Statement of Albert R. Counselman, CPCU, Past Chairman, Council of Insurance Agents + Brokers

Before the joint hearing of the House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises

NARAB & Beyond: Achieving Nationwide Uniformity in Agent Licensing
(National Association of Registered Agents and Brokers)

May 16, 2001

This statement is submitted on behalf of the members of The Council of Insurance Agents + Brokers ("The Council"). The Council is a national trade association founded in 1913 as the National Association of Casualty and Surety Agents. For 88 years, The Council of Insurance Agents + Brokers has provided industry leadership while representing the largest, most productive and most profitable commercial insurance agencies and brokerage firms in the U.S., and around the globe.

The Council's member firms operate in over 3,000 locations and place nearly 80% - well over $100 billion - of the U.S. commercial property/casualty premiums. In addition, The Council's members specialize in a wide range of insurance products and risk management services for business, industry, government and the public. The Council's members operate nationally and internationally and administer billions of dollars in employee benefits.

I am Albert R. Counselman, President and CEO of Riggs, Counselman, Michaels and Downes in Baltimore, MD. I am a Past Chairman of The Council. Riggs, Counselman, Michaels & Downes is the largest independent agency/brokerage firm in Maryland, with more than 150 employees. Our firm provides risk management services, commercial property/casualty insurance products and employee benefit programs — utilizing both traditional insurance channels and alternative risk-financing options such as captives.

I'm pleased to have the opportunity to testify before you today on the progress of insurance agent and broker licensing reform, which is a very important issue for financial services modernization. This is not the first time I have testified on this issue – I testified before Chairman Oxley's Subcommittee on Finance and Hazardous Materials four years ago, during the debates over H.R. 10. In my prior testimony, I stressed the need for relief from needlessly duplicative regulatory requirements for licensure and protectionist restrictions that are placed on agents and brokers seeking to do business in more than one state, and offered The Council's support for the National Association of Registered Agents and Brokers (NARAB).

NARAB was a true provision of modernization in the Gramm-Leach-Bliley Act. Were it not for the tenacious support and initiative from Congresswoman Kelly, the leadership of Chairman Oxley, and your active support of NARAB in conference, Mr. Chairman, things assuredly would not be changing for the better - particularly at their current pace. This initiative was bipartisan, and provides a very good model for a carrot-and-stick approach that can effectively move insurance regulation forward toward goals of efficiency.

The Council's support for NARAB grew from our members' frustration with the increasingly inefficient nonresident agent and broker licensing system. Council members breathed a sigh of relief when the Gramm-Leach-Bliley Act and its NARAB provisions were signed into law in 1999. We knew that at long last, we would finally get the relief that we were seeking from the blizzard of paperwork and needlessly duplicative licensing requirements that served as a real barrier to conducting interstate business in an efficient manner.

I wish I could say that things have improved dramatically in the marketplace in the four years since I last testified on this issue, but unfortunately, that is just not the case. I am still facing several of the burdensome and duplicative requirements that I faced four years ago, and little has been done until just recently to significantly streamline the nonresident licensing process for me and my employees. I still maintain 90 licenses – down slightly from the 100 licenses I maintained four years ago. As just a couple of further examples, I still must publish my firm's financial statement every year in Nevada as a condition of doing business in that state, and even though I have secured a nonresident license in Texas, I am still not permitted to solicit business from any Texas resident.

The nonresident license application process has improved slightly from four years ago, as most states now accept the uniform nonresident licensing applications developed by the National Association of Insurance Commissioners (NAIC). However, many states still require applicants to submit documentation beyond that requested on the application form. Additionally, there are still several states that do not accept the uniform application, which means that separate applications must be completed for those states. I don't believe that this represents much of an improvement in the process.

With all that said, I am still very grateful for the enactment of the NARAB provisions of the Gramm-Leach-Bliley Act because I think that those provisions have had a very positive effect on states' efforts to enact licensing reforms. It was only after the states were given an incentive to move forward on these reforms that they really got serious and started to change their laws and regulations. I believe that it is highly unlikely that the states would have moved this quickly without the "Bunsen burner effect" of NARAB giving them a jump start – especially when you consider that The Council formed its first committee to begin work on licensing reforms more than 60 years ago. And even though the NAIC incorporated the National Insurance Producer Registry, which houses the Producer Database (PDB), in 1996, there is still not full participation by all licensing jurisdictions in the PDB. If after five years, there is still not full participation in the electronic database that was meant to simplify and streamline the licensing process for agents and brokers, how can agents and brokers expect that licensing uniformity will progress at anything faster than a snail's pace?

