



OFFICE OF THE STATE AUDITOR



September 2, 2020

DIANNE E. RAY, CPA
STATE AUDITOR

TITLE INSURANCE REGULATION – STATUS REPORT

Members of the Legislative Audit Committee:

Attached is the status report from the Department of Regulatory Agencies (Department) on the implementation of recommendations contained in the Office of the State Auditor's (OSA) *Title Insurance Regulation Performance Audit*.

OSA REVIEW OF DOCUMENTATION

As part of the status report process, we requested and received supporting documentation for each recommendation that the Department reported as having been implemented. Specifically, we reviewed the following documentation:

- 3 CCR 702-8, Regulation 8-1-1, effective August 2020
- Guidance for Department staff on rate and fee reviews
- Guidance for title insurance companies on complying with regulations
- The Department's rate filing summary webpage and search guide
- The Division of Insurance's Conflict of Interest Policy and Disclosure Statement (April 2019)

Based on our review, the supporting documentation substantiates the Department's reported implementation status.

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COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

August 31, 2020

Dianne E. Ray, CPA
State Auditor
Colorado Office of the State Auditor
1525 Sherman St., 7th Floor
Denver, CO 80203

Dear Auditor Ray:

In response to your request, we have prepared the attached status report on the implementation status of audit recommendations contained in the Title Insurance Regulation performance audit #1756P. The report provides a brief explanation of the actions taken by the Division of Insurance to implement each recommendation.

The key objectives of the audit were to evaluate the Division's (1) processes for reviewing title insurance rates, (2) controls for addressing risks with affiliated business arrangements, (3) processes for planning market conduct activities of title insurance companies, and (4) approach to providing information to the public about title insurance.

While your office did not have any findings or recommendations concerning controls for affiliated business arrangements and planning processes for market conduct activities, your office did have four core Audit Recommendations related to processes for reviewing title insurance rates and our approach to providing information to the public about title insurance. We are pleased to inform you that all four core Audit Recommendations were successfully fully implemented. We believe that our regulation of the title industry is stronger as a result of your office's audit and we thank you and your staff for your professionalism and engagement.

We have enclosed the Status Report and would be happy to explain any of the information we have submitted.

If you have any questions about this status report and the Division of Insurance's efforts to implement the audit recommendations, please contact Michael Conway, Commissioner of Insurance at 303-894-7480 or Michael.conway@state.co.us.

Sincerely,

Patty Salazar
Executive Director



AUDIT RECOMMENDATION STATUS REPORT

AUDIT NAME	Title Insurance Regulation
AUDIT NUMBER	1756P
AGENCY	Department of Regulatory Agencies – Division of Insurance
DATE OF STATUS REPORT	August 31, 2020

SECTION I: SUMMARY

REC. NUMBER	AGENCY'S RESPONSE	ORIGINAL IMPLEMENTATION DATE	CURRENT IMPLEMENTATION STATUS	CURRENT IMPLEMENTATION DATE
1A	Agree	October 2019	Implemented	August 2020
1B	Agree	October 2019	Implemented	August 2020
1C	Agree	October 2019	Implemented	April 2020
1D	Agree	February 2019	Implemented	April 2020
1E	Agree	February 2019	Implemented	April 2020
1F	Agree	October 2019	Implemented	August 2019
2A	Agree	October 2019	Implemented	April 2020
2B	Agree	October 2019	Implemented	April 2020
2C	Agree	October 2019	Implemented	August 2019
2D	Agree	October 2019	Implemented	August 2019
3A	Agree	October 2019	Implemented	August 2019
3B	Agree	October 2019	Implemented	August 2019
3C	Agree	October 2019	Implemented	August 2019
4A	Agree	October 2018	Implemented	August 2018
4B	Agree	October 2018	Implemented	August 2018
4C	Agree	October 2018	Implemented	August 2018
4D	Agree	October 2018	Implemented	August 2018

SECTION II: NARRATIVE DETAIL

RECOMMENDATION 1A			
<p>The Division of Insurance should ensure title insurance filings adhere to all applicable statutory and rule requirements by clarifying in rule whether each listed piece of justification is required for each rate filing and, if not, the circumstances when the piece of justification should be filed or could be omitted from the filing.</p>			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	August 2020
AGENCY UPDATE			
<p>The Division implemented initial changes to CO Insurance Regulation 8-1-1, which were effective on August 15, 2019. These changes amended Section 5(C)(6) to state that companies must provide the Division with an explanation of why any piece of justification information was not included in the rate filing and that the Division would evaluate that rationale on a case by case basis. The Division implemented additional revisions, which were effective on August 15, 2020, for Section 5(C)(3)(f) to require a description of the rate in every filed rate manual and Section 5(C)(8) to include a redline version along with each rate manual.</p>			

RECOMMENDATION 1B			
<p>The Division of Insurance should ensure title insurance filings adhere to all applicable statutory and rule requirements by revising guidance provided to title insurers to reflect the filing requirements developed in Part A.</p>			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	August 2020
AGENCY UPDATE			
<p>Regulation 8-1-1. Section 5.C.3.f was amended to require a rate description to be included in the rate manual. The Division also revised appendix H to include the statutory and rule requirements, adding clarification for each piece of justification and a section to document the reasoning for inclusion or omission of any justification information. The Division updated the training materials for companies in anticipation of the rules being updated.</p>			

