NARAB AND BEYOND

HEARING

BEFORE THE

SUBCOMMITTEE ON
CAPITAL MARKETS, INSURANCE, AND
GOVERNMENT SPONSORED ENTERPRISES

OF THE

COMMITTEE ON
FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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NARAB AND BEYOND

WEDNESDAY, MAY 16, 2001

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE
AND GOVERNMENT SPONSORED ENTERPRISES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC.

The subcommittee met, pursuant to call, at 2:05 p.m., in room 2128, Rayburn House Office Building, Hon. Richard Baker, [chairman of the subcommittee], presiding.

Present: Chairman Baker; Representatives Shays, Gillmor, Barr, Weldon, Biggert, Miller, Hart, Kanjorski, Maloney, Jones, Meeks, Inslee, Ford, Lucas of Kentucky, Shows, Crowley, Israel, and Ross.

Also Present: Representative Kelly.

Chairman BAKER. We will go ahead and call our hearing to order. I wish to ask for unanimous consent that for today's hearing Mrs. Kelly be considered a Member of our subcommittee for the purposes of questioning the panel that follows and that she will be recognized pursuant to myself and Mr. Kanjorski for the purposes of pursuing that line of questioning. And that is without objection, of course.

Today we have, I believe, the obligation to review the progress to date in meeting the goal established by the adoption of Gramm-Leach-Bliley in the harmonization of the 50-State regulatory process for insurance agency licensing and marketing. I had the misfortune recently to sit down with some folks and look at a chart—that was an amazing piece of work—that showed the regulatory requirements in order to seek and obtain approval for the marketing of an insurance product in each of the 50 States simultaneously, and it is indeed an overwhelming set of circumstances.

Despite the fact that there is some comfort taken that to date, 21 States have agreed to reciprocity, there are several observations which I would like to make that I think give Members some concern. The 21 States frankly only represent about 30 percent of the licensed agents, and only 20 percent of the premium being paid. The standard to expect attaining is a national marketing system of uniformity; I think we are falling far short of our expectations.

And therein also is an important point. My view of the provisions of Gramm-Leach-Bliley as a member of that conference committee is that it went beyond the question of just reciprocity. I went to the issue of uniformity, and that is indeed a different standard, so that we have much work to do. It is my hope that today, in the course of this hearing, we will hear from those who are engaged in this issue, NAIC and others, that there has been significant progress

beyond the reported numbers. But certainly, the subcommittee will move very slowly in its actions and carefully listen to all affected parties.

It would be my view that this would be an ongoing, long-term project, not on a short-term paper we hand in tomorrow and walk away from, so that this hearing today marks the initiation of that process. I believe that this can be a productive endeavor and encourage those with the responsibility to work aggressively toward a harmonized standard, averting the need for the Congress to act in any other manner.

With that, I would recognize Mr. Kanjorski for any opening statement he may choose to make.

Mr. KANJORSKI. Thank you, Mr. Chairman.

One-half of the sand has now fallen through the hourglass, marking a time Congress gave the States under Gramm-Leach-Bliley Act to establish reciprocity and uniformity thresholds for nonresident producer licensing. It is therefore appropriate and constructive for us to hold a hearing at this time on the efforts to date by the States to comply with the NARAB provisions contained in the 1999 law and the need for further Congressional action to improve the efficiency and effectiveness of the Nation's insurance industry. I therefore commend you, Mr. Chairman, for bringing these matters to the subcommittee's attention and for helping to educate our Members about the new jurisdiction. This hearing also represents the first time our subcommittee has substantively examined insurance issues in the 107th Congress.

In an effort to allow an agent or broker to conduct business in more than one State using a single license, Congress included provisions to create the National Association of Registered Agents and Brokers, or NARAB, in the law to overhaul our Nation's financial services marketplace. These provisions require at least 29 States and territories to implement reciprocal or uniform standards for agents licensing by November 12th, 2002. If these jurisdictions fail to meet this deadline, the law then triggers the establishment of NARAB as a semiautonomous body managed and supervised by State insurance commissioners with the power to set and preempt certain State standards in order to create a national licensing standard for insurance. As I understand, the States, under the guidance of the National Association of Insurance Commissioners, have to date focused on meeting the reciprocity standards contained in the GLB Act while pursuing uniformity as a long-term goal.

Last fall, the subcommittee on finance and hazardous waste held a hearing about the status of implementing the NARAB provisions of the Act. At that time, limited action had occurred and doubts existed about whether the States would meet the deadline. Since then, however, considerable progress has been made. According to the National Association of Insurance Commissioners, 21 States have now passed legislation seeking to satisfy the reciprocity requirements. As a result, it now appears likely that the States will preempt the creation of NARAB.

From my perspective, streamlining the insurance licensing process represents an important first step in increasing the effectiveness and efficiency of our Nation's traditional system of State in-

surance regulation. The McCarran-Ferguson Act authorized States to regulate the insurance business, and Congress reaffirmed this system in the GLB Act. Absent continued advances in State efforts to streamline and increase uniformity in their insurance laws and regulations, however, some may, in the near future, encourage Congress to consider altering these statutory arrangements. The States must consequently continue to work proactively to modernize their systems for regulating the insurance marketplace.

In closing, Mr. Chairman, I believe it important that we learn more about the views of the parties testifying before us today, and if necessary, work to further refine and improve the legal structures governing our Nation's insurance system. I also look forward to hearing from our witnesses about their impressions and to working with you in the future on insurance issues. Thank you, Mr. Chairman.

[The prepared statement of Hon. Paul Kanjorksi can be found on page 31 in the appendix.]

Chairman BAKER. Thank you, Mr. Kanjorski.

Mrs. Biggert, would you have an opening statement?

Mrs. BIGGERT. No.

Chairman BAKER. At this time, then, I would recognize our first witness today is the Honorable Sue Kelly, Member of the subcommittee, and appreciate her longstanding interest in the subject of insurance uniformity and welcome you here today to make comments on this important topic. Thank you, Sue.

STATEMENT OF HON. SUE W. KELLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mrs. KELLY. Thank you very much, Chairman Baker, Ranking Member Kanjorski and Members of the subcommittee. I want to thank you for inviting me to testify on the National Association of Registered Agents and Brokers, which is known as NARAB, section of the Gramm-Leach-Bliley Act. Let me begin by reading to you a quote which demonstrates both the desire of State regulators to achieve uniform licensing standards and the impediments to it: "The commissioners are now fully prepared to go before their various legislative committees with recommendations for a system of insurance law which shall be the same in all States, not reciprocal but identical, not retaliatory, but uniform."

This statement expressing the clear desire for uniform insurance regulatory system was made by Mr. George W. Miller of the New York's Insurance Commissioner. He was the New York Insurance Commissioner who founded the National Association of Insurance Commissioners. Mr. Miller made this statement at the end of the very first meeting of NAIC in 1871. Since then, the NAIC has been working for 130 years to achieve some form of regulatory uniformity. I wish they could have solved the problem, but clearly, they have not.

Some of the problems for agents and brokers who offer policies in more than their home State are simply the result of needless duplication, yet the root of many other problems is protectionism. I believe that the licensing laws affecting agents and brokers are among the most anachronistic. An overwhelming majority of commercial insurance is sold on an interstate basis, yet an agent or

broker has to get upward of 100 insurance licenses in order to market national insurance programs.

More seriously, those agents encounter numerous obstacles that have been erected in States to protect in-State agents from out-of-State competition.

Today's insurance business spans State and national borders, with an increasing emphasis on national insurance programs, multistate clients and cutting-edge technology. Yet today's agent licensing system is based on yesterday's market, one in which agents and their clients did business in their region and nowhere else. Agents who want to write a national insurance program have to procure and maintain licenses by line, class, producer and State. These agents are confronted with a mind-numbing minutiae of individual State licensing requirements, including such prerequisites as fingerprinting, certified copies of high school diplomas, printed notices in the local newspaper before an agency can get a license. These have nothing at all to do with the real insurance regulation or professionalism of its practitioners. Some States require corporate rather than individual agent licenses, which means the agency must be incorporated in the State where it wants to obtain a license.

Other States will not permit any non-resident agent to solicit business in the State. In this time of increasing global competition, it is hard to lecture to our trading partners about opening markets when we still have these kinds of barriers to interstate domestic commerce. Together, we took an important step when we made NARAB a part of the Gramm-Leach-Bliley bill. If 29 States can repeal their anticompetitive licensing laws by November of 2002 with the voluntary licensing clearinghouse, NARAB would create—it will not be implemented.

In this way, the initiative operates as a sword of Damocles if a clear majority of States fail to repeat protectionist requirements. Let me be clear. We must not let the States stop at 29. We have to push further. We must take the next step beyond NARAB, and we must realize the goal set by Mr. Miller 130 years ago, which is a goal of uniformity for 50 States and reach it before the end of this decade.

As evidenced by the State's continuing effort to avoid NARAB implementation, the States will act if we give them the right incentive.

I ask you today to join me in looking beyond NARAB today and calling for uniformity among the States. This way we can ensure that our insurance agents and brokers can focus on providing the best insurance service at the lowest cost to consumers, not continuing to hire extra staff in an attempt to comply with the staggering complexity of 50 insurance agencies and regulatory standards.

I thank you very much for this opportunity, and I just want to take a moment to thank Chairman Oxley for taking up this fight in the Gramm-Leach-Bliley conference and getting this provision back in the bill. In addition, it would not have been possible without the support of you, Chairman Baker, who had perhaps the best statement of all in a conference when you spoke in favor of NARAB. I thank you very much for the opportunity to share my

thoughts, and at this time I am glad to answer any questions that you might have.

Chairman BAKER. Thank you very much.

[The prepared statement of Hon. Sue W. Kelly can be found on page 32 in the appendix.]

Chairman BAKER. Some have stated that as to Congressional activity on this subject, that Congress really hasn't had hearings scrutinizing NARAB operations or the concept of NARAB to any significant degree prior to the Gramm-Leach-Bliley considerations in conference. I know for a certainty that on the Banking Committee side of the formula in the decade-long debate of modernization, this was, in fact, a subject of repeated discussion. Do you have knowledge about the Commerce Committee's activities in this arena, and wasn't Chairman Oxley—a Chairman of the subcommittee of jurisdiction—an issue in which he had some longstanding interest?

Mrs. KELLY. The Commerce Committee actually did have hearings, and we had hearings here in the banking committee at that time. I have a copy of George Reider's—the Connecticut insurance commissioner—testimony in front of our committee. That was on February 11th, 1999. He testified on NARAB and this is a copy of his testimony. Unfortunately, I can't say the same for some of the people, I suspect, who are saying that there were no hearings. There were.

Chairman BAKER. And the reason I bring that up, is the next step in critical comment is that we have too short a time line in which to address such a complicated matter. I don't think anybody, one, should have been taken by surprise, but is there a sufficient clock remaining, in your view, for this process to achieve productive-end conclusion?

Mrs. KELLY. Chairman Baker, I am glad you asked that question. I think that we gave 3 years for the States to address the problem, and after about a year-and-a-half, 21 States have acted on the problem. I think there is probably easily going to get that 29, because this is something whose time has come. So I think now we should go back and take a look at it and perhaps just move this out and do what Miller asked in his remarks 130 years ago, let us do it for all 50 States, because it just simply makes sense. In hindsight, I think perhaps we should have set that bar higher.

