,” which is line item

R1.3 in the finally noticed Income Statement. Line item 1.3 is automatically calculated from line items 1.3a, 1.3b, 1.3c, and 1.3d. The Department has amended all four of those line items to include definitions. The Department has also added a definition of “full escrow” and “sub-escrow.” Also, each of those four line items now conform to the equivalent NAIC Annual Statement line items. Each of the line items, including the calculated line item, is necessary to gain an essential understanding of the financial experience of both the reporting company and the entire industry.

**Comment:** Regarding originally proposed regulation report CATI-R2, line item R2.5 – Unusual Risk or Service Revenue: “Most companies do not separately track unusual risks or service revenues currently. Modifications to the appropriate systems will need to be made to collect this data.” (Appendix B)

**Response:** California Insurance Code section 12401.8, passed by the Legislature in 1973, allows companies an exception to the requirement that they charge their filed rates, but only in circumstances when unusual risks are assumed or unusual services performed and only provided that such charges are reasonably commensurate with the risks or services and provided further that each person obligated to pay such charges consents thereto in writing in advance. Under these circumstances, such charges will be relatively rare and the existing statute already requires thorough documentation. Thus, this line item requires only the extra step of reporting the rare and previously documented transactions. The Department understands that systems may need to be updated. However, the Department has weighed the consequences of ignoring the data and has determined that its collection is necessary to ensure proper review of the industry.

**Comment:** Regarding originally proposed regulation report CATI-R2, line items R2.14 and R2.15 – Temp. Agency Expenses and Contract Worker/Consultant Expenses: “Temporary agency expenses and contract worker/consultant expenses are currently consolidated on the standard financial reporting forms. [The commenter’s] member companies are unable to discern any remotely useful value for such segregation which would offset the expense of such a separation. Therefore, a reasonable alternative to the Proposed Regulation would be to combine these two rows.” (Appendix B)

**Response:** The Department disagrees with the comment because these are discreet expense items which should be reported separately in order to derive any meaningful review. For example, a “temp” may be a minimum wage type expense while a consultant may be a million dollar per year type expense. A few such consultants would skew the data in a combined line item. Thus, failing to delineate them would unacceptably muddle or mask the data.

**Comment:** Regarding originally proposed regulation report CATI-R2, line items R2.19 and R2.20 – Change in Title Loss Reserves and Title Loss Adjustment Expense Incurred: “We understand these rows to require the separation of IBNR reserve increases, decreases and allocations to be separated into reserves for title loss separately from loss adjustment expense. No title insurer polled indicated they currently calculate IBNR reserves in that manner. Furthermore, we are informed that no actuarial firm used by any such responding firm makes such delineation in the current actuarial analysis. Therefore, a reasonable alternative to the Proposed Regulations would be to combine the data requested in these two Rows into Row 2.19 and relabel Row 2.19 to reflect “Total Change in IBNR Reserve;” relabel Row 2.20 to reflect

“Title Loss Adjustment Expenses Paid;” and add a new Row labeled “Change in Loss and Loss Adjustment Expense Known Claim Reserves.”” (Appendix B)

**Response:** The Department has considered the comment and has deleted the INBR reporting requirements as well as amended the referenced line items to allow countrywide data reporting to coincide with the equivalent NAIC Annual Statement line items.

**Comment:** Regarding originally proposed regulation report CATI-R2, line items R2.26 and R2.27 – Title Maintenance for Owned Title Plants and Subscription Fees, Rent & Charges for Jointly Owned and Non-Owned Plants: “All title plant expenses are currently reported on a single line in the statutory financial statement provided annually to the Department. The segregation of expense contemplated would require an evaluation of such arrangements to determine appropriate segregation. We find little difference in whether a licensee incurs expense for maintenance as an owner, shares expenses as a co-owner, or pays a subscription fee as a non-owner. Therefore, a reasonable alternative to the Proposed Regulation would be to combine these rows into a single row for the provision of data already tracked for completion of the Operations and Investment Exhibit, Part 3 Expenses, Line 6, Title Plant Rent and Maintenance of the Annual Statement.” (Appendix B)

**Response:** The Department has considered the comment and has combined the line items into a single line item within which the countrywide reporting is to comport with the NAIC Annual Statement line item referenced in the comment.

**Comment:** Regarding originally proposed regulation report CATI-R2, line items R2.29 and R2.30 – Title Search/Examination & Underwriting Preliminary Report and Production & Issuance/ Title Policy Production, Issuance and Maintenance: “If this row is meant to capture costs incurred with outside parties/consultants/other title companies for providing the services not performed by the underwriter’s employees, most underwriters indicated that they could provide. However, we believe a more consistent result could be obtained by the Department by electronically obtaining the applicable annual report information for such information (Operations and Investment Exhibit, Part 3 - Expenses, Row3, Production Services (Purchased Outside)) and applying its own consistent allocation. However if this is also intended to include internal overhead items for such activities, these costs could only be provided based on estimated percentage allocations, providing possibly widely inconsistent results between reporting entities. In the event the Department intends this result, we respectfully submit that a reasonable alternative to remove these Rows or combine the Rows and label such row “Production Services (Purchased Outside)” to conform with the annual report.” (Appendix B)

**Response:** The Department has considered the comment and has amended the line items to allow countrywide reporting to conform to the equivalent NAIC Annual Statement line items, as referenced in the comment.

**Comment:** Regarding originally proposed regulation report CATI-R2, line items R2.32, R2.33, R2.35, and R2.36 – Funds Transfer; Recording Fees and Costs; Messenger, Overnight & Delivery; Subtotal: Closing and Settlement Service Expenses: “The items used to compute this subtotal (Rows 2.32 – 2.35) reflect only a small portion of the expenses incurred in connection with closing and settlement services activity. Furthermore, the expense reflected in the individual row items will likely also include general corporate and other activities for the line item indicated. Further, we see little, if any, benefit of having only a portion of expenses apportioned

to certain tasks. Some companies do not currently track "Funds Transfer" expenses since some reimbursement for such expenses is permitted through their banking relationships. Therefore, we respectfully submit that a reasonable alternative to the Proposed Regulation would be to remove these Rows." (Appendix B)

**Response:** The Department has considered the comment and has amended the line items to allow countrywide reporting to conform to the equivalent line items as reported in the NAIC Annual Statement.

**Comment:** Regarding originally proposed regulation report CATI-R2, line items R2.37, R2.38, R2.39, and R2.41 – Sales Expenses; Business Promotion, Marketing, Advertising and Public Relations; Customer Service; and Travel – “Row R2.37 combines all sale expenses into one line with out differentiating whether the expense is related to title or escrow income. Further, the Sales Expense row does not specifically exclude personnel costs (as done in previous "task-based" row items), which would require the additional segregation of personnel costs related solely to this activity.”

“Also, other expense items not apportioned to any other task-based activity now require allocation to Sales Expense activities. These expenses include the following expense activities, the balance of which (except for expenses related to row R2.37 through Row R2.41) will be shown on the row item indicated: travel and travel items (2.41), data processing services and software (2.44), printing, stationery/supplies (2.45), telephone/utilities (2.46) and postage and freight (2.47). Each would therefore require the unduly burdensome accounting step of creating and capturing such data in a separate sub account. Also, no clear definition is provided distinguishing “sales” (tracked on Row R2.37) , “business promotion” or “marketing” (tracked on row R2.38) or Customer Service (tracked on Row R2.39).”

“We respectfully submit that a reasonable alternative to the Proposed Regulation would be to either (a) remove these Rows or (b) remove Rows 2.37 and 2.39 and rename 2.38 "Marketing and promotional expenses" to conform with the annual report Operations and Investment Exhibit, Part 3 - Expenses, line 9, along with amending the description to conform to the annual report instructions.” (Appendix B)

**Response:** The Department has considered the comment and has amended the line items to allow countrywide reporting to conform to the equivalent line items as reported in the NAIC Annual Statement.

**Comment:** Regarding originally proposed regulation report CATI-R2, line items R2.44, R2.45, R2.46, and R2.47 – “These expenses must be apportioned first to each of Sales Expense, Business Promotion and Customer Service, with the balance of each such expense type included on the applicable row. Each would therefore require the unduly burdensome accounting step of creating and capturing such data in a separate sub account. We respectfully submit that a reasonable alternative to the Proposed Regulation would be to report all such expenses on one Row without apportionment.” (Appendix B)

**Response:** The Department has considered the comment and has amended the line items to allow countrywide reporting to conform to the equivalent line items as reported in the NAIC Annual Statement, thus significantly reducing the reporting burden.

**Comment:** Regarding originally proposed regulation report CATI-R2, line item R2.66 – Interest Paid: “Row title should be ‘Interest Expense’.” (Appendix B)

**Response:** The line item has been eliminated and the expenses will instead be reported in aggregate with other line items for which countrywide reporting conforms to existing NAIC Annual Statement line items.

**Comment:** Regarding originally proposed regulation report CATI-R2, line item R2.73 – Unrealized Capital Gains: “Unrealized Capital Gains do not flow through the income statement for either statutory or GAAP accounting. Therefore, this row should be removed.” (Appendix B)

**Response:** The Department has considered the comment and has deleted the line item.

**Comment:** Regarding originally proposed regulation report CATI-R2, line item R2.74 – Aggregate Write-ins for Other Operating Expenses: “The label for this item seems incorrect. Possibly the label should read “Aggregate Write-ins for Miscellaneous Income (Loss).”” (Appendix B)

**Response:** The Department agrees and has amended the language accordingly.

**Comment:** Regarding originally proposed regulation report CATI-R2, line items R2.76 and R2.77 – Provision for State Income Taxes, and Provision for Federal Income Tax: “Calculating a provision for state and federal income taxes at the state level is unduly burdensome. All other states gather pre-tax information, which is adequate for rate determination. Further, this is really only needed to calculate equity and equity is being allocated to California based on a formula in this report. Therefore, this row should be removed.” (Appendix B)

**Response:** The Department has considered the comment and has removed the state income tax line item and retained the federal income tax line item.

*Commenter: David A. Cheit, Stevens & O’Connell LLP; on behalf of First American Title Insurance Company*

*Date of Comment: Document dated August 8, 2008; received August 8, 2008*

**Comment Summary:** Introductory comments. (p. 1)

**Response:** No response necessary because this portion of the comment is not specifically directed at the Department’s proposed revised regulations or to the procedures followed in proposing the revised regulations. To the extent the comment generally describes the focus of the comments, a detailed response is provided below in connection with the summary of and response to the more detailed comments.

**Comment Summary:** The Department has made no showing that the information requested by the proposed regulations “is either necessary for the stated purpose of the regulations or unavailable from existing reports or databases.” (p. 2)

**Response:** The Department disagrees with the comment. The Initial Statement of Reasons, on page 1 under the heading titled “Specific Purpose and Necessity of the Regulations,” provides the purpose and necessity for the proposed regulations. The Department agrees that some information could be obtained from other sources, but information available from other sources

is either limited in scope or depth and does not provide a sufficient understanding of financial experience in order for the Department to carry out its legislative mandate to regulate rates. Further information regarding the purpose and necessity of amendments to the originally proposed regulations can be found in the Final Statement of Reasons.

**Comment Summary:** The Department does not have legislative authority to require the submission of countrywide data. (Citing Insurance Code sections 12401.4, and 12401.5 subsections (a) and (b)) (pp. 2-7)

**Response:** The Department disagrees with the comment. The Legislature has directed the Department to regulate title insurance rates and has prescribed standards for such rates. The Legislature granted to the Department the authority to require annual financial data and statistical plan reports to enable it to carry out its duty to ensure that rates are neither excessive nor inadequate nor unfairly discriminatory, and to encourage competition on a sound financial basis. The Department is authorized to collect financial data relating to economic performance for the purpose of determining the industry financial experience for the reporting year. This embraces all of the data that affects the company's financial condition and results. Requesting select countrywide data is both reasonable and necessary to obtain a complete picture of the industry's financial experience. To propose that the Legislature wishes to bar all collection of countrywide data is inconsistent with the Department's duty to administer the rate regulatory laws. Indeed, Insurance Code section 12401.3(b) requires consideration of countrywide data. Had the Legislature wished to bar the Department from collecting limited countrywide data they could have easily done so. Instead, Insurance Code section 12401.4 permits the Department to gather countrywide information by certain means, which it intends to do. That section does not bar other means of obtaining information. In short, requesting limited countrywide data is both reasonable and necessary to fulfill the Department's duty to review and evaluate rates and monitor the financial health of the industry.

**Comment Summary:** Even for California data, the breadth and extent of the proposed regulation's reporting requirements exceeds the Department's legislative authority. (pp. 6-7)

**Response:** The Department disagrees with the comment. The Legislature has directed the Department to regulate title insurance rates and has prescribed standards for such rates. The Legislature granted to the Department the authority to require annual financial data and statistical plan reporting to enable it to carry out its duty to ensure that rates are neither excessive nor inadequate nor unfairly discriminatory. The statistical plan and financial data reporting requirements have been narrowly tailored to for the purpose of determining the industry's financial experience. As such, the proposed regulations greatly reduce and limit the existing reporting requirements and will provide data crucial to determining the reasonableness of rates.

**Comment Summary:** The Initial Statement of Reasons does not include "a description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives [, and] in the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative." (quoting the APA; Government Code section 11346.2(b)(3)(A).) (emphasis in original omitted.) (pp. 2, 5, 7, and 8)

**Response:** Both the Initial Statement of Reasons and the Final Statement of Reasons address alternatives. The Initial Statement of Reasons addresses alternatives on page six. The proposed

regulations are the least burdensome alternative. Accordingly, they are significantly less burdensome than the to the existing regulations and are necessary to carry out the Department's legislative mandate to regulate title insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory and to promote competition on a sound financial basis. Pursuant to Government Code section 11346.9(a)(4), the Final Statement of Reasons contains a determination with supporting information that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation. Further, the reporting of statistical plans and financial data for the purpose of determining an industry's financial experience requires uniform and standardized reporting requirements and is incompatible with performance standards.

**Comment Summary:** The Department has made no showing that the information required by the proposed regulations could not be obtained by means that impose a lesser burden on the regulated entities. (p. 7)

**Response:** Pursuant to Government Code section 11346.9(a)(4), the Final Statement of Reasons contains a determination with supporting information that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

**Comment Summary:** Although other reports relate to industry financial experience, the transaction activity report appears to be entirely outside the scope of information subject to a statistical plan. (p. 7)

**Response:** The Department disagrees. The Department is authorized to collect financial data relating to economic performance for the purpose of determining the industry financial experience for the reporting year. This embraces all of the data that affects the company's financial condition and results, including transaction activities.

**Comment Summary:** The proposed regulations will be costly to comply with. (p. 8)

**Response:** The Department understands the current financial situation of the companies affected by these regulations. It is with this consideration in mind that these regulations delete the existing vastly more burdensome and costly title insurance statistical plan and financial data reporting regulations promulgated in 2007 and replace them with these more tailored and streamlined regulations.

**Commenter:** *Kurt Pfotenhauer; on behalf of the American Land Title Association*

**Date of Comment:** *Document dated August 13, 2008; received August 13, 2008*

**Comment Summary:** The commenter describes history and size of ALTA which has been providing title services since 1907 employing over 100,000 nationwide. Comment supports the NAIC Title Insurance Working Group's efforts to update the Model Title Insurance Laws and urges restraint with respect to any efforts which might impede the efforts of the working group to

develop a standardized data call and database. Commenter advocates limiting effect of regulations to the capture of in-state information.

**Response:** Contrary to the commenter's implication, the Department's efforts support rather than impede the NAIC's working group's task. The Department has limited the collection of some line items to California-only data. The vast majority of the rest ask for countrywide information that the affected companies already collect and report. The remaining bits of requested countrywide non-Annual Statement data is necessary to fulfill the Department's statutory obligation to ensure that rates are neither excessive, nor inadequate, nor unfairly discriminatory.

**Comment Summary:** Commenter recognizes the need in California for a viable data call and statistical plan to ensure compliance with applicable California law. Commenter asserts that Department's proposal to collect information on a countrywide basis will be overly burdensome and potentially duplicative of efforts already taking place in some states. Commenter urges that the Department consider obtaining information directly from NAIC or individual states until such time as a standardized nationwide data call procedure and data base is established. Asks that the Department consider CLTA comments as well as other title industry inputs where they reasonably set forth industry concerns. Maintains a cautious and narrow regulatory approach is best suited for current economic times.

**Response:** The Department does not disagree with most of commenter's sentiments. In light of the industry's current economic times, the Department has amended the originally proposed regulations to delay implementation and to greatly limit the reporting burden, in many cases allowing the reporting companies to provide data already collected so that the expense of reconfiguring or updating systems is minimized. Also, the Department naturally supports and is involved in the NAIC title group's efforts and, as outlined herein, has given thorough consideration to the CLTA's comments.

## II. Summary and Response to Oral Comments Provided at the Public Hearing Conducted on August 14, 2008

*Commenter: Caroline Scott, Margaret M. Serrano-Foster and Roger Therien on behalf of LandAmerica Financial Group, Inc.*

*Date of Comment: Presented August 14, 2008*

### **Comment Summary (transcript Page 4, ln. 13 to Page 5, ln. 2.):**

This passage summarizes the commenters' interest in these proceedings and the nature of the organization that the commenters are affiliated with.

### **Response:**

This portion of the comment either expresses support for, or is not specifically directed at, the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. No response is, therefore, necessary. (Gov. Code section 11346.9.)

### **Comment Summary (Page 5, ln. 3 to Page 5, ln. 14):**

The commenter incorporates by reference the comments of the California Land Title Association, and states the commenter's support for those comments. This portion of the comment also generally expresses support for the proposed regulations, subject to some revisions.

**Response:**

The Commissioner incorporates by reference his summary and response to the comments presented by the California Land Title Association. Additionally, to the extent that this portion of the comment either expresses support for, or is not specifically directed at the Commissioner's proposed regulations or to the procedures followed in proposing the regulations, no response is necessary. (Gov. Code section 11346.9.)

**Comment Summary (Page 5, ln. 15 to Page 6, ln. 24):**

The commenter states that the current economic climate necessitates that the Commissioner delay the implementation of title insurer data collection until 2010 and delay title insurer data reporting until 2011. The commenter goes on to describe the effect that the economic decline has had on real estate prices, foreclosures and the number of mortgage applications. The commenter adds that the commercial market has had similarly-adverse experiences. The commenter incorporates by reference Exhibit A to the commenter's written comments as evidence of the economic climate.

**Response:**

The Department agrees with the comment and has delayed the data collection and reporting requirements. Collection now begins in 2011 and initial reporting is due in 2012. Further, it is in consideration of the current economic decline that the Department has greatly amended the proposed regulations to limit the reporting burden while preserving necessary data collection.

**Comment Summary (Page 6, ln. 25 to Page 7, line 10):**

The commenter notes that the commenter's specifically-proposed changes to the regulations are set forth in the commenter's written comments and offers to discuss the commenter's suggestions with the Department in an effort to work constructively with the Commissioner to improve the regulations he ultimately adopts.

**Response:**

To the extent that this comment references specific changes to the regulations, those changes are summarized as part of the summary and response to this commenter's written comments. The remainder of this comment either expresses support for, or is not specifically directed at, the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. No response is, therefore, necessary. (Gov. Code section 11346.9.)

**Comment Summary (Page 7, line 14 to Page 8, line 11):**

The commenter states that proposed regulation section 2359.4 presents problems, because a title policy is often issued weeks after a real estate transaction closes. Consequently, the disclosure of discounts will not benefit consumers for those transactions where the title policy issues after the close of the real estate transaction. As an alternative to the current regulations, the commenter proposes that the notice of discounts should be given along with the preliminary report and that

the escrow notice should be provided with the escrow instructions. Additionally, the commenter proposes that the provision stating that “the discount was given” should be deleted in order to bring the regulations in line with common practice, because the discount would not be given at the preliminary report or escrow instruction phase of the transaction.

**Response:**

The Department agrees with the comment and has amended the proposed regulation to require disclosure before the closing and to delete the notation requirement.

**Comment Summary (Page 8, line 12 to line 23):**

The commenter notes that the regulations require an unusual services or extra work disclosure to be made 15 days before closing or upon delivery of the preliminary report, whichever date is earlier. The commenter recommends that the form required by proposed section 2359.5 should be revised to add the phrase “or as soon as the need for change becomes clear” as an alternative to the 15-day requirement.

**Response:** The Department has considered the comment and has decided to delete section 2359.5 in order to streamline these proposed regulations and because Insurance Code section 12401.8 continues to regulate the use of excess charges for unusual risks and services.

**Comment Summary (Page 8, line 24 to Page 9, line 23):**

The commenter agrees that the charge for unusual services or extra work charge must be commensurate with the additional risk or cost of the service, however, the commenter disagrees with the requirement that an actuarial and economic analysis should be included. The commenter believes that an actuarial analysis is not possible where extra charges are relatively rare and are imposed under varying circumstances. The commenter notes, further, that the form required by section 2359.5 should be used in place of the actuarial analysis. In other words, the commenter recommends that the phrase “as demonstrated by an actuarial and economic analysis” should be deleted.

**Response:** The Department has considered the comment and has decided to delete section 2359.5 in order to streamline these proposed regulations and because Insurance Code section 12401.8 continues to regulate the use of excess charges for unusual risks and services.

**Comment Summary (Page 9 line 24 to Page 10, line 9):**

The commenter notes that section 2359.5 refers to the “consumer” in a number of places. The commenter states that the regulations should be clarified, so that the application of the regulations will be limited to one-to-four family residential real estate transactions, and not applied to commercial transactions. The commenter adds that the form required by section 2359.5 is not necessary for commercial transactions, due to the sophistication of the parties involved in the transaction.

**Response:**

The Department has considered the comment and has decided to delete section 2359.5 in order to streamline these proposed regulations and because Insurance Code section 12401.8 continues to regulate the use of excess charges for unusual risks and services.

*Commenter: Allison Evers; on behalf of Stewart Title; transcript pp. 10-13 [Note: Ms. Evers also provided a written script which is, in all practical, substantive and material respects, identical to the transcript of her oral comments. Therefore, the following are summaries and responses to both.]*

**Comment Summary:** Introductory comments

**Response:** No response necessary because this portion of the comment is not specifically directed at the Commissioner’s proposed revised regulations or to the procedures followed in proposing the revised regulations. To the extent the comment generally describes the focus of the comments, a detailed response is provided below in connection with the summary of and response to the more detailed comments.

**Comment Summary:** The implementation date should be pushed back one year in order to allow sufficient time for compliance.

**Response:** The Department agrees that the implementation date should be pushed back and has amended the proposed regulation to do so.

**Comment Summary:** The line item instructions for the required reports are ambiguous.

**Response:** The Department has considered the comment and has amended, explained, clarified, and/or deleted the instructions where necessary.

**Comment Summary:** Task-based reporting is unduly burdensome because it would be very difficult and costly to capture and would be of little value to the Department.

**Response:** The Department has either eliminated or greatly reduced “task based” reporting requirements.

**Comment Summary:** Underwriters do not account for IBNR “losses” separately from IBNR “loss adjustment expenses” as currently required in the proposed regulation’s income statement report. Requiring such reporting would be costly. A reasonable alternative would be to report the two figures combined.

**Response:** The Department has eliminated INBR reporting requirements.

**Comment Summary:** Pre-tax results are provided in data calls to all other states. While the nationwide number is readily available, calculating state specific federal taxes would require extensive rework of the consolidated tax provision calculation. If state specific information is deemed necessary, allowing an allocation to state specific California using the effective tax rate should be considered as a reasonable alternative.

**Response:** The Department has deleted the line item “Provision for State Income Taxes.”

*Commenter: Karen Petitta; on behalf of First American Title; transcript pp. 13-21*

**Comment Summary:** Introductory comments

**Response:** No response necessary because this portion of the comment is not specifically directed at the Commissioner’s proposed revised regulations or to the procedures followed in proposing the revised regulations. To the extent the comment generally describes the focus of the comments, a detailed response is provided below in connection with the summary of and response to the more detailed comments.

**Comment Summary:** Within the Balance Sheet portion of the proposed regulation, the line item called “title premium due others” is unclear and ambiguous.

**Response:** The entire Balance Sheet portion of the proposed regulation, including the line item called “title premium due others,” has been deleted from the proposed regulation.

**Comment Summary:** The commenter’s company does not collect information regarding intercompany receivables or payables, accrued interest receivables, or federal/foreign income taxes that are recoverable or payable – at least not in the discreet, specific line items requested in the proposed regulation. The commenter is not sure whether these items should be reported as “write-ins” or whether they’re not required to be reported at all.

**Response:** This comment refers to the Balance Sheet report, which has been deleted from the proposed regulation.

**Comment Summary:** It would be difficult to collect the information requested in the line item called “Other title and service charges,” which is found within the Income Statement portion of the proposed regulation. It would be difficult because this information is not currently collected or readily available, especially on a countrywide basis.

**Response:** The countrywide reporting for the line item categories listed below “Other Title Fees & Service Charges, which together comprise this reporting requirement, has been amended to conform to the equivalent NAIC Annual Statement line items, which are currently collected and available.

**Comment Summary:** Regarding the line item in the income statement portion of the proposed regulation involving unusual risk and unusual service charge -- this is not something that the commenter’s company tracks on a transactional level, thus the commenter’s company wouldn’t have any way to know whether a transaction involved an unusual risk. Thus, that information is not available.

**Response:** California Insurance Code section 12401.8, passed by the legislature in 1973, allows title companies to deviate from their filed rates in a transaction where there is an unusual risk or an unusual service, provided that the charges are reasonably commensurate with such risk or service and disclosed to consumers in advance. Thus, the legislature has imposed upon companies the burden of justifying any such unusual or excess charges and the burden of obtaining prior consent. For transactions in which a company deviates from their filed rates in a transaction where there is an unusual risk or service, the Department expects that companies have determined that the charges are commensurate with the risk or service, and have obtained prior consent, as per the statute. It is also the Department’s expectation that companies keep track of such charges in order to comply with the statute.

**Comment:** There are a number of items that asked for costs on a tax basis, on allocating charges that would be in a branch operation or a national operation, that would require us to break them

down into functional title processing – search and exam, title order processing, preliminary report production, title issuance. We don't allocate costs down to the task level. That's one of the items asked for that we could not do.

**Response:** Countrywide reporting for the referenced line items have been amended to conform to the equivalent NAIC Annual Statement line items.

**Comment:** Cost related to funds transfers is not something the commenter's company captures.

**Response:** The referenced line item has been deleted.

**Comment:** "Recording fees and costs. We are unclear about this, whether this meant an outside third-party vendor charge or some type of internal expense, since recording fees are a pass-through. The same with notary fees, recording fees, messenger overnight delivery. We have two issues. One is the pass-through on the transactional level, but there are internal messenger overnight and delivery fees that would require that we capture those in two different ways so that we could report and we could separate out those that are pass-throughs from the ones that would be internal charges."

**Response:** The line items have been deleted and replaced with those whose countrywide reporting requirements correspond to NAIC Annual Statement line items.

**Comment:** "Customer service. This is something that we handle as part of a branch function. Costs or charges for customer service that we provide is not segmented in any way from any of our other operations. It would be as a whole."

**Response:** The line item has been deleted and replaced with one whose countrywide reporting requirement corresponds to an existing NAIC Annual Statement line item.

**Comment:** "Data processing services and software. We would need a lot of clarification on what this means. We have a large technology division within our company. We're not sure what this is specific to or limited to. There are a number of categories: Printing, stationary, supplies, telephone, utilities, postage and freight that ask for breakdowns between functions within an office or personnel. We currently don't capture it this way; we don't have the ability to capture it."

**Response:** The line item has been amended to require that countrywide amounts should equal the corresponding NAIC Annual Statement line item.

**Comment:** "We have a number of things for the transaction activities. The first section deals with title orders only. Title orders open at the beginning of the year. We are unclear if this means our entire open inventory. Is this every file that's open as of January 1? It is also -- we would need to know, if it's a file that has title service, are you only looking for transactions where the intention is to issue a title policy? We have a number of transactions we do that require title service that do not result in a title policy. This will also -- these orders will be at a different stage in their life cycle and so the data quality will be different. They could be reported in more than one of these categories."

**Response:** For clarification, the Department has added definitions for "Open(ed) Orders," "Closed(ed) Orders," and "Cancelled Orders."

**Comment:** “The number of title orders open during the year. We have the same concerns. Is this a title order that should only result in a title policy issuance, or can it be for any title service? We don't know at the time that they're opened that they necessarily will have a title policy at the end. That's usually not identified until later in the transaction.”

**Response:** For clarification, the Department has added definitions for “Open(ed) Orders,” “Closed(ed) Orders,” and “Cancelled Orders.”

**Comment:** “We will need some, I guess, consideration in the plus-minus factor of accuracy. We do have very few required fields in our system currently which will result in a number of transactions that would fall outside any of these requirements.”

**Response:** The Department understands that reported data may at times contains a reasonable variance.

**Comment:** “We'll need some definition on what a "title order closed" means. There seems to be reference to a closed order as well as policy issuance. Those are not simultaneous. We would need to know if you're asking for when a policy is issued. Then we would have the same concern as before. It could be a closed transaction that did not issue a title policy.”

**Response:** For clarification, the Department has added definitions for “Open(ed) Orders,” “Closed(ed) Orders,” and “Cancelled Orders.”

**Comment:** “Title orders cancelled during the year. We can provide this; however, it's not a normal practice for the business source or the person who initiated the transaction to tell us if it cancelled.”

**Response:** The proposed regulation, as amended, allows for the use of estimates if noted by the reporting company.

**Comment:** “Title orders opened at the end of the year. We have the same concern. We can tell you how many we opened during the year, but they could also be counted in some of these other categories. They may be opened and cancelled; they may be opened and could have been subsequently closed.”

**Response:** The information requested by that portion of the proposed regulation is “Orders Open at End of Year.” If, as the commenter suggests, an order gets cancelled, it should not be reported as open. If, as the commenter suggests, an order gets closed, it should not be reported as open.

**Comment:** “So, for combined title and escrow orders, we have some similar concerns, as well as we're unclear as to where the sub-escrow category would fit and how that applies to all the title companies for us. The sub-escrow order belongs to a title order, not an escrow order, so that would be something that we would need clarified.”

**Response:** This comment and response both refer to proposed regulation line items R2.2 a, b, c, d, & e. The Department expects that these line items include combined title and sub-escrow orders.

**Comment:** “In order for us, I guess, to fully comply, we'd like to understand the purposes of us reporting all of the open orders that we have at the beginning of the year and at the end of the year. We're happy to provide whatever information the Department asks for, but understanding

the purpose might help us to either have a suggestion or to be able to give you an alternative to get the information that you require.”

**Response:** The information helps the Department better understand the number of orders processed during the year.

**Comment:** “The same concerns about open, closed, cancelled, open at the end of the year, and some expectation that files will have a plus-minus factor of accuracy, since as the file moves through, or a transaction moves through its life cycle, the data inside of it changes. So the day we snapshot the data, it may be different the following day.”

**Response:** The Department understands that reported data at times contains a reasonable variance. The Department also understands that a transaction progresses through time even after end of year data is collected and reported.

**Comment:** “The same for escrow orders only. It's unclear if this includes transactions that we do have sub-escrow type activity on. It may not be if -- do these belong in the escrow category or do they belong in the title category?”

**Response:** This comment and response both refer to line items 2.3 a, b, c, d, & e. The Department expects that sub-escrow activities that are combined with title orders be reported in the line items for “Combined Title & Escrow Orders.” (2.2 a, b, c, d, & e.) The Department expects that line items for “Escrow Orders Only” (2.3 a, b, c, d & e) include Sub-Escrow orders that are not done in combination with title orders. Limited Escrow orders should also be reported here.

**Comment:** “We have summary of rate distribution by the type of policy. We have made some assumptions that where it says "personal," this would be the same as residential. We did have questions about what the purpose is of using the base rate. The base rate that we file is something that we use to calculate rates off of. It's not typically our intention to charge a base rate in a transaction. We would have no idea of which surcharges or discounts would apply. So applying the base rate we feel would be misleading. Very few of our transactions would actually equal the base rate.”

**Response:** The Department has added definitions for “Personal,” “Commercial,” and other policy types. The Department has deleted the base rate reporting requirement.

**Comment:** “We have numerous types of policies that didn't necessarily fit inside this specific rate schedule that you're asking for. We have limited liability policy types. We have letter type reports that would not fit into these -- the base rate that you have defined. We would need to know what to do with those. Base rate will never reflect the premium charge, or in very few transactions will it.”

**Response:** The Department understands that companies categorize their policy types differently, but standardized reporting requires more general and widely acceptable policy type definitions in order to accommodate the widest range of various company policy types. Also, “base rate” reporting has been eliminated.

**Comment:** “Number of policies issued. We will have some -- this will require system enhancement for us.”

**Response:** The Department understands that proposed statistical plan and financial data reporting regulations will require affected companies to modernize, upgrade, or reconfigure their data collection capabilities. The Department has made numerous amendments to the proposed regulation in order to accommodate the affected companies' data collection capabilities and reduce the reporting burden. The Department also recognizes that the proposed regulations delete the existing reporting requirements which would require more system enhancement than the proposed regulations. Thus, the proposed regulations serve to significantly reduce the affected companies' system enhancement responsibilities.

**Comment:** "The same with liability amounts. That's not a required field right now. We do have a certain percentage of transactions that we're not able to identify the policy without a manual search inside the file and to pick up the liability amount."

**Response:** The Department understands that proposed statistical plan and financial data reporting regulations will require affected companies to modernize, upgrade, or reconfigure their data collection capabilities. The Department has made numerous amendments to the proposed regulation in order to accommodate the affected companies' data collection capabilities and reduce the reporting burden. The Department also recognizes that the proposed regulations delete the existing reporting requirements which would require more system enhancement than the proposed regulations. Thus, the proposed regulations serve to significantly reduce the affected companies' system enhancement responsibilities.

**Comment:** "Average premium. Average premium is something else we have some questions about. Since we do have so many different types of policies and different types of rating schedules, to figure out an average premium would be misleading to apply that across the state. If we were going to qualify policies that are full coverage policies only to be included in this, that would, for us, make more sense if we're going to apply some type of average premium. But with limited liability policies and informational only policies that either don't have a corresponding rate or have a corresponding flat fee rate, those would skew the average premium calculation."

**Response:** Limited liability policies and informational only policies that either don't have a corresponding rate or have a corresponding flat fee rate should be excluded.

**Comment:** "Escrow fee distribution by amount by county. County is not a required field for us; that will require system enhancement. And we did make some assumptions that a sale escrow was for a purchase transaction. A loan escrow was for a non-sale transaction. We would like some clarification. We have 15 separate transaction types and will need to understand how those will fall into those two types of definitions."

**Response:** The Department understands that different companies have different specific transaction types. Transaction types such as non-real property transactions, subdivision escrows and REO escrows should be excluded. The reporting categories require uniformity in order to properly assess the data, and are designed to be broad enough to capture the various transaction types.

**Comment:** "Then, our last comments are, just in general, the same as everyone has mentioned. We will need a minimum of twelve months to finish the development to our systems in order to comply with Goodrich data. So we felt the same as everyone else. 2010 would be reasonable for

us, and we will not be able to get data, this type of data, going backwards; only forward. Once we can apply the enhancement to our transaction systems in production, then data will be available going forward. The same with the accounting system.”

**Response:** The Department has considered the comment and in order to allow companies sufficient time to update their systems the Department amended the date to begin collecting information for the initial filing to January 1, 2011 and the due date for the initial filing to May 31, 2012.

### III. Summary and Response to Written Comments Provided by the California Land Title Association as Requested by the Department Subsequent to the Initial 45-day Public Comment Period

*Commenter: Craig Page; on behalf of the California Land Title Association (“CLTA”)*

*Date of Comment: Document dated October 27, 2008; received October 28, 2008*

**Comment Summary:** Introductory letter providing background for the following comments.

**Response:** No response necessary because this portion of the comment is not specifically directed at the Department’s proposed revised regulations or to the procedures followed in proposing the revised regulations. To the extent the comment generally describes the focus of the comments, a detailed response is provided below in connection with the summary of and response to the more detailed comments.

**Comment Summary:** The comment consists of proposed language that elucidates, illustrates, and crystallizes the CLTA’s written comments provided August 11, 2008. The language also illustrates and exemplifies Karen Petitta’s comments provided at the public hearing. The proposed language is in the form of a complete statistical plan similar to the Department’s proposed regulation, including general instructions, and specific instructions for each statistical plan report. It also includes the reports in excel spreadsheet format. Specific line-item suggestions are treated as individual comments below.

**Response:** To the extent this comment generally describes the focus of the later comments, a response is provided below in connection with the individual comments.

**Comment Summary:** Language suggests Balance Sheet reporting standards, including allocation standards, statement classification standards, and dollar rounding standards.

**Response:** The Department has considered the comment and in order to realize a balance between providing useful information to the Department and imposing a burden on the reporting companies, the Department has deleted the Balance Sheet report from the proposed regulation.

**Comment Summary:** Balance Sheet line items should conform to equivalent NAIC Annual Statement line items. Certain line items should be California only. Reference to “IBNR” should be eliminated. The term “equity” should be changed to “surplus.”

**Response:** The Department has considered the comment and in order to realize a balance between providing useful information to the Department and imposing a burden on the reporting companies, the Department has deleted the Balance Sheet report from the proposed regulation.

**Comment Summary:** Balance Sheet line item “Prepaid Expenses” should be deleted.

**Response:** The Department has considered the comment and in order to realize a balance between providing useful information to the Department and imposing a burden on the reporting companies, the Department has deleted the Balance Sheet report, including the “Prepaid Expenses” line item, from the proposed regulation.

**Comment Summary:** Commenter suggests language to define Income Statement reporting standards, including allocation standards, statement classification standards, and dollar rounding standards.

**Response:** The Department agrees with the comment and has amended the proposed regulation to include the commenter’s suggested language.

**Comment Summary:** The Income Statement line item “Direct Operations” should exclude unusual risk premiums (which should be reported elsewhere) and should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and has amended the proposed regulation to include the commenter’s suggested language.

**Comment Summary:** In the Income Statement, the line item for “Unusual Risk Premium” should include California amounts only.

**Response:** The Department agrees with the comment and has amended the proposed regulation to include the commenter’s suggested language.

**Comment Summary:** In the Income Statement, the line item for “Unusual Risk Premium” should include direct operations only.

**Response:** The Department disagrees. Since title insurance is sold primarily through agents/UTC’s, limiting the reporting to direct business only would exclude most transactions.

**Comment Summary:** In the Income Statement, combine the line items for “Escrow”(originally R2.2) and “Settlement Service Charges” (originally R2.3) in conformance with the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and has amended the proposed regulation accordingly.

**Comment Summary:** The Income Statement line item for “Affiliated Agencies” should make clear that it explicitly includes UTC’s.

**Response:** The Department agrees with the comment and has amended the proposed regulation to include the commenter’s suggested language.

**Comment Summary:** The Income Statement line item for “Non-Affiliated Agencies” should make clear that it explicitly includes UTC’s.

**Response:** The Department agrees with the comment and has amended the proposed regulation to include the commenter’s suggested language.

**Comment Summary:** The Income Statement line items for “Title Examinations,” “Search & Abstract,” “Survey,” and “Aggregate Write-Ins for Service Charge” should conform to the equivalent NAIC Annual Statement line items.

**Response:** The Department agrees with the comment and has amended the proposed regulation to include the commenter’s suggested language.

**Comment Summary:** The Income Statement line item for “Title Premium” (originally R2.8) should include the term “Title Agents” and should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and has amended the proposed regulation to include the commenter’s suggested language.

**Comment Summary:** The Income Statement line items for “Salaries,” and “Payroll Taxes” should conform to the equivalent NAIC Annual Statement line items.

**Response:** The Department agrees with the comment and has amended the proposed regulation to include the commenter’s suggested language.

**Comment Summary:** The Income Statement line items for “Commissions” and “Bonus” should be for California only.

**Response:** The Department agrees with the comment and has amended the proposed regulation to include the commenter’s suggested language.

**Comment Summary:** The Income Statement line item for “Employee Benefits” (originally R2.13) should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and has amended the proposed regulation to include the commenter’s suggested language.

**Comment Summary:** The Income Statement line items for “Temporary Agency Expenses” and “Contract Workers/Consultants” (R2.14 and R2.15 as originally proposed) should be combined into a single line item and should include California only.

**Response:** The Department agrees with the part of the comment regarding California only data and has amended the proposed regulation accordingly. However, the Department rejects the part of the comment regarding combining the two line items because the Department considers them separate and distinct items of data that should remain delineated. Combining the two would not allow an accurate picture of either set of data.

**Comment Summary:** The Income Statement line item for “Title Losses Paid” (originally R2.18) should include adjustment expenses, should be split into distinct line items for direct operations and UTC/agency operations, and should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and has amended the proposed regulation to include the commenter’s suggested language.

**Comment Summary:** The Income Statement line item for “Change in Title Loss Reserves” should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and has amended the proposed regulation to include the commenter’s suggested language.

**Comment Summary:** The Income Statement line item “Title Loss Adjustment Expenses Incurred” (originally R2.20) should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and has amended the proposed regulation to include the commenter’s suggested language.

**Comment Summary:** The Income Statement line item regarding “Ceded IBNR Reserves from Prior Year” (originally R2.21B.a) should be deleted.

**Response:** The Department agrees with the comment and has deleted the line item.

**Comment Summary:** The Income Statement line item “Recovery from Reinsurance During Year” should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and has amended the proposed regulation to include the commenter’s suggested language.

**Comment Summary:** The Income Statement line items titled “Escrow Losses Paid,” “Change in Escrow Loss Reserves,” “Escrow Loss Adjustment Expenses Incurred,” and “Total Escrow Loss & Loss Settlement Expenses” (originally proposed R2.22-2.25) should be deleted.

**Response:** The Department disagrees because the data is required for adequate financial performance review.

**Comment Summary:** The Income Statement line items regarding “Title Plant Maintenance,” and “Subscription Fees” (originally proposed R2.26 and R2.27) should conform to the equivalent NAIC Annual Statement line items.

**Response:** The Department agrees with the comment and has amended the proposed regulation to include the commenter’s suggested language.

**Comment Summary:** The Income Statement line items regarding “Preliminary Report Production” (originally R2.30) should be deleted.

**Response:** The Department agrees with the comment and has deleted the line item.

**Comment Summary:** The Income Statement should include a line item for “Other Production, Services Purchased Outside,” in conformance with the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and has amended the proposed regulation in accordance with the commenter’s suggested language.

**Comment Summary:** The Income Statement line item for “Funds Transfer Fees” (originally R2.32) should include California only.

**Response:** Because previous comments emphasized that this line item is unduly burdensome to report, and in some cases is a “pass through,” the Department has deleted the reporting requirement for both countrywide data and California data.

**Comment Summary:** The Income Statement line item for “Recording Fees and Costs” should be deleted.

**Response:** The Department agrees with the comment and has deleted the line item.

**Comment Summary:** The Income Statement line item for “Notary Fees, Conveyancing Fees, Inspection Fees, Tax Service Contract Fees” should be deleted.

**Response:** The Department agrees with the comment and has deleted the line item.

**Comment Summary:** The Income Statement line items “Messenger, Overnight & Delivery,” “Telephone/Utilities,” and “Postage and Freight” (originally R2.35, R2.46, and R2.47) should be combined into one line item that conforms to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and has amended the proposed regulation in accordance with the commenter’s suggested language.

**Comment Summary:** The Income Statement line items “Sales Expenses,” “Business Promotion, Marketing, Advertising & Public Relations,” and “Customer Service” (originally R2.37, R2.38, and R2.39) should be combined into an “Advertising Expenses” line item and a “Promotion and Marketing Expenses” line item that both conform to the equivalent NAIC Annual Statement line items.

**Response:** The Department agrees with the comment and has amended the proposed regulation accordingly.

**Comment Summary:** The Income Statement line item regarding “Travel and Travel Items” (originally R2.41) should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and has amended the proposed regulation accordingly.

**Comment Summary:** The Income Statement line items for “Facility Rent” and “Equipment Rent” (originally R2.42 and R2.43) should conform to the equivalent NAIC Annual Statement line items.

**Response:** The Department agrees with the comment and has amended the proposed regulation accordingly.

**Comment Summary:** The Income Statement line item for “Data Processing Services and Software” should be for California only.

**Response:** The Department disagrees with the comment because the Department needs both the California only data and the countrywide data in order to compare and contrast the costs and expenditures to help gain an accurate and thorough understanding of the industry’s reasonable expenses in this area and overall.

**Comment Summary:** The Income Statement line item for “Printing/Stationery/Supplies” should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and has amended the proposed regulation accordingly.

**Comment Summary:** The Income Statement line items for “Accounting/Auditor Fees” (originally R2.48) and “Legal Fees” (originally R2.50) should be combined into one line item in conformance with the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and has amended the proposed regulation accordingly.

**Comment Summary:** The Income Statement line item for “Director Fees” should conform to the equivalent NAIC Annual Statement line items.

**Response:** The Department agrees with the comment and has amended the proposed regulation accordingly.

**Comment Summary:** The Income Statement line item for “Management Fees” (originally R2.51) should be deleted in accordance with the NAIC Annual Statement.

**Response:** The Department agrees with the comment and has amended the proposed regulation accordingly.

**Comment Summary:** The Income Statement line items for “License, Fees, Taxes Other than Income and Premium” and “Premium Taxes” should conform to the equivalent NAIC Annual Statement line items.

**Response:** The Department agrees with the comment and has amended the proposed regulation accordingly.

**Comment Summary:** The Income Statement line item for “Depreciation/Amortization Other Than Real Estate and Buildings” should be limited to California only.

**Response:** The Department has considered the comment and has deleted the line item from the reporting requirements.

**Comment Summary:** The Income Statement line item for “Bad Debt Expense” (originally R2.55) should be amended to conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and has amended the proposed regulation accordingly.

**Comment Summary:** The Income Statement line item for “Insurance” should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and has amended the proposed regulation accordingly.

**Comment Summary:** The Income Statement reporting requirements for line items “Lobbying” and “Donations” should be for California only.

**Response:** The Department agrees with the comment and has amended the proposed regulation accordingly.

**Comment Summary:** The Income Statement line item for “Trade Associations & Advisory Organizations” (originally R2.59) should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and has amended the proposed regulation accordingly.

**Comment Summary:** The Income Statement line item for “Dues/Subscriptions other than Trade and Advisory Organizations” should be limited to California only.

**Response:** The Department has considered the comment and has deleted the entire line item from the reporting requirements.

**Comment Summary:** The Income Statement line item for “Fines or Penalties” (originally R2.61) should be for California only.

**Response:** The Department agrees with the comment and has amended the proposed regulation accordingly.

**Comment Summary:** The Income Statement line item for “Interest Paid” (originally R2.66) should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department has deleted the line item in order to reduce the reporting requirements to only those most necessary for accurate assessment of the reporting companies’ financial condition. The Department finds that the information sought by this line item will be captured in the aggregate by other line items.

**Comment Summary:** The Income Statement line items regarding “Investment Income” should conform to the equivalent NAIC Annual Statement line items.

**Response:** The Department agrees with the comment and further limits the reporting requirements to a single “Net Investment Income” line item that conforms to the equivalent NAIC Annual Statement line item.

**Comment Summary:** The Income Statement line items regarding “Investment Expenses” should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department has deleted the line item in order to reduce the reporting requirements to only those most necessary for accurate assessment of the reporting companies’ financial condition. The Department finds that the information sought by this line item will be captured in the aggregate by other line items.

**Comment Summary:** The Income Statement line items regarding “Capital Gains” (originally R2.72 and R2.73) should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and amended the language accordingly.

**Comment Summary:** The Income Statement line item regarding “Aggregate Write-Ins” (originally R2.74) should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and amended the language accordingly.

**Comment Summary:** The Income Statement line item for “Provision for State Income Taxes” should be eliminated.

**Response:** The Department agrees with the comment and deleted the line item.

**Comment Summary:** Regarding the Income Statement line item “Provision for Federal Income Taxes,” the California amount should be allocated by a specific method and the countrywide amount should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and amended the language accordingly.

**Comment Summary:** The Income Statement line item for “Beginning Year Equity” (originally R2.79) should be changed to “Beginning Year Surplus as Regards Policy Holders” and should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department agrees with the comment and amended the language accordingly.

**Comment Summary:** The Income Statement line item for “Aggregate Write-Ins for Equity” (originally R2.80) should conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department has considered the comment and has amended the line item to conform the equivalent NAIC Annual Statement line item.

**Comment Summary:** The Income Statement line item for “Dividends to Stockholders” (originally R2.81a) should be amended to conform to the equivalent NAIC Annual Statement line items. “Aggregate Write-Ins for Retained Earnings” (originally R2.81b) should be amended to conform to the equivalent NAIC Annual Statement line items.

**Response:** The Department has deleted the line items in order to reduce the reporting requirements to only those most necessary for accurate assessment of the reporting companies’ financial condition. The Department finds that the information sought by these line items will be captured in the aggregate by other line items.

**Comment Summary:** The Income Statement line item for “Aggregate Write-Ins for Retained Earnings” (originally R2.81b) should be amended to conform to the equivalent NAIC Annual Statement line item.

**Response:** The Department has deleted the line item in order to reduce the reporting requirements to only those most necessary for accurate assessment of the reporting companies’ financial condition. The Department finds that the information sought by this line item will be captured in the aggregate by other line items.

**Comment Summary:** The line item “Ending Year Equity” (originally R2.82) should be replaced with “Ending Year Surplus as Regards Policyholders.”

**Response:** The Department agrees with the comment and amended the language accordingly.

**Comment Summary:** The “Summary of Transaction Activities” report (originally CATI-R3) should include California data only.

**Response:** The Department agrees and has amended the language accordingly.

**Comment Summary:** The “Summary of Transaction Activities” report (originally CATI-R3) should include only those orders written directly with the reporting company.

**Response:** The Department disagrees because this would exclude the vast bulk of transactions, which would render impossible the Department’s responsibility to understand the industry’s financial experience.

**Comment Summary:** The commenter suggests a definition of “Cancelled Orders” for the “Summary of Transaction Activities” report (originally CATI-R3).

**Response:** The Department has considered the comment, accepts the definition, and has amended the proposed regulation accordingly.

**Comment Summary:** The “Summary of Rate Distribution by Type of Policy” report (originally CATI-R4) should include direct business only.

**Response:** The Department disagrees. Since title insurance is sold primarily through agents/UTC’s, limiting the reporting to direct business only would exclude most transactions.

**Comment Summary:** The “Summary of Rate Distribution by Type of Policy” report (originally CATI-R4) should specify that it includes California data only.

**Response:** The Department agrees and has amended the report accordingly.

**Comment Summary:** The “Summary of Rate Distribution by Type of Policy” report (originally CATI-R4) should delete the reference to “Base Rate,” should delete reference to “Refinance Policy,” and should delete reference to “Equity Line Policy.”

**Response:** The Department agrees and has amended the report accordingly.

**Comment Summary:** The “Summary of Rate Distribution by Type of Policy” report (originally CATI-R4) should include definitions, as suggested, for all of the policy types.

**Response:** The Department agrees with the definitions and has amended the originally proposed regulation to include the definitions as suggested by the commenter.

**Comment Summary:** The “Summary of Rate Distribution by Type of Policy” report (originally CATI-R4) should require reporting in slightly different dollar increment bands – so that the high end of the band is rounded rather than the low end.

**Response:** The Department agrees and has amended the report accordingly.

**Comment Summary:** The “Escrow Fee Distribution by Amount of Transaction” report (originally CATI-R5.1) should include direct business only.

**Response:** The Department disagrees. Since title insurance and attendant escrow services are sold primarily through agents/UTC’s, limiting the reporting to direct business only would exclude most transactions.

**Comment Summary:** The “Escrow Fee Distribution by Amount of Transaction” report (originally CATI-R5.1) should specify that it includes California data only.

**Response:** The Department agrees and has amended the report accordingly.

**Comment Summary:** The “Escrow Fee Distribution by Amount of Transaction” report (originally CATI-R5.1) should require reporting in slightly different dollar increment bands – so that the high end of the band is rounded rather than the low end.

**Response:** The Department agrees and has amended the report accordingly.

**Comment Summary:** The comment provides suggested language to amend existing regulation section 2359.4. The suggestions delete the notation requirement, make the disclosure applicable to residential transactions only, and change the timing of the disclosure to before the closing.

**Response:** The Department agrees with the comment and has amended the proposed regulation to include the suggested language.

**Comment Summary:** The comment provides suggested language to amend existing regulation section 2359.5

**Response:** The Department has considered the comment and has decided to delete section 2359.5 in order to streamline these proposed regulations and because Insurance Code section 12401.8 continues to regulate the use of excess charges for unusual risks and services.

*Commenter: Craig Page; on behalf of the California Land Title Association (“CLTA”)*

*Date of Comment: Document dated January 30, 2009; received January 30, 2009*

**Comment Summary:** Introductory letter providing background for the subsequent comments, which were provided in matrix format.

**Response:** No response necessary because this portion of the comment is not specifically directed at the Department’s proposed revised regulations or to the procedures followed in proposing the revised regulations. To the extent the comment generally describes the focus of the comments, a detailed response is provided below in connection with the summary of and response to the more detailed comments.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line item 1.4 (“Prepaid Expenses”). “Line was eliminated to conform to the NAIC Annual Statement Form. Prepaid expenses are non-admitted assets for Title Insurance Companies (underwriters).”

**Response:** The Department has considered the comment and in order to realize a balance between providing useful information to the Department and imposing a burden on the reporting companies, the Department has deleted the entire Balance Sheet report from the proposed regulation.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line item 1.5 (“Deferred Income Taxes”). “Terminology was changed to conform the NAIC Annual Statement Form.”

**Response:** The Department has considered the comment and in order to realize a balance between providing useful information to the Department and imposing a burden on the reporting companies, the Department has deleted the entire Balance Sheet report from the proposed regulation.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line item 1.14 (“Title Premium Due Others”). “Terminology was changed to conform the NAIC Annual Statement Form. The line was not eliminated but renamed”

**Response:** The Department has considered the comment and in order to realize a balance between providing useful information to the Department and imposing a burden on the reporting companies, the Department has deleted the entire Balance Sheet report from the proposed regulation.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line item 1.15 (“Notes/Loans Payable”). “Terminology was changed to conform to the NAIC Annual Statement Form. Borrowed money includes the entire principle balance.”

**Response:** The Department has considered the comment and in order to realize a balance between providing useful information to the Department and imposing a burden on the reporting companies, the Department has deleted the Balance Sheet report from the proposed regulation.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line items 1.16-1.18 (“Leases Payable,” “Accrued Personnel Costs – Salary, Bonus and Vacation Payable,” and “Pensions and Retirement”). “Most companies providing input on these items indicated that no such breakdown is currently made in their accounting systems. Further, with respect to personnel costs, some companies indicated that this would require changes to both personnel/payroll systems as well as accounting systems, as well as changes to operational protocols. Such changes would be required for all other applicable states, even though not required detail for that state’s regulatory purposes. Also, one company reported that California operations often are their own unique profits centers which provide different personnel programs than those provided in other states, making any nationwide data of questionable value and limited utility & reliability.”

**Response:** The Department has considered the comment and in order to realize a balance between providing useful information to the Department and imposing a burden on the reporting companies, the Department has deleted the Balance Sheet report from the proposed regulation.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line items 1.19-1.22 (“Title Case Loss Reserves,” Title Incurred But Not Reported Loss Reserves,” Statutory Premium Reserve Less Title IBNR Reserves,” and “Escrow Claim Reserves”). “Terminology changes and new lines were added to conform to the NAIC Annual Statement Form. Escrow losses on direct business are reported in ‘Known Claims Reserve.’”

**Response:** The Department has considered the comment and in order to realize a balance between providing useful information to the Department and imposing a burden on the reporting companies, the Department has deleted the entire Balance Sheet report from the proposed regulation.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line items 1.26-1.28 (Additional Paid-In Capital,” “Retained Earnings,” and “Aggregate Write-Ins for Equity”). Terminology was changed to conform the NAIC Annual Statement Form.

**Response:** The Department has considered the comment and in order to realize a balance between providing useful information to the Department and imposing a burden on the reporting

companies, the Department has deleted the entire Balance Sheet report from the proposed regulation.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line item 2.5 (“Unusual Risk or Service Revenue”). Unusual risk and charges may be in connection with either escrow fees or title insurance premiums. Thus segregation into separate categories is appropriate. Also, since other states have no similar law, the reporting should be for California only.

**Response:** The Department agrees with the portion of the comment that suggests breaking the line item into separate line items for escrow and title insurance, and has amended the proposed regulations accordingly. The Department also agrees with the portion of the comment that suggests reporting for California only, and has amended the line items to conform.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line items 2.2-2.3 (“Escrow,” and “Settlement Service Charges”). The change conforms to the NAIC Annual Statement. The comment also supplies a working definition of “Escrow Fee,” “Sub-Escrow,” and “Settlement Service Charges.”

**Response:** The Department agrees with the comment and has amended the proposed regulation to conform. The Department has also adopted the suggested definitions.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line items 2.14-2.15 (“Temporary Agency Expenses,” and “Contract Workers/Consultants”). These are reported combined in the NAIC Annual Statement.

**Response:** As explained above in reference to the October 27, 2008 comment, the Department rejects the suggestion to combine the two line items because they are separate and distinct items of data that should remain delineated if they are to be of any use. Combining the two would not allow an accurate picture of either set of data, and would provide a muddled and nearly useless combined line item.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line items 2.26-2.27 (“Title Plant Maintenance for Owned Title Plants,” and “Subscriptions Fees, Rent & Charges for Jointly-Owned and Non-Owned Title Plants”). Segregating the lines is meaningless for the Department and costly to comply with.

**Response:** As explained above in reference to the October 27, 2008 comment, the Department agrees with the comment and has amended the proposed regulation accordingly. This includes adding CLTA’s suggested line item “Other Production Services Purchased Outside.”

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line item 2.30 (“Preliminary Report Production & Issuance/Title Policy Production, Issuance & Maintenance”). The line was eliminated to conform to the NAIC Annual Statement. Further, the line items as originally proposed by the Department would be costly to comply with.

**Response:** The Department has considered the comment and has deleted the line item.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line item 2.33 (“Recording Fees and Costs”). The line was eliminated to conform to the NAIC Annual Statement. Also, the fees are “pass-through” and thus have little financial impact.

**Response:** The Department has considered the comment and has deleted the line item.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line item 2.34 (“Notary Fees, Conveyancing Fees, Inspection Fees, Tax Service Contract Fees”). The line was eliminated to conform to the NAIC Annual Statement. Also, the fees are “pass-through” and thus have little financial impact.

**Response:** The Department has considered the comment and has deleted the line item.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line items 2.35, 2.46, and 2.47 (“Messenger, Overnight & Delivery,” “Telephone/Utilities,” and “Postage and Freight”). These expenses are reported on one line in the NAIC Annual Statement. Also, compliance would be costly and unnecessary.

**Response:** The Department has considered the comment and has amended the proposed regulation in accordance with the commenter’s suggested language.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line item 2.44 (“Data Processing Services & Software”). The comment regards reporting IT services in California only.

**Response:** The Department disagrees with the comment because the Department needs both the California only data and the countrywide data in order to compare and contrast the costs and expenditures in order to determine the industry’s reasonable expenses in this area and overall.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line items 2.48 and 2.50 (“Accounting/Auditor Fees” and “Legal Fees”). The lines were combined to conform to the Annual Statement. Accounting fees were not eliminated – they are included in the CLTA suggested line 2.34.

**Response:** As provided above in relation to the original comment, the Department agrees with the comment and has amended the proposed regulation accordingly.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line item 2.51 (“Management Fees”). The line was eliminated to conform to the NAIC Annual Statement.

**Response:** The Department agrees with the comment and has amended the proposed regulation accordingly.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line item 2.73 (“Unrealized Capital Gains”). The line was eliminated to conform to the NAIC Annual Statement.

**Response:** The Department agrees with the comment and amended the language accordingly.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line item 2.76 (“Provision for State Income Taxes”). State Income taxes would be included in CLTA 2.36. Reporting segregated state and federal is unduly burdensome.

**Response:** The Department agrees with the comment and amended the language accordingly.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation line item 2.74 (“Aggregate Write-Ins for Other Operating Expenses”). Terminology was amended to conform to the NAIC Annual Statement.

**Response:** The Department agrees with the comment and amended the language accordingly.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation report CATI-R-3 (“Summary of Transaction Activities”) which suggests eliminating reporting countrywide data because of the burden. Also, suggests definitions.

**Response:** The Department agrees and has amended the regulation accordingly.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation report CATI-R-3 (“Summary of Transaction Activities”) which states that the definitions for “open,” “closed,” and “cancelled” are ambiguous.

**Response:** The Department agrees and has amended the regulation accordingly.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation report CATI-R-4 (“Summary of Rate Distribution by Type of Policy”) which limits and amends the reporting categories to conform to industry business practices.

**Response:** The Department agrees and has amended the report accordingly.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation report CATI-R-4 (“Summary of Rate Distribution by Type of Policy”) which eliminates the refinance category to conform to industry business practices.

**Response:** The Department agrees and has amended the report accordingly.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation report CATI-R-4 (“Summary of Rate Distribution by Type of Policy”) which suggests requiring reporting of direct business only to conform to industry business practices.

**Response:** The Department disagrees. Since title insurance is sold primarily through agents/UTC’s, limiting the reporting to direct business only would exclude most transactions which would render impossible the Department’s responsibility to understand the industry’s financial experience.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation report CATI-R-5.1 and 5.2 (“Escrow Fee Distribution by Amount of Transaction” and “Summary of Escrow Fees by County”) which suggests specifying that it requires reporting of California operations only because that term is used differently in other states.

**Response:** The Department agrees and has amended the report accordingly.

**Comment Summary:** Further explanation of purpose and rationale for CLTA’s October 27, 2008 comment regarding original proposed regulation reports CATI-R-5.1 (“Escrow Fee Distribution by Amount of Transaction”) which suggests requiring reporting of direct business only because making underwriters report data from their UTC’s would be costly.

**Response:** The Department disagrees with the comment. Since title insurance is sold primarily through agents/UTC’s, limiting the reporting to direct business would exclude most transactions and thus eliminate the usefulness of the data.

**Comment Summary:** Further explanation of CLTA’s October 27, 2008 comment regarding 15 transaction types for a member company. Specifically, the commenter explains that the individual companies’ specific transaction types are not uniform across the industry. However, more broad or general categories can encompass the various individual companies’ specific transaction types.

**Response:** The Department has considered the comment and has amended the Escrow Fee reports to agree with the transaction types suggested by the commenter.

#### IV. Summary and Response to Written Comments Provided During the 15-day Public Comment Period Ending May 22, 2009

*Commenter: Craig Page; on behalf of the California Land Title Association (“CLTA”)*

*Date of Comment: Document dated May 22, 2009; received May 22, 2009*

**Comment Summary:** Introductory comments

**Response:** This portion of the comment either expresses support for, or is not specifically directed at, the Commissioner’s proposed regulations or to the procedures followed in proposing the regulations. No response is, therefore, necessary. (Gov. Code section 11346.9.)

**Comment Summary:** California Insurance Code section 12401 only allows the Department to require title insurers to report data for the statistical plan.

**Response:** The Department does not agree with the comment regarding the scope of authority conferred by CIC section 12401. However, the point is moot because the proposed regulations require only title insurers to report data for the statistical plan, which is within the scope of legislative authority asserted by the commenter.

**Comment:** The Department acknowledges that Insurance Code section 12401 only allows the Department to require title insurers to report data for the statistical plan. This is shown by requiring, in proposed section 2355.1(a), only title insurers to report. To wit: “Pursuant to California Insurance Code (CIC) Section 12401.5, the Insurance Commissioner requests each title insurance company licensed to transact business in California to submit a Statistical Plan and Income Statement report on the prescribed electronic forms and in accordance with these regulations.”

**Response:** The Department disagrees. That the Department chooses to require only title insurers to submit reports in no way acknowledges the scope of the Department’s legislative authority. The Department agreed to limit the reporting requirements in order to alleviate the reporting burden on the reporting companies.

**Comment Summary:** The last sentence of proposed regulation section 2355.1 could be used to argue that UTC’s are subject to the reporting requirements.

**Response:** The Department believes that the paragraph in question and the entirety of the context provided by the proposed regulations make clear that only Title Insurers are required to submit reports. However, pursuant to Government Code Section 11346.8 and Section 40 of Title 1 of the CCR, and in the interest of improved clarity, the Department deleted the sentence in question.

**Comment Summary:** It appears that the modifications increase the scope of the material reported. The original regulation text limited experience reported to title and escrow business performed on a direct basis by the title insurer.

**Response:** The Department disagrees. The text was mute on the issue, and therefore perhaps unclear. However, the Department never had any expectation that reporting entities would ignore all but their directly marketed transactions, especially since transactions through direct marketing makes up small minority of the data. The Department has now clarified by adding language to make explicitly clear that directly marketed transactions as well as transactions marketed through corporate affiliates, which is the bulk of the data, are to be reported.

**Comment Summary:** The income statement report originally required both directly marketed transactions and corporate affiliate transactions. The other reports previously only required direct business. Reporting is now significantly expanded.

**Response:** The Department agrees that the income statement report originally required, and still requires, both directly marketed transactions and corporate affiliate transactions. The Department disagrees that the other reports previously only required direct business. The text was mute on the issue and therefore perhaps unclear. However, the Department never had any expectation that reporting entities would ignore all but their directly marketed transactions, especially since they are a small minority of the data. The Department has now clarified by adding language to make explicitly clear that reporting companies shall include data regarding transactions which take place through corporate affiliates, which make up the bulk of the data. Further, it should be noted that the proposed regulations significantly decrease the reporting requirements compared to those in the existing regulations.

**Comment Summary:** The Department may lack statutory authority to collect data beyond that of direct business.

**Response:** Title Insurers market their business through direct marketing, corporate affiliates, and non-affiliated companies. A small minority of business is through direct marketing. In order for the Department to fulfill its legislative mandate to regulate rates, encourage competition, and ensure a sound financial base, it must collect enough data. Ignoring all but direct business would render the Department incapable of fulfilling that statutory responsibility. Also, the existing regulations require data beyond that of direct business.

**Comment Summary:** Requiring affiliate data without non-affiliate data would unfairly increase the reporting burden of insurers having more affiliate UTC's than non-affiliate UTC's, make the data less useful, and require the disclosure of potentially proprietary information.

**Response:** The Department believes that in order to make a meaningful determination it must obtain enough data. Without obtaining the corporate affiliate data, which is the bulk of the data, the Department is cannot undertake a sensible review. The Department understands that requiring title insurers to report data from non-affiliate underwritten title companies would improve the quality of the data. However, the Department is currently declining to require title insurers to report that data in order to alleviate the reporting burden and because it is a much smaller subset of data. The Department also understands that regulations must be followed uniformly by each company, even though individual companies within the industry are different. However, it is equally clear that the data must be uniform in order to have any meaning. The Department has made every effort to consider the reporting burden of the regulated companies while fulfilling its legislative mandate to ensure that rates are not excessive, inadequate, or unfairly discriminatory and at the same time encourage competition on a sound financial basis. Also, regarding "proprietary information" the Department disagrees that any of data is the property of the insurers and notes that the commenter has provided no examples of reported data that is the property of the reporting companies.

**Comment Summary:** Proposed regulation line item R1.21 "Escrow Losses Paid" should be combined with R1.23 "Escrow Loss Adjustment Expenses Incurred." The new line item should be titled "Escrow Loss and Loss Adjustment Expenses Paid." Since the Income Statement generally requires either NAIC CW data or requires California only, reporting for this line item should be for California only. These changes are consistent with the reporting of policy loss and loss adjustment expenses in line items 1.16 and 1.17. Also, not all underwriters set loss reserves separately from reserves for loss adjustment expenses.

**Response:** The Comment does not pertain to any amendments made pursuant to the 15-day public comment period ending May 22, 2009. That is, other than renumbering the references to the proper rows in the Income Statement, the line items' titles and descriptions are exactly as originally noticed before the 45-day public comment period ending August 14, 2008. In any case, line items R1.21, 1.22, 1.23, and 1.24 are distinct sets of data. Their combination and resulting loss of clarity would have an unreasonably deleterious effect on the Department's ability to review the industry financial experience. Also, regarding that portion of the comment referring to loss reserves and LAE, line item 1.21 does not include loss reserves or LAE. Line item 1.23 includes LAE incurred. Reporting for 1.23 does not depend on whether the LAE came from a separate reserve or a more general loss reserve.

**Comment Summary:** For the same reasons stated above in the comments for line item R1.21, line item R1.22 should be for California only and the title should be changed to “Change in Known Escrow Claims Reserve.”

**Response:** The Comment does not pertain to any amendments made pursuant to the 15-day public comment period ending May 22, 2009. That is, other than renumbering the references to the proper rows in the Income Statement, the line items’ titles and descriptions are exactly as originally noticed before the 45-day public comment period ending August 14, 2008. However, as stated above, line items R1.21, 1.22, 1.23, and 1.24 are distinct sets of data. Their combination and resulting loss of clarity would have an unreasonably deleterious effect on the Department’s ability to review the industry financial experience.

**Comment Summary:** For the same reasons stated above in the comments for line item R1.21 and R1.22, line item R1.23 should be deleted.

**Response:** For the same reasons stated above in response to those line items, the Department disagrees.

**Comment Summary:** Consistent with the comments for 1.21, 1.22, and 1.23, line item 1.24 should be amended to reflect the proposed changes.

**Response:** Consistent with the responses above, the Department is not proposing to make any changes and therefore should not change this summary line item.

**Comment Summary:** Line items 1.1A.a and 1.1A.d relating to unusual risk premiums refer to regulation section 2359.5. However, that regulation is proposed to be deleted. Therefore, the line items should be deleted too.

**Response:** The Department agrees that regulation section 2359.5 is proposed to be deleted. However, the Department disagrees that line items 1.1A.a and 1.1A.d should be deleted. Instead, only the reference to the proper authority should be amended. Regulation section 2359.5 is not the Department’s source of authority for collecting the information. California Insurance Code section 12401.8, passed by the Legislature in 1973, is the authority which will continue to regulate companies who wish to utilize excess charges for unusual risks or services. Thus, pursuant to Government Code Section 11346.8 and Section 40 of Title 1 of the CCR, the reference has been amended to cite to the proper authority – Insurance Code section 12401.8.

*Commenter: Patricia A. Laffin; on behalf of the Placer Title Company*

*Date of Comment: Document dated May 21, 2009; received May 22, 2009*

**Comment Summary:** Introductory comments

**Response:** This portion of the comment either expresses support for, or is not specifically directed at, the Commissioner’s proposed regulations or to the procedures followed in proposing the regulations. No response is, therefore, necessary. (Gov. Code section 11346.9.)

**Comment Summary:** Commenter states that it was her “understanding that under the proposed regulations, UTC’s would not be required to report data for the statistical plan.”

**Response:** The Department agrees that UTC's are not required to submit reports pursuant to the proposed regulations. Title Insurers will be the only entities required to report and they will be reporting data regarding their transactions marketed through both direct marketing and their corporate affiliate UTC's.

**Comment Summary:** The last sentence of proposed regulation section 2355.1 could be used to argue that UTC's are subject to the reporting requirements.

**Response:** The Department believes that the paragraph in question and the entirety of the context provided by the proposed regulations make clear that only Title Insurers are required to submit reports. However, pursuant to Government Code Section 11346.8 and Section 40 of Title 1 of the CCR, and in the interests of improved clarity, the Department deleted the sentence in question.