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

**RH05049799** **January 5, 2007**

TITLE 10. INVESTMENTS
CHAPTER 5. INSURANCE COMMISSIONER
***Article 7.1***
***TITLE INSURANCE STATISTICAL PLAN***
***AND RELATED RULES GOVERNING RATES AND CHARGES***

Summary and Response to Comments Received During
Revised Regulation Comment Period

**VOLUME 9**
**Bates Range "Dec.comments 1-351"**

**Volume 9, Comment No. "Dec.comments 1-55":**

**Commentator:** David Cheit on behalf of First American Title Insurance Group
**Date of Comment:** Received 12/15/06
**Type of Comment:** Written

**Summary of Comment (page 1):**

This passage summarizes the commenter's affiliation and identifies the comments that are set forth in greater detail within the body of the comment.

**Response to Comment:**

This portion of the comment is not specifically directed at the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. Additionally, this portion of the comment reflects summaries of comments that are summarized and responded to in greater detail below. No response is, therefore, necessary. (Government Code Sections 11346.9 9 & 11346.8(c).)

**Summary of Comment (page 1-2):**

The scope of the revisions to the regulations is substantial, both in terms of specific individual revisions as well as in terms of the revisions' effect on the regulatory scheme as a whole. The proposed revisions were so substantial that they do not satisfy the provisions of Government Code section 11346.8 (c), because the changes are not "sufficiently related to the original text that the public was adequately placed on notice that the changes could result from the originally proposed" regulations. The short

comment period was legally insufficient, given the substantive nature of the revisions, and the regulations are invalid on this basis.

**Response to Comment:**

The Commissioner rejects this comment. The amendments were all to existing sections and address the same topics the unamended sections addressed. Under longstanding construction of Government Code section 11346.8, a 15-day comment period is appropriate.

**Summary of Comment (page 2-3):**

The commenter summarizes the primary features of the originally-proposed regulations.

**Response to Comment:**

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, no response is necessary. (Government Code Sections 11346.9 9 & 11346.8(c).)

**Summary of Comment (page 3-4):**

The public comments on the originally-proposed regulations focused on the lack of factual support for the Commissioner's findings, including the Commissioner's failure to recognize that housing prices, and title insurer profits, are affected by long-term economic cycles. The comments on the originally-proposed regulations concerning past profits and market competition were derived from unrepresentative data. The findings used to determine the profit and sales cost factors were devoid of any support at all. By the time the July 2006 Staff Report was released, the housing market had already entered the current downturn, rendering the Report's expectations inoperative from the outset.

**Response to Comment:**

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, no response is necessary. (Government Code Sections 11346.9 9 & 11346.8(c).)

**Summary of Comment (page 4):**

The revised regulations did not include a revision of the Initial Statement of Reasons, despite the fact that the Initial Statement of Reasons declared a need for immediate rate reductions. Similarly, the revised regulations did not revise the Commissioner's unilateral findings regarding noncompetitiveness, excessive profit levels, or the necessity for the regulations.

**Response to Comment**

The Commissioner rejects this comment. There is no requirement that the Initial Statement of Reasons be amended when the proposed regulations are modified. Rather, the changes are addressed in the Final Statement of Reasons.

**Summary of Comment (page 4):**

The revised regulations include dramatic revisions. The decision to "scrap" the 2007 rollback reflects a tacit recognition that the assumptions which formed the basis for the 2007 rollbacks were invalid.

**Response to Comment:**

The Commissioner rejects this comment. The postponement of the effective date of the interim rate provisions merely reflects the Commissioner's determination to give companies additional time to conform their costs to the regulations in order to reduce their excessive rates.

**Summary of Comment (page 4-5):**

The commenter summarizes the effect of the new interim-rate reduction formula.

**Response to Comment:**

To the extent this comment recommends action with respect to the proposed regulation, that recommendation is addressed below.

**Summary of Comment (page 5):**

The revised regulations produce a single rate adjustment, which will be effective in 2009, but are silent regarding the appropriate adjustment if the interim rate formula remains in effect for future years. This is a critical deficiency in the revised proposal.

**Response to Comment:**

The Commissioner rejects this comment. The Commissioner does not expect the interim rates to remain in effect long after 2009, since, by the terms of sections 2357.19 and 2358.9, the interim rates cease to be effective once data from the statistical plan has been filed and the Commissioner is able to promulgate the prescribed values. Should that event be delayed beyond 2009, the Commissioner can consider any necessary amendment at the time.

**Summary of Comment (page 5):**

As "discussed in greater detail below and in the attached report, the new 'interim rate' formula is itself both highly complex and so flawed in its operation and its effect that it could impose rates that are" discriminatory and confiscatory.

**Response to Comment:**

These arguments are summarized and responded to in greater detail below. Therefore, no response is necessary here.

**Summary of Comment (page 5):**

The Department's own staff counsel expressly recognized in an interview with The Legal Description, published on December 7, 2006, that the use of updated economic data in the new formula means that the resulting rate adjustments could reduce or even eliminate the interim rate reductions if housing prices return to 2000 levels.

**Response to Comment:**

This comment appears to be an agreement with the amendment to the proposed regulations and therefore requires no response.

**Summary of Comment (page 5):**

The revised interim rates back away from the original interim rates' premise that housing prices would continue to rise. The revised interim rates are now premised on the realization that the predictions on the housing market have already been proven false. However, the Initial Statement of Reasons has not been revised to acknowledge these changes or to explain them. The November 27, 2006, Staff Report identifies two principal changes from the July 3, 2006, Staff Report, that relate to the "interim rate reduction." Neither change addresses the "Commissioner's abandonment of the initially proposed rollback effective March 1, 2007" or even the significance of that change as it relates to the unaltered underlying findings, declarations, and assumptions.

**Response to Comment:**

The Commissioner rejects this comment. While the comment appears to support the amendment to the proposed regulations, the commenter draws incorrect inferences from the amendment. There is no "realization" of any specific past or future prediction about housing prices. As originally promulgated, the statistical plan and permanent rate-regulation system would have gone into effect a year earlier than under the amended proposed regulations. The likelihood of a change in market conditions is perforce greater than under the original regulations. But the fundamental purpose of the regulations in question – to reduce rates that have become excessive solely due to housing inflation that has exceeded the cost of providing the insurance and services, remains sound and is reflected in the proposed regulations as amended.

**Summary of Comment (pages 5-7):**

The amended regulations add six documents (four internal Department of Insurance Report and two reports from non-department sources) to the list relied upon for the amended regulations, all of which were not previously identified. Only three of the newly added documents --- the November 27, 2006, Department staff reports regarding profit factor and interim rate reduction, and the 2005 Swiss Reinsurance Company Economic Research & Consulting study --- relate to the amended regulations.

The remaining three documents --- the November 27, 2006, Department staff report regarding sales cost factor, the June 16, 2006, Department data compilation, and the October 2006 report from Washington State's Insurance Commissioner --- relate to Commissioner's underlying rationale for the title insurance regulations and the regulatory scheme as a whole.

**Response to Comment:**

The Commissioner rejects this comment. The commenter appears to be laboring under the erroneous belief that documents added to the file must pertain exclusively to the contemporaneous amendment to the proposed regulations. Some of the documents that have been added simply respond to comments that have been received during the 45-day comment period and respond to those comments.

**Summary of Comment (pages 6-7):**

Commenter objects to the Commissioner did not previously make the six newly listed documents found in the revised regulations available or explain how the documents relate to the regulations.

**Response to Comment:**

The Commissioner rejects this comment for the reasons stated immediately above.

**Summary of Comment (pages 7-8):**

The 15 days notice provided in the November 27, 2006, Notice of Availability, is inadequate because the changes in the revised regulations include changes that are "far beyond what could have been reasonably expected from the initial proposal." The revised regulations include a new method for determining interim rates that was unavailable in the prior proposal and "dramatically" undermines the justification for the entire regulatory scheme, since there is no longer immediate necessity or the requirement for immediate effectiveness. Furthermore, the new formula for the interim rate requires its own notice and comment period. And the abandonment of any proposal for rate reduction until 2009 requires full-scale re-examination on non-competitiveness findings.

**Response to Comment:**

The Commissioner rejects this comment for the reasons stated above.

**Summary of Comment (page 8):**

The Commissioner intends to disregard any comments on the unchanged portions of the initial proposed regulations, even though the revised proposal expands or shifts the premise of the entire regulatory scheme, including sections in the unchanged portions of the regulations. Fair play and due process require 45 days to comment on the material changes to the original proposal.

**Response to Comment:**

The Commissioner rejects this comment. The commenter has provided no evidentiary or legal support for this comment.

**Summary of Comment (page 8):**

The Commissioner's restriction on the time and scope of those comments on the revised regulations, to correspond with his term in office, is another reason why the entire regulatory scheme is invalid.

**Response to Comment:**

The Commissioner rejects this comment. The commenter has provided no evidentiary or legal support for this comment.

**Summary of Comment (page 9):**

Commenter reiterates that the proposed regulations are invalid, and states that that revised proposal "underscores and magnifies" the regulatory scheme's violation of the Insurance Code's mandate that calls for a regulatory process that is comprehensive. First, the regulations seek to implement findings on market competitiveness that will be three years out of date before any of the proposed rate regulations would take effect. And second, the regulations seek to impose blanket rate roll-backs, without a legal basis or need for the Commissioner to regulate rates outside the current structure provided for in the Insurance Code.

**Response to Comment:**

The Commissioner rejects this comment. First, the Commissioner has found that the absence of a reasonable degree of competition is a condition that has prevailed for many years, as reflected in the findings of the Competition Report and the studies it cites. The commenter has proffered no evidence that would support the belief that this condition will change over the next three years. Second, the basis for the interim rate provisions of

the proposed regulation have been spelled out in the Staff Report on Interim Rates. (See also response to Common Comment E.18.)

**Summary of Comment (page 9):**

The regulations are so substantively flawed that they would be ineffective in operation, as explained in the report by Analysis Group.

**Response to Comment:**

The Commissioner rejects this comment. The Commissioner responds to the cited comments separately in this file.

**Summary of Comment (pages 9-10):**

Commenter purports to summarize the Commissioner's initial proposal for rate regulation, including the Initial Statement of Reasons and general provisions, and purports to summarize the Commissioner's characterization of the regulation package as well as the Commissioner's stated justification for the immediate rate rollback.

**Response to Comment:**

The Commissioner responds to the substantive comments below.

**Summary of Comment (pages 10):**

Commenter purports to summarize its own August 29, 2006, comments to the initial proposal, asserting that it previously stated that the proposed regulations were defective because (1) the findings and roll back provisions "exceeded the Commissioner's rulemaking authority under the Insurance Code," (2) the proposed regulations were not consistent with the meaning of "reasonable" under section 12401.5 of the Insurance Code, and (3) the proposed regulation were not shown to be necessary, there was no discussion of reasonable alternatives, there was no evaluation on the impact on business, and there was no consideration of the burden of compliance that complied with the requirements of the Administrative Procedures Act.

**Response to Comment:**

The Commissioner has already responded to the commenter's August 29, 2006, comments, so no further response is necessary here.

**Summary of Comment (page 11):**

The regulations have been dramatically revised from the initial proposal, fail to consider and cure the defects of the initial proposal, and compound the defects in the initial proposal by speeding up the comment period on the revised regulations. The revised

proposal changes the formulas for developing permanent ratemaking and for interim rates; delays implementation of interim rates for over two and a half years; reconfigures interim rates in a manner that could possibly lead to no rollback if housing prices fall to year 2000 levels; and provides that the interim rates are proposed to take effect as of October 1, 2009, if the Commissioner does not adopt permanent formulas by that date.

**Response to Comment:**

The Commissioner rejects this comment. To the extent the comment merely restates the commenter's original comments, the Commissioner incorporates here his response to those comments. The Commissioner agree that the amended regulations could lead to no interim-rate reduction if housing prices fall to 2000 levels, an outcome with which the commenter does not appear to disagree. The commenter also does not appear to disagree with the postponement of the effective date and contingent nature of the interim rates as the proposed regulations have been amended.

**Summary of Comment (page 11):**

The Commissioner's interim rate formula is inconsistent with comprehensive regulatory process authorized by the Insurance Code, and therefore outside of the Commissioner's rulemaking authority. Furthermore, because of his choice to defer and reconfigure the scheduled rollback, the Commissioner's "noncompetitiveness" finding is outdated. Furthermore, the "Noncompetiveness" finding is based on the biased advice of a hand-picked consultant.

**Response to Comment:**

The Commissioner rejects this comment. The commenter has failed to proffer any legal basis for the claim of inconsistency with the Insurance Code. There is no reason to expect the finding of a lack of a reasonable degree of competition to be obsolete in the next three years, given the consistent findings to the same effect from studies over the past three decades, but if there is evidence of such a change, the regulation can be amended on the Commissioner's motion or on the petition of any person. The Commissioner rejects the personal attack on Mr. Birnbaum, whose qualifications the commenter has not disputed.

**Summary of Comment (pages 11-12):**

Commissioner does not subject his market competition findings to those processes outlined in the Insurance Code and there is no provision in the regulations for reviewing the competition finding or for considering newer data on competition. A finding of market competitiveness is factual, and the "Commissioner's failure to provide for full-scale regulatory review of the market competitiveness issue invalidates the entire scheme." Furthermore, now that there is no urgency with respect to the interim rates, there is no basis for maintaining the competitiveness findings for rate regulation that will

not take place until 2009. A system for determining the degrees of competition could also be implemented at a later time.

**Response to Comment:**

The Commissioner rejects this comment for the reasons stated immediately above. In addition, the comment is rejected because the existence or absence of a competitive market is inherently market-wide, not company-specific.

**Summary of Comment (pages 12 -13):**

Commenter references original comments of the regulations, and states that the Commissioner has neither the authority to implement nor the justification to support the findings advanced in the original proposal. And further states that there is no justification for Commissioner's refusal to provide for a through and ongoing consideration of the issue of competitiveness, especially as housing prices may fluctuate and the competitiveness finding may be outdated when the regulations take effect.

**Response to Comment:**

The Commissioner rejects this comment. To the extent the comment merely incorporates the commenter's original comments, the Commissioner incorporates here his response to those comments. The Commissioner has given the proposed regulations, including the finding of an absence of a reasonable degree of competition, careful and thorough consideration. The commenter's juxtaposition of the finding of the absence of a reasonable degree of competition and the decline in housing costs is a non-sequitur. As noted above, given the fact that studies have been confirming the existence of reverse competition and finding the absence of competition for decades, there is no reason to defer the finding in the regulations, which can be reviewed any time in the future that evidence is presented of a change in the competitiveness of the market.

**Summary of Comment (pages 13-14):**

The Commissioner's rate rollback is outside of the regulatory structure outlined in the Insurance Code. The commenter summarized comments made in response to the original proposal, stating that Proposition 103 does not extend to title insurance, that "[t]he repeal of the statutory provision that denied the Commissioner the power to 'fix or determine rates' appeared only in Proposition 103," and there is no other provision of law that allows the expansion of Proposition 103 to title insurance.

**Response to Comment:**

The Commissioner rejects this comment, which merely restates the commenter's earlier comments, and incorporates here the Commissioner's response to the previous comments.

**Summary of Comment (page 14):**

The interim rollback rates amount to a "prior approval" system --- where a rate that is not in compliance is automatically disapproved. The commenter states that the Commissioner is prohibited from adopting a "prior approval" system and therefore is acting in excess of his authority with the rollback regulations.

**Response to Comment:**

This comment does not regard the changes noticed on November 27, 2006, so no response is required. (Gov. Code section 11346.8(c).)

**Summary of Comment (pages 14-15):**

The current downward trend in the housing cycle eliminates "the rationale for the imposition of immediate fixed-rate rollbacks in title insurance rates" and the Commission's whole regulatory scheme. The Commissioner provides no reason for the interim formula, as there is no automatic rollback effect or urgency and the findings for market competition are incompetent and outdated. The Commissioner should have started over with truly comprehensive system as detailed in the Insurance Code, with evaluation of the rate regulation in a complete and timely manner.

**Response to Comment:**

The Commissioner rejects this comment. The delay in effectiveness of the interim rates allows companies to adjust their cost structures to the new rate levels where necessary. The commenter fails to explain the basis for claiming the proposed regulations are not "comprehensive" enough a system. If the commenter's reference to "timely" is meant to suggest the regulations should be made effective earlier than 2009, the Commissioner doubts the sincerity of the comment and rejects it.