Chairman BAKER. And finally, the point of view that this is about companies engaging with producers and upsetting the apple cart at the State level, I am not, and I don't believe you are, an advocate of Federal regulation of insurance sales, but we do have to recognize that on the consumer side of the coin, new product development, competitive pricing and ultimately better service is the end goal of this. It is about making sure that the best products are available for whatever the consumer need might be, and having 50 arbitrary grocery stores in which you have to have a different list of rules to enter each store isn't in the consumer's best interest. I assume that is your motivation as well.

Mrs. KELLY. I would agree with you. I think if we raise the bar, what we are doing is something that is really reasonable and is going to do a tremendous amount of good for the consumers, and it is the consumers who are benefiting from this piece of legislation.

Chairman BAKER. I want to express my appreciation for your willingness to participate and your longstanding interest and leadership on this issue as well.

Mr. Kanjorski.

Mr. KANJORSKI. Mrs. Kelly, I think you make a good point, but I am more interested in learning what you would suggest for how we could raise the bar?

Mrs. KELLY. I think we have perhaps set it at too low at the requirement for 29 States. We need to raise the bar. One of the concerns that I have is that we have some of the larger States engage in this as well. If we have a smaller States with smaller populations, we are not affecting everyone in the United States. Those larger States need to be a member of this community. We need to get them into uniformity, and it will help the consumers tremendously in those larger States as well.

Mr. KANJORSKI. But how would we raise the bar? What is the stick and what is the carrot?

Mrs. KELLY. I am sorry. What were you——

Mr. KANJORSKI. What would be the stick and/or the carrot that we could use to accomplish raising the bar? California is not in. Pennsylvania is not in. Texas is not in. I agree with you that if we could only get 29 of the smaller States to stay in while 21 of the larger States stay out, we are not going to be terribly successful. But what would you utilize to accomplish greater reciprocity?

Mrs. KELLY. I would think we could find a way to attach an additional bill that would open that number up to 50. You see, what has really happened here, when we did the NARAB and passed the NARAB bill, we essentially put a sword of Damocles over their heads. We gave them 3 years and said, either do this yourselves, or we will step in.

Well, the end game of this has been that 21 States already, in a year-and-a-half, have stepped in and said, you know, this is really a good idea, we are going to do this. If we sort of give them that type of incentive again by finding a vehicle to attach a new piece of legislation that would open this a bit, all the way to the rest of the 50 States, I think we will get uniformity. And then I think it will be something that will inure to the benefit of the consumers.

Mr. KANJORSKI. I think it is an important issue, and I compliment you for your position.

Mrs. KELLY. Thank you. These agents have to spend a lot of money getting these separated licenses, and that is only reflected in their fees.

Chairman BAKER. Mrs. Biggert.

Mrs. BIGGERT. Thank you, Mr. Chairman. In your quote from 1871, it was talking about uniformity. Do you think that you should just skip over—is uniformity your goal, and why wouldn't that be the standard to achieve the States rather than just to have the reciprocity as the first tactic?

Mrs. KELLY. Uniformity is the goal, Mrs. Biggert. The idea of having uniformity is that it would, first of all, inure to the benefit of the consumer because of the cost of the agents. Right now, some of the things that the agents are required to do are just simply costly. If you, for instance, are requiring an agent, if they want to offer multistate insurance, they have to, in some instances, go out

to a State and spend a week taking a course in another State that is not their home State, and that is perfectly understandable, but if the course doesn't add anything to their knowledge and is not enhancing their ability to offer their insurance in that State, it seems to be needless duplication. What NARAB would allow is a self-regulating organization. We set the bar so that everybody is involved, allow them to self-regulate, and by their self-regulation, it drops the cost to the consumers of the insurance. It seems to make sense.

Mrs. BIGGERT. Thank you. Thank you, Mr. Chairman.

Chairman BAKER. Mr. Israel here, you are next. No questions?

Mr. ISRAEL. I have no questions right now, Mr. Chairman.

Chairman BAKER. Mr. Shows.

Mr. Inslee.

Mr. INSLEE. No questions.

Chairman BAKER. I thank you for your willingness to participate and do appreciate your longstanding interest in this subject and look forward to continuing to work with you. Thank you.

Mrs. KELLY. Thank you very much, Mr. Chairman.

Chairman BAKER. At this time I would invite the members of our second panel to please come forward. Welcome, gentlemen, and for the purposes of proceeding, each of your statements have been made part of the record. Please feel free to summarize as much as practicable. Constrain your remarks to maximize the opportunity for Members to ask questions, and we are pleased to recognize the Honorable William J. Kirven, Commissioner of Insurance for the State of Colorado and Co-Chair of the National Association of Insurance Commissioners NARAB Working Group to speak here on behalf of the NAIC. Welcome, Mr. Kirven.

STATEMENT OF HON. WILLIAM J. KIRVEN III, COMMISSIONER OF INSURANCE, STATE OF COLORADO; CHAIR, WESTERN ZONE, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS; CO-CHAIR, NAIC'S FINANCIAL SERVICES MODERNIZATION WORKING GROUP ON NARAB; ON BEHALF OF THE NAIC

Mr. KIRVEN. Thank you, Mr. Chairman. As you stated, Mr. Chairman, I am the Insurance Commissioner of the State of Colorado. I am the Chairman of the Western Zone, and Co-Chair——

Chairman BAKER. If you could pull that mike down a little bit.

Mr. KIRVEN. And Co-Chair of the NAIC's Financial Services Modernization Working Group on NARAB. You do have my prepared testimony. What I would like to spend my 5 minutes addressing is the questions that were in the Chairman's letter that you sent to the NAIC.

The first question is what are our long-term goals for streamlining producer licensing, and I think Congresswoman Kelly is absolutely right. If our long-term goal is uniformity, we realize that the reciprocity in 29 States is not really true and effective reform.

The States are using a two-step process to approach the streamlining. It is our goal to achieve reciprocity in every State plus the District of Columbia, while moving to uniformity through the adoption of a Model Act, again, in every State. Not only does this involve revising State laws as necessary, but also developing and uti-

lizing technology to implement a centralized process for agent licensing.

In order to achieve these goals, in October of 2000 we completed the revisions to the Producer Licensing Model Act to make the model more consistent with the NARAB revisions of Gramm-Leach-Bliley. The States are now working to enact that model nationwide, and I will talk a minute in how we are coming on that.

On the technology front, the NAIC is working through its non-profit affiliate, the National Insurance Producer Registry, to streamline the agent licensing process through the use of improved technology and a centralized producer database. And the goal here is to make it possible for State insurance regulators and producers to complete the non-resident licensing process for any number of States within a 24-hour period using a single application form.

The current status of our reforms is the States are making strong progress. Twenty-one States have enacted the Producer Model Licensing Act or relevant portions of it. Four States have bills that are waiting their governor's signature. Another 15 States have producer licensing legislation pending, and we anticipate another four or five States will introduce the legislation in the coming weeks. I was advised today, for example, that California has introduced a version of the Model Act.

One other State intends to adopt regulations to implement the Model Act, and it is our understanding that the remaining States are either still considering legislation, or otherwise planning to do it in the next legislative session.

Obviously, I think it would have been better if everyone had done it this session instead of cutting it so close, but there are people who are waiting until the next session.

The fourth question you asked was how many jurisdictions have passed NARAB-compliant legislation, and what percent of the total premium do these jurisdictions represent. The initial process of certifying whether a State's producer licensing laws are compliant with the NARAB provisions is just now beginning. Of course, the NAIC was actively involved in the preparation of the legislation that was submitted to the legislators in the various States. As you understand, what gets submitted isn't necessarily what comes out at the back end of that process, and so now, the NAIC is preparing to examine the laws as they were enacted to determine whether or not they are, in fact, still compliant with the NARAB requirements. And that is, as you know, an obligation of the NAIC to make a determination as to whether or not the required number of States have, in fact, achieved reciprocity as required by GLB.

As for determining the amount of premiums covered by States that are NARAB compliant, this is not something that we presently track, because it does not provide a relevant measuring stick. There is no meaningful correlation between the State's premium volume and the number of non-resident producers, which is what we are really talking about as far as efficiency and effectiveness of licensing. We prefer instead to look at the number of licensed agents of those States that are adopting the producer licensing model. In those States that have thus far enacted producer licensing legislation, this accounts for almost one-third of all licensed agents in the country, or nearly one million out of 2.9 million. If

we add those States with bills awaiting their governor's signature and those States with pending bills in the legislative session, nearly 70 percent of the licensed agent population will be covered.

There has been some reference to the size of the States, Mr. Chairman, and in fact, California, I think, in 1999, had roughly 238,000 total licensed agents, but only 44,000 of those were actually non-resident producers who were licensed.

How many jurisdictions do we anticipate passing NARAB by the deadline? Obviously, we think that there will be in excess of the minimum of 29, and we are confident that we will have those minimum 29 on board, but again, we do not intend to stop there. We intend to achieve our goal of getting all jurisdictions to meet reciprocity and then move on ultimately to uniformity.

With respect to measuring premiums affected by reciprocity, again, we have not found that to be a meaningful measure and do not really have data. Do we believe the potential creation of NARAB has assisted States in their efforts to enact agent licensing reforms? I think it is hard to say with any certainty. Certainly we started this process long before GLB was enacted, but it certainly gave focus to—and some inspiration to the effort that the NAIC has made, and I think that has been a very positive effect. I think it is important to keep in mind that State regulators were, in fact, working on agent licensing reforms well in advance of GLB.

The last question you asked was to discuss the need for comprehensive uniformity in agent licensing. In March of 2000, almost all members of the NAIC signed off on a statement of intent, wherein they expressed their commitment to work toward implementing effective uniform producer licensing standards.

Today, the NAIC's commitment remains as strong as ever. The NAIC, working with its affiliate, the National Insurance Producer Registry, is continuing to work with States to achieve a centralized electronic producer licensing process that will reduce the costs and the complexity of regulatory compliance related to the current multi-state process. Those concludes my answers.

[The prepared statement of Hon. William J. Kirven III can be found on page 36 in the appendix.]

Chairman BAKER. Thank you very much, Mr. Kirven. I appreciate your responses.

Our next participant is the past Chairman of the Council of Insurance Agents and Brokers, Mr. Albert Counselman. Welcome, Mr. Counselman.

STATEMENT OF ALBERT R. COUNSELMAN, PRESIDENT, RIGGS, COUNSELMAN, MICHAELS & DOWNES, BALTIMORE, MD; PAST CHAIRMAN, COUNCIL OF INSURANCE AGENTS AND BROKERS

Mr. COUNSELMAN. Thank you. Good afternoon, Mr. Chairman and Members of the subcommittee. I am Skip Counselman, President of Riggs, Counselman, Michaels & Downes in Baltimore, Maryland. I am also past Chairman of the Council of Insurance Agents and Brokers. I am grateful for this second opportunity to testify on the issue of agent and broker licensing. I first testified before Chairman Oxley's Subcommittee on Finance and Hazardous Materials in July 1997 about 4 years ago.