I would like to commend the NAIC for their response to NARAB's enactment. In the immediate aftermath of Gramm-Leach-Bliley's passage, the NAIC pledged to do better than the reforms engendered in NARAB and to secure not only licensing reciprocity in all jurisdictions, but also to secure licensing uniformity in all jurisdictions. In the 18 months since NARAB's enactment, the pace of licensing reform has picked up considerably.

Sixteen states have enacted the reforms necessary to avert the creation of NARAB since the beginning of the year. Four states enacted similar reforms last year, bringing the total to twenty states that represent about 20 percent of total premiums written in the U.S. The states enacting the necessary reforms include Arizona, Arkansas, Georgia, Iowa, Indiana, Kansas, Kentucky, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Utah, Virginia and Wyoming. I understand that there may be discrepancies between our list and the lists developed by others. There are some other states that have enacted licensing reforms that The Council does not believe comply with the NARAB reciprocity provisions. I am puzzled as to how the NAIC will be able to reach licensing uniformity when these states have considered and rejected simple reciprocity.

Despite these concerns, I do believe that a majority of states will enact the necessary licensing reforms to avert the creation of NARAB by November of 2002. There are at least five states where legislation is awaiting the Governor's signature, and eleven states where NARAB-compliant legislation is under consideration this year. It is also my understanding that five more states are in the process of drafting legislation for consideration either this year or in the next legislative session. I am hopeful that at least three-quarters of the states will enact legislation by the November 2002 deadline. However, I am also concerned about the states that are not enacting legislation, because they represent the largest insurance markets in the country.

While Texas is considering licensing reform legislation this year, The Council does not believe that the legislation under consideration is NARAB-compliant. The Texas legislative session is scheduled to adjourn in less than two weeks, on May 28, and the Texas legislature will not meet again until 2003. While it is true that this legislative session will not be the last chance for Texas to modernize its licensing laws, I am disappointed that agents and brokers will have to wait at least two more years for complete reform in that state.

California's legislature is considering legislation that would enact the bare minimum laws necessary to meet the NARAB reciprocity standards. Florida's legislature considered legislation that died at the end of the session without even moving out of committee. These states represent three of the top four insurance markets in the country and represent nearly one quarter of insurance premiums in the U.S. Even if all 48 other jurisdictions enacted reforms necessary to avert the creation of NARAB, that would still only constitute about seventy-five percent of the national insurance marketplace. That is not enough. Council members represent the top one percent of all commercial agencies and brokerages, but place nearly 80 percent of commercial insurance in the U.S. For this reason, The Council believes that there must be full participation in nonresident licensing reciprocity by all states if we are to begin to achieve true reform.

The Council believes that increased uniformity in licensing laws is the key to widespread acceptance of nonresident licensing reciprocity. This is why we have consistently supported states' enactment of the NAIC's Producer Licensing Model Act (Model Act). The Council worked with the NAIC to draft this Model at the same time that the NARAB legislation was under consideration in Congress because we wanted relief from the onerous and burdensome licensing process as soon as possible. While not perfect, we believe this Model Act will not only assist the states in meeting the NARAB reciprocity requirements but will also bring a much-needed level of uniformity to the agent and broker licensing process that has not existed in the past.

Even though adoption of the NAIC Model Act by all states will increase uniformity in licensing standards, there is still a need for the states to go further towards comprehensive uniformity in producer licensing laws. For example, if all state insurance commissioners know that agents and brokers must meet the same standards for resident licensure in every state, then no state insurance commissioner should have concerns about licensing nonresident agents and brokers on a reciprocal basis. Areas that would be good candidates for uniformity standards include the agent appointment process, continuing education and pre-licensing education requirements, and criminal history reviews.

I realize that increased uniformity in resident licensing requirements will raise the standards in some states. The Council has historically taken the view that the level of professional requirements for state insurance licensing are not very high when compared to other fields of professional endeavor. However, there are many duplicative and unnecessary requirements that have little or nothing to do with standards of professionalism. Council members have not had a problem with meeting high professional standards; our problem has been with having to meet those standards multiple times in different states. This is why The Council supported the requirement that membership standards for the National Association of Registered Agents and Brokers (NARAB) meet or exceed the highest levels currently existing in the states.

There are other areas in agent and broker licensure that would benefit from increased uniformity. For example, the Model Act did not address license tenure and renewal dates. While this may seem like a small issue, it can easily turn into a large problem for someone like me, who is licensed in all 51 jurisdictions. I must constantly renew licenses throughout the year, based upon the individual requirements in each state. Even if all jurisdictions reach licensing reciprocity, without the development of a uniform standard in this area, I will have to continue to file license renewals throughout the year. The development of a uniform standard in this area would be of enormous benefit to me and millions of other producers in the nation.

Another area that would benefit from increased uniformity is the licensure of business entities. The licensure of business entities was not addressed in NARAB, and until this issue is addressed, we have only solved half of the licensing problem. Nearly all states license business entities, but the rules for their licensure vary widely. Additionally, some states will not currently license nonresident business entities. And once a nonresident business entity license is secured, the rules on how that entity may operate vary widely from state to state. Because Council members do sell and service commercial insurance policies and employee benefits for large companies that often have locations in several states, and because we must be licensed in all of those states, it is absolutely crucial that this issue be addressed as the NAIC moves toward increased licensing uniformity.

Finally, The Council also believes that increased uniformity is critical as we move towards an increasingly global insurance marketplace. Many Council members sell and service insurance policies for customer with international operations. As we attempt to broaden international opportunities for U.S. insurance providers, we must be prepared to provide a model for our trading partners to follow. Permitting the states to keep the patchwork of licensing laws and regulations will do little to reinforce our arguments that other countries should open their markets to U.S. insurance providers; we must lead on this issue by our example.

While it is true that enactment of the NAIC's Model Act will enable states to meet the NARAB reciprocity threshold, progress in enacting the NAIC's Model Act was slow last year. This was due in part to of a controversy over one portion of the Model that had absolutely nothing to do with the NARAB reciprocity standards. The NAIC eventually deleted that portion of the Licensing Model last October, but unfortunately most state legislatures were out of session by that time. There was a flurry of pre-session activity last fall, however, that resulted in the widespread introduction and enactment of legislation this year.

Another obstacle that states have faced in attempting to meet the NARAB requirements is the protectionist attitude of some local agents. There are agents who would rather not have nonresident agents and brokers selling in their states. The result of this protectionism has led to some extremely egregious laws that discriminate against nonresident agents and brokers over the years. One example is the Texas law that I mentioned earlier that prevents a nonresident from soliciting business from a Texas resident. Another example is the Nevada law requiring that I publish a financial statement in a local paper every year. NARAB did address most of these unproductive laws, and states that wish to comply with the NARAB reciprocity requirements must eliminate laws that discriminate against nonresidents. However, there is one set of laws not addressed by NARAB that are the most egregious protectionist laws in existence – countersignature laws.

Countersignature laws require a resident state agent or broker to "countersign" any policy written by an out-of-state agent or broker. The resident agent or broker must also receive up to half of the commission or fee income – depending on state law – without having added any value to the transaction. Countersignature laws were expressly excepted from the scope of NARAB as a result of a political compromise, and there are still five states that require countersignatures: Alabama, Florida, Nevada, South Dakota and West Virginia. All of the national insurance producer groups and the NAIC are all on the record as opposing countersignature laws. These laws serve no legitimate purpose in today's increasingly interstate and international insurance marketplace. Yet, as you can see, they still exist in several states – one of the last vestiges of pure protectionism in agent and broker licensing.

The Council believes it is entirely appropriate for you to take additional measures to assure that all 51 licensing jurisdictions - representing 100 percent of premium volume - have uniform, consistent and high professional standards for agent/broker licensing and to ensure that any remaining protectionist barriers are eliminated. If that means that it becomes necessary to pursue a NARAB II, we would welcome those actions. Experience has shown that the states have been willing to move forward once they are given the appropriate incentive to do so. While state regulators may strongly support the move to uniformity, they may not have the political strength to do so because of local agent opposition. The incentives engendered in NARAB have served the move towards reciprocity well, and we believe that a similar approach would be effective in encouraging both full reciprocity and full uniformity in licensing laws in all jurisdictions.

As I noted earlier in my testimony, we think NARAB is a successful model for ways in which your committee can dramatically improve insurance regulation without either turning the system on its head, or blithely accepting the status quo. It provides the proper incentives for states to modernize the agent and broker licensing system, but still protects the authority of state insurance regulators. NARAB's enactment did more to advance reform in the nonresident agent and broker licensing system in the last 18 months than all the efforts undertaken by the states and the NAIC over the past 60 years. You can't argue with that kind of progress. We would urge the Subcommittee to look at using this approach in other areas of insurance regulation.

Mr. Chairman, I am grateful to you for holding this hearing today. But I'd also like to note that the battle is far from being over. As this Subcommittee explores the options for improving harmonization of state laws, we would urge you to recognize the progress that has been achieved through NARAB - even though its passage was strongly opposed by regulators at the time. Thank you for this opportunity, and for your leadership on these important issues that impact both the insurance industry and the consumers we serve.