RECOMMENDATION 1C			
The Division of Insurance should ensure title insurance filings adhere to all applicable statutory and rule requirements by clarifying in rule how the Division will handle incomplete or late filings.			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	April 2020
AGENCY UPDATE			
Reg. 8-1-1 was amended to clarify how the Division handles incomplete or late filings. As specifically set forth in Sections 5(A)(3) and (4) of this rule, incomplete filings will be rejected on or before the 30 th day after receipt. The Division amended its internal written guidance to specify that “deficiencies,” as used in the rule, include non-compliant proposed effective dates.			

RECOMMENDATION 1D			
The Division of Insurance should ensure title insurance filings adhere to all applicable statutory and rule requirements by clarifying, through written guidance, under what circumstances staff should search in past filings for justification documents that are missing from a current filing.			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	April 2020
AGENCY UPDATE			
The Division included language in its internal written guidance to specify that division staff will not look in past filings to find proper justification; they will instead issue an objection.			

RECOMMENDATION 1E			
The Division of Insurance should ensure title insurance filings adhere to all applicable statutory and rule requirements by clarifying, through written guidance, that staff may not make exceptions to the statutory requirement for the rate effective date to be at least 30 days after the Division received the filing.			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	April 2020
AGENCY UPDATE			
This written guidance was developed during the November 6, 2018 Title Insurance Rates & Fees Working Group discussion. Reg. 8-1-1, Section 5(A)(3) and (4) clarify that rates and fees must be rejected if the effective date is less than 30 days from the receipt of the filing and the carrier does not rectify the deficiency. Appendices H and I were finalized by the conclusion of the Working Group meetings in December, 2018 and also clarify that the rates and fees must be rejected if the effective date is less than 30 days from the receipt of the filing. The Division amended its internal written guidance to specify that “deficiencies,” as used in the rule, include non-compliant proposed effective dates.			

RECOMMENDATION 1F			
The Division of Insurance should ensure title insurance filings adhere to all applicable statutory and rule requirements by clarifying in rule required elements of the side-by-side comparison.			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	August 2019
AGENCY UPDATE			
Reg. 8-1-1 clarified the required elements of side-by-side comparisons and added new side-by-side comparison forms as Appendices C-F. On August 5, 2019, Division staff conducted a training webinar for industry users on how to prepare new filing forms. The training materials were uploaded to the Division website in August of 2019.			

RECOMMENDATION 2A			
The Division of Insurance should ensure that its rate review process is consistent and meets its objectives of determining whether title insurance rates are excessive, inadequate, or unfairly discriminatory by implementing a framework for staff to use in analyzing expense, loss, and profit information to determine whether profits are unreasonable, rates are set to be sustainable, and price differences are equitable.			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	April 2020
AGENCY UPDATE			
The Division has revised its internal guidance, creating a framework to reflect statutory requirements so that rate review is consistent and meets its objectives. The Division updated staff guidance documents to reflect statutory requirements that will assist staff with analysis of rates to determine whether rates are excessive, inadequate or unfairly discriminatory.			

RECOMMENDATION 2B			
The Division of Insurance should ensure that its rate review process is consistent and meets its objectives of determining whether title insurance rates are excessive, inadequate, or unfairly discriminatory by defining in writing key terms, including what constitutes a company's profit, loss, and expenses; the threshold for reasonable profit; the threshold for sustainable; and the threshold for equitable price differences.			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	April 2020
AGENCY UPDATE			
The Division has revised its internal guidance, creating a framework to reflect statutory requirements so that rate review is consistent and meets its objectives. The Division updated staff guidance documents to reflect statutory requirements that will assist staff with analysis of rates to determine whether rates are excessive, inadequate or unfairly discriminatory.			

RECOMMENDATION 2C			
The Division of Insurance should ensure that its rate review process is consistent and meets its objectives of determining whether title insurance rates are excessive, inadequate, or unfairly discriminatory by promulgating rules and developing written guidance for Division staff on when to require companies to submit follow-up filings.			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	August 2019
AGENCY UPDATE			
Reg. 8-1-1 was amended to address when companies are required to submit follow-up filings. For example, Section 5(C) of Reg. 8-1-1 was modified to include provisions requiring a new filing when a current filing omitted certain historical information or other data to support the justification of the rate. On August 5, 2019 via webinar, Division staff educated industry users on how to submit new filing forms. The training materials were distributed publicly on the Division website in August of 2019. On August 14, 2019, the Division also drafted written internal guidance concerning when companies are required to submit follow-up filings.			

RECOMMENDATION 2D			
The Division of Insurance should ensure that its rate review process is consistent and meets its objectives of determining whether title insurance rates are excessive, inadequate, or unfairly discriminatory by developing a mechanism to track that the Division has received requested follow-up information from companies and taking action when the information has not been received.			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	August 2019
AGENCY UPDATE			
Reg. 8-1-1 was amended on August 15, 2019 to address when companies are required to submit follow-up filings and Sections 5(A)(3) and (4) address filing deficiencies and what action must be taken if not resolved by the 30th day after receipt. Electronic reminders are set by Division staff in the System for Electronic Rates & Forms Filing (“SERFF”) in order to properly track the status of responses or new fee history. Written guidance for these electronic reminders were memorialized in writing in March, 2019.			

RECOMMENDATION 3A			
The Division of Insurance should ensure that it complies with statute requiring posting of a summary of each title insurance rate filing by implementing a rate filing summary that will provide useful information to the public about title insurance filings.			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	August 2019
AGENCY UPDATE			
The title insurance rate filing summary web page went live on June 26, 2019 and is located at https://www.colorado.gov/pacific/dora/title-insurance-company-rate-summaries . The Division began posting title insurance summaries in August of 2019. The online Guide on Accessing and Interpreting Summaries is also located on this webpage.			

RECOMMENDATION 3B			
The Division of Insurance should ensure that it complies with statute requiring posting of a summary of each title insurance rate filing by developing written guidance for companies about how to interpret and report on the data that will be used to populate the summary.			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	August 2019
AGENCY UPDATE			
The title insurance rate filing summary reporting form (Reg. 8-1-1, Appendix G) was developed during the Reg. 8-1-1 stakeholder process and sets forth what data should be used and completed in order to populate the Rate Summary. On August 5, 2019, Division staff trained industry users by webinar on how to prepare new filing forms, including the summary reporting form. The webinar training materials were circulated to the public via the Division website in August of 2019.			

RECOMMENDATION 3C			
The Division of Insurance should ensure that it complies with statute requiring posting of a summary of each title insurance rate filing by requiring companies to provide information in their filings that will be used to population the summary.			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	August 2019
AGENCY UPDATE			
The new title insurance rate filing summary reporting form was created during the Reg. 8-1-1 stakeholder meetings and attached to Reg. 8-1-1 as Appendix G. Section (5)(C)(7) of Reg. 8-1-1 requires the filing of this form with the Division. Utilizing Appendix G, companies disclose their rate summaries by county. The new title insurance rate filing summary web page went live on June 26, 2019 and is located at https://www.colorado.gov/pacific/dora/title-insurance-company-rate-summaries . The Division began posting title insurance summaries in August of 2019.			

RECOMMENDATION 4A			
The Division of Insurance should strengthen controls for identifying addressing, and mitigating conflicts of interest by revising the conflict-of-interest policy to broaden the definition of situations that may create conflicts of interest, including identifying the types of non-familial relationships with the regulated industry that employees should disclose.			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	August 2018
AGENCY UPDATE			
The Division completed a revision of its internal Conflict of Interest form to include broader definitions and examples of what may constitute a Conflict of Interest, a section on financial interest in regulated entities, expanded sections around outside or prior employment and potential conflicts of interest, a section regarding disclosure and navigation of any other potential conflict of interest, and how to mitigate or seek guidance on any perceived conflict. Policy revision was completed in August 2018.			

RECOMMENDATION 4B			
The Division of Insurance should strengthen controls for identifying addressing, and mitigating conflicts of interest by implementing a policy and process for collecting employees' annual disclosure forms.			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	August 2018
AGENCY UPDATE			
The Division expanded its internal Conflict of Interest Policy and Disclosure to provide more information on what may constitute a conflict of interest, different types of potential conflicts, instruction regarding navigation of any conflict of interest, the continuing duty to disclose, and a concrete chain of reporting for a conflict of interest. The Disclosure is signed, discussed, reviewed, and collected by supervisors during employee performance reviews. Policy revision was finalized in August of 2018 and disclosure forms were used during the April 2019 performance reviews.			

RECOMMENDATION 4C			
The Division of Insurance should strengthen controls for identifying addressing, and mitigating conflicts of interest by implementing written policies and guidance for supervisors to use in assessing employees' potential conflicts of interest and documenting the assessment.			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	August 2018
AGENCY UPDATE			
The Division prepared written instructions for Supervisory Assessment and Mitigation of Conflict of Interest, which is attached to the Disclosure form and provides a framework for review. The framework includes, review of Division policy, confirmation of compliance, review of any possible conflict and taking action to resolve or mitigate any conflict of interest. Assessment includes examples, and documentation of actions taken to assist both supervisor and employee with identification and specific resolution steps. Policy revision was completed in August of 2018.			

RECOMMENDATION 4D			
The Division of Insurance should strengthen controls for identifying addressing, and mitigating conflicts of interest by implementing written policies and procedures for supervisors to use in identifying appropriate mitigation efforts and documenting mitigation plans.			
CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	August 2018
AGENCY UPDATE			
The Division prepared written instructions for Supervisory Assessment and Mitigation of Conflict of Interest, which is attached to the Disclosure form and provides a framework for review. The framework includes review of Division policy, confirmation of compliance, review of any possible conflict, and taking action to resolve or mitigate any conflict of interest. The Assessment includes examples and documentation of actions taken to assist both supervisor and employee with identification and specific resolution steps. Policy revision was concluded in August of 2018.			