I would like to say that while I appreciate the efforts of the NAIC leadership and while I can see progress being made, the marketplace reality has changed little for a firm such as mine. I still am facing several of the same burdensome requirements that I faced 4 years ago, and little has been done to significantly streamline the licensing process for me and for my employees.

In my prior testimony, I noted that I had to personally maintain 100 separate licenses. Today I still maintain 90 licenses, not much of an improvement. The application process has gotten slightly better, as most States now accept the NAIC's uniform applications. However, many States still require additional documentation beyond what is requested on those forms. And even though I hold a non-resident agent license in Texas, for example, I still may not solicit business from any Texas resident. So as you can see, not much has changed in the last 4 years.

With that said, I think that the enactment of NARAB provisions of the Gramm-Leach-Bliley Act had a positive effect on State's efforts to enact licensing reforms. It was only after the enactment of NARAB that the States got serious about enacting these reforms.

It is highly unlikely that States would have moved this quickly without the Bunsen Burner effect of NARAB giving them a jump start, especially when you consider the fact that our association formed its first committee to work on licensing reforms more than 60 years ago. NARAB was a true provision of modernization in the Gramm-Leach-Bliley Act. Were it not for the tenacious support and initiatives 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. 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 regulators strongly opposed its passage at the time. The Council appreciates the progress that has been made in reforming the licensing system, but we believe that we are only at the beginning of the road.

After NARAB's enactment, the NAIC pledged to go further than NARAB in reforming the licensing system and to secure not only reciprocity of all licensing jurisdictions, but also uniformity of licensing laws in all jurisdictions.

It is a virtual certainty that a majority of these jurisdictions will enact the necessary legislation to meet NARAB's reciprocity requirements. However, there are some questions as to whether NAIC will reach its initial goal of reciprocity in all jurisdictions.

The Council is very concerned about this prospect. While 20 States have enacted laws that meet the reciprocity standard, those States account for only 20 percent of the total premium in the U.S. Council members represent only the top one percent of agents and brokers, but place over 80 percent of all commercial insurance business in the U.S., and if only 29 States enact the necessary laws, a large number of agents and brokers will not actually be benefitting from the NARAB regulations and proposals.

The Council continues to have concerns about States such as California, Texas, Florida and New York. The Council firmly leaves that increased uniformity of licensing laws is the key to full acceptance of non-resident licensing reciprocity. This is why we have consistently supported States enactment of NAIC's Producer Licensing Model Act, because it brings State agent and broker licensing laws much closer to uniformity than they have ever been before.

However, there is still a need for the States to go further. For example, there is the issue of tenure and renewal dates in all 50 States. There is the issue of countersignature laws, which still exist, which are protectionist in several States.

Mr. Chairman, I wish to thank you for holding this hearing today, but we would also like to note that the battle must continue forward on this issue. As you consider options, we ask that you consider what appropriate issues should be considered so that all jurisdictions representing 100 percent of premium volume benefit by uniformity throughout the country. Thank you for this opportunity and for your leadership on this important issue.

[The prepared statement of Albert R. Counselman can be found on page 47 in the appendix.]

Chairman BAKER. Thank you, Mr. Counselman.

Our next witness is Mr. Ronald Smith, here today in his capacity as Chair of State Government Affairs and past President of the Independent Insurance Agents of America, as well as participating on behalf of the National Association of Insurance and Financial Advisors and the National Association of Professional Insurance Agents. Welcome, Mr. Smith.

STATEMENT OF RONALD A. SMITH, PRESIDENT, SMITH, SAWYER & SMITH, INC., ROCHESTER, IN; STATE GOVERNMENT AFFAIRS CHAIRMAN AND PAST PRESIDENT, INDEPENDENT INSURANCE AGENTS OF AMERICA; ON BEHALF OF THE IIAA, NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS, AND THE NATIONAL ASSOCIATION OF PROFESSIONAL INSURANCE AGENTS

Mr. SMITH. Thank you, Chairman Baker. Chairman Baker, Ranking Member Kanjorski and Members of the Subcommittee, good afternoon. I am Ron Smith. I am an insurance agent from Rochester, Indiana, and I am representing the Independent Insurance Agents of America, the National Association of Insurance and Financial Advisers and the Professional Insurance Agents.

No segment of the industry is affected more by licensing laws than our diverse membership, and no group is impacted more by the reforms we are discussing today.

Despite our longstanding support for State regulation and effective licensing laws, we feel the current licensing system does not operate as efficiently as it should. For this reason, we have led the effort to streamline the licensing process, and we have pushed for increased uniformity across State lines.

The passage of the NARAB provisions assured our members that effective licensing reform was finally eminent. It has now been 18 months since the enactment of the Gramm-Leach-Bliley Act, and we are halfway to the NARAB deadline. The associations that I represent have a presence in every State capital. And our members

and affiliates have been working closely with State lawmakers to enact reform.

This partnership has resulted in a staggering amount of reform in a short period of time. Because of these efforts, the NARAB threshold of 29 States will be cleared, we believe, before the end of 2001 over 1 year ahead of the timetable established by Gramm-Leach. Our success at the State level cannot be overstated. Here are some of the numbers.

Twenty-one States, as have been mentioned, have enacted significant reciprocity and uniformity laws. We believe there are 10 additional States that have passed reform bills through both legislative chambers, and if those bills become laws, that will mean approximately 31 States which account for almost 50 percent of all licensed individuals and almost 45 percent of the country's total property and casualty insurance premiums. We think that will happen yet this year. Many other States are currently considering licensing reform bills, and by the end of this year, we anticipate that over 45 States will have considered licensing reform legislation.

We think we have made some progress. Given the pace of activity that has occurred, it is now clear that the creation of NARAB will be averted. We commend the hundreds of State legislators who have worked diligently on insurance license and reform over the last several months. They have clearly done their part to modernize insurance regulation.

While the accomplishments of the last several months are impressive, we intend to keep the pressure on. Our organizations believe it is essential that we have national reform. Reaching the statutory bare minimum is not good enough, and we will not settle for reform in only 29 States. Instead, we will continue to push for reform in all States, both prior to and after the November 2002 deadline.

Some in our industry suggest that the process is insufficient, because larger States have not yet acted. We are a little more optimistic on that point. We believe that several large States will be taking some action. 41 States will adjourn by August of this year in their State legislatures, and we anticipate that at least 35 of those States will have taken at least some action this year. Most of the remaining States, including the largest States, have legislative sessions that continue on an ongoing basis. These additional States include New York, California, Illinois, Pennsylvania, Michigan, Ohio and New Jersey. Each of these States is now working to enact licensing reform, and we are optimistic that several of these States will get something done, maybe even this year. Effective and meaningful reform must be national in scope, and it is essential that the largest States be part of the mix.

By enacting the NARAB provisions, Congress took affirmative steps to ensure that insurance agents would have access to a streamlined and functional licensing mechanism. While we have consistently argued that the States were up to the challenge, we are nevertheless pleased with the results so far. We must continue, however, to build on this progress and gain enactment of similar reforms in the remaining States. We are confident that this will occur and we will continue to work closely with State policymakers to achieve meaningfullicensing reform on a national basis.

On behalf of IIAA, NAFIA, and PIA, I thank you for this opportunity to present our views. We look forward to working with this subcommittee in any capacity needed. Thank you.

[The prepared statement of Ronald A. Smith can be found on page 56 in the appendix.]

Chairman BAKER. Thank you very much, Mr. Smith.

Mr. Kirven, I want to start with what appears to be differing views about the real direction of the provision within Gramm-Leach-Bliley and whether or not there was clear enough direction in the language of the Act to understand the goal.

And this is just my perspective. I can't speak for all members of the conference, and certainly Mrs. Kelly probably has her own view. But reciprocity is something different from uniformity, and when we sat around that table talking about the marketing of products, it, I believe, was with a view toward the goal of uniformity. You then went on to say that the Gramm-Leach-Bliley requirement was not the initiation of the effort, but it certainly was an incentivizer to the overall activity.

Do you think that we—pending the current target of November, 2002, nothing will alter that event—need to start thinking about another incentive program for uniformity?

Mr. KIRVEN. From the NAIC's perspective, I would hope that you would not. I think the NAIC itself is committed to uniformity. We want all jurisdictions to have a uniform application process where you simply file one application and you can get licensed in any State in the Union. We have a strong incentive to do that.

As you have noted, Mr. Chairman, there are some States that still have, for example, countersignature laws in effect. I agree that those are certainly economic protection. And in certain States, apparently the agents—we need their cooperation, and we need to have their support to change some of those things, and if they don't, then that is certainly a problem for us.

I don't think it is any secret that the most difficult part of this process for us is having to go to each of these legislatures, introduce a bill and everybody has their ideas and it is our system on how that can best be accomplished. And sometimes what we put in as a Model Act doesn't exactly look like a Model Act when it comes out.

That is a difficult issue for us. I think we have made great progress to date doing that, but I want there to be no question that the NAIC's goal is clearly uniformity. We have never felt that reciprocity was an end in it. But we also realized, given the timeframe and given the amount of work that we have to do with these legislatures, that reciprocity would certainly help us beat the clock, so to speak.

But I would certainly not—and I don't think the organization will tolerate—say, "Well, we made that deadline, let us keep trying." I think we are going to push ahead for uniformity.

Chairman BAKER. Well, as a longstanding member of the Louisiana legislature, I have good reason to have my concerns about our ability to achieve certain goals.

I would point to the fact that almost every bill that is passed in the legislature has the proviso, except for the Parish of Orleans. Even the rules of time apparently don't apply to Orleans Parish

any longer. So for those reasons and the fact that you observed that it was some modest assistance in focusing the organization's attention, for what it is worth, if it helps, just let them know that somebody else is talking about additional interest in the matter, should progress not achieve desired goals.

Mr. Counselman, you indicated you have approximately 90 licenses today, as opposed to a hundred. How does that occur, and what do you perceive from the market side is the difficulty in the larger States coming on board?

Mr. COUNSELMAN. Thank you, Mr. Chairman.

Ninety as opposed to a hundred is because of the good cooperation from some of my associates in my own company. We have a total of 190 non-resident licenses for people in my company. We operate in one location in Baltimore, in one State; and so some of my associates have additional licenses that I used to hold exclusively. So the streamlining of 10 percent isn't really streamlining. It is just some of my associates are carrying those——

Chairman BAKER. You were just trying to be nice, I guess.

Mr. COUNSELMAN. Right. I am trying to be precise.

But the uniformity is the major issue, because even if we have licenses in all of these States, we are not fulfilling the identical requirements in those different States. The applications are different, and the requirements are different. For example, in criminal background checks, it seems like a reasonable thing to require. The manner in which that information is gathered for the different States is not consistent.

Chairman BAKER. I thank you very much. My time has expired.

Mr. Kanjorski.

Mr. KANJORSKI. I am trying to understand that issue better. When you say that you will meet the requirement that 29 States will pass laws by the deadline, you are only talking about reciprocity. You are not talking about uniformity. Is that a correct assessment of your accomplishment in the 3-year deadline?

Mr. KIRVEN. Yes. I am talking about 29 States' reciprocity. We will exceed that goal, but our real goal is 50 States for uniformity.

Mr. KANJORSKI. After the 3-year period, how much uniformity are you going to have?