**Summary of Comment (page 15):**

Arguing in the alternative, the commenter states that even if interim rates were authorized by the Legislature and justified, the formula in the revised regulations is not a reasonable or an appropriate means of adjusting rates. The commenter summarizes findings regarding the formula, as found in the Analysis Group, Inc., report entitled "Evaluation of Revised Proposed Regulations for The California Title Insurance and Escrow Industry." Relying on the report, the commenter states that the adjustment's starting points of filed rates and "average" transactions levels are "egregious defects in the proposed formula" that will produce "discriminatory and even confiscatory rate levels."

**Response to Comment:**

The Commissioner rejects this comment. The Commissioner has responded to the cited report elsewhere in this file, showing the starting points to be appropriate and the claims of discrimination or confiscation to be insubstantial.

**Summary of Comment (page 15):**

The regulations do not contain a provision that would allow an insurer to show that a mandated adjustment resulted in a "confiscatory rate." The inability to obtain relief on such a showing renders the interim rate provision invalid. Furthermore, the interim rate formula's imposition of unprofitable rates to offset past profits is invalid, as held by the California Supreme Court in *Calfarm Ins. Co. v. Deukmejian*.

**Response to Comment:**

The Commissioner rejects this comment. A rate adjustment is necessary where the law in question creates a sufficient risk of a confiscatory result. In this case, the adjustment is contained in the regulations themselves, which recognize reasonable expenses and provide for a reasonable profit. Under such conditions, there is no constitutional need for any further adjustment. As the Supreme Court indicated in *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 313, a properly constituted regulatory formula has the end-result "'safety' built in," and therefore does not require any other "safety valves." The comment regarding offsetting past profits is irrelevant as the proposed regulations do not rely on past profits to subsidize current or future rates.

**Summary of Comment (page 15-16):**

The Commenter references its August 29, 2006, discussing the Commissioner's unauthorized findings on competition and efforts to impose interim rates "outside the comprehensive regulatory process." The continued provision for interim rates and the change in the effective date from March 1, 2007, to October 1, 2009, "renders the revised proposal more specious than the original proposal." The underlying need and the need for immediate effectiveness are now gone, so the entire interim rates should be deemed invalid.

**Response to Comment:**

The Commissioner rejects this comment. The commenter has failed to proffer any explanation or basis for the argument that postponement of the effectiveness of the interim rates somehow renders the original or amended proposal in any way "specious." The delay does not eliminate the need for immediate relief for consumers, it merely gives companies more time to adjust their cost structures, leaving the need for relief unabated.

**Summary of Comment (page 16-17):**

The regulatory scheme, in addition to the specific problems on the competitiveness findings and the interim rate formula, is unreasonable and unworkable for those reasons

detailed in the Analysis Group, Inc. report. The commenter discusses issues presumably expanded upon in the Analysis Group report, and cites that report as well as the reports that were submitted along with its August 29, 2006, comment letter.

**Response to Comment:**

This comment does not regard the changes noticed on November 27, 2006, so no response is required. (Gov. Code section 11346.8(c).)

**Summary of Comment (page 17):**

The commenter concludes its comments, stating that the original regulatory proposal was "legally invalid, logically unfounded and economically untenable." The original proposal has been "stripped" of its original justification for immediate adoption, yet the Commissioner seeks to rush the remaining elements of the proposal through the adoption process. The revised proposal would not even been suitable after 45 day notice and public hearing. Commenter requests that "any future proposed regulations be consistent with the Legislature's intent, the limits of the Commissioner's authority, and the Administrative Procedure Act."

**Response to Comment:**

The Commissioner rejects this comment. The commenter has proffered no valid legal or factual argument to support the objections to the proposed regulation. The Commissioner has found the proposed regulations to be fully consistent with all applicable statutes.

**Attachment: Stangle & Strombom: "Evaluation of Revised Proposed Regulations for the California Title Insurance and Escrow Industry" Dated December 15, 2006 "Dec.Comments 19-55"**

Summary of Comments, Page 2: The commenters provide an introduction to their comments including a description of their engagement by First American Title Insurance Company.

Response: Responses to the comments summarized in the introduction are provided below in response to the detailed comments which are summarized in the introduction, so no response to the summary of comments in the introduction is needed.

Summary of Comments, Page 3: The commenters offer general observations. While report focuses on deficiencies in revised regulations, we want to emphasize that Department's proposal to impose price caps are not economically justified. Most states are file and use. California consumers have received title insurance at competitive prices with file and use system and Department has no valid basis for stringent price regulation. The Department claims competition is lacking and title and escrow rates are excessive, but prices per thousand dollars of coverage have been falling, not rising. The current real estate cycle has begun to turn down and drastic price reductions contemplated by

Department could come at precisely the wrong time, causing harm to title and escrow firms and their customers. Experience in this country with price controls – housing, natural gas, gasoline, airlines and so forth – is that they cause supply shortages, harming consumers. Imposition of price controls in title and escrow industry would create more costs than benefits. We believe the Commissioner has no economic justification for imposing price controls.

Response: The Commissioner rejects the comment. The commenters mischaracterize the proposed regulations and repeat comments from their August 30 submissions. The Commissioner has responded to these comments in the response to the comments in the August 30 submissions and no further response is required.

Summary of Comments, Page 4: Price regulation is not warranted for title insurance and escrow services in California.

Response: The Commissioner rejects this comment. The commenters repeat a comment made in their August 30 submissions. The Commissioner has responded to these comments in the response to the comments in the August 30 submissions and no further response is required.

Summary of Comment, Page 4: The interim rate reduction percentages drop out of the formulas. When formula for SPAF is substituted into interim rate formula (which includes SPAF), the interim rate reduction cancels out and does not affect interim rates. It is puzzling why the Department would go to such lengths to calculate a value that is not actually used in the interim rate calculation.

Response: The Commissioner rejects this comment. The SPAF effectively becomes the interim rate reduction under certain circumstances. It is structured as presented to ensure that the interim rate reduction after application of the SPAF is between 0% and 100% of the state interim rate reduction. The interim rate reduction values are used directly if SPAF is above 1.0 and also represent the template for the SPAF calculation.

Summary of Comment, Pages 4-5. In the event the implementation of the post-interim period rates take longer than anticipated, the interim rate reductions will be fixed at 2009 levels. This result is either inconsistent with the goals of the regulation or the regulations are flawed.

Response: The Commissioner rejects this comment. The interim rate reductions will only go into effect and remain in effect until the statistical plan has yielded sufficient information to permit the permanent cost-based rate-regulation system to go into effect. There is no inconsistency as the interim rate reduction is a coherent and logical part of rate regulation to ensure that prices are not excessive.

Summary of Comments, Page 5: The average premium values used to calculate the interim rates are not the typically charged to consumers. In practice, insurers offer many discounts.

Response: The Commissioner rejects this comment. The commenters repeat a comment made in their August 30 submissions. The Commissioner has responded to these comments in the response to the comments in the August 30 submissions and no further response is required.

Summary of Comment, Page 6: The use of averages in interim rate reduction calculation does not reflect the variation in real estate appreciation across the state since 2000 and is not appropriate. It leads to a percentage that is too large in some areas. This problem would be particularly acute for unaffiliated agents who typically operate in a limited geographic area where price appreciation may not be similar to the statewide average.

Response: The Commissioner rejects this comment. For title insurance, the use of statewide averages is appropriate because title insurers used and continue to use one rate table for the entire state. Insurers and underwritten title companies will respond to the statewide rate reduction, if the interim rate reduction is implemented, in the same manner that they responded to differential price appreciation since 2000.

Summary of Comment, Page 6: The reduction percentages for title insurance are applied to products beyond those used to calculate the percentages. The Department has provided no justification for applying reductions applicable to policy rates to completely different products offered by title insurers.

Response: The Commissioner rejects this comment. Different policy forms are almost universally priced as a percentage of the basic premium calculated from the base rates. It is therefore logical that a percentage reduction to the base rates would retain the same relationship in prices between policy forms and products.

Summary of Comment, Page 7: Data used to calculate average transaction size and average insurance premium or escrow fee lead to biased values. The Department's exclusion of zero dollar amounts biases the calculations.

Response: The Commissioner rejects this comment. DataQuick is an industry standard source of information on real estate transactions and used by analysts and title insurance market participants, including the California Association of Realtors. No data set is perfect, but the Commissioner finds the DataQuick data reliable for the purposes used in the interim rate calculations. The fact that the November 27, 2006 Staff Report on the Interim Rate Reduction and the superseded July 3, 2006 Staff Report on the Interim Rate Reduction discuss issues with the use of the data does not undermine the reliability of the data, but serves to explain the Commissioner's use of the data. The November 27, 2006 Staff Report on the Interim Rate Reduction explains why it is reasonable and necessary to exclude the zero dollar transactions and how this selection of data to be used, among several valid choices, produces neither the highest or lowest interim rate reduction values.

Summary of Comment: Profit should not be considered part of expense. There is no support for the 5% profit rate.

Response: The Commissioner rejects this comment. The cost assumptions in the interim rate reduction calculations are the percentages of premium that vary with premium level (variable costs), the percentage of premium that varies with change in exposure (losses) and the percentage of premium subject to cost inflation (fixed costs). The profit provision is a percentage of premium and is treated as a variable cost or expense for purposes of the interim rate reduction calculation. The basis for the amounts are explained in the November 27, 2006 Staff Report on the Interim Rate Reduction. Moreover, the interim rate reductions are designed as a stop gap measure and focus solely on the dramatic increase in average transaction size since 2000 and not to replicate the detailed cost analyses of the maximum charge formulae. Finally, small changes in the percentages associated with the three cost categories do not result in large changes to the interim rate calculation.

Summary of Comments, Page 8: The formulation for inflation factor appears to be incorrect. Commenter provides a hypothetical example of the calculation as one possible interpretation. Either the text should be revised or the purpose of inflation factor should be explained. In either case, Department has not provided adequate, carefully thought-out regulations that consumers and industry needed in order to understand and follow its rules.

Response: The Commissioner rejects this comment. The commenters have constructed a hypothetical calculation that is a wholly unreasonable and implausible interpretation of regulation and particularly unreasonable from economists who claim to be experts on inflation. The premise for the comment – that the language is unclear – is unsupported and incorrect, so the arguments based on the premise are unfounded and invalid.

Summary of Comment, Pages 9 to 10: The use of CPI as measure of increased costs at title and escrow firms is an inappropriate use of CPI. CPI reflects spending patterns of consumers and consumer purchases are not similar to purchases by title and escrow firms. The Department chose to use national CPI based on BLS advice about escalator clauses, but Department's use of CPI is not in an escalator clause. All escalator clauses relate to payments to consumers. It is likely that the general CPI understates rise in labor rates paid by UTC since 2000. Peak demand for title insurance and escrow specialists, who are in limited supply, has likely caused labor costs at these firms to increase faster than general rate of inflation. Understating rate of inflation causes the interim rate reduction percentages to be overstated.

Response: The Commissioner rejects this comment. The November 27, 2006 Staff Report on the Interim Rate Reduction explains in detail the basis and rationale for the selection of the inflation series used in the regulation and why that series is superior to other options. While the commenters criticize the selection, they offer no superior alternative and the Commissioner finds not only that the inflations series selected is a

reasonable basis for assigning cost increases in the regulation formulae, but that no superior alternative exists. Furthermore, the commenters have offered no evidence that increases in UTC "labor costs," if in fact they exceed CPI inflation, were reasonable, rather than, for example, further manifestations of reverse competition.

Summary of Comment, Page 10: The Department has provided very little in the way of explanation of why it has chosen the particular formulas it is using.

Response: The Commissioner rejects this comment. The comment is vague and non-specific and, consequently, no response is necessary. Moreover, the comment is inaccurate as the rationale and methodology for the interim rate reduction formulae are described in detail in the November 27, 2006 Staff Report on the Interim Rate Reduction.

Summary of Comment, Pages 11-12: The risk premium has been changed but has the following problems. As noted in our previous paper, the use of accounting returns is an inappropriate measure of return. The risk premium fails to reflect the higher return demanded by privately held companies. It is inappropriate to use the same risk premium for title and escrow because the profitability and riskiness of the two products may be different. The risk premium should not be considered a maximum value, but should be considered an expected value.

Response: The Commissioner rejects this comment. Use of market-capital to determine profit is circular, since the higher the recognized capital the higher the return and the greater the market value of the investment. Furthermore, in the long run book value and market value tend to converge. And, in fact, the courts have consistently rejected the claim that a regulated entity is entitled to market-based returns. (E.g., *Permian Basin Area Rate Cases* (1968) 390 U.S. 747, 769; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 320-321; cf. *id.* at 301-302 [authorizing use of statutory capital rather than GAAP capital].) The suggestion that the proposed regulations employ different risk premia for title and escrow is rejected, since the escrow business subject to the proposed regulations is conducted by title companies or their affiliates; furthermore, the commenters have offered no evidence of significantly different riskiness. The use of the risk premium in the proposed regulations is consistent with the standard usage in rate-regulation in insurance and other industries.

Summary of Comments, Page 13: The commenters summarize earlier comments in their submission about the Staff Report on the Profit Factor and the Staff Report on the Interim Rate Reduction.

Response: The Commissioner rejects this comment. The commenters repeat comments made earlier in their submission. These comments are responded to above and no further response is required.

Summary of Comments, Page 14: The Staff Report on the Sales Cost Factor makes inappropriate comparisons to other lines of insurance that do not involve middlemen providing guidance to customers, so sales costs are not comparable. The Department has

provided no information on what amounts are actually spent by title firms for sales and marketing and without such information, the Department's method is arbitrary and inappropriate.

Response: The reference to other lines of insurance is appropriate and intentional. The proposed regulations are intended to prohibit rates that exceed those that would obtain in a competitive market. It is precisely the middlemen in the title industry who drive prices above competitive levels, so elimination of the extra costs attributable to them is necessary.

Summary of Comment, Pages 14-15: It is not clear what the purpose of the 5-Year Profitability Report is. Policyholder surplus is not the same as stockholder's equity so the report does not show a return as equity as it purports to show. If point is to suggest insurers' profits reflect a lack of competition, the commenters have rebutted that conclusion. The report presents incorrect and misleading information. ROE is calculated as net income divided by policyholder surplus. Policyholder surplus is not stockholder's equity so this report does not show what it purports to show.

Response: The Commissioner rejects this comment. The returns on equity calculations based on policyholder surplus rely upon net income produced under Statutory Accounting Principles. While SAP surplus is generally less than GAAP equity or net worth, SAP income is also generally less than income determined under GAAP. The result is that, over time, SAP returns on equity are about the same as GAAP returns on equity.

Summary of Comment, Page 15-17: It is not clear why the Department included the Washington State Office of the Insurance Commissioner Report. It appears to be an attempt to cast aspersions on notion that middlemen can be trusted to guide consumers' choices. However, the practice of middlemen providing advice to consumers takes place in many industries and provides a cost effective means for customers to purchase complex products. The commenters cite from their January 2006 report. The commenters note that Insurance Commission ultimately decided that violations of marketing laws warranted increased enforcement and consumer education, not price regulation.

Response: The Commissioner rejects this comment. The commenters mischaracterize reverse competition by describing the role and relationship of referrers of business as middlemen who can be trusted to guide consumers' choices. Reverse competition does not refer to consumers seeking advice of third parties; it refers to a market structure in which the seller markets the product to a third party who refers the paying customer to the seller, the consequence of which is that the referrer of the business has the market power and is able to extract considerations from the seller who passes the cost of the considerations onto the paying consumer who has no market power to discipline the pricing of the seller. The Washington report provides graphic evidence that the commenters' characterization of the role of referrers of business is incorrect and that reverse competition harms consumers. The decision by the Washington Commissioner

about how to deal with the illegal kickbacks is not relevant to the California Insurance Commissioner's statutory responsibility to regulate title and escrow rates if a reasonable degree of competition does not exist and if rates are unreasonably high for the insurance or other services provided.

Summary of Comments, Page 17-18: The commenters provide observations on the SwissRe Sigma Report. Property and casualty lines of insurance are not comparable to title and escrow business and the risk premium for property and casualty companies is not the appropriate benchmark for title insurance industry. The commenters cite from page 38 of the report that the CAPM is not an appropriate cost of capital method for companies that follow strategies different from sector average. Clearly, title industry is different from P&C industry and since Department is applying CAPM concepts in its analysis, the SwissRe report suggests that use of data from P&C industry for comparison is highly suspect. The SwissRe report provides support for position that title industry does not require increased regulation. Report argues that decreased regulation has led to gradual decline in underwriting profits, squeezing out abnormal profits industry may have earned in past. This evidence shows that reducing regulation, not increasing regulation, may lead to lower margins.

Response: The Commissioner rejects this comment. The fact remains that the calculation of a reasonable rate of return is routinely derived in regulated industries by reference to other companies and other industries. Having found the absence of a reasonable degree of competition and the existence of reverse competition in the title industry, it was reasonable for the Commissioner to look to the returns elsewhere for a benchmark for the reasonable returns in the title business. P/C lines of insurance are clearly more apt comparison than unrelated industries, given the similar nature of state insurance regulation and insurance principles.

Summary of Comments, Pages 18 to 30: Important Issues Unaddressed by Revised Proposed Regulations. The commenters' prior report highlighted several unintended consequences of price regulation that could be expected to arise and the commenter repeats those comments from the previous report.

Response: The Commissioner has already responded to the prior comments in the responses to the prior submission, so it is not necessary to repeat those responses.

Summary of Comments, Page 31: The commenters describe their company, education and experience.

Response: This portion of the comment 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.)

Summary of Comments, Page 32-37: The comments present charts which are referenced in earlier comments.

Response: The comments to which the charts are addressed have been responded to above. No additional response is required.

**Volume 9, Comment No. "Dec.comments 56-57":**

**Commentator:** Don Irelan, SR/WA, Notary Public
**Date of Comment:** Received 12/07/06
**Type of Comment:** Written

**Summary of Comment:** Commenter opposes any regulatory change that will adversely impact the already high costs of real estate transactions in California. Cost increases impact notaries who work for escrow companies, title companies and lenders and could eventually impact local public agency notaries.

(this set also contains the commenter's earlier August 25 comment on the original text)

**Response to Comment:**

The Commissioner rejects this comment. The purpose of the proposed regulations is to reduce the unnecessarily high costs of real estate transactions by preventing the collection of excessive premiums and charges.

**Volume 9, Comment No. "Dec. Comments: 58-61"**

**Commentator:** Fran Butler, President-Elect on behalf of the California Escrow Association
**Date of Comment:** Received 12/15/06
**Type of Comment:** Written

**Summary of Comment:**

The proposed new language violates both the letter and the spirit of the Administrative Procedure Act by failing to provide for new public hearings and full opportunity to comment. Specifically the new language violates Government Code section 11346.8(c) because the proposed changes are so radical that they are not such that the public was adequately placed on notice that the changes could result from the original language. Specifically the revised text mandates interim rate reductions according to counties grouped in three categories ("Bay Area", "South" and "Rest of State") as opposed to the original text's statewide mandated reductions. Escrow services do vary from northern to southern California but categorization by county is arbitrary and additional evaluation and an opportunity to comment should be provided. Not all southern California counties are categorized as "South" and the "Bay Area" category only contains seven counties rather than the nine counties typically included. The categories also fail to recognize "hybrid" counties which perform both Northern and Southern California style escrow services. The proposed language fails to indicate whether the location of the escrow provider or property location determines which category applies.

**Response to Comment:**

The Commissioner rejects this comment. The 15-day notice for the amendments fully conforms to the requirements of the Administrative Procedure Act. The amendments amend existing proposed regulation sections and address the same topics.

The definitions of regions were made on the basis of a careful review of price-levels and increases, as described in the Staff Report on Interim Rates.

**Summary of Comment:**

Second, the proposed changes mandate rate reductions based upon newly-defined types of escrow such as "purchase" and "non-purchase" transactions. These definitions are arbitrary, fail to include transactions that don't fall in either category, and contain basic misunderstandings of real property law. An example is the definition of "purchase transaction" as that in which "ownership" of residential property "changes hands." The use of the term ownership is a lay word lacking legal meaning and insufficient to define a type of transaction.

**Response to Comment:**

The Commissioner rejects this comment. The definitions generally conform to existing practice and, in particular, to the terminology used by companies in rate-filings with the Department.

**Summary of Comment:**

Also, "changing hands" is also insufficient to describe transactions involving changes in title or proportional interests. These definitions should be the subject of a new hearing and extended opportunities to comment. The original proposed language did not adequately apprise the public that reductions based upon types of transactions might emerge.

**Response to Comment:**

The Commissioner rejects this comment. The commenter has not explained what ambiguity is claimed to exist. There is a clear distinction in the real estate industry between sales (change hands) and other transactions such as refinancings, in which ownership does not change.

**Summary of Comment:**

Further, although the date change for mandated escrow rate reductions is a later date, it provides less certainty. The new language requires reductions by October 1, 2009 or any

earlier time that the Commissioner elects to publish "projection factors". This lack of certainty puts companies at risk of having to suddenly comply with new rate limitations.

**Response to Comment:**

The Commissioner rejects this comment. Affected companies know when the data responding to the statistical plan is due and that the Commissioner intends thereafter to publish the prescribed values. The commenter has failed to proffer any evidence that it would take long for a company whose rates are found to be excessive to file new rates.

**Summary of Comment:**

Lastly, the proposed changes modifying the definition of "full escrow" in Section 2355.3(l) constitute a very substantial change to the regulations as companies will be required to report on the types of escrows performed. As transactions vary widely, there is question as to how a transaction should be reported if it lacks a minimum element. Also, the definition could be interpreted as imposing a standard of care for escrow services which could expose companies to liability in negligence actions. This issue needs further evaluation and a new hearing.

**Response to Comment:**

The Commissioner rejects this comment. The term is well understood to apply to any escrow in which there is no subescrow. The commenter has failed to explain how an error in reporting a transaction to the Department could give rise to a negligence action. Any duty is owed to the Department, which enforces that duty through non-compliance actions. The commenter has failed to identify any other party to whom a tort duty is owed.

**Summary of Comment:**

As the new changes constitute major revisions they do not meet the test of Government Code section 11346.8 and violate the APA. Reasonable alternatives exist which were not adequately considered as required by Government Code Section 11346.9.

**Response to Comment:**

The Commissioner rejects this comment. The cited amendments were all to existing sections, did not change their subject matter, and were, under longstanding practice, "sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action." The Commissioner fully considered alternatives, and commenter has proffered none that the Commissioner has found to offer any reasonable basis for action to eliminate excessive rates and charges.

**Volume 9, Comment No. "Dec. Comments: 62-65":**

**Commentator:** Jeanne Flynn Martin, Senior Vice President Regulatory & Underwriting Counsel on behalf of Commerce Title Insurance Company and Commerce Title Company
**Date of Comment:** Received 12/14/06
**Type of Comment:** Written

**Summary of Comment:**

The commenters CTIC and CTC continue to have concerns regarding the requirements that the proposed regulations seek to impose. As stated in their earlier comments CTIC and CTC continue to believe the proposed regulations provide for burdensome and unnecessary operating and reporting requirements that are without legal authority. A new hearing should be scheduled as it is not only required but would be in the best interest of the public.

CTIC and CTC are particularly concerned with the addition of formulae required in the calculation of the interim maximum title insurance and escrow rates (revised sections 2357.19 and 2358.9) even with the extension of the compliance date from 2007 to 2009. The interim title insurance and escrow rate requirements are substantially different and are inexplicably complex and include calculation factors determined by the Department. CTIC and CTC cite the sales price adjustment factor ("SPAF") as evidence of this.

The proposed SPAF is based upon a number of criteria arbitrarily determined by the authors of the formula lacking a justified or tested basis. Further, the SPAF, a critical factor in the determination of rates, is required to be published only one month prior to the deadline for submission of required interim filings

The revisions to 2357.19 and 2358.9 along with the unchanged substantial statistical reporting requirements contain formulae and methodology based on data collection requirements that are currently not possible and won't be possible without a comprehensive restructuring of numerous departments and operating systems of CTIC and CTC which would require a substantial investment. Given the statistical reporting requirements this would have to happen in the near future at a time when title insurance and escrow operations nationwide are experiencing dramatic reductions in orders and revenues.

The initial annual statistical report filing extension does not alleviate the problem as the revisions now include a requirement that companies submit certain experience reports by June 30, 2008 based upon information from the period January 1 through March 1 of 2008. The revisions have actually created additional reporting requirements adding to the already burdensome statistical reporting requirements.

Lastly, the publication of the revisions on November 27 did not allow for sufficient time to provide public comment even though the deadline was extended to December 15. As that time of year is particularly hectic, coupled with the Department's failure to hold a

public hearing on the revisions, precluded a full and meaningful examination of the issues and does not serve the best interests of California citizens.

**Response to Comment:**

The Commissioner rejects this comment. The complexity of the SPAF and the remainder of the proposed regulations is simply the product of the complexity of the underlying quantity. As fully explained in the Staff Report on Interim Rates, the provision provides, as industry commentators requested, a downward adjustment of interim rate reductions in proportion to any decline in real estate prices. The commenters have proffered no evidence in response to the amended proposed regulations to substantiate the claim that the amendments increase the burden on affected companies. The claim that requiring reporting for January through March of 2008 is more burdensome that the original requirement that all data be reported starting with the fully year 2007 is patently false. The comment period fully complies with the law.

**Volume 9 , Comment No. "Dec.comments 66-67":**

**Commentator:** James R. Woods on behalf of Fidelity National Financial, Inc. (formerly Fidelity National Title Group, Inc.) and its title insurance subsidiaries (collectively "FNF")
**Date of Comment:** Received 11/28/06
**Type of Comment:** Written

**Summary of Comment (page 1):**

The California Department of Insurance claims that its proposed modifications are insubstantial or solely grammatical in nature or sufficiently related to the original text. However, this position effectively deprived affected parties of the right to a hearing and shortened the period during which affected parties may submit written comments. Fidelity disagrees with the Department position and requests a formal hearing on the modifications.

**Response to Comment:**

The Commissioner rejects this comment. The amendments were all "sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action." (Gov. Code § 11346.8.) The notice period fully complies with the Administrative Procedure Act.

**Summary of Comment (page 2):**

One example is the Department's complete rewriting of the provisions of the proposed regulations relating to the calculation of maximum interim rates for title and escrow services. The re-write contains new, detailed formulae absent from the original proposed regulations and were not discussed at the hearing. Briefly, the Department – which is not

entitled to establish any title insurance rates at all – proposes to alter its method of calculating the amount of maximum interim rates that affected title and escrow companies may charge. The re-write is so extensive that the Department has included entirely new definitions in its draft *viz* Proposed Regulations §§2357.19 and 2358.9.

**Response to Comment:**

The Commissioner rejects this comment. As the commenter acknowledges, the subject of the amended regulations governing interim rates is identical to the subject of those same sections before amendment. A change in the formula for calculating the interim rates – made largely in response to industry comments – is plainly an amendment that the public would reasonably expect could result from the original proposed action.

**Summary of Comment (page 2):**

Further, in July 2006 when the Department promulgated the proposed regulations, it represented that its actions were based upon the Birnbaum Report. The Department now represents that it also relied upon another internal non-published report and six additional reports which were made public at the end of November 2006. The Department thereby deprived affected parties of an adequate opportunity to respond to and be heard on the materials it alleges support its proposed actions. The Department reliance on these new sources contradicts its assertion that the proposed modifications are not substantial, merely grammatical or sufficiently related.

**Response to Comment:**

The Commissioner rejects this comment. To the extent that the Commissioner has placed additional documents in the file, they are either documents that were not previously available or documents that respond to comments from the public regarding the original proposal. Members of the public have been given a full opportunity to comment on those reports. The procedure fully complies with the applicable statutes.

**Summary of Comment (page 2):**

It is a violation of Government Code §11346.8(c) and unreasonable for the Department to proceed with the modifications without a hearing and extension of the comment period.

**Response to Comment:**

The Commissioner rejects this comment. The commenter has wholly failed to explain any basis for disputing that the amendments are "sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action."

**<u>Volume 9 , Comment No. "Dec.comments 68-69":</u>**

**Commentator:** Kassidy Harmon, a Notary Public, Certified Signing Agent of California
**Date of Comment:** Received 12/4/06
**Type of Comment:** Written

**Summary of Comment:**

Notaries do the work and are the ones who have personal contact with borrowers. The proposed cutbacks to title and escrow fees will adversely affect the 200,000 Notary Signing Agents in California. The proposed cutback would only slightly decrease the amount of fees charged to the consumer on a single transaction, insufficient to make a difference to the average customer. If this proposal takes effect, it would in fact harm consumers because there would be fewer notaries to serve them and an increased potential of fraud. Sole proprietors will suffer financial harm. A reasonable alternative would be to review and place stricter limits on the fees of mortgage brokers.

**Response to Comment:**

The Commissioner rejects this comment. The comment is largely addressed to provisions not amended in the regulatory proposal, so no response is required. However, the Commissioner notes that the cost of other products and services in the real estate markets is irrelevant to the excessiveness of title and escrow costs to consumers, that the commenter has failed to proffer evidence that the proposed regulation would reduce the number of notaries (whose charges are not governed by the proposed regulations), and that the Commissioner has no statutory authority to regulate the fees of mortgage brokers.

**Volume 9 , Comment No. "Dec.comments 70-76":**

**Commentator:** Lawrence Green, on behalf of California Land Title Association
**Date of Comment:** Received 12/13/06
**Type of Comment:** Written

**Summary of comment (Bates pages 70-71):**

These pages reflect a cover page e-mail and a request from the commenter to see the Department's summaries and responses to the comments of the public.

**Response to Comment:**

This portion of the comment is not specifically directed at the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. No response is, therefore, necessary. (Government Code Sections 11346.9 & 11346.8(c).)

To the extent that the commenter is requesting an opportunity to view the summaries and responses to public comment, the Department intends to post its responses on its website, along with the Final Statement of Reasons, once the regulations have been submitted to the Office of Administrative Law.

**Summary of comment (page 1):**

Because the Department has failed to comply with the Administrative Procedure Act, at a minimum, the Department should provide a new 45-day comment period and public hearing to consider the new revisions. Because the regulations are so flawed, however, the Department should withdraw the regulations and work with a wide sector of groups to consider alternatives to the regulations.

**Response to Comment:**

The Commissioner rejects this comment. The 15-day comment period is that prescribed by law. (Gov. Code section 11346.8.)

**Summary of comment (page 1-2):**

Contrary to the Department's assertion that the changes are either nonsubstantial, solely grammatical, or sufficiently related to the original text, they are not. The revised regulations add new material and include extensive substantive changes. For example, the new interim maximum rate formulae for escrow rates are extensive and entirely new and required a new definition of the term "region."

**Response to Comment:**

The Commissioner rejects this comment. Neither the addition of new text nor substantive changes preclude the use of the 15-day notice procedure. The commenter has failed to explain why the amendments, which affect only existing proposed sections and deal with the same topics as their original text, are not, in commenter's view, "sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action."

**Summary of Comment (page 2):**

While the original regulations only required controlled escrow companies to make rate filings, the new regulations require rate filings from each company that charges for escrow services. The revised regulations also contain a new definition of "title insurance company" in section 2355.3(cc) that encompasses title insurers, underwritten title companies and controlled escrow companies.

**Response to Comment:**

The Commissioner rejects this comment. The commenter has proffered no basis for its reading of the amended proposed regulations as applying to companies that provide escrow services other than title insurers, underwritten title companies and controlled escrow companies.

**Summary of Comment (page 2):**

The revised regulations show strikeout in section 2358.9(a) of the words "title insurance." Those words, however, were not in the originally proposed text of the regulations. The original regulations only referred to a "controlled escrow company" in subdivision (a).

**Response to Comment:**

The commenter is correct that the stricken words should be "~~controlled escrow~~" instead of "~~title insurance~~" but that difference is immaterial since the words are stricken and since, as the commenter demonstrates, the meaning was clear.

**Summary of Comment (page 2-3):**

The Department has not considered all of the comments presented and is acting contrary to law. For example, while the definition of "full escrow" in section 2355.3 states that it includes "at a minimum…requesting a preliminary title search or title commitment to determine the present condition of title to the property," Insurance Code section 12340.11 expressly states that a preliminary report shall not be construed as a representation as to the condition of title to real property. Many court decisions confirm that a preliminary report does not constitute a representation as to the condition of title.

**Response to Comment:**

The Commissioner rejects this comment. To the extent the comment merely restates prior comments of the commenter, the Commissioner incorporates his responses to those comments here. The commenter materially misquotes section 2355.3. The full sentence reads: "*'Full escrow' means the complete set of escrow activities associated with a typical residential transaction, including, at a minimum: serving as the liaison to all parties in the transaction; preparing escrow instructions; requesting a preliminary title search or title commitment to determine the present condition of title to the property; complying with the lender's requirements as specified in the escrow agreement; receiving purchase funds from the buyer; preparing or securing the deed or other documents related to escrow; prorating taxes, interest, insurance and rents according to instructions; securing releases of all contingencies or other conditions required; recording deeds and any other documents as instructed; closing escrow when all instructions from buyer and seller have been carried out; disbursing authorized funds; and preparing final statement.*" By selective quotation, the commenter suggests that any transaction that includes a request for a preliminary title or commitment has been defined as a full escrow. As the foregoing full quotation makes clear, that is not the case – a "full escrow" must include "the complete set of escrow activities associated with a typical residential transaction."

**Summary of Comment (page 3):**

The comments above reflect some of the major substantive changes that are not sufficiently related to the original text to have been anticipated by the public. The comments also highlight the Department's failure to consider earlier comments and alternatives to the proposed regulations. The regulations should, therefore, be withdrawn.

**Response to Comment:**

The Commissioner rejects this comment. The commenter has failed to explain why the amendments, which affect only existing proposed sections and deal with the same topics as their original text, are not, in commenter's view, "sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action." (Gov. Code section 11246.8.) The Commissioner has fully responded in this file to all comments requiring a response.

**Summary of Comment (page 3):**

The July 2006 version of the proposed regulations only identified one study that it was relying upon: the Competition Report. The revised regulations included a notice that the Department is now relying upon six additional reports, which first became available to the public on November 27, 2006. Four of the reports, including three Department reports and one report from the Washington Department of Insurance, did not even exist at the time that the regulations were proposed in July of 2006. The Department cannot rely upon reports that did not exist when the regulations were first issued, or even on reports that did exist, but were not identified.

**Response to Comment:**

The Commissioner rejects this comment. To the extent that the Commissioner has placed additional documents in the file, they are either documents that were not previously available or documents that respond to comments from the public regarding the original proposal. Members of the public have been given a full opportunity to comment on those reports. The procedure fully complies with the applicable statutes.

**Summary of Comment (page 3-4):**

"If the modifications were 'nonsubstantial,' solely grammatical', or 'sufficiently related' as the CDI claims, then why even use these reports as the basis for regulations proposed back in July?" These reports could not have possibly been considered at the August 30th hearing and therefore the Administrative Procedure Act requires a new 45-day notice ad comment period. The Department should either abandon the pretense that it relied upon these subsequent reports, or schedule a new public hearing so that the public can properly provide public comment and review.

**Response to Comment:**

The Commissioner rejects this comment. As noted above, reports inserted not to support an amendment but to respond to public comments received on unamended aspects of the original proposal are plainly appropriate, are certainly "sufficiently related" to the original proposal, and require only a 15-day period in which the public is invited to comment on those reports.

**Summary of Comment (page 4-5):**

The revised regulations do not show any evidence that the Department considered the commenter's comments regarding 1) lack of authority, 2) failure to consider alternatives and 3) inadequate consideration of the economic impact of the regulations. If the Commissioner does not honor the commenter's request for a new hearing, then the commenter intends to incorporate the prior comments submitted by the commenter on August 28, 2006 concerning the originally proposed regulations. (The commenter then proceeds to summarize the comments submitted by his company on August 28, 2006.)

Based upon these comments, the Commissioner should either withdraw the regulations or set a date for a hearing with at least 45 days notice.

**Response to Comment:**

The Commissioner incorporates here his responses to the comments the commenter has incorporated here.

**Volume 9 , Comment No. "Dec.comments 77-78":**

**Commentator:** Lexi Howard, Certified Escrow Officer and Instructor
**Date of Comment:** Received 12/15/06
**Type of Comment:** Written

**Summary of Comment:**

The November 27, 2006 Proposed Regulation Text is vastly different from that of the Proposed Regulation Text of July 3, 2006. The substantial changes warrant a new hearing and public comment period. The Department attempts to define what escrow service is at a minimum, but the phrase ignores the diverse transactional applications that may vary from escrow to escrow. For example, in some instances an attorney may prepare the Grant Deed instead of the escrow holder. In other instances, the preliminary title report has been previously ordered by a party to the transaction and not the escrow holder.

**Response to Comment:**

The Commissioner rejects this comment. The amended proposed regulations are "sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action." (Gov. Code

section 11246.8.) The commenter has failed to explain why the variations in escrows to which the comment refers are relevant to the proposed regulations. The Commissioner finds that the definitions in the proposed regulations are fully adequate to embrace the diversity of transactions to which the commenter alludes.

**Summary of Comment:**

The revised proposal is a poorly-composed attempt by the Department to change the way escrow business is transacted by defining minimum services and setting rates in a manner that requires algebraic calculations that are not transparent to the consumer and arbitrary guesswork by the escrow holder. For example, if the property is in the Bay Area and the escrow is in Southern California, which interim rate reduction percentage would apply: the one where the property is located or the one where the escrow holder's office is located?

**Response to Comment:**

The Commissioner rejects this comment. The answer to the question posed – whether the applicable interim rate is based on the location of the property or the location of the escrow office – is clear: the location of the property. The Commissioner has been clear in the past – including in response to similar questions posed in response to prior data calls – that references to location of real property transactions are references to the location of the real property. The commenter has failed to identify any other alleged grounds for "guesswork" by the commenter. The Commissioner finds the proposed regulations are sufficiently clear.

**Summary of Comment:**

The Department has failed to gather and process the information it needs, both from the escrow industry, escrow staff and regulators including those over banking and the Department of Real Estate and the Department of Corporations.

**Response to Comment:**

The Commissioner rejects this comment. The commenter has failed to identify what information it claimed the Commissioner does not have and should have. The Commissioner has determined after reviewing all of the comments submitted that he has sufficient information to adopt the proposed regulations.

**<u>Volume 9 , Comment No. "Dec.comments 79-82":</u>**

**Commentator:** L. Irv. Cousin II, Notary Public/Certified Signing Agent
**Date of Comment:** Received 12/11/06
**Type of Comment:** Written

**Summary of Comment (pages 1 and 2):**

Two weeks is insufficient time to respond to 274 pages of legal terminology. An example is the Definitions Section 2355.3, where the abbreviations are inconsistent. Definitions are important and should be in the same format throughout since legal terminology is difficult enough to read. All references to Notary Public and Certified Signing Agents should be repeated in a section designated for notarial functions. Such a section is needed to facilitate reference for those regulations applicable to notaries.

**Response to Comment:**

The Commissioner rejects this comment. Most of the 274 pages and 57 sections are unamended. The commenter has not identified a material inconsistency in the regulations and has not identified any manner in which he claims the proposed regulations are unclear. Few of the sections have any relevance to notaries as such, and each such section is clearly identified by reference to "notary fees."

**Summary of Comment (page 2):**

Another example is the How to Report Section 2356.5. This section presumes knowledge of the forms in this section. Samples of these forms should be added to the regulation for the benefit of those new to the procedures. If separate, then as a compatible software disk or CD with the forms and formats, without default to the Web.

**Response to Comment:**

The Commissioner rejects this comment. Section 2356.5 does not presume knowledge of the forms identified – those forms are defined in section 2356.9. As the commenter appears to acknowledge, the "sample forms" – actually a spreadsheet template much easier to use than mere forms – is provided. Commenter has not explained why promulgation on a CD would be easier for complying firms than simply to download the template file from the web, but nothing in the regulations preclude any person from requesting a copy of the template by other medium.

**Summary of Comment (page 2):**

In the part regarding Notary Fees, it does not make sense to state "Do no report any amount passed through without mark-up as a separate charge to the consumer." An example would help understanding. Also, a glossary of abbreviations used would be beneficial. In conclusion, consistency in the usage of abbreviations, formulas, Zip codes and words should be maintained throughout to promote clarity.

**Response to Comment:**

The Commissioner rejects this comment. The instruction not to report amounts passed through without mark-up is required to prevent the same quantity from being reported and counted twice. The commenter does not explain what kind of an example is

required. The suggested glossary of abbreviations is not necessary since most definitions are appropriately grouped together for easy lookup. The Commissioner has been careful to ensure that the terminology used in the regulations is commonly used and familiar to those called upon to comply (which does not appear to include commenter, who does not appear to be a title insurer, underwritten title company, or controlled escrow company).

**Volume 9 , Comment No. "Dec.comments 83":**

**Commentator:** Lena Signor, CSEO, CEI, Assistant Vice President of Alliance Title Co.
**Date of Comment:** Received 12/11/06
**Type of Comment:** Written

**Summary of Comment:**

There is extreme competition in the title business – within a 1 mile radius of my office are 7 other title company offices. We all offer the same products, and so service is the only difference. If you take away our ability to provide good service then we all lost.

**Response to Comment:**

The Commissioner rejects this comment to the extent it asserts that relevant competition exists in the title business. However, the commenter's acknowledgement that the only kind of competition in the business is competition in "service" agrees with the Commissioner's finding that there is no price-competition in the business. The commenter has failed to explain how competition in service to lenders, realtors, and others middle-men benefits consumers. The Commissioner has found that such competition does not benefit ultimate consumers and drives up the costs they pay, substantiating the need for rate-regulation.

**Summary of Comment:**

The title industry is very important to buyers, sellers and lenders. California leads the nation in real estate fraud. Title and Escrow protect consumers from real estate fraud. Without it there would be more fraud and more people displaced from their homes. Loan brokers charge excessive fees and you should regulate them. It's unfair to assign a flat fee to all companies when smaller companies don't have the overhead that eats up profits. Smaller companies will benefit and make money. Larger companies will lose money and lay off staff. That's not fair.

**Response to Comment:**

The Commissioner rejects this comment. To the extent the comment does not address the amendments to the proposed regulations, no response is necessary. To the extent the commenter calls for regulation of loan-broker charges, the commenter has failed to cite statutory authority for the Commissioner to do so. The claim that smaller companies are

advantaged by the proposed regulations is unexplained and contrary to the claims of the smaller companies that they lack the economies of scale to compete on price.

**Volume 9, Comment No. Dec. Comments 84-89**

**Commentator:** PJ Garcia and Tim Egan, on behalf of the Escrow Institute of California (EIC)
**Date of Comment:** Dated December 15, 2006 and received December 15, 2006
**Type of Comment:** Written

**Summary of Comment (cover letter):**

EIC is commenting on the version of the regulations reissued on November 27, 2006. EIC thinks that this version of the regulations is significantly different from the July 3, 2006 version and on that basis requests another public hearing. EIC says that until we amend the regulations to reflect the changes they suggested at the August 30, 2006 hearing, they continue to oppose the "repressive" regulations as "anti-small business."

**Response to Comment:**

The Commissioner has considered this request for hearing and rejects the request. Each of the changes proposed is sufficiently related, such that a reasonable member of the directly affected public could have determined from the notice that these changes to the regulation could have resulted.

To the extent that this comment reiterates the comments submitted in August of 2006, no response is necessary, as the August 30, 2006 comments were already responded to in the summary and response of the August 30, 2006 hearing transcript and in Volume 6 of the rulemaking file comments. (Government Code Sections 11346.9 & 11346.8(c).)

**Summary of Comment (cover letter):**

Although the Department said that they want to cleanup illegal kickback activity, DOI has eliminated the data gathering on alleged recipients of such alleged kickbacks. We support the objective of cleaning up illegal kickbacks – therefore you should not delete the reporting requirements necessary to track that activity. It takes a payee and a recipient to consummate an illegal activity and requiring only one party to report does not make sense.

**Response to Comment:**

The commenter has failed to identify to which data elements claimed to have been eliminated from the statistical plan the comment refers. Accordingly, no response can be given.

**Summary of Comment:**

Their previous letter of August 8, 2006 is attached. Those comments are not summarized herein because they were previously submitted as part of the summary and response to the original draft of the regulations (see bates page number 2186).

**Response:**

No response is necessary, as the August 30, 2006 comments were already responded to in the summary and response of the August 30, 2006 hearing transcript. Specifically, these comments were summarized and responded to in Volume 6 of the rulemaking file comments. Moreover, these comments do not address the November 27 revisions to the proposed regulation text and do not require a response on that basis as well. (Government Code Sections 11346.9 & 11346.8(c).)

**Volume 9, Comment No. "Dec. Comments 90-125"**

**Commentator:** Paul Chang and Chen-Li Liu
**Date of Comment:** Dated December 14, 2006
**Type of Comment:** Written

**Summary of Comment:**

Presenting the perspective of victims of "real estate scams," the commenter states that one of the primary goals of the proposed regulations is to monitor the industry for signs of improprieties. In order to monitor the industry, the Commissioner should determine if sufficient data is being collected. Two good tests to see if sufficient data is being collected is to actually run reports to see if it is possible to identify patterns of illegal behavior. A second good test is to see how well the Commissioner responds to reports of improprieties.

**Response to Comment:**

While the majority of this comment is not specifically directed at the Commissioner's proposed regulations or to the procedures followed in proposing the regulations, the Commissioner agrees with the commenter that it is important to ensure that the Commissioner is collecting sufficient data to determine whether title insurance and escrow rates are reasonable. The proposed regulations, and in particular the statistical plan, are designed to do just that.

To the extent that this comment is describing other components of the real estate industry other than title insurance or escrow services, they are beyond the scope of this rulemaking proceeding and are not specifically directed at the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. No further response is, therefore, necessary. (Government Code Sections 11346.9 & 11346.8(c).)

**Summary of Comment (Bates pages "Dec.comments 91-125":**

The commenter describes in detail his lawsuit in the state of Nevada, which concerns allegations that a title insurer forged documents related to the commenter's real estate transaction, and then sued the commenter on the grounds of "slander of title."

The commenter also wonders whether the proposed regulations would allow the Commissioner to check to see how many escrows have failed within a given period of time and whether the figures could be published for everyone to review, including the names of persons who have been involved in escrow transactions that have failed. The commenter urges the California Department of Insurance to investigate the commenter's allegations concerning this Nevada transaction and to conduct audits of transactions such as the commenter's transaction. The commenter attaches a number of legal pleadings which concern the commenter's Nevada lawsuit.

**Response to Comment:**

This portion of the comment and the legal papers related to the lawsuit are not specifically directed at the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. No response is, therefore, necessary. (Government Code Sections 11346.9 & 11346.8(c).)

To the extent that this commenter wonders whether the Department will collect information related to escrow transactions, the statistical plan will collect detailed information about escrow transactions, including information regarding the number of escrow transactions that do not close for one reason or another. Some of this information will be published. The information collected and published, however, will be aggregated and any protected, non-public information will not be shared with the public.

**Volume 9, Comment No. "Dec.comments 126-143":**

**Commentator:** Patrick Shannon on behalf of Stewart Title Guaranty Company
**Date of Comment:** Received 12/15/06
**Type of Comment:** Written

**Summary of Comment (cover page):**

This passage references the attached comments and includes a request for confirmation of receipt.

**Response to Comment:**

This portion of the comment is not specifically directed at the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. No response is, therefore, necessary. (Government Code Sections 11346.9 & 11346.8(c).)

**Summary of Comment (page 1):**

This passage includes a description of the commenter's affiliations and a request that the comments be incorporated into the rulemaking file for this matter.

**Response to Comment:**

This comment is not specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action, so no response is necessary. (Gov. Code section 11346.9(a)(3).)

**Summary of Comment (page 1):**

The commenter requests a new 45-day notice and comment period and lists as support for this request the commenter's comments on the revised regulations.

**Response to Comment:**

The Commissioner rejects this comment. The Commissioner has provided the comment period prescribed by law. The Commissioner responds in this file to the comments on the revised regulation together with the summaries of those comments.

**Summary of Comment (page 1-2):**

The Commissioner lacks authority to set rates and for this reason, the proposed regulations are invalid as a matter of law. Insurance code section 12401 prohibits the Commissioner from setting rates either directly or by formulae. While the Commissioner has the authority to declare a rate to be excessive, Insurance Code section 12401.3 requires the use of quasi-adjudicative review procedures in which the Commissioner must 1) find the rate to be unreasonably high for the services provided and 2) find that a reasonable degree of competition does not exist. The statutory authority restricts the Commissioner to an insurer-by-insurer (or rate-by-rate) evaluation and can only occur after a probable cause finding, notice and a hearing on an individual rate. The statutes do not permit the regulation of rates on a comprehensive basis for the entire industry. Insurance Code section 12414.15, by limiting the procedures available to those specifically enumerated in the title insurance chapter of the Insurance Code, expresses the Legislature's intent to prohibit the setting of rates in the manner proposed by these regulations.

**Response to Comment:**

This comment does not regard the changes noticed on November 27, 2006, so no response is required. (Gov. Code section 11346.8(c).)

**Summary of Comment (page 2-3)**

The Competition Report, which the Commissioner relies upon to justify his rate-setting action, is inadequate. A series of expert economists and actuaries have discredited the report, and their comments are incorporated by reference. The documents incorporated by reference are the following:

- An Economic Analysis of the December 2005 Birny Birnbaum Report to the California Insurance Commissioner," by Gregory Vistnes, Ph.D., dated January 5, 2006;
- Statement of Michael J. Miller, FCAS, MAAA, on behalf of the California Land Title Association, dated January 5, 2006;
- "Incorrect Conclusions about Competition in the California Title and Escrow Markets Asserted in the December 2005 Contractor Report to the California Insurance Commissioner," by Nelson R. Lipshutz, dated January 5, 2006;
- "Comments and Objections to the Report of the California Insurance Commissioner; An Analysis of Competition in the California Title Industry and Escrow Industry by Birny Birnbaum," dated December 5, 2005, with an analysis prepared by Dr. Jerod E. Hazelton, Professor of Finance, Insurance, Real Estate and Law, University of North Texas;
- "Competition in Title Insurance Rates in California," prepared by Bruce E. Stangle, Ph.D. and Bruce A. Strombom, Ph.D., dated January 23, 2006.

**Response to Comment**

To the extent a response to the referenced comments is required, the Commissioner has responded to them separately elsewhere in this file, where each commenter's submission is summarized.

**Summary of Comment (page 3):**

The methodologies used in the Competition Report to determine whether rates are excessive are fatally flawed from the start. As actuary Michael Miller explains on page 4 of his January 5, 2006 Statement, the determination of whether rates are excessive must be done on a company-by-company basis and broad statements about the excessiveness of rates on an industry-wide basis have no significance. This is due to the unique nature of each insurer's future losses, expenses and capital and cost of capital structure. The Competition Report does not contain the actuarial analysis necessary to support an opinion that any insurer's rates are excessive.

**Response to Comment:**

This comment does not regard the changes noticed on November 27, 2006, so no response is required. (Gov. Code section 11346.8(c).) The Commissioner has responded to Mr. Miller's January comments separately in this file.

**Summary of Comment (page 3-4):**

Any determination of whether rates are excessive must be based on an analysis of the reasonableness of prospective loss costs, expenses and an estimate of the cost of capital. In order for the Competition Report to support its conclusion that rates are excessive, this kind of actuarial analysis of rate adequacy or excessiveness would be necessary. But, as Michael Miller explains on page 3 of his January 5, 2006 comments, nothing of this nature is contained within the Report.

**Response to Comment:**

This comment does not regard the changes noticed on November 27, 2006, so no response is required. (Gov. Code section 11346.8(c).) The Commissioner has responded to Mr. Miller's January comments separately in this file.

**Summary of Comment (page 4):**

The conclusion that a reasonable degree of competition does not exist in the market is unfounded. This conclusion is undermined, as Dr. Lipshutz explains, because of a number of incorrect assertions within the Competition Report. For instance, the Report claims that there are a number of barriers to entry in the market. Dr. Lipshutz, however, has demonstrated that the market is porous and presents evidence of 253 new escrow companies that have entered the market since 2003.

**Response to Comment:**

This comment does not regard the changes noticed on November 27, 2006, so no response is required. (Gov. Code section 11346.8(c).) The Commissioner has responded to Dr. Lipshutz's comments separately in this file.

**Summary of Comment (page 4):**

Similarly, the Report states that title insurers and underwritten title companies are earning excessive profits. But, Dr. Lipshutz presents data that shows that the returns are average – at best. In fact, the S&P 500 and Dow Jones Industrials, as well as accounting firms and legal services firms, appear to have outperformed the rate of return on equity for title insurers in 2003 and 2004.

**Response to Comment:**

This comment does not regard the changes noticed on November 27, 2006, so no response is required. (Gov. Code section 11346.8(c).) The Commissioner has responded to Dr. Lipshutz's comments separately in this file.

**Summary of Comment (page 4):**

The Report also fails to analyze industry returns over a relevant period of time. The Report only looks at the years during the boom market, but does not account for the bane

years as well as the boom years. As Dr. Lipshutz points out, for example, in the 1980s, title insurers earned a return on equity that was 30% below the interest rate on risk-free T-bills.

**Response to Comment:**

This comment does not regard the changes noticed on November 27, 2006, so no response is required. (Gov. Code section 11346.8(c).) The Commissioner has responded to Dr. Lipshutz's comments separately in this file.

**Summary of Comment (page 4):**
The deficiencies referenced above, as well as many other flaws which were identified by the expert economists and actuaries, demonstrate that the Commissioner's reliance upon the Report as the predicate for rate regulation is misplaced.

**Response to Comment:**

This comment does not regard the changes noticed on November 27, 2006, so no response is required. (Gov. Code section 11346.8(c).) The Commissioner has responded to prior comments addressing the Competition Report separately in this file.

**Summary of Comment (page 4-5):**
The California title insurance industry is highly competitive. A review of the Department of Insurance web site for pricing of title premiums shows that there is a broad range of prices, which is a hallmark of a price-competitive market.' Licensed title companies in Los Angeles County showed a 27 percent increase in premiums for the CLTA standard form policy for a $525,000 sale/purchase transaction from lowest to highest company. Similarly, the ALTA Residential Policy showed a range in pricing of 9.5%. The ALTA Homeowner's Policy of Title Coverage varied by 12.7%. The price ranges described by the commenter are set forth directly below:

**Califoria Department of Insurance Web Site Pricing Information**
**Sale/Purchase of Single Family Residence or Condo**
**$525,000**

| | CLTA Standard Form Policy | ALTA Residential Policy | ALTA Homeowner's Policy | Title Lender Fee |
|---|---|---|---|---|
| | $ 1,751 | $ 1,751 | $ 1,926 | $ 625 |
| | $ 1,398 | $ 1,748 | $ 2,010 | $ 593 |
| | $ 1,741 | $ 1,751 | $ 1,915 | $ 697 |
| | $ 1,751 | $ 1,751 | $ 1,926 | $ 625 |
| | $ 1,622 | $ 1,622 | $ 1,785 | $ 1,622 |
| | $ 1,741 | $ 1,741 | $ 1,915 | $ 697 |
| | $ 1,751 | $ 1,751 | $ 1,926 | $ 625 |
| | $ 1,636 | $ 1,636 | $ 1,800 | $ 673 |
| | $ 1,685 | $ 1,685 | $ 1,854 | $ 657 |
| | $ 1,622 | $ 1,622 | $ 1,784 | $ 587 |
| | $ 1,776 | N/A | $ 1,954 | $ 686 |
| | $ 1,751 | $ 1,751 | $ 1,926 | $ 625 |
| | $ 1,741 | $ 1,741 | $ 1,915 | $ 697 |
| | $ 1,751 | $ 1,751 | $ 1,927 | $ 733 |
| | $ 1,751 | $ 1,751 | $ 1,926 | $ 1,751 |
| | $ 1,709 | N/A | $ 1,880 | $ 605 |
| | $ 1,776 | $ 1,776 | $ 1,954 | $ 696 |
| Minimum | $ 1,398 | $ 1,622 | $ 1,784 | $ 587 |
| Maximum | $ 1,776 | $ 1,776 | $ 2,010 | $ 1,751 |
| Difference | $ 378 | $ 154 | $ 226 | $ 1,164 |
| Percent Different | 27.0% | 9.5% | 12.7% | 198.3% |

Source: California Department of Insurance
http://interactive.web.insurance.ca.gov/webuser/titw_get_rates$tr_qry.actionquery
Note: Company name has been deleted

## Response to Comment:

The Commissioner rejects this comment. What the data show is that there is very little pricing diversity among the major companies. While there is greater pricing diversity among the smaller companies, there is no evidence that a significant number of consumers are paying the lower prices. On the contrary, the fact that the larger companies do not find it necessary to reduce their own rates to meet the lower prices confirms the absence of price competition.

**Summary of Comment (page 5-6):**
The California title insurance industry is highly competitive. A review of the Department of Insurance web site for pricing of title premiums shows that there is a broad range of prices, which is a hallmark of a price-competitive market. Variation among lenders policies showed even greater price variation. Even if two outlying premium charges are removed, the fee range still shows a variance of 24.9%.

Similar results can be found in refinance title premium fees. Los Angeles county rates are generally considered to be representative of trends statewide, and demonstrate that the title industry is extremely competitive. If one were to assume that the refinanced loan amount is 80 percent of the median price, a 12 percent range in from low to high refinance rates can be found. Specifically, the following fees would be found in Los Angeles County:

**Califoria Department of Insurance Web Site Pricing Information**
**Refinance of Single Family Residence or Condo**
**$420,000**

| | Refinance Title Lender Fee | Excluding Lowest Fee Refinance Title Lender Fee |
|---|---|---|
| | 1,047 | 1,047 |
| | 983 | 983 |
| | 960 | 960 |
| | 1,047 | 1,047 |
| | 550 | Deleted |
| | 960 | 960 |
| | 1,047 | 1,047 |
| | 995 | 995 |
| | 1,033 | 1,033 |
| | 983 | 983 |
| | 1,075 | 1,075 |
| | 1,047 | 1,047 |
| | 960 | 960 |
| | 1,054 | 1,054 |
| | 1,047 | 1,047 |
| | 1,013 | 1,013 |
| | 1,075 | 1,075 |
| Minimum | $ 550 | $ 960 |
| Maximum | $ 1,075 | $ 1,075 |
| Difference | $ 525 | $ 115 |
| Percent Different | 95.5% | 12.0% |

Source: California Department of Insurance
http://interactive.web.insurance.ca.gov/webuser/titw_get_rates$tr_qry.actionquery
Note: Company names have been deleted

**Response to Comment:**

The Commissioner rejects this comment for the reasons stated in the preceding response.

**Summary of Comment (page 7):**

The Department has not presented any actuarial analysis of the adequacy of title industry rates, despite the fact that the Insurance Code provides protections against inadequate rates. Although it has not presented any actuarial study, the Department proposes to roll back rates on an interim basis by 25.6 percent.

**Response to Comment:**

The Commissioner rejects this comment. The question of the adequacy of rates is not addressed in the proposed regulations. To the extent the commenter claims that the rate levels that will be derived from the proposed regulations as the maximum non-excessive rates are, in fact, inadequate, the commenter has proffered no evidence to support such an assertion. On the contrary, the proposed regulations provide for the maximum rate to be set high enough to cover each company's reasonable costs.

**Summary of Comment (page 7):**

The Department provides no evidence to support the fact that a roll back of premium rates to levels observed in 2000 will provide income levels necessary to be adequate and non-confiscatory to the title industry, given market activity and related expenses. The Insurance Code requires that compensation to the industry is adequate to provide reserves and surplus necessary to pay future policyholder claims.

**Response to Comment:**

The Commissioner rejects this comment. The Commissioner has reasonably found that the rates the companies chose to charge in 2000 were adequate and non-confiscatory, or they would have filed for rate increases, which they could have taken without affirmative approval of the Commissioner. Sections 2357.19 and 2358.9 of the proposed regulations merely return each company's rate to that 2000 level, adjusted for increases in costs and exposure – not taking into account cost-savings due to automation that each company could reasonably be expected to have realized since 2000.

**Summary of Comment (page 7):**

As the following table demonstrates, while examining just the revenue and not accounting for expenses and total transactions, the year 2000 represents one of the worst years in recent memory for title premium returns. Title premiums were down 14.6 percent when compared to 1998 before considering inflation, and down 20.6 percent after considering inflation. From 1996 to 2005 both after adjusting for inflation and before adjusting for inflation, only in two of the ten years did the industry experience title insurance premiums that were less than those in 2000. The two years in which premiums were lower than 2000 were both years in which there was a recession in California real estate. By picking the year 2000 as the start date for the Commissioner's analysis of the interim rate reductions, it appears that the year was chosen to achieve a pre-determined outcome without any regard for the Commissioner's duty to protect against inadequate rates.

The table in support of this comment is set forth in full below:

**California Title Premiums**
**Nominal and Inflation Adjusted**

| | Nominal Dollars* | Inflation Adjusted 2005 Dollars | Consumer Price Index All Urban Consumers LA-Riverside-Orange County Not Seasonally Adjusted First-Half ** |
|---|---|---|---|
| **1990** | $ 1,145,826,000 | $ 1,703,347,307 | 134 |
| **1991** | $ 1,040,501,153 | $ 1,477,318,815 | 140.3 |
| **1992** | $ 1,212,281,403 | $ 1,659,700,725 | 145.5 |
| **1993** | $ 1,287,594,009 | $ 1,712,207,788 | 149.8 |
| **1994** | $ 991,937,421 | $ 1,300,815,894 | 151.9 |
| **1995** | $ 765,916,720 | $ 986,235,363 | 154.7 |
| **1996** | $ 882,512,311 | $ 1,120,436,280 | 156.9 |
| **1997** | $ 1,004,396,372 | $ 1,254,393,463 | 159.5 |
| **1998** | $ 1,470,604,822 | $ 1,812,775,251 | 161.6 |
| **1999** | $ 1,455,324,863 | $ 1,753,785,316 | 165.3 |
| **2000** | $ 1,283,696,244 | $ 1,503,305,654 | 170.1 |
| **2001** | $ 1,887,077,929 | $ 2,129,778,603 | 176.5 |
| **2002** | $ 2,551,408,717 | $ 2,806,408,705 | 181.1 |
| **2003** | $ 3,336,797,413 | $ 3,560,203,774 | 186.7 |
| **2004** | $ 3,068,170,089 | $ 3,191,537,764 | 191.5 |
| **2005** | $ 3,198,269,133 | $ 3,198,269,133 | 199.2 |
| **10-Year Average** | $ 2,013,825,789 | $ 2,233,089,394 | |

Sources * CDS (Corporate Development Services, Demotech, American Land Title Association
** US Bureau of Labor Statistics

## Response to Comment:

The Commissioner rejects this comment. As explained above, if the rates in 2000 were anything other than satisfactory to companies, they could have filed for and obtained rate increases. The fact that they did not is clear basis for finding that the 2000 rates were reasonable. The year 2000 was, indeed, carefully selected – not because of any asserted poor performance by the companies but because that year marked the beginning of the sharp increase in housing prices. Since the sole purpose of the proposed regulations is to offset the increase in title premiums and other charges due solely to housing inflation that exceeded the cost of providing the insurance or other services, the selection of 2000 is entirely appropriate.

## Summary of Comment (page 8-9):

The rationale for the interim rate reductions has been substantially undermined by the recent decline in housing sales over the last 24 months. The California Association of Realtors estimates that the numbers in 2006 are down by 23%, and predicts an additional 7% decline from 2006 to 2007. Those forecasts are set forth below:

**California Association of REALTORS® 2007 Forecast**

| | 2005 | 2006* | 2007* |
|---|---|---|---|
| **Single Family Sales (Thousands)** | **625.00** | **481.20** | **447.50** |
| **Percent Change (Year-To-Year)** | **0.0%** | **-23.0%** | **-7.0%** |
| **Percent Change (Since 2005)** | **0.0%** | **-23.0%** | **-28.4%** |
| **Median Price ($ Thousands)** | **$524** | **$561** | **$550** |
| **Percent Change (Year-To-Year)** | **16.2%** | **7.0%** | **-2.0%** |
| **Percent Change (Since 2005)** | | | |

*** Forecast**

**Source: California Association of REALTORS®**

## Response to Comment:

The Commissioner rejects this comment. The first three rows of the table are irrelevant to the interim rates under the proposed regulations. Sections 2357.19 and 2358.9 address solely the sharp increase in average prices, not the transaction volume. The proposed regulations provide consumers no relief due to the sharp increase in transaction volume since 2000, so there is no need to respond to forecasted changes in transaction volume.

The comment regarding changes in home prices is relevant to the proposed regulations, but the November amendment to the proposal fully responds to the point. To the extent average home prices fall after 2006, the required interim rate reductions will decline proportionately.

## Summary of Comment (page 9):

DataQuick, which reports actual county-by county deed information, confirms that year-to-date sales are off 20%. From October 2005 to October 2006, sales are down 22.8%. The DataQuick figures are set forth below:

**California Existing Home Sales: October 2006**

| Sales Cities | Year To Date | Last YTD | Percent Change | October 2006 | October 2005 | Percent Change |
|---|---|---|---|---|---|---|
| Alameda | 16,605 | 21,879 | -24.1% | 1,586 | 2,187 | -27.5% |
| Contra Costa | 16,677 | 21,257 | -21.5% | 1,658 | 2,104 | -21.2% |
| Marin | 3,110 | 4,064 | -23.5% | 286 | 395 | -27.6% |
| Napa | 1,367 | 1,926 | -29.0% | 140 | 187 | -25.1% |
| San Francisco | 5,197 | 6,164 | -15.7% | 523 | 605 | -13.6% |
| San Mateo | 6,461 | 7,901 | -18.2% | 653 | 754 | -13.4% |
| Santa Clara | 18,726 | 26,297 | -28.8% | 1,971 | 2,557 | -22.9% |
| Solano | 6,382 | 9,791 | -34.8% | 605 | 936 | -35.4% |
| Sonoma | 5,789 | 7,820 | -26.0% | 557 | 783 | -28.9% |
| Los Angeles | 83,999 | 101,139 | -16.9% | 7,662 | 9,792 | -21.8% |
| Orange County | 30,534 | 41,554 | -26.5% | 2,715 | 3,614 | -24.9% |
| San Diego | 35,522 | 47,167 | -24.7% | 3,282 | 4,155 | -21.0% |
| Riverside | 49,301 | 55,895 | -11.8% | 4,200 | 5,542 | -24.2% |
| San Bernardino | 34,617 | 38,950 | -11.1% | 3,318 | 4,217 | -21.3% |
| Ventura | 9,908 | 13,493 | -26.6% | 940 | 1,169 | -19.6% |
| Totals | 324,195 | 405,297 | -20.0% | 30,096 | 38,997 | -22.8% |

Source: DataQuick DQNew.com

**Response to Comment:**

The Commissioner rejects this comment. Sections 2357.19 and 2358.9 address solely the sharp increase in average prices, not the transaction volume. The proposed regulations provide consumers no relief due to the sharp increase in transaction volume since 2000, so there is no need to respond to changes in transaction volume. Furthermore, were there any relevance to transaction volume, the relevant comparison would be to 2000 levels. A decline of 20% to 23% from 2005 levels is far smaller than the increase from 2000 to 2005.

**Summary of Comment (page 9-10):**

According to the Home Mortgage Disclosure Act (HMDA), refinance activity has seen a significant reduction and will likely continue to decline. The HMDA data demonstrate that refinancings, as a percentage of all California residential loans, rose from 31.7 percent in 2000, peaked at 75.9 percent in 2003 and receded to 59.2 percent in 2004. According to the model, 53.6 percent of all California residential lending volume in 2006 pertained to refinance transactions. 60.4 percent of all California residential lending volume pertained to refinance transactions in 2005, according to the same model. The model is set forth directly below:

**California Refinance Estimates**
**Refinance as a Percent of Total Lending Dollars**

| Year | National* Refinance Percentage | California** Refinance Percentage | |
|---|---|---|---|
| 2000 | 11.9 | 30.8 | |
| 2001 | 56.5 | 68.2 | |
| 2002 | 61.5 | 72.3 | |
| 2003 | 71 | 76.1 | |
| 2004 | 52.2 | 59.8 | |
| 2005 | 49.3 | 60.4 | regression estimates |
| 2006 | 40.7 | 53.6 | |

Source: * Fannie Mae
** Home Mortgage Disclosure Act--Data Aggregated by the Mortgage Bankers Association

SUMMARY OUTPUT

| *Regression Statistics* | |
|---|---|
| Multiple R | 0.992392798 |
| R Square | 0.984843466 |
| Adjusted R Square | 0.979791288 |
| Standard Error | 2.582467335 |
| Observations | 5 |

ANOVA

| | *df* | *SS* | *MS* | *F* | *Significance F* |
|---|---|---|---|---|---|
| Regression | 1 | 1300.044587 | 1300.0446 | 194.93444 | 0.000795564 |
| Residual | 3 | 20.00741261 | 6.6691375 | | |
| Total | 4 | 1320.052 | | | |

| | *Coefficients* | *Standard Error* | *t Stat* | *P-value* |
|---|---|---|---|---|
| Intercept | 21.32441271 | 3.096646602 | 6.886292 | 0.0062732 |
| X Variable 1 | 0.792484933 | 0.056760567 | 13.961892 | 0.0007956 |

## Response to Comment:

The Commissioner rejects this comment. Changes in the percentage of loans attributable to refinancings are irrelevant. Again, the transaction volume itself is irrelevant to the interim rate provisions of the proposed regulation, which merely offset the increases in housing prices, not transaction volume, since 2000. The proposed regulations did not attempt to recapture for consumers the savings that might have been attributable to sharply higher transaction volume since 2000, so there is no reason to take the much smaller declines in transaction volume since 2006 into account – and the proffered tables do not even demonstrate any decline in transaction volume, merely in the percentage mix of sales and refinancings.

**Summary of Comment (page 11-12):**

The following table estimates the level of residential refinance-related title premiums in 2006 to gauge the probable decline in 2006 or 2007. According to the table, title premiums are projected to decline from 2005 levels by 20 percent in 2006 and by more than 26 percent in 2007. Accordingly, title premiums from sales and purchase transactions are projected to plummet by $400 million in 2006 and another $132 million in 2007. When the declining purchase transactions are combined with the varying refinance activity, the total reduction in premiums is expected to be $785 million in 2006 and $945 in 2007. Thus, due solely to changing conditions in the market, the title industry faces an almost $1 billion dollar cut in revenue. The proposed regulations would add an additional $1 billion dollar cut, and result in an almost 40 percent reduction in premiums since 2005. This will be financially catastrophic for title companies.

The table which sets forth the basis for these estimates is printed below:

**Forecast of California Residential Title Premium Revenues**

**California Exisitng Home Sales and Median Prices**

| Year | Median Price (Thousands) | A Existing Home Sales (Thousands) | B ALTA Policy ** | (A x B) Relative Title Premiums From Purchase-Sale Transactions | Title Premium Percent Change From 2005 Levels |
|---|---|---|---|---|---|
| 2005 | $ 524.0 | 625.0 | $ 1,622 | 1,013,750.00 | |
| 2006f | $ 561.0 | 481.2 | $ 1,692 | 814,190.40 | -19.7% |
| 2007f | $ 550.0 | 447.5 | $ 1,672 | 748,220.00 | -26.2% |

* Rounded to the nearest $5,000 to Reflect CDI Title Insurance Survey
** California Department of Insurance, First American Rates
Source: California Association of Realtors® 2007 Forecast

**Estimation of Title Premiums From Purchase Transactions**

| Year | California Total Title Premiums | Refinance Share of Lending Volume | Refinance Share of Title Premiums* | Implied Percentage Title Premiums From Purchase Transactions | Estimated Dollar Title Premiums From Purchase Transactions |
|---|---|---|---|---|---|
| 2005 | $ 3,198,269,133 | 60.4% | 36.2% | 63.8% | $ 2,039,333,074 |
| 2006f | | 53.6% | 32.1% | 67.9% | $ 1,637,884,500 |
| 2007f | | 55.3% | 33.2% | 66.8% | $ 1,505,173,655 |

* Assumes an average 40 percent reissue credit

**Estimated Reduction in Total California Title Premiums For 2006 and 2007**

| Year | California Total Title Premiums | Purchase Transactions | Refinance Transactions | Estimated Change in California Title Permium Revenues from 2005 |
|---|---|---|---|---|
| 2005 | $ 3,198,269,133 | $ 2,039,333,074 | $ 1,158,936,059 | |
| 2006f | $ 2,413,876,512 | $ 1,637,884,500 | $ 775,992,013 | $ (784,392,621) |
| 2007f | $ 2,252,579,550 | $ 1,505,173,655 | $ 747,405,895 | $ (945,689,583) |

## Response to Comment:

The Commissioner rejects this comment. Sections 2357.19 and 2358.9 address solely the sharp increase in average prices, not the transaction volume. The proposed regulations provide consumers no relief due to the sharp increase in transaction volume since 2000, so there is no need to respond to changes in transaction volume. The comment itself predicts 2007 price-levels 5% higher than 2005 and only 2% lower than 2006, and the commenter's forecasts are themselves dubious and rife with unsupported assumptions, but more importantly the exercise is irrelevant to the proposed regulations. The proposed regulations provide for a possible decline in 2009 home prices from 2006 and reduce the interim-rate reduction proportionately. The decline in transaction volume is, as noted above, irrelevant to the proposed regulations. And the commenter has wholly failed to

take into account lower costs and exposures from declining premium volume, rendering the projections about lower premiums irrelevant even were they credited as accurate forecasts.

**Summary of Comment (page 12):**

The Commissioner's own actions in office strongly suggest that there is adequate competition in the title industry. Since taking office the Commissioner has not rejected a single title insurance industry acquisition, including the latest Capital Title Group acquisition by LandAmerica. Although Capital Title Group had a 1 percent market share nationally, it made up 18.9 percent of California's total premiums in 2005. The Capital Title Group's California company - United Capital Title - had a 3.85 percent California market share in 2005. Such a major transaction should never have been approved if the Commissioner truly believed that the market lacked competition.

**Response to Comment:**

The Commissioner rejects this comment. The commenter has not shown that that there was a reasonable degree of competition that the subject acquisitions could reasonably have been expected to injure. Furthermore, a "reasonable degree of competition" under Insurance Code section 12401.3 is a different standard from the inquiry into competition that the Commissioner conducts with respect to mergers and acquisitions, so acquisitions can still be approved in a market that lacks a reasonable degree of competition for rate-regulation purposes. In approving the acquisition, the Commissioner noted that it did not affect the standing of the top five insurance groups, that the acquiring firm remained solidly in third place and that the acquisition of a relatively small player did not appreciably affect the competitive structure as outlined in the Competition Report.

**Summary of Comment (page 12):**

Rate reductions are unnecessary because rates have not increased in California since 1994. In fact, numerous rate reductions for electronic ordering, special refinance rates, first time buyers and elderly homebuyer rate reductions have been introduced into the market since that time. There is not sufficient analytical support for a rate cut, and no analysis has been produced to ascertain whether a proposed rate cut will make rates inadequate for members of the industry.

**Response to Comment:**

The Commissioner rejects this comment, for which no response is required since it does not regard the changes noticed on November 27, 2006 (Gov. Code section 11346.8(c)). As the Commissioner has previously noted, what industry commenters have called the absence of rate increases is really an absence of change in the percentage of the transaction price collected in title premium and escrow fees. The constant percentage applied to soaring average home prices has allowed companies to collect vastly higher revenues than would be cost-justified. The existence of limited special-purpose rate cuts,

in the absence of reductions in base rates, does not alter the Commissioner's conclusion that there is not a reasonable degree of competition.

**Summary of Comment (page 12):**

The Commissioner's process of proposing a statistical plan, but proposing a 25+ percent rate cut in the interim without statistical support or actuarial analysis is out of step with other states' procedures to regulate title insurance. For example, Texas did not cut rates until after extensive hearings, data calls, expert testimony, current economic data and consumer representation. When Texas finally moved to cut rates, it reduced them by a modest 3.2%. In contrast to the approach of the State of Texas, the California Commissioner has not produced any evidence to justify rate cuts for the state.

**Response to Comment:**

The Commissioner rejects this comment. The basis for the interim-rate reductions is explicit and valid, as explained here and in the Staff Report on Interim Rates. The Commissioner has considered regulatory practices in other states and has found that none satisfactorily protects consumers.

**Summary of Comment (page 13):**

Instead of a rate reduction, evidence appears to suggest that income for the title industry has already been dramatically reduced by market conditions. The Commissioner's Notice of Proposed Action notes that the Commissioner is required to prohibit excessive rates, but does not include a reference to the Commissioner's additional responsibility to protect against inadequate rates. In fact, there is no evidence that the Commissioner has conducted any analysis to determine whether rates are currently adequate, let alone an analysis to ensure that the regulations will not produce inadequate rates.

**Response to Comment:**

The Commissioner rejects this comment. The Commissioner has explicitly limited the scope and effect of the proposed regulations to excessive rates, not inadequate rates, because the Commissioner has found the former is a far more prevalent concern than the latter and requires greater regulatory action. Companies remain obligated to charge rates that are not inadequate, and the Commissioner retains his statutory duty to address any allegedly inadequate rates.

**Summary of Comment (page 13):**

While the Commissioner claims that there will be an increase in California jobs due to the regulations, in fact, jobs will be lost. The Commissioner's assumption that title and escrow expenditures will be reduced by $800 million and produce savings fails to appreciate the fact that the majority of these expenses are salaries and jobs that will be cut. An industry forecast estimates that salaries in 2006 will be an average of 61.1

percent of direct premiums for the top four underwriters. Because contracts for rent, issues of severance and fixed costs will prevent immediate cuts in expenses, most of the reductions in expense will be in the form of jobs.

**Response to Comment:**

The Commissioner rejects this comment. To the extent non-salary costs cannot be cut in the short term, the proposed regulations have been amended to delay any rate reduction until 2009 at the earliest, giving companies time to adjust their cost structures accordingly. The commenter has failed to proffer any evidence to deny the Commissioner's finding that savings for home buyers and sellers will leave them with more money to spend on other goods and services, stimulating employment in those industries.

**Summary of Comment (page 13):**

The Commissioner incorrectly assumes that the regulations will produce savings to the consumer. It is misleading and incorrect to assume that the proposed cuts will reduce title and escrow expenditures by at least 20 percent and result in savings of roughly 1 percent of the purchase price. For example, if you take a rate quote from First American for a $525,000 house in Los Angeles County that costs $1785 for title insurance and would cost $2,350 for escrow, the total fee would be $4,135, or 0.8 percent of the home sale price. A 20 percent reduction of this rate would be roughly 0.158 percent, which is nowhere near the 1 percent savings to the consumer, which is stated in the Commissioner's Notice. Thus, the regulations will have virtually no impact on housing sales.

**Response to Comment:**

The Commissioner rejects this comment. The commenter has misread the notice. The relevant saving is the percentage of the regulated premiums and fees – the 20% in this example. A 20% reduction in the $4,135 assumed by the comment is $827 more in the pocket of the consumer. The percentage of the total home cost is less relevant than the absolute magnitude of the savings – an amount large enough to buy furniture, appliances, or other valued goods and services.

**Summary of Comment (page 13-14):**

The costs to comply with the proposed regulations will be highly burdensome and compliance may not even be feasible. The commenter's California operations chief has estimated that it will require several employees and hundreds of thousands of dollars in annual expenses just to attempt to conform to the stat. plan requirements. Programming costs to determine how to capture the information requested in the stat. plan will also be very large.

**Response to Comment:**

The Commissioner rejects this comment. While the Commissioner does not deny that compliance costs will be significant, they are fully justified by the Commissioner's finding of hundreds of millions of dollars a year in excessive rates in this industry that collects more than $4 billion a year in revenue. The Commissioner has amended the proposed regulations to exempt from the reporting burden small independent companies until necessary software or services becomes commercially available.

**Summary of Comment (page 14):**

The regulations contain many errors. For example, the regulations use the US City Average consumer price index to adjust for labor inflation, but several regions in California (such as Los Angeles, Riverside and Orange County) have their own indicies which vary considerably from the US City Average consumer price index. Use of the US City Average will result in underestimated employment cost increases for many regions in California.

**Response to Comment:**

The Commissioner rejects this comment. The reason for using the national CPI is fully explained in the Staff Report on Interim Rates.

**Summary of Comment (page 14):**

The returns on surplus and reserves calculations contain numerous errors. For example, Fidelity was reported as having an extremely high return in the analysis, but that return was actually just a stock market transaction, when "FNT" spun off from "FNF." Corrections to these errors will demonstrate that industry rates of return are much lower than claimed by the Commissioner.

**Response to Comment:**

The Commissioner rejects this comment. The Commissioner has drawn limited inferences from the market returns, since those returns necessarily include non-regulated businesses and have other limitations. It is, however, of some relevance that members of the industry have occasionally realized large capital gains from transactions involving their regulated firms.

**Summary of Comment (page 14):**

The Swiss Re, Sigma No. 3/2005 report, relied upon by the Commissioner, states that "companies that do not succeed in earning returns in excess of their capital costs will have market values below their book value." This is true, for two of the top four underwriters in the state, which are trading below book value, thereby demonstrating that many in the title industry are displaying an inadequate return on capital.

**Response to Comment:**

The Commissioner rejects this comment. The commenter has not explained how this comment is believed to be relevant to the proposed regulations. The proposed regulations are based on book returns, not market returns. Individual companies' market values may be higher or lower than their book values, as the commenter notes, but rate regulation in numerous industries has long and justifiably been based on book returns.

**Summary of Comment (page 14):**

The proposed regulations are replete with so many misapprehensions, inconsistencies, omissions and downright errors that it would be a disaster to impose this on the regulated community.

**Response to Comment:**

The Commissioner rejects this comment. To the extent the commenter has identified the claimed misapprehensions, inconsistencies, omissions, or errors, elsewhere, the Commissioner has responded to those comments in the file. No further response to this comment is possible or necessary.

**Summary of Comment (page 14):**

Before considering the new proposed changes, the commenter requests that the Commissioner address the following unanswered question:

From an actuarial basis for the year 2000, what would rates have needed to have been to have achieved the requirement that rates not be excessive for consumers and at the same time that rates would not have been inadequate for the protection of policyholders in future claims paying capabilities?

**Response to Comment:**

The Commissioner rejects this comment. He has reasonably assumed that the rates on file in 2000 were not inadequate, or the companies would have filed for rate increases, which they could have obtained without any affirmative approval of the Commissioner. It may well be that the rates were excessive – that is a logical inference from the absence of a reasonable degree of competition. But that is no basis for forbearing from any of the provisions of the proposed regulations.

**Summary of Comment (page 14-15):**

Before considering the new proposed changes, the commenter requests that the Commissioner address the following unanswered question:

The 2006 profitability results thus far posted by the major underwriters year-to-date have shown a significant increase in claims expenses. One company even increased their provision for claims to 8 percent. Are there any carryover claims from the prior 10 years indicating that premiums were inadequate during those years? If so, how much greater should premiums have been to generate the necessary surplus to provide adequate policyholder protection?

**Response to Comment:**

The Commissioner rejects this comment. The numbers to which the commenter refers have not been found to be accurate. In fact, there is a reasonable doubt that the company that increased its loss reserves to roughly 60% above the historical loss levels did so with justification. Actual paid reserves have not been nearly that high. Companies have established reserves for future losses at the time the premium is received, and do so in compliance with statutory-reserve requirements. There has been no showing that the industry is in any way under-reserved. Thus, the answer to the commenter's question is that there is no reason to believe premiums needed to have been any higher than they were in 2000 to adequately protect policyholders.

**Summary of Comment (page 15):**

Before considering the new proposed changes, the commenter requests that the Commissioner address the following unanswered question:

The Department proposes that 11 percent is a fair rate of return[1] yet the expected average annual return on equity for the top five underwriters as forecast by Keefe, Bruyette and Woods, assuming no rate cuts, is 10.6 percent, 10.7 percent, 10.7 percent for 2006, 2007 and 2008, respectively. Included in this are much higher returns on investments for several of the companies for their non-title operations, indicating that returns on title operations are even less than the mid-10 percent range.

How could any of these companies achieve these levels of returns (which are less than the Department proposed 11 percent) given the Department requested 25.6 percent rate cut? California represented 18.9 percent of all premiums in 2005 and 19.7 percent in 2004 (or 19.3 percent average for the two years). The proposed Department cut, therefore, would reduce the average industry return on equity (including the higher-return non-title segment) to approximately 10.2 percent. How much would title rates need to be increased in other states necessary to subsidize the proposed rate cut in California to assure financial solvency and a fair return to title insurance underwriters and policyholder protection by California consumers?

**Response to Comment:**

The Commissioner rejects this comment. The Commissioner does not assign any significance in this rulemaking proceeding to transitory predictions of profitability in

[1] Staff Report, *Calculation of Profit Factor*, November 27, 2006, p. 4

coming years. But more fundamentally, the comment is based on the erroneous assumption that every dollar of reduced revenue is a lost dollar of profit. First, there are inevitable savings (e.g., commissions, taxes) from lower revenues. And the Commissioner assumes that companies seeing the prospect of lower revenues will appropriately reduce their costs – particularly their excessive sales and marketing costs, which are the conspicuous effect of reverse competition. The Commissioner assumes solvency and a fair return can be achieved by each company without any subsidy from other jurisdictions.

**Summary of Comment (page 15):**

Before considering the new proposed changes, the commenter requests that the Commissioner address the following unanswered question:

California has the lowest remittance rate by Underwritten Title Companies to title insurance companies -- averaging less than 10 percent. Average industry-wide estimated remittance for the title industry nationwide by Keefe, Bruyette and Woods in their 2007 Outlook is estimated at 20.5 percent. Why does the Department not include a proposed change or even an analysis of the remittance rate to determine what is necessary to protect the solvency of the underwriter in California?

**Response to Comment:**

The Commissioner rejects this comment. The rate the Commissioner regulates is required by law to cover the underwriter and UTC charge together – "the entire charge to the public for each type of title policy included within such schedule . . . without separate statement thereof that portion of the charge, if any, which is based upon work performed by an underwritten title company." Remittance rates lie beyond the Commissioner's rate-regulatory authority.

**Summary of Comment (page 15):**

Before considering the new proposed changes, the commenter requests that the Commissioner address the following unanswered question:

On an actuarial basis, what should the minimum remittance rate in California be to the underwriter to insure solvency and adequate reserves and claims paying ability on a go-forward basis? What should the remittance rate have been in each of the past 10-years given the cost structure of the title industry?

**Response to Comment:**

The Commissioner rejects this comment for the reasons stated in the preceding response.

**Summary of Comment (page 15):**

Before considering the new proposed changes, the commenter requests that the Commissioner address the following unanswered question:

The Consumer Price Index for all urban consumers for Los Angeles, Riverside and Orange County rose from 199.2 to 209.3 from mid-year 2005 to mid-year 2006 (an increase of 5.1 percent). The projected median price of California residences was estimated to have risen from $524,000 to $561,000 (7.1 percent). Yet the title premium (as reported on the Department web site in the 2005 Title Insurance Survey for First American, the largest company in California) increased just 4.3 percent. Explain why these statistics do not somewhat refute the Department premise that rising home prices alone warrant a reduction in premiums? Would the Department recommend an 0.8 percent rate increase to make up for the inflation adjusted shortfall?

**Response to Comment:**

The Commissioner rejects this comment. The price-changes for one-sixth of the period addressed in the interim rate sections of the proposed regulations for three of 58 counties for one company do not even "somewhat refute" the proposed regulations. To the extent the housing market declines in 2009 from 2006 toward 2000 prices, the proposed regulations provide for a decline in the percentage reduction. Calculations of limited scope for a portion of the period are irrelevant.

**Summary of Comment (page 15-16):**

Before considering the new proposed changes, the commenter requests that the Commissioner address the following unanswered question:

The California Association of Realtors also estimates that the number of transactions declined by 23 percent from 2005 to 2006. To what extent are costs fixed in the title industry? Given that level of fixed costs (which has increased as the title industry has automated to assure that consumers can complete their transactions and lock-in highly favorable interest rates within the lock in periods and benefit for potentially decades in monthly savings), how much do California title rates need to be increased to compensate for a declining number of sales?

**Response to Comment:**

The Commissioner rejects this comment. The distribution of fixed and variable costs in the title industry can be inferred from the proposed regulations, but that distribution is irrelevant to the comment. California title rates do not need to be increased to compensate for a declining number of sales from 2005 to 2006 any more than they need to be reduced for soaring numbers of sales from 2000 to 2005. The Commissioner has chosen not to make the latter adjustment, so the former is at least equally unnecessary.

**Summary of Comment (page 16):**

The 15-day notice and comment period called for by the Commissioner is not adequate to give the public a fair opportunity to consider the proposed changes. Government Code section 11346.8(c) requires that the amendments be given a new 45-day notice and comment period.

**Response to Comment:**

The Commissioner rejects this comment. The changes to the proposed regulations are "sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action" (Gov. Code section 11246.8), so a 15-day comment period is appropriate.

**Summary of Comment (page 16):**

The revised interim rate calculations are entirely new, create new classifications of rates, materially alter the levels at which interim rates would be established, and have never been the subject of discussion at any stage in this process. Additional time for comment is needed to address these substantial revisions. This is a fundamentally new approach and has not been properly studied. These changes are substantial and could not have been anticipated by the public. They are not properly the subject of a Government Code section 11346.8(c) notice and comment period.

**Response to Comment:**

The Commissioner rejects this comment. The commenter has failed to explain why the amendments, which affect only existing proposed sections and deal with the same topics as their original text, are not, in commenter's view, "sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action." (Gov. Code section 11246.8.)

**Summary of Comment (page 16):**

The new revisions apply different formulae for title insurance rate reductions, depending upon whether the transaction is a purchase, non-purchase finance, or non-purchase other than finance. Similarly, different formulae apply for escrow rate reductions depending upon whether the transaction is purchase or non-purchase and depending upon the region in which the transaction occurred. This is a fundamentally new approach and has not been properly studied. These changes are substantial and could not have been anticipated by the public. They are not properly the subject of a Government Code section 11346.8(c) notice and comment period.

**Response to Comment:**

The Commissioner rejects this comment. Each of the changes that the commenter cites is "sufficiently related to the original text that the public was adequately placed on notice

that the change could result from the originally proposed regulatory action." (Gov. Code section 11246.8.)

**Summary of Comment (page 16):**

The substantial revisions to the statistical plan reporting requirements affect timelines, criteria and the parties who are obligated to file. These changes are substantial and could not have been anticipated by the public. They are not properly the subject of a Government Code section 11346.8(c) notice and comment period.

**Response to Comment:**

The Commissioner rejects this comment. Each of the changes that the commenter cites is "sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action." (Gov. Code section 11246.8.)

**Summary of Comment (page 16):**

At the eleventh hour, the Department has offered six new reports that it is relying upon in addition to the Competition Report and July 3, 2006 Staff Report. These changes are substantial and could not have been anticipated by the public. They are not properly the subject of a Government Code section 11346.8(c) notice and comment period.

**Response to Comment:**

The Commissioner rejects this comment. To the extent that the Commissioner has placed additional documents in the file, they are either documents that were not previously available or documents that respond to comments from the public regarding the original proposal. Members of the public have been given a full opportunity to comment on those reports. The procedure fully complies with the applicable statutes.

**Summary of Comment (page 16-17):**

The commenter requests written responses to his questions as soon as possible and requests that the Department coordinate with the commenter to set a date for a new hearing to address the revised regulations and related studies relied upon.

**Response to Comment:**

The Commissioner rejects this comment. The Commissioner has afforded the commenter appropriate responses to each comment requiring a response and has fully accorded the commenter all of the rights due under the Administrative Procedure Act.

**<u>Volume 9, Comment No. "Dec.comments 144-145":</u>**

**Commentator:** Phyllis Yanagihara
**Date of Comment:** December 7, 2006
**Type of Comment:** Written

**Summary of Comment:**

While the Department continues to insist that the title and escrow companies have made excessive charges to consumers by basing their fees on the consideration of the property being insured, it refuses to acknowledge that the government is doing the very same thing. Documentary transfer tax on a sale is based upon the current sales price or "new money" being spent on the real estate purchase. Additionally, real estate property tax is based on current sales price. If these prices have been falsely inflated and should not be the consideration for the good of the consumer, and because the consideration charge does not affect the amount of work completed on a transaction, why is it then okay for the consumer to be hit by increased taxation based upon those same inflated sales prices?

**Response to Comment:**

The Commissioner rejects this comment. The Commissioner does not have authority over the statutory or constitutional rates to which the commenter refers. Accordingly, this comment is not specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action, so no response is necessary. (Gov. Code section 11346.9(a)(3).)

**Summary of Comment:**

The Franchise Tax Board withholding that is done on a sale of real property is also based upon the sales price of the property not the amount of tax that might actually be due from the taxpayer.

These are consumer issues that hit the consumer with thousands of dollars on a regular basis rather than a few hundred dollars on an isolated transaction.

**Response to Comment:**

The Commissioner rejects this comment. The Commissioner does not have authority over the statutory or constitutional rates to which the commenter refers. Accordingly, this comment is not specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action, so no response is necessary. (Gov. Code section 11346.9(a)(3).)

**Summary of Comment:**

With respect to escrow fees, the Department fails to take into consideration the complexity of today's transaction as opposed to those prior to 2000 plus the fact that the settlement agent is the unpaid collection agency for the State of California. The

Department also fails to take into consideration the fact that, in most other states, settlement is completed by attorneys at a much higher cost than the escrow fees in California. However, the title and escrow companies are expected to maintain the same level of expertise.

**Response to Comment:**

The Commissioner rejects this comment. The reasonable costs of the escrow service will be reported in the statistical plan and fully recognized in the maximum permitted rates. The commenter has not proffered any evidence on which to base any conclusions about the magnitude of additional costs that have been imposed on escrow officers since 2000, and has not demonstrated that any such costs are reasonable. In particular, several industry commenters have noted that they have assumed responsibility for additional services for those companies that refer business to them – further evidence of reverse competition, costs of which are not properly borne by consumers.

**Summary of Comment:**

The Commissioner is not an escrow authority and should stick to facts not speculative and irresponsible studies made by people that do not have a basic understanding of our industry.

**Response to Comment:**

The Commissioner rejects this comment. Escrow performed by an underwriter, UTC, or controlled escrow company falls within the Commissioner's authority, and the authority of other Insurance Commissioners, such as the commissioner in Texas to whom the author of the Competition Report served as Chief Economist. The commenter has failed to identify any facts commenter claims is relevant that the Commissioner does not know.

**Volume 9, Comment No. "Dec.comments 146":**

**Commentator:** Russell Erickson
**Date of Comment:** 12/10/06
**Type of Comment:** Written

**Summary of Comment:**

The level of detail, repetition and coverage of every aspect of an insurance company's business elements, as contained in the proposed regulations is horrifying. While the commenter believes that title insurance is a consumer "rip-off" and that the cost of title insurance should be reduced, the proposed regulations should be rewritten into a format that would be understandable and more easily reviewed by accountants, lawyers and perhaps educated laypersons. The 273 pages suggest to the commenter an explanation as to why a lot of money is used to pay for state bureaucracy.

**Response to Comment:**

To the extent that this comment supports the reduction of title insurance rates, no response is necessary. The remainder of the commenter's remarks have been considered and rejected. While the proposed regulations are indeed detailed and technical, the Commissioner has concluded that the proposed regulations are reasonably capable of review and comprehension by those members of the public that will be affected by the terms of the regulations.

**Comment Bates Pages "Dec. Comments 147 – 302":**

**Commentator:** American Land Title Association (ALTA)
**Date of Comment:** Dated December 15, 2006 marked for hand delivery
**Type of Comment:** Written

**Summary of Comment (page 1):**
The first two paragraphs on page 1 are a preliminary statement.

**Response to Comment:**

This portion of the comment is not specifically directed at the Commissioner's proposed regulations or to the procedures followed in proposing the regulations, or simply summarizes comments which are summarized and responded to in more detail below. No response is, therefore, necessary. (Gov. Code section 11346.9.)

**Summary of Comment (pages 1 - 2):**

The workshop and the hearing are summarized on pages 1-2. Exhibit 1 contains ALTA's comments submitted at the workshop. Exhibit 2 contains ALTA's written comments at the public hearing. Both exhibits are incorporated by reference.

**Response to Comment:**

This portion of the comment is not specifically directed at the Commissioner's proposed regulations or to the procedures followed in proposing the regulations, or simply summarizes comments which are summarized and responded to in more detail below. No response is, therefore, necessary. (Gov. Code section 11346.9.)

**Summary of Comment (pages 2-3):**

A report by Dr. Lipshutz entitled "Some Practical Issues Raised by the Revised Title Insurance Statistical Plan and Related Rules Governing Rates and Charges Proposed by the California Insurance Commissioner" dated December 15, 2006 is attached as Exhibit 3 and is incorporated by reference.

The legal issues surrounding the regulations should cause the Commissioner to reconsider and withdraw the regulations. To the extent the Commissioner seeks to adopt a statistical plan, the plan should address the comments raised by Dr. Lipshutz.

**Response to Comment:**

The Commissioner rejects this comment. The Commissioner responds directly to Dr. Lipshutz's comments separately in this file.

**Summary of Comment (page 3):**

Due to the scope of changes in the Proposed Regulations, a public hearing should be held to ensure all interested parties have an opportunity to provide comment and testimony. Gov't Code Section 11346.8(c) and (d).

**Response to Comment:**

The Commissioner rejects this comment. The amendments, which affect only existing proposed sections and deal with the same topics as their original text, are "sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action." (Gov. Code section 11246.8.)

**Summary of Comment (Bates pages Dec. Comments 150-290) :**

Bates pages Dec. Comments 150-290 are copies of documents previously submitted and responded to.

**Response to Comment:**

The Commissioner has responded to these comments in connection with their original submission.

Attachment, entitled Some Practical Issues Raised by the Revised Title Insurance Statistical Plan and Related Rules Governing Rates and Charges Proposed by the California Insurance Commissioner" dated December 15, 2006
**(Bates pages Dec. Comments 291-302 ) :**

**Summary of Comment, Page 1**: – The commenter describes his engagement by the American Land Title Association and his experience.

**Response**: This portion of the comment 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.)

**Summary of Comment, Page 2**: The revised statistical plan eliminated the collection of some sensitive data but still requires sensitive commercial information which is at risk of being disclosed by hackers and identify thieves.

**Response**: The Commissioner rejects this comment. The Department routinely collects and safeguards confidential information and there is no reason to expect that the Department would fail in this instance.

**Summary of Comment, Page 2**: The addition of the increase in IBNR reserve in loss expense in Table 3 needs to be carried over to Table 12.

**Response**: The Commissioner rejects this comment. The Table 12 reference is correct and includes the increase in IBNR reserve.

**Summary of Comment, Pages 2-3**: The deferral of implementation by a year is valuable as it provides additional time for companies and additional time for DOI to correct and refine statistical plan and rating rules, but the improvement is negated by first quarter 08 reporting.

**Response**: The Commissioner rejects this comment. The revision to the reporting requirements provides an additional year to prepare for collection of required data. The first quarter 2008 reporting does not negate the fact that reporting companies need not report 2006 experience, but only 2007 experience. Further, the difficulties companies may face is in collecting the data – which the extension addresses – and not the reporting of data collected.

**Summary of Comment, Page 3**: The one year extension for small UTCs is valuable, but negated by the requirement of non-existence of commercial software, which guarantees that software firms will rush bad products to market.

**Response**: The Commissioner rejects this comment. If the only commercial software is "bad products," then small companies will easily be able to obtain an exemption because commercial software as described in the regulation will not exist.

**Summary of Comment, Page 3**: The discount information collected on Schedules TI05, TI11, TI14, TI17, UTC05, UTC11 is incomplete. It is necessary to collect not only total policy liability, but amount to which discount applies.

**Response**: The Commissioner rejects this comment. The Reports cited allow for examination of the specific circumstances proffered by the commenter and the discount information collected in the various reports is complete for the various purposes of the proposed regulation.

**Summary of Comment, Pages 3-4**: TI13 and UTC13 Column F and G are free-form text entries, which cannot be analyzed consistently, require manual inspection and involves subjectivity.

**Response**: The Commissioner rejects this comment. The text fields are used because there are no standard responses for the requested data elements at this time. The text responses will be analyzed and, if appropriate, will be modified in the future to use standard responses. In some instances, a description of a prior entry is requested and a text response is necessary and reasonable.

**Summary of Comment, Page 4**: TI17 columns E and H require a standard list of policy forms, as individual companies use different names for same policies and have different understandings of standard, extended, greater than extended coverage.

**Response**: The Commissioner rejects this comment. Report TI17 columns E and H do not require standard lists or standard definitions. The intent is for companies to report the names of the policies as they use them and the nature of coverage as the companies understand that coverage. The statistical agent will be able to correlate different policies and coverage levels as needed.

**Summary of Comment, Page 4**: Many of the functional cost requirements of TI03 and UTC03 are impossible to meet. It is impractical to split overnight costs among preliminary reports, policies, and other items. It is impossible to segregate the cost of generating a preliminary report from cost of search and examination. The breakout of sales and customer service expenditures among lines 48, 49 and 50 is completely judgmental.

**Response**: The Commissioner rejects this comment. Overnight service billing provides for accounting codes on each shipment, thereby easily allowing for allocation to the categories provided. The physical production of a preliminary report is clearly separate from the search, examination and underwriting necessary for the report, in the same way that physical production of a policy is separate from the search examination and underwriting of the policy. The categories for sales and customer service track industry practice. Title insurers and underwritten title companies understand customer service as provision of information and other services to their "customers" – the referrers of business. This clear understanding is reflected in the job categories and descriptions used by title insurers and underwritten title companies called "customer service representative."

**Summary of Comment, Page 4**: TI07, UTC07 column F, TI08 and UTC08 Column D use free form entries, which cannot be analyzed consistently. .

**Response**: The Commissioner rejects this comment. The text fields are used because there are no standard responses for the requested data elements at this time. The text responses will be analyzed and, if appropriate, will be modified in the future to use

standard responses. In some instances, a description of a prior entry is requested and a text response is necessary and reasonable.

**Summary of Comment, Page 5**: The California balance sheet does not balance because the allocation requirements for assets and for equity are inconsistent.

**Response**: The Commissioner rejects this comment. The commenter does not clearly explain the inconsistency he claims and, consequently, no response is possible.

**Summary of Comment, Page 5**: The definition (w) of purchase transaction includes only residential transactions, which excludes commercial, industrial and governmental transactions, which constitute a substantial fraction of all title insurance purchase transactions.

**Response**: The Commissioner rejects this comment. The Commissioner intends the regulation of title insurance and escrow rates to apply only to residential transactions and, consequently, the definition is appropriate.

**Summary of Comment, Page 5**: The definition (cc) of title insurance company inconsistent with use within body of document where it is restricted to insurer, not a UTC or escrow company..

**Response**: The Commissioner rejects this comment. The regulations are clear that a title insurance company engaged in only UTC or escrow activities are clearly required only to conform to the requirements applicable to the activities in which it engages.

**Summary of Comment, Page 5** : The term "affiliated" is never defined. It is unclear whether a de minimus connection constitutes affiliation.

**Response**: The Commissioner rejects this comment. The term is defined by Insurance Code section 1215 as "is a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified." That definition applies to the proposed regulations.

**Summary of Comment, Page 5-6**: The statistical plan is still a unit statistical plan and is inappropriate as noted in previous comments. Compliance costs will enormous and disproportionate to benefits.

**Response**: The Commissioner has previously responded to the comment. That response can be found in the response to commenter's August 2006 comments on the statistical plan and need not be repeated here.

**Summary of Comment, Page 6**: Very few of the data elements collected by the revised statistical plan are actually used in the ratemaking formula and it appears that the rate-

irrelevant elements are intended to be used to monitor market conduct. This approach is likely to be unsuccessful.

**Response**: The Commissioner rejects this comment. The commenter's premise is incorrect as all the data elements are designed for either direct use in the ratemaking formulae or indirectly by ensuring the accuracy of other data elements. The commenter provides no specific example of the claimed rate-irrelevant data elements and, consequently, there is no basis to his comment.

**Summary of Comment, Pages 6-7**: The risk premium has been increased and is now closer to published historical averages (Ibbotson) for large corporations, but far too low for small companies. For companies with small capitalization, the long run risk premium is 17%, Ibbotson Table C-1. Required rates of return for closely-held companies are substantially higher than those for publicly traded companies. The risk premium is too low to ensure that title insurers, UTCs and controlled escrow companies earn adequate profits.

**Response**: The Commissioner rejects this comment. The Commissioner has considered demands for a higher small-company risk-premium many times over the years and has uniformly rejected those demands. The argument amounts to a claim that small companies have higher costs and that rate-regulation must accommodate those higher costs. In a competitive market, were it true that small companies have higher costs, the result would be to drive out such companies. That generally does not happen, likely because smaller companies enjoy other efficiencies not available to their larger rivals. No such adjustment is appropriate here.

**Summary of Comment, Page 7**: The allocation ratios for total title plant maintenance expense in section 2357.3(v)(2); total search, title exam and underwriting in (y)(2) and for total preliminary report production and delivery in (z)(2) are based solely on data for UTCs and ignore data for insurers. These items should track the formula in (x)(2).

**Response**: The Commissioner rejects this comment. The commenter has incorrectly described the formulas. Contrary to the comment, all four items include both title insurer and underwritten title experience and are analogous. Moreover, the items referenced are not allocation formulas, but totals.

**Summary of Comment, Page 8**: The CPI is not a correct measure of the level of costs incurred by business because it is based on a market basket of goods purchased by private households. A more appropriate business cost index covering both urban and rural areas of CA should be used.

**Response**: The Commissioner rejects this comment. The November 27, 2006 Staff Report on the Interim Rate Reduction explains in detail the basis and rationale for the selection of the inflation series used in the regulation and why that series is superior to other options. While the commenter criticizes the selection, he offers no specific alternative and the Commissioner finds not only that the inflations series selected is a

reasonable basis for assigning cost increases in the regulation formulae, but that no superior alternative exists.

**Summary of Comment, Page 8**: The forecasted market growth factor is based on calculations that consider only residential properties. A substantial faction of title insurance transactions are non-residential. Growth of title insurance market is not well approximated by trend in residential transactions alone.

**Response**: The Commissioner rejects this comment. The regulations regulate solely residential transactions. (See section 2355.3(dd).) Accordingly, it is the growth in those transactions that is relevant.

**Summary of Comment, Page 8**: The sales cost factor is based on comparison with ratio of commissions and brokerage expense to premiums by P&C insurers. First, this approach has two serious defects. It fails to adjust for the fact that the fraction of non-loss costs in the total premium is much lower for title insurers than for P&C insurers. My study shows that 72% of non-loss costs of P&C insurers are sales expenses. Second, the method applies the same allowance to UTCs as to title insurers. There is no basis for restricting UTCs to same sales cost factor as title insurers, since UTCs carry out proportionately more sales activity than insurers.

**Response**: The Commissioner rejects this comment. The comment about fraction of non-loss costs is irrelevant because the ratio of sales costs to non-loss costs is clearly not related to any measure of what reasonable sales expenses should be. The ratio is an artificial construct with no probative value. With regard to the second point, the commenter misunderstands the maximum charge formulae. There is no title insurer formula vs. an underwritten title company formula. (See Ins. Code section 12401.1 [“Every schedule of rates filed by a title insurer shall set forth the entire charge to the public for each type of title policy included within such schedule and shall include without separate statement thereof that portion of the charge, if any, which is based upon work performed by an underwritten title company; there shall be no separate filing by an underwritten title company for such work.”] Rather, there are formulas for products and title insurers and underwritten title companies are free to divide premium as they see fit. The use of same percentage for all formulas means that overall sales expense will be limited to the maximum amount.

**Summary of Comment, Page 9**: The proportion of costs subject to inflation in the Staff Report "Interim Rate Reduction", the proportion of funds transfer workers engaged in sub-escrow activities in Section 2357.3(e), the policy relativities in Section 2357.17, the endorsement relativities in Section 2357.18, the premium/transaction factors in Section 2357.19(b)(2), the escrow relativities in Section 2358.7(a), and the regional escrow charge/transaction factors in Section 2358.9(B)(2) are presented with as many as five significant figures. Yet neither the regulation itself nor the foundational staff reports presents the data underlying these factors or the calculational steps employed in their derivation. This makes it impossible to review these factors for accuracy or even for

reasonability.

**Response**: The Commissioner rejects this comment. The commenter is incorrect in his claim that the calculation of the identified values are not explained. The Staff Report on the Interim Rate Reduction describes the derivation of each of the components of the interim rate reduction calculation and provides additional data and sensitivity analyses for review of the reasonableness of the calculations and methodology. The commenter has the same access to the Data Quick data as the Commissioner and could have obtained those data for analysis.

**Summary of Comment, Page 9**: The formula for number of full time equivalent sub-escrow employees in 2357.3(e) makes no sense and should be corrected.

**Response**: The Commissioner rejects this comment. The comment is non-specific and vague, making it unclear why the commenter thinks the formula makes no sense.

**Summary of Comment, Page 9**: The language describing amount of insurance in section 2357.3(p) incorrectly uses premium as basis of measurement, but references the correct source lines which report exposure. This language also needs correction.

**Response**: The comment does not respond to changed text. Consequently, the Commissioner is not required to respond to the comment.

**Summary of Comments, Pages 9-10:** Mandating relativities for policies, endorsements and escrow charges will eliminate almost all competitive flexibility. Competition in these markets has manifested itself precisely through creative changes in rate categories and rate relativities by companies developing cost advantages in particular market segments. While mandated rates are supposed to be only maximum rates, my experience indicates that these rates will rapidly become standard and inflexible rates. Forbidding offsets between rate increases and rate reductions as prescribed in 2357.19(c)(3) will be injurious to small consumers as noted in my prior comments, which are quoted by commenter.

**Response**: The Commissioner has already responded to these comments in the response to the commenter's August 2006 comments. It is not necessary to repeat the response here.

**Summary of Comments, Page 10**: The staff report on the interim rate reduction cites analyses of range of non-variable costs from 10% to 30%. This parameter plays a pivotal role in calculations, but no analysis or underlying data are presented, making it impossible to review the parameter for reasonableness or accuracy.

**Response**: The Commissioner rejects this comment. The November 27, 2006 Staff Report on the Interim Rate Reduction provides the complete formula for the calculation of the interim rate reduction and all of the inputs that went into the calculation. It is a simple matter both to replicate the calculations in the staff report and to vary the percentage of premium for variable and non-variable expense. Further, the commenter

incorrectly states the range of non-variable costs. The range of variable costs analyzed was from 10% to 30%.

**Summary of Comments, Page 10**: The commenter cites a comment from his previous submission about the use of the year 2000 as the base year for the interim rate reduction calculation.

**Response**: The Commissioner has already responded to these comments in the response to the commenter's August 2006 comments. It is not necessary to repeat the response here.

**Summary of Comments, Page 10-11**: The commenter repeats his comments from his previous submission that title and escrow are inherently cyclical and that title insurers must earn higher than normal profits during boom years in order to accumulate sufficient surplus to protect insureds during periods of low profitability.

**Response**: The Commissioner has already responded to these comments in the response to the commenter's August 2006 comments. It is not necessary to repeat the response here.

**Volume 9, Comment No. "Dec.comments 303-351":**

**Commentator:** Ronald Blitenthal on behalf of American Guaranty Title Insurance Company
**Date of Comment:** Received 12/15/06
**Type of Comment:** Written

**Summary of Comment (page 1):**

This passage summarizes the commenter's affiliation and anticipated entry into the California market. The passage also requests that the commenter's remarks be included in the rulemaking file.

**Response to Comment:**

This portion of the comment is not specifically directed at the revisions to the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. No response is, therefore, necessary. (Government Code Sections 11346.9 9 & 11346.8(c).) To the extent that the commenter' has requested that the remarks be included in the rulemaking record, they will be so included.

**Summary of Comment (page 1-5 and Exhibits A and B):**

These pages are – verbatim – the same comments submitted by this commenter for the originally-proposed draft regulations. (Compare bates pages "comments 92-136" with bates pages "Dec. comments 303-351")

**Response to Comment:**

This portion of the comment is not specifically directed at the revisions to the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. No response is, therefore, necessary. (Government Code Sections 11346.9 & 11346.8(c).)