Mr. KIRVEN. Well, actually, the Model Act is designed to create a lot of uniformity now. It does a dual purpose. It also establishes reciprocity, but it goes on to establish definitions of the various lines in commonality among the States that adopt it. So it is, in fact, a start toward uniformity; and if everybody adopted the Model Act, I think we could probably safely say we had uniformity.

Mr. KANJORSKI. How many States have adopted the uniform act?

Mr. KIRVEN. Twenty-one States. Ten, I think, are through both houses awaiting governors' signatures.

Mr. KANJORSKI. That is the Model Act itself?

Mr. KIRVEN. That is the Model Act.

Mr. KANJORSKI. So you will have both reciprocity and uniformity?

Mr. KIRVEN. For the most part in those. We have to look at those. When we put them in, they are the Model Act; and when they come out, there have been some changes to them as they go through the process. And that is what the NAIC is going to do as

part of its compliance process, is to look at the enacted laws to see how compliant they are with the minimum standards that we have for uniformity.

Mr. KANJORSKI. How soon will that analysis be finished?

Mr. KIRVEN. Well, the working group, which I cochair, is in the process right now of establishing a checklist of each item that must be in the State laws to meet our requirements for determination that they are compliant with reciprocity. We are going to work on that at the June meeting. So we will start this summer. And we would be glad to share with the subcommittee our progress on certifying those States.

Mr. KANJORSKI. Could you do that? I think it would be very helpful to us.

Mr. KIRVEN. OK.

Mr. KANJORSKI. Mr. Smith, I know you are trying to walk a fine line here, being optimistic and favorable, but I sort of heard a little hesitancy in your testimony. When the day is done, are we really not going to accomplish what we are looking for?

Mr. SMITH. I think there is a big difference between reciprocity and uniformity, and our association has always felt that way. We worked extremely hard on the Model Act. We spent a lot of time, effort and energy on the language in the Model Act. There were some attempts to change that language. We were effective in fighting those off, because we thought the changes were harmful to consumers. And so, quite frankly, we have been a little disappointed in what has come out of some of the State legislatures.

We would look forward to working with this subcommittee, if that need be, to reach the goal of uniformity. There is no question that that is where we should be.

I live in a community of 7,000 people in north central Indiana. I have 15 licenses around the various States and actually deal with my largest client, who happens to be in the State of Florida. So this is not just something that affects big brokers. It affects smaller agents and brokers like myself who happen to have clients that deal all around the country.

Mr. KANJORSKI. Is this delay done for protectionism, or is it that every State wants to feel they have a right to be unique and a little different?

Mr. SMITH. I think there has been a lot of protectionism in the past, particularly countersignature laws. We are basically now down to five States. We think one of those is going to get rid of their countersignature law. But it has been very protectionist.

I think now several States believe that they have one or two ingredients that for their State is crucial in the licensing process, but yet for the vast majority of States, it is not deemed crucial—criminal background checks and some things like that. That is where in particular I think some of the larger States have been hung up on their passage of the Model Act. So that is why we maintain a certain degree of optimism, because we do have associations in each of those States working with the State legislatures and the NAIC to see if we can't reach some compromises there.

Mr. KANJORSKI. Mr. Counselman, is it your hope that you are going to go down from the 90 licenses that you now own to just one?

Mr. COUNSELMAN. I would hope I would go to one.

Mr. KANJORSKI. Can any of you give me an idea about when you have 90 licenses, what does it cost you?

Mr. COUNSELMAN. It is different in every State. On average, it is probably about $100. It could be as little as $25 or as much as $150, but in addition some States have bond requirements, and that could be $100 to $500 in addition.

Mr. KANJORSKI. It seems to me that you are talking about thousands of dollars for your agency.

Mr. COUNSELMAN. I am talking for my own firm in excess of $100,000, and for me just with 90 licenses, I am talking thousands of dollars. But when you multiply that by the literally millions of agents across the country, it is a very major issue. And the time it takes to fill out those applications, somebody has to take the time to do it at work.

Mr. KANJORSKI. Very good. Thank you, Mr. Chairman.

Chairman BAKER. Thank you, Mr. Kanjorski.

Mrs. Kelly.

Mrs. KELLY. Thank you, Mr. Chairman.

Mr. Kirven, you are talking about your your group, is the NAIC really agreeing with this goal that we are trying to achieve with NARAB?

Mr. KIRVEN. Yes.

Mrs. KELLY. Well, if you agree with the goal, it seems to me that 130 years is a long time to try to enlarge this question and try to push it. I would like to know when you think we will have uniformity. What is your stated goal at this point in terms of time in all of the States? In 3 years? Five years? Six months? What are we talking about?

Mr. KIRVEN. Well, I would think that if we can reach the reciprocity level in 3 years, I don't know why we couldn't—and this is my personal opinion. We don't have a fixed date. I don't know why we couldn't try and achieve uniformity within the next 3 years.

Mrs. KELLY. Well, I am asking you about all 50 States, sir, not just the fact that we put the 29 States in as a goal.

Mr. KIRVEN. I understand, Congresswoman Kelly. I said—if it took us 3 years to reach 29 as a minimum, which we will reach more than that, I would hope within another 3 years we can reach uniformity, because it takes—you know, GLB was passed in November of 1999 I think. That was really too late to get bills ready for introduction in the 2000 session. So in Colorado we did it the very first session we could, which was this year, got it done and passed. Some States are waiting, but I would think that, if we need to make more changes, we will need 3 years as a reasonable amount of time to finalize, fine-tune uniformity on some of the acts now that may not come out uniform.

Mrs. KELLY. Do you think this would have occurred without the NARAB legislation, without that sword of Damocles? We have given NAIC quite some time, 130 years.

Mr. KIRVEN. I think that certainly the act has given impetus to an effort that was ongoing. People talk about how lately the NAIC is moving at light speed, and I guess that proves Einstein's Theory of Relativity. It took us 130 years to do some things. Lately, we have done a few in a couple of years. So we are picking up some

momentum, Congresswoman Kelly, and I think that we will continue to maintain this. I think there has just been a real hard look at all of our efforts, speed-to-market issues that the Chairman has referred to.

I certainly as an—coming from private industry and coming into this job have realized that this system is very balkanized and very redundant and really needs to be reformed. I am very committed to that, and I think that my colleagues in the NAIC are committed as well.

Having said that, though, no matter how much we agree, we still have to go to our State legislator to change our laws in a lot of cases, and we want them to be uniform across the country. And my personal opinion is, is that, yes, we may need some help with some pre-emption of countersignature laws. If some States can't just seem to get it done, then perhaps we will need some kind of a pre-emption which will make them get rid of the countersignature laws so we can get to uniformity. What I would like to see you do is give us adequate time, as you have, to make our best efforts to accomplish this goal.

Mrs. KELLY. I am sure that we would all be very happy to try to help you. When you say adequate time, I am just looking at the time line you have had before—and I don't mean to beat a dead horse here. Certainly I appreciate your coming here to testify, but I am concerned, because I think that the time has come for us to have a uniformity. There has been 130 years. When do you think the NAIC is going to have comprehensive uniform standards for the States to follow beyond the limited uniformity parameters that are in the Producer Licensing Model Act? Do you think that is going to be coming soon?

Mr. KIRVEN. I think our Producer Licensing Model Act goes a long way toward achieving uniformity today in its present form if we can get it adopted in all of the States.

Mrs. KELLY. But I asked you about a comprehensive uniform standard. I am not talking about reciprocity and not talking about models. I am talking about real standards for real people.

Mr. KIRVEN. And I am talking about the same thing. The Model Act has more than just reciprocity set forth in it. It has certain well-defined lines of business and how to be licensed and what the criteria are and the educational requirements. So we can make that on a uniform application across the country. It would be a uniform filing basis.

Mrs. KELLY. My trouble here is the comprehensiveness of it. I hope that you will work extremely quickly to accomplish the goal, but I appreciate the fact that you are looking for us to help you. I am sure we are very happy to help you.

And I thank you, Mr. Chairman, for allowing me to appear here today.

Chairman BAKER. Thank you, Mrs. Kelly.

Mr. Israel.

Mr. ISRAEL. Thank you, Mr. Chairman.

Mr. Smith, you noted in your testimony that we should not settle for reform in only 29 States, we have to go beyond that, and that you are optimistic that this year we will have more than 29 States. We are talking about the large market States like California,

Texas, Florida that have high premium value, lots of agents and brokers. In addition to being optimistic, can you tell me specifically what steps your organizations are taking in order to bring these jurisdictions on board?

Mr. SMITH. It is a little bit different in every State, because it depends on the views of all the people in that State.

For instance, Texas. Texas has passed the bill, and it has gone through both the house and senate in Texas, but we are not sure that it is going to be compliant or the NAIC will consider it compliant for purposes of uniformity or reciprocity. However, it would help the vast majority of agents and non-resident agents that would apply to the State of Texas.

California has some particular things that they require of their resident brokers that they think if they just pass the uniform model that they will actually be letting non-resident agents operate in their State on a basis that is much less comprehensive than their own residents are required to meet.

So those are two instances where some of the particularities in those States—we are working with our lobbyists in those States, we are working with the NAIC in those States, and then working with NCOIL and various legislative groups in the various States. So to get into particulars, every State is just a little bit different, and it is their own feeling about some of those things that we are trying to help overcome.

Mr. ISRAEL. The three organizations that you represent, IIAA, NAIFA, and PIA, are active in California, Florida, Texas. Are you playing an active role in encouraging those States to come on board?

Mr. SMITH. Yes, absolutely.

Mr. ISRAEL. Thank you, Mr. Chairman.

Chairman BAKER. Thank you, Mr. Israel.

Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

Could you update me—and I apologize if this came up earlier in the testimony; I was at a separate hearing—on what is going on with California, Texas and Louisiana, I think?

Mr. SMITH. Louisiana, I believe, has passed the Model Act.

Texas has passed both houses of the legislature. Again, I restate I am not exactly sure that that will be considered NAIC compliant. They had a couple little pieces in it.

California, we are working diligently with, as we speak. As a matter of fact, our lobbyists here that works with me, Wes Bissett behind me, spoke with their lobbyists yesterday on the issue.

And I think Ohio is another State that we might mention. The commissioner there, Lee Covington, is a strong supporter of this. But yet in Ohio they have had some very substantive discussions about budgets and things like that; and this legislation, quite frankly, has tended to hit toward the bottom of the barrel. So we are optimistic that later in this year we might get something done in Ohio.

So we are working as hard as we can in all of those States with our lobbyists. Our national association has affiliates in all 50 States, and that is who we work with through our affiliates there.

Mr. BARR. So Louisiana, that has been signed?

Mr. SMITH. No. Passed. It has passed and has gone to the governor. It has not been signed yet.

Mr. BARR. And in Texas, similarly?

Mr. SMITH. Yes.

Mr. BARR. Are there still some problems remaining in the language of the Texas bill?

Mr. KIRVEN. I believe that is correct. It is not compliant with the Model Act, and I am going to talk to the commissioner about that.

Mr. BARR. Is there going to be some effort to change that, or is it too late, if it has passed both houses?

Mr. KIRVEN. I know that while I am here I am going to talk to someone about what issues we don't feel are compliant and talk to the commissioner and see if we can't have some of those revisited. I don't know if it is in conference committee or how we can do that, but we are going to try and talk to Texas and see if we can't make them change the bill to be more compliant with the Model Act.

Mr. BARR. I guess you can talk to them, but not mess with them.

Mr. KIRVEN. That is correct.

Mr. BARR. And California is just being California or——

Mr. SMITH. Wes says that the bill is in committee and may very well be moving forward soon.

Mr. KIRVEN. Congressman, if I may——

Mr. BARR. Are you all optimistic that we will see it move through the California legislative system this year?

Mr. KIRVEN. Mr. Chair, can I—Congressman, I—one of the biggest things we have in California is they have a fingerprint check, and they use it. So a lot of States have it. They put them in a folder, and they never look at them, but California apparently does. That is an add-on under the reciprocity thing. It is not allowed, and California refuses to give it up. I think maybe roughly 14 States even have requirement, and so we are a little stuck there.

California won't meet reciprocity because they have an additional requirement to fingerprint, and yet it also is not uniform across the country. But we are working through NIPR to try and—work so we can get an electronic fingerprint one time.

For example, if—and Mr. Counselman wants to be licensed in 50 States, and if we have his one electronic fingerprint, we can check it once, pay one data access fee for the database, which is $24 or $25, and spread that cost across all 50 States. So we hope to recognize savings, and we always have his print there. We will only have to check it once for every State and at least make that available to the States that want to use it.

So we are trying to do workarounds on some of these issues, but it is difficult. Some States don't want to give that up. I wouldn't argue it is not a valid consumer protection.

Mr. BARR. Well, thank y'all very much. We appreciate your efforts; and if we can be of any help, let us know. Thank you.

Chairman BAKER. Thank you, Mr. Barr.

Mrs. Jones.

Mrs. JONES. Mr. Chairman, I come from Ohio. I am not quite sure what we are doing, but we are trying to fund education in Ohio. That is our top priority for our legislature right now.

I have a couple questions. You say there are five States who have not done something. I think that was you, Mr. Smith. Was that part of your—one of you said——

Mr. SMITH. I referred to several States, and we are hopeful that at least 45 will have taken at least some action by the time their legislatures come back. So, yes, there are four or five that have not really addressed the issue yet.

Mrs. JONES. And can you tell me who they are? Not if you don't——

Mr. SMITH. We can get you a list. We will be happy to share our list. We have a list of all the States and the activities that we think are taking place. We will be happy to share that list with you.

Mrs. JONES. Just so I am clear on—and we are using the same terminology, can one of you define what you mean by countersignature laws?

Mr. COUNSELMAN. I can describe how it impacts on the sale of insurance, an example would be Florida, because they are famous for their countersignature law. If I as an out-of-State agent write some business in the State of Florida, I have to have that policy signed or, more specifically, countersigned by a resident Florida agent. Florida also requires the payment of 50 percent of the commission, regardless of whether the agent actually participated in the transaction.

Mrs. JONES. Now, when I first came to Congress back in 1999 and H.R. 10 was being considered, the big push was leave the regulation of insurance to the States.

Now, if you want to leave the regulation of insurance to the States, why then do you want to push this other piece to uniformity and reciprocity across the board? What is the advantage of that?

Mr. COUNSELMAN. The advantage is the efficiency, because the NARAB proposal would still allow the States to regulate insurance and to regulate agents.

Mrs. JONES. So it is more efficient for you to be uniform with licensing, but it is more efficient for each State to be the regulator?

Mr. COUNSELMAN. Just on the licensing issue alone, it is more efficient to get a license once; and so, just on that basic principle, we want there to be uniformity of licensing.

Mrs. JONES. If you know, are licensing fees used to fund insurance regulation within the States?

Mr. COUNSELMAN. They are a part of funding, but the major funding for insurance regulation comes from premium tax that is collected by the States, which, on average, is about 3 percent of premium. So licensing fees are an additional source of income, but they are not the major source of income, to my knowledge.

Mrs. JONES. Are you able to tell me what percentage of the funds that fund a licensing regulation in the State come from licensing fees?

Mr. COUNSELMAN. I wouldn't know the answer to that.

Mr. KIRVEN. It is not that significant, Congresswoman.

Mrs. JONES. I don't know whether it is, and I am trying to get educated on it.

Mr. SMITH. I am sure that Mr. Counselman and I would both be happy to pay a fee if we could go ahead and apply for a license in Florida. I am in Indiana. If I could use my status in Indiana to

apply at the same time in Florida, I would be happy to pay a fee if that is what it took, rather than go through a whole separate licensing process and pay a fee that way.

Mrs. JONES. So, in other words, you would pay 50 fees if you could get licensed once?

Mr. SMITH. If that is what we are required. We are doing that now. So if it was found that that money was really, indeed—I am not advocating agents want to spend any more money than we have to—but. if it was found that some of that money was needed to help regulate the States, I am sure there would be some cost. We would be happy to pay a nominal fee, as long as we could get around or have a uniform license that we could use for every jurisdiction.

Mrs. JONES. Well, there is some administrative cost to regulating an industry, and so what I am trying to find out from the three of you, if you can educate me—maybe you can't. Then I will ask someone else. Is part of that processing, or part of this—I don't know what word I want to use—this hurdle that you must leap responsible or is it attributed to the fact that the States say I need something to cover the cost of regulating your industry?

Mr. COUNSELMAN. From my experience of sending in the licensing fees and the process that is involved in it, the application process and the issuing of the license, I am not advocating increasing fees, but I would doubt that the fee——

Mrs. JONES. So the record is clear. Right?

Mr. COUNSELMAN. I would doubt that the fee that is collected would actually cover the cost of issuing the license, because there is so much paper that has to be reviewed before the license can be issued. I would be doubtful if the revenue actually covers the expense for an individual State to handle that service.

Mr. SMITH. I am not intimate with all the monetary details of the State of Indiana, but I do know that in the State of Indiana premium taxes actually go into our general fund, and all of the premium tax is not used just for the funding of the insurance department. Several of the funds are sent to other departments in the State.

Mrs. JONES. Mr. Chairman, if you would just allow Mr. Kirven to respond, I am finished with my question.

Mr. KIRVEN. Congresswoman, I was trying to do my—we have about 80,000 agents registered in the State of Colorado, and I believe our fee is about 36 bucks, which I can't do in my head. But I can do $30. So it would be about $240,000 in—is that right—fees, and I think our contract to process licenses cost $300,000. So it is not a revenue generator for us.

Chairman BAKER. Let me point out, too, if I may—if I am understanding the process correctly, if you file once in Indiana, pay your fees in Indiana, then a database is created in Indiana that other States can access to verify before you are allowed to enter into that market. So you are really talking about 50 State repositories where you are principally licensed, and other States have access via the Internet, I presume, to that database. Is that what we are envisioning?

Mr. KIRVEN. We already have a producer database which has all but about 300,000 of the agents licensed in it already today. So we

do have that database; and, yes, it would be accessible for showing that you are licensed in your domiciliary State.

Chairman BAKER. So in a practical matter, just following up on Mrs. Jones' line, we would not necessarily be increasing costs. We may, in fact, be reducing it with the elimination of all of the documents that are now shipped back and forth?

Mr. KIRVEN. Hopefully the net result would be less expense, no more documents; and, for example, we would save money on background checks, too. We could just do it once, and it would apply to 50 States.

Chairman BAKER. Terrific.

Mrs. JONES. Mr. Chairman, if I could just follow up.

Chairman BAKER. Yes.

Mrs. JONES. What I was trying to determine was, when you have a regulator, the cost of regulation, be it investigation, be it whatever the heck it is; and I was just trying to see if those dollars that were generated by the application fed into that process. Thank you very much.

Chairman BAKER. No. I understand. In my own State's case, I am sure the licensure fee has no correlation to the enforcement side of the business.

Congressman Miller.

Mr. MILLER. Thank you, Mr. Chairman.

I used to be in the State legislature on the insurance committee, and it always struck me as interesting that the fingerprinting was necessary for licensing, and they figured it should be required; yet, voter registration cards were punitive. Good luck on your legislation at the State. I don't know how you are doing, but it should be an interesting process.

I have a couple different numbers that I am finding. One brings the total to 20 States that represent 20 percent of the total premiums written in the United States. Yet I understand that there may be discrepancies between our list and the list developed by others. Is there some States that have enacted licensing reform that the Council does not believe comply with NARAB reciprocity provisions? And the other list says 17 States have passed such laws, representing about 16 percent of the mark. Is that a fair statement? Seventeen States?

Mr. COUNSELMAN. I believe you have quoted—when you mentioned the Council, you certainly were quoting my testimony. At any different point in time—and that might be the reason for the differences among our testimony, because these bills are being passed in the last few days. The numbers change daily.

Mr. MILLER. Yes. You know, I have quite a few friends in the insurance industry and, you know, you talk to them about the requirements of different States and trying to provide the same service from State to State, how burdensome that is and how complex and in many cases confusing, and unless you are a very, very large company, it makes it very difficult for you and it makes it very difficult for smaller companies going into States.

And I am kind of changing my mind. In the past, I always believed that it should be an absolute State issue dealing with insurance issues and issues associated with a State, but I am beginning to wonder if there is a need for an optional Federal charter for in-

surance companies, similar to depository institutions. What is your opinion on that, just as a sidebar?

Mr. COUNSELMAN. There may well be a place for an optional Federal charter for certain types of insurance or for certain categories of insurance. For example, one program that I represent has only 100 insureds. They are located through the country, but the policy form has to be filed in 50 States, because those 100 insureds are in different jurisdictions. So that would be an example of where it would be very useful to have a Federal charter.

Mr. MILLER. Instead of an adviser group of individuals who are willing to give their time to discuss and debate these issues, and it is something I think needs to be debated in the near future.

I don't have an answer. I don't think anybody does, but there seems to be a growing need for some form of regulation that is consistent, where you know what you are doing and without having to deal with—you dealt in California. I mean, your oversight changes weekly, depending on what bill goes before a committee. It is almost impossible to keep up with.

But in the statement of intent, the 49 State insurance commissioners at the NAIC national meeting, it reads, quote, we have empowered the NAIC's non-profit affiliate insurance regulatory information network to develop recommendations for a streamlined national producers licensing process that will reduce the cost—I love this—reduce the cost and complexity of regulatory compliance related to the current multistate process, end quote.

However, under NARAB's provision for required reciprocity, States are still allowed to have countersignature requirements; and does this provision defeat your effort to reduce the costs and complexity of regulatory compliance related to the current multistate process?

Mr. COUNSELMAN. It was a compromise. When the bill was enacted, that countersignature was specifically deleted in order to get the appropriate support. We really do believe that countersignature should be one of those uniform issues and should be addressed.

Mr. MILLER. And if it is not addressed, you are still dealing with a complicated process you had to go through otherwise. So that basic intent really did you no good.

Mr. COUNSELMAN. Well, at least it is a limited—the countersignature issue is a limited number of States, and the licensing issue obviously affects all 50 States, but countersignature—differing countersignature requirements are really focused on—I believe it is about five States.

Mr. MILLER. So, basically, if we had an optional Federal charter, many of these issues would dissolve with that, if it could be worked out based on the different insurance entities that are involved in it?

Mr. COUNSELMAN. It may or may not be resolved, because most agents would probably still be selling insurance through companies that are licensed and regulated in the individual States and perhaps other forms of insurance or specific programs that would be under a Federal charter. So, in all probability, agents and brokers would still have—they might then have two licenses instead of 50 or——

Mr. MILLER. So it would be much more simplistic?

Mr. COUNSELMAN. It would be simplistic.

Mr. MILLER. Thank you, Mr. Chairman.

Chairman BAKER. Thank you, Mr. Miller.

Just for information, we distributed to date all Members a tentative committee agenda, and one of the possible issues for fall consideration is examination of the national charter question. And so people don't get excited, that doesn't mean we are introducing legislation. We are just examining.

Mr. MILLER. One of the States is on that charter concept?

Chairman BAKER. Yes.

Mr. MILLER. I applaud you for that, because I believe things have changed dramatically in recent years, and the requirements that many States impose on insurance companies tend to be punitive based on the mandates of 50 separate States and trying to meet those mandates. I think there is far too much confusion. I applaud you.

Chairman BAKER. Well, it is merely a discussion to make inquiry that Chairman Oxley has indicated that that is an area of interest for his review, and so sometime this fall—it is the committee agenda as such. We are creating enough trouble between now—that we can't get to it till then.

Mr. MILLER. Thank you, Mr. Chairman.

Chairman BAKER. Thank you.

Mr. SMITH. If I can make a quick comment in that regard, I would appreciate it.

We have been opposed to Federal charters, simply from the standpoint that we don't want just another level of bureaucracy added to our industry. But I do applaud the fact, though, that there is room for discussion. We like the idea of potentially maybe some national charters; and we, too, would applaud you for having discussions in that regard.

Mr. MILLER. If approached properly, similar to banks, State savings and loans, it works very well; and I myself—and I am sure the Chairman and Mr. Oxley, have no interest in creating a bureaucratic nightmare for the industry to go through. It only, from my perspective, could happen if some reasonable conclusion and agreement could be reached within the industry that was beneficial, that would simplify the process everybody has to go by. Where you are asking for that today, we are saying maybe we can do that in a broader fashion.

Chairman BAKER. And I want to reiterate, I am not advertising—as you are not advertising for new fees, I am not advertising for a new Federal regulator. Just to make the record clear.

Mr. Meeks.

Mr. MEEKS. Thank you, Mr. Chairman.

And you know, I, like my colleague, Mrs. Jones, am trying to learn. I know that, as a practicing attorney, I wish that I could go to—take one—get one license and practice in any State in the Union, but I can't, and there is different competing interests that the States have to determine how many lawyers are practicing in the State and to limit that number.

But let me ask this question. Here is my real question. I know in the Gramm-Leach-Bliley bill they set a minimum goal in which

to achieve the reciprocity in licensing reform efforts. If those minimum goals are met, why wouldn't it just then fizzle out?

Mr. KIRVEN. Congressman, we recognized early on that those minimum goals are just simply that, that that is not really true reform and that we need to have nationwide uniformity amongst the States. Having 29 States simply is not an acceptable—a minimum for us. We are not going to quit. We really have—we are using this as impetus to push for total uniformity, because that is really what today's markets and the globalization of the industry requires.

Mr. MEEKS. Well, is there anything else that you think that we should be doing in Congress to keep pushing reform?

Mr. KIRVEN. As I stated earlier, I think that we appreciate the opportunity to see how much progress and see if we can get that uniformity. If there are a few holdout States or somebody that won't give up countersignatures, maybe some form of pre-emption would then be necessary to let us push our goal of 100 percent compliance.

Mr. MEEKS. Is there—and I missed most of the testimony, but do you see any compelling reason by any of the States not to want to have a reciprocity on reform?

Mr. KIRVEN. Over time, States have developed unique features that they think are very essential; and we talked earlier about California and fingerprints and checking the criminal database, and only a minority of States do that, check fingerprints, but they are very married to that idea.

That is one example of where a State has something that they are somewhat married to and reluctant to give up, and we are trying to address those issues going forward of a way to do that without necessarily requiring every State in the Union to do that, although it may or may not be a bad thing. Some people don't like the idea. We are working on letting those States still be able to do that but still having a uniform process.

Mr. MEEKS. Thank you, Mr. Chairman.

Chairman BAKER. Thank you, Mr. Meeks.

Each State is different. Louisiana has had reason to fingerprint its past four commissioners.

Mr. Weldon.

Mr. WELDON. Thank you, Mr. Chairman.

Mr. Smith, in your written testimony, you note that some insurance departments have been hesitant to introduce and support the Producer Licensing Model Act. Could you please tell us which insurance departments you are referring to and why you think this is occurring?

Mr. SMITH. We would be happy to get you that list.

I think why it is occurring is because the issues that we have been talking about here, several States think that they have certain distinctive things about their particular State that require them to use fingerprints or have a countersignature or whatever those requirements are; and, therefore, they have been reluctant to get on board with the Model Act.

I think some of the States we have talked about—obviously, Florida is a State we have worked with. California, Texas has had some problems. I mean, it is relatively common what those States are.

Mr. WELDON. I am from Florida, you know, so be careful what you say.

Mr. SMITH. Florida is a great State. I absolutely love Florida. And, as I say, my largest client is there. So we have worked very closely with a lot of the people in Florida, and our association works very hard with——

Mr. WELDON. I was just teasing you about that.

Mr. SMITH. That is OK. It is OK. I don't change. They still have some questions—they question—a lot of the States—a lot—some of the States still question the need for this act, the uniform piece, and so that is what we are fighting in a few of the jurisdictions.

Mr. WELDON. Is some of the dynamics of what has been going on some response to Gramm-Leach-Bliley, this section there of just market issues? Are the small States that are coming into compliance interested in getting into the big State markets? Are the big State markets reluctant to get into there because they see an opportunity for business going elsewhere? Just protecting the home turf, in other words.

Mr. SMITH. I think that is a good question. I think there is some protection, I feel. I think a lot of it is timing. I think some of the big States have had budgetary items. I think this has been a secondary or back-burner issue for them. I don't see that any small State wants to get into big State marketing.

We have clients in Rochester, Indiana, a town of 7,000 people, that literally have plants in several States across the country. So they are used to dealing with me; and if they have a plant in New Jersey or Montana or someplace else, they would rather have me take care of that on a rather simplistic matter than deal with some other agent some place in one of those jurisdictions.

So that is why uniformity is important. I really think it is an economic issue more than anything right now.

Mr. WELDON. But if I understand all three of you correctly, the level of uniformity that has occurred so far would have never occurred without this provision and that if we are going to get all 50 States on board it is going to stay further action on the part of Congress, on the part of Federal Government.

Mr. SMITH. I think one of James Bond movies was "Never Say Never," but I think, yes, you may very well be right. This, the Gramm-Leach, provided the impetus for these reforms to start taking place.

Will they be complete without more impetus? I think that is a question that we won't fully know the answer to until sometime next year as we get closer to the deadline. But you may very well be right. We may need some more preemption from this group to make sure we have reciprocity and uniformity.

Mr. WELDON. Mr. Kirven, Mr. Counselman, do you want to comment on that?

Mr. COUNSELMAN. Congressman, I think there are other issues that do come up that effect the passage of this legislation on a State-wide basis, and I think that because it is not always just licensing that is being examined, but it is other insurance issues that some States and some State legislatures feel that they want to have absolute control over without giving up any semblance of control.

Our point is that this isn't a control issue. This is a licensing efficiency issue. So we are trying to hammer home the thought that this is all about paperwork. This is not about regulation. But those other issues do come up, relating to a State giving up some ability to regulate insurance within its jurisdiction.

Mr. WELDON. I believe my time has expired. Thank you, Mr. Chairman.

Mr. BAKER. Thank you, Mr. Weldon.

Mr. Lucas. No questions.

Mrs. Kelly, did you have a wind-up comment?

Mrs. KELLY. Thanks, Mr. Chairman.

I just have a message for you, Mr. Kirven. Let me ask you to take a message back of one word to the NAIC. That word is "uniformity." If you folks aren't able to do that and help us realize this goal, then I am sure that we are willing to ensure that you do.

Thank you very much, Mr. Chairman.

Mr. BAKER. Thank you Mrs. Kelly.

Gentleman, I do appreciate your courtesy and participation. Obviously, this is the first hearing on this subject within this subcommittee's responsibility. For the sake of keeping channels of communication open, we will proceed with a series of inquiries relating to the NARAB as well as the national charter matter. I feel it our obligation to prepare for next November should market progress not be where we all would like it to be. Then we certainly do not want, after having created the standard, to fail to react to the responsibility as outlined in Gramm-Leach-Bliley.

To that end, the respective organizations should know that Chairman Oxley and this subcommittee have significant interest in the matter. We believe it good public policy, ultimately good for the consumers we all serve; and that to that end we can work cooperatively together toward a system that makes more market sense and delivers better products to all the folks who rely on you.

So I thank you for your courtesies, and we look forward to working with you as the months proceed. Thank you.

Our hearing stands adjourned.

[Whereupon, at 3:34 p.m., the hearing was adjourned.]

A P P E N D I X

May 16, 2001

Congressman Joseph Crowley
Remarks - NARAB Hearing
May 16, 2001

I would like to thank Chairman Baker and Ranking Democrat Kanjorski for holding this hearing today on the status of NARAB

As we enter this post Gramm-Leach-Bliley environment, an environment in which our marketplaces, conditions, services and clients change constantly, we in Congress need to ensure that our regulations and laws encourage dynamic new product innovations and strong, but fair, competition to the benefit of all American consumers

NARAB was created under Gramm-Leach-Bliley to obtain this objective

To date, the insurance industry does not have a Federal regulator or any other uniform national standards for dealing with licensing or products or agents

In this global marketplace, it is key that we encourage a system that provides for the more rapid flow of product innovation from the corporate boardroom into the homes and personal portfolios of all Americans

Therefore, I welcome this opportunity and am anticipating an interesting hearing today

Again, I thank Chairman Baker and Ranking Democrat Kanjorski

OPENING STATEMENT OF
RANKING DEMOCRATIC MEMBER PAUL E. KANJORSKI

SUBCOMMITEE ON CAPITAL MARKETS, INSURANCE, AND GOVERNMENT SPONSORED ENTERPRISES

HEARING ON NARAB AND BEYOND: ACHIEVING NATIONWIDE UNIFORMITY IN AGENT LICENSING

WEDNESDAY, MAY 16, 2001

Mr. Chairman, one half of the sand has now fallen through the hourglass marking the time Congress gave the states under the Gramm-Leach-Bliley Act to establish reciprocity or uniformity thresholds for non-resident producer licensing. It is therefore appropriate and constructive for us to hold a hearing at this time on the efforts to date by the states to comply with the NARAB provisions contained in the 1999 law and the need for further congressional action to improve the efficiency and effectiveness of our nation's insurance industry. I therefore commend you, Mr. Chairman, for bringing these matters to the Subcommittee's attention and for helping to educate our Members about this new jurisdiction. This hearing also represents the first time our Subcommittee has substantively examined insurance issues in the 107th Congress.

In an effort to allow an agent or broker to conduct business in more than one state using a single license, Congress included provisions to create the National Association of Registered Agents and Brokers -- or NARAB -- in the law to overhaul our nation's financial services marketplace. These provisions require that at least 29 states and territories implement reciprocal or uniform standards for agent licensing by November 12, 2002. If these jurisdictions fail to meet this deadline, the law then triggers the establishment of NARAB as a semi-autonomous body managed and supervised by state insurance commissioners with the power to set and preempt certain state standards in order to create a national licensing standard for insurance. As I understand, the states, under the guidance of the National Association of Insurance Commissioners, have focused to date on meeting the reciprocity standards contained in the Gramm-Leach-Bliley Act while pursuing uniformity as a long-term goal.

Last fall, the Subcommittee on Finance and Hazardous Waste held a hearing about the status of implementing the NARAB provisions. At that time, limited action had occurred and doubts existed about whether states would meet the deadline. Since then, however, considerable progress has been made. According to the National Association of Insurance Commissioners, 21 states have now passed legislation seeking to satisfy the reciprocity requirements. As a result, it now appears likely that the states will preempt the creation of NARAB.

From my perspective, streamlining the insurance licensing process represents an important first step in increasing the effectiveness and efficiency of our nation's traditional system of state insurance regulation. The McCarran-Ferguson Act authorized states to regulate the insurance business, and Congress reaffirmed this system in the Gramm-Leach-Bliley Act. Absent continued advances in state efforts to streamline and increase uniformity in their insurance laws and regulations, however, some may in the near future encourage Congress to consider altering these statutory arrangements. States must consequently continue to work proactively to modernize their systems for regulating the insurance marketplace.

In closing, Mr. Chairman, I believe it important that we learn more about the views of the parties testifying before us today and, if necessary, work to further refine and improve the legal structures governing our nation's insurance system. I also look forward to hearing from our witnesses about their impressions and to working with you in the future on insurance issues.

Testimony of Congresswoman Sue Kelly House Committee on Financial Services Subcommittee on Capital Markets Hearing on NARAB & Beyond: Achieving Nationwide Uniformity in Agent Licensing.

Wednesday, May 16, 2001 – 2:00 p.m. - 2129 Rayburn

Chairman Baker, Ranking Member Kanjorski and Members of the committee, I want to thank you for inviting me to testify on the National Association of Insurance Agents and Brokers 'known as NARAB' section of the Gramm-Leach-Bliley Act.

Let me begin by reading to you a quote which demonstrates both the desire of State regulators to achieve the uniform licensing standards and the impediments to it:

"The Commissioners are now fully prepared to go before their various legislative committees with recommendations for a system of insurance law which shall be the same in all States – not reciprocal, but identical; not retaliatory, but uniform."

This statement expressing the clear desire for a uniform insurance regulatory system was made by Mr. George W. Miller, the New York Insurance Commissioner who founded the National Association of Insurance Commissioners. Mr. Miller made this statement at the end of the very first meeting of the NAIC in 1871. Since then the NAIC has been working for 130 years to achieve some form of regulatory uniformity. I wish they could have solved the problem, but they clearly have not.

My sponsorship of NARAB was borne of the concerns raised by New York insurance agents and brokers who sell and service insurance policies on a multi-state basis. While New York markets are relatively open to participation by nonresident insurance agents and brokers, many other states do not afford nonresident agents and brokers the same courtesy. Some of the problems are simply the result of needless duplication, yet the root of many other problems is protectionism. The purpose of the Gramm-Leach-Bliley legislation was – and is – to modernize our nation's regulations affecting the financial

services industry. The legislation gets rid of scores of statutes that no longer reflect the marketplace we're in. It struck me that the licensing laws affecting agents and brokers are among the most anachronistic. The insurance business, like much of the rest of the financial services sector, has experienced massive consolidation during the past two decades. An overwhelming majority of commercial insurance, for example, is sold on an interstate basis. Yet an agent or broker must obtain upwards of 100 insurance licenses in order to market national insurance programs. More seriously, those agents encounter numerous obstacles that have been erected in states to protect in-state agents from out-of-state competition.

Without a doubt, the current state regulatory system works well for the insurance industry, and replacement with a system of federal oversight is simply unjustified. But the mind-numbing minutiae of individual state licensing requirements -- including such prerequisites as fingerprinting, certified copies of high school diplomas, and printed notice in the local newspaper before an agency can get a license -- have nothing to do with real insurance regulation or the professionalism of its practitioners. Rather, in attempting to meet these requirements, agents and brokers waste time, talent and money that should be spent on their clients.

Today's insurance business spans state and national borders, with an increasing emphasis on national insurance programs, multi-state clients, and cutting-edge technology. Yet today's agent licensing system is based on yesterday's market -- one in which agents and their clients did business in their region and nowhere else. Agents who want to write a national insurance program have to procure and maintain licenses by line, class, producer, and state. Some states require corporate rather than individual agent licenses -- which means the agency must be incorporated in the state where it wants to obtain a license. Other states will not permit *any* nonresident agent to solicit business in the state. In this time of increasing global competition, it's hard to lecture to our trading partners about opening markets when we still have these kinds of barriers to interstate domestic commerce.

NARAB calls for a voluntary membership organization which would have standards of professionalism and expertise higher than any of the states. Insurance agents are very supportive of a higher standard for the industry, as long it is a single standard, not fifty or one hundred as the case may be. In addition NARAB is completely self-funding through fees paid by the agents in addition to the state licensing fees which continue to be paid.

Agents know that they will save both time and money through NARAB. Finally, all states retain the ability to revoke the licensee issued through NARAB, as long as they are not discriminating against NARAB members. If one state pulls their license issued through NARAB all licenses issued through NARAB are revoked and the agent would have to wait five years before they could reapply. Hence, NARAB would create a system in which the repercussions for wrong actions are staggeringly high, yet agents would flock to it.

Together, we took an important step when we made NARAB part of Gramm-Leach-Bliley. If twenty-nine states can repeal their anti-competitive licensing laws by November 2002 the voluntary license NARAB would create will not be implemented. In this way the initiative operates as a sword of Damocles if a clear majority of states fail to repeal protectionist requirements. But let me be clear, we must not let the states stop at twenty-nine -- we must push further. We must take the next step beyond NARAB, we must realize the goal set by Mr. Miller 130 years ago, the goal of uniformity for fifty states and reach it before the end of this decade. As evidenced by the states continuing effort to avoid NARAB implementation -- the states will act if we give them the right incentive. I ask you all today to join me in looking beyond NARAB today and calling for uniformity among the states. This way we can ensure that our insurance agents and brokers can focus on providing the best service at the lowest cost to consumers – not continuing to hire extra staff to attempt to comply with the staggering complexity of fifty insurance regulatory standards.

NARAB was and is an essential incentive for the states to achieve a goal that has been elusive for over a century. With hearings such as this, and with the cooperation of state legislatures, governors, and the industry itself, the goals of harmonization and efficiency in insurance regulation can be attained. Thank you.

Opening Statement

Chairman Michael G. Oxley

Committee on Financial Services

Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises
May 16, 2001

"NARAB & Beyond -- Achieving Nationwide Uniformity in Agent Licensing"

Chairman Baker, thank you for holding this hearing today.

I am very pleased that this Subcommittee is taking another look at NARAB to review the status of State producer licensing reforms and to explore what we in Congress can do to keep the process moving forward.

By all accounts, the NAIC has made significant progress, and I applaud their efforts. It now appears that the required number of States will implement reciprocal standards for agency licensing by the deadline of November 2002. This is good news indeed.

However, this is no time to rest on our laurels, as this is only the beginning. There is much work still to be done.

First, efforts must be redoubled to make reciprocity a reality in every State and U.S. territory. I am troubled that many of the larger States with the bulk of premium volume have not yet enacted reforms. We will be keeping a close eye on these States to see if they fall off the reform bandwagon.

Second, we must keep our eye on the prize: achieving nationwide uniformity in agent licensing. As the NAIC declared in its *Statement of Intent: The Future of Insurance Regulation*: "While reciprocity is a short-term answer, uniformity is the efficient, long-term solution." I couldn't agree more.

It is my sincere hope that the current pace of producer licensing reform will continue. If not, Congress will return to this issue with our own solution. By all accounts, the NARAB provisions have worked well in pushing the States towards reciprocity. Follow-up legislation along the same lines may, in fact, be necessary. The Committee has begun consideration of what additional incentives may be necessary if reform efforts get bogged down.

Today's hearing is part of the Committee's larger efforts to move towards greater uniformity in insurance regulation. I look forward to the Committee's continued work in this area.

I would like to welcome the witnesses who are testifying, in particular, Congresswoman Kelly. As we all know, Rep. Kelly was instrumental in the inclusion of the NARAB provisions in G-L-B-A. Her participation here today is greatly appreciated.

Thank you, Mr. Chairman. I yield back the balance of my time.

Testimony of the
Financial Services Modernization NARAB Working Group
of the
National Association of Insurance Commissioners

Before the
Subcommittee on Capital Markets, Insurance and
Government Sponsored Enterprises
of the
Committee on Financial Services
United States House of Representatives

Hearing on:
NARAB and Beyond: Achieving Nationwide Uniformity in
Agent Licensing

May 16, 2001

William J. Kirven III
Commissioner of Insurance
Colorado

Testimony of William J. Kirven III, Co-Chair
NAIC Financial Services Modernization Working Group on NARAB

Introduction

Mr. Chairman and Members of the Subcommittee:

My name is Bill Kirven. I am the Commissioner of Insurance for the State of Colorado. I also serve as Chair of the Western Zone of the National Association of Insurance Commissioners (NAIC) and Co-Chair of the NAIC's Financial Services Modernization Working Group on NARAB.

NAIC created the NARAB Working Group in December 1999 to help States implement Subtitle C requirements in Title III of the Gramm-Leach-Bliley Act (GLBA). That subtitle requires State insurance regulators to meet Federal statutory requirements streamlining insurance agent licensing, and provides for establishing a new organization named the National Association of Registered Agents and Brokers (NARAB) if the States fail to achieve the goals set forth in Subtitle C. The mission of the NARAB Working Group is to coordinate State regulatory actions related to NARAB, so that the States can fully and promptly comply with all requirements in the Gramm-Leach-Bliley Act.

Let me start by saying the NAIC and State insurance regulators wholeheartedly support the licensing goals endorsed by Congress in NARAB. We do not, however, believe NARAB is necessary. Moreover, we believe the creation of NARAB as a separate organization would undermine the legal authority of State insurance departments to protect consumers throughout the United States. If NARAB were to prevent States from exercising their full range of powers to regulate insurance for the benefit of consumers, there would be nobody to perform this vital function.

Today, I would like to make three basic points regarding the response of State insurance regulators to NARAB –

- First, States are moving aggressively to implement the NARAB requirements in the Gramm-Leach-Bliley Act by doing the job ourselves as intended by Congress.

- Second, it is the goal of State insurance regulators to first achieve licensing reciprocity, and then continue moving forward to satisfy the larger goals of regulatory uniformity and efficiency that are embodied in Title III of GLBA. The NAIC and its non-profit affiliate, the National Insurance Producer Registry or NIPR (formerly the Insurance Regulatory Information Network or IRIN), have approximately 2.7 million of the Nation's three million agents in the Producer Data Base (PDB), and is targeting all 50 States to be online with PDB by year end 2001.

- Third, meeting the legal requirements and larger policy goals of NARAB will require prompt action by many interested groups, including State insurance regulators, State legislators and governors, Congress, and industry participants.

State Insurance Regulators Are Committed to Meeting the NARAB Requirements

During Congressional consideration of H.R. 10 and S. 900, proponents of NARAB argued that it should be included in the final law to spur needed changes in State laws and regulations affecting the licensing of insurance agents. The avowed purpose in adding NARAB to the financial services bill was to provide the States with a strong incentive to change, not to actually replace State insurance regulation with a Federally-established licensing organization. Accordingly, Congress did not hold hearings to scrutinize potential legal and operational problems likely to arise if NARAB came into existence.

The NAIC has long supported the same goals of efficient and uniform agent licensing as the proponents of NARAB. We anticipate that States will meet and exceed the short-term goal of meeting the NARAB reciprocity provisions in the Gramm-Leach-Bliley Act

within the three-year time allotted by statute. We plan to accomplish this goal by making necessary changes to the existing system of State insurance supervision so that NARAB will not need to be created as a separate organization. This approach will satisfy the objectives of NARAB supporters who want to see State regulation improved without additional Federal action.

The NARAB Standards for States – Reciprocity and Uniformity

Subtitle C provides the States with two approaches in attempting to avoid creation of a new NARAB organization. The first is for States to recognize and accept the licensing procedures of other States on a reciprocal basis so agents will not be required to meet different standards in each State.

In order to achieve reciprocity under the NARAB provisions, a majority of States and United States territories must have laws and regulations that guarantee reciprocal treatment for non-resident agents doing business in more than one State. The required reciprocity will be reached if a majority of States and territories:

(1) Permit a producer licensed to sell insurance in his or her home State to sell in non-resident States after satisfying only minimum requirements such as submission of a licensing application and payment of all applicable fees;
(2) Accept the satisfaction by a producer of his or her home State's continuing education requirements;
(3) Do not limit or condition producers' activities because of residence or place of operations (except that counter-signature requirements are still permitted); and
(4) Grant reciprocity to all other States meeting reciprocity requirements.

Alternatively, the States can avoid the creation of NARAB by adopting uniform laws and regulations regarding non-resident agent licensing. Laws and regulations will be deemed to be uniform under the NARAB provisions if the States:

(1) Establish uniform criteria for integrity, personal qualifications, education, training, and experience of licensed insurance producers;
(2) Establish uniform continuing education requirements;
(3) Establish uniform ethics course requirements;
(4) Establish uniform criteria regarding the suitability of insurance products for specific customers; and
(5) Do not limit or condition producers' activities due to residency or place of operations.

NAIC Approach: Achieve Reciprocity Then Move Toward Uniformity

The Gramm-Leach-Bliley Act imposes a tight timeframe for States to comply with the NARAB provisions by giving us until November 2002 to achieve either reciprocal or uniform non-resident agent licensing. Although this sounds like a long time, in reality this is a fairly short period to develop and enact State laws. Most State legislatures meet briefly during annual or biennial sessions, which presents limited opportunities for them to process insurance laws along with addressing other pressing issues.

As a matter of practical strategy, State insurance regulators decided to implement a two-step process to comply with the NARAB provisions. The first step is achieving reciprocity among the States for non-resident agent licensing. Once reciprocity is achieved, we will continue working toward our real goal of uniformity, which is a greater challenge.

The mission of State regulators regarding agent licensing is clearly set forth in the "Statement of Intent" that was signed by 49 insurance commissioners at the NAIC national meeting in Chicago on March 12, 2000, as follows:

Streamlined Licensing for Producers

"We are committed to uniformity in producer licensing and will work to implement effective uniform producer licensing standards. As a necessary interim step, the NAIC adopted the Producer Licensing Model Act for consideration by State legislatures. This Model Act provides specific multi-state reciprocity provisions to comply with the requirements of the Gramm-Leach-Bliley Act.

"While reciprocity is a short-term answer, uniformity is the efficient, long-term solution. As a result, we have empowered the NAIC's non-profit affiliate Insurance Regulatory Information Network (IRIN) [now re-named the National Insurance Producer Registry] to develop recommendations for a streamlined, national producer licensing process that will reduce the cost and complexity of regulatory compliance related to the current multi-state process. We believe that by leveraging work already done on the Producer Database and the Producer Information Network and by using [NIPR] as a central clearinghouse for non-resident licensing information, efficiencies will be realized that exceed expectations outlined in the National Association of Registered Agents and Brokers (NARAB) provisions of the Gramm-Leach-Bliley Act."

The NAIC and NIPR have invested a great deal of time and resources over the past three years in modernizing the technical infrastructure to develop a centralized producer licensing processing center. Currently, the NAIC and NIPR maintain a complex network and centralized database of over 2.7 million of the Nation's producers that is available to regulators and insurance companies over the Internet. This information is updated daily by automated processes at the State insurance departments.

Currently, 38 states are online with the Producer Database and the target is to have all 50 states contributing to PDB by year-end. Because PDB is intended to duplicate a significant part of the State licensing database, NIPR is creating a single system to

automatically process appointments, terminations, and uniform non-resident license applications on behalf of individual State insurance departments within 24 hours of receipt of the required electronic data from an insurance company or producer. This key milestone will bring about regulatory efficiencies that far exceed the expectations in NARAB and set the stage for uniformity.

Achieving Reciprocity and Uniformity with the Producer Licensing Model Act

Prior to passage of the Gramm-Leach-Bliley Act, the NAIC was working on an improved Producer Licensing Model Act to promote uniformity and efficiency among the States. We moved quickly to amend this model legislation to incorporate fully the NARAB reciprocity provisions in GLBA. Amendments to the Producer Licensing Model Act were completed in February and October of 2000 in order to make it available in time for consideration by State legislatures in 2001.

The NAIC's Producer Licensing Model Act is the primary vehicle for the States to fully implement the GLBA requirements for licensing reciprocity among States. Adoption of the Model Act by a majority of States will assure that we will be in compliance with the NARAB reciprocity provisions by November 2002. However, adoption and implementation of this model law will do much more than simply satisfy the minimum requirements of the Gramm-Leach-Bliley Act. It will create a foundation for achieving our ultimate goal of uniformity among the States for agent licensing.

Here are several areas where the Producer Licensing Model Act advances uniformity and efficiency in agent licensing –

(1) The Model Act creates uniform definitions for "negotiate," "sell," and "solicit." Many States currently use these terms to determine when someone needs to be licensed; however, State statues and regulations often do not define these terms. In conjunction with these uniform definitions, the Model Act contains uniform exceptions to licensing requirements. These uniform

definitions and key exceptions will help companies (direct writers), agents, and consumer service representatives determine when an individual needs to be licensed as an insurance producer and eliminate inconsistencies.

(2) The Model Act creates a uniform application process for both resident and non-resident applications by referencing the use of the NAIC Uniform Application for both resident and non-resident producers.

(3) The Model Act establishes uniform definitions for the five major lines of insurance: Life, Accident and Health, Property, Casualty and Variable Life and Variable Annuity.

(4) The Model Act establishes uniform exemptions from pre-licensing education and examination requirements for licensed producers who apply for a non-resident license.

(5) The Model Act establishes uniform standards for license denials, non-renewals and revocations.

(6) The Model Act establishes uniform standards regarding what entities may and may not receive a commission related to the sale of an insurance policy.

(7) The Model Act establishes uniform standards for agent appointments. (The adoption of these provisions is optional for States.)

(8) The Model Act establishes uniform procedures for regulators, companies, and agents to report and administratively resolve "not for cause" and "for cause" terminations.

(9) The Model Act promotes use of the Producer Database (PDB), which will ensure its continued success. From a consumer protection standpoint, the use and success of the PDB is critical.

As a follow-up to achieving reciprocity, the NAIC will be building upon the improvements contained in the Producer Licensing Model Act to establish more uniformity and efficiency in State insurance regulation.

Adoption of the Producer Licensing Model Act – Current Status

The States are making great progress towards nationwide adoption of the Producer Licensing Model Act. As of late last week, 21 States have enacted new producer licensing legislation. Three of these States are pursuing additional legislation to achieve uniformity. In addition to the 21 states that have enacted legislation, four other States have passed bills that are awaiting signatures by their respective governors. Additionally, there are 15 States that have legislation pending. Another State plans on enacting the Model Act by regulation. To the best of our knowledge, the remaining States are either considering producer licensing legislation or planning for the next legislative session.

When one considers the number of licensed agents in those States that have thus far enacted producer licensing legislation, this accounts for almost one-third of all licensed agents in the country (or nearly 1 million out of 2.9 million). If we add in those States with bills awaiting their governor's signature and those States with pending bills in this legislative session, nearly 70% percent of the licensed agent population is covered. Some would argue that we should measure success in this effort by premium dollars on a per State basis, but we believe that is an inaccurate measuring stick. Looking at the States in terms of premium dollars does not accurately reflect the writing of multi-state risks, which generally have significant premiums.

The NAIC's NARAB Working Group, of which I am a Co-Chair, is currently monitoring the progress of the States' adoption of the Producer Licensing Model Act. In fact, the

Working Group is about to begin the process of reviewing State producer laws for compliance with the NARAB reciprocity standard. The review will be a careful and deliberate process which reflects the importance of this work. Based on our review, the Working Group will make recommendations to its parent body, the NAIC's Financial Services Modernization Task Force. Additionally, as part of our work, the Working Group is reviewing a small number of existing State law requirements concerning non-resident agent licensing, such as requirements for surplus lines bonds, trust accounts, etc. The purpose of this review is to determine whether these requirements fit within the NARAB reciprocity standard. If these licensing requirements are determined to fall outside the NARAB reciprocity standard, we anticipate those affected States should have sufficient time to address the issues in either their current or next legislative session. The Working Group is in the process of completing this review and making written recommendations to the Financial Services Modernization Task Force.

As spelled out in the NARAB provisions in GLBA, the NAIC is responsible for making a determination as to whether a majority of the States have achieved reciprocity. This determination will occur prior to the end of the three-year period following enactment of GLBA (or November 2002). We are optimistic that more than 29 States will meet the NARAB reciprocity requirement by November 2002. However, the NAIC will not be satisfied until all 50 States plus the District of Columbia and U.S. Territories meet the NARAB reciprocity standard. Even as States work to meet the reciprocity standard, they are working towards the next step in the process, which is achieving uniformity in producer licensing.

State Regulators are Relying on Help from Others to Comply with NARAB

The key to State compliance with the NARAB provisions in the Gramm-Leach-Bliley Act is adoption of the NAIC's Producer Licensing Model Act by the States. As regulators, we have started the process at the NAIC by developing the Model Act and revising it to meet the requirements of the Gramm-Leach-Bliley Act.

Many industry groups participated in drafting the modernization reforms contained in the Model Act. These include: Council of Insurance Agents and Brokers, National Association of Insurance Financial Advisors, Independent Insurance Agents of America, Professional Insurance Agents, National Association of Professional Surplus Lines Offices, Consumer Credit Insurance Association, National Association of Life Companies, American Council of Life Insurers, Alliance of American Insurers, American Bankers Association Insurance Group, Association of Banks in Insurance, National Association of Independent Insurers, and the American Insurance Association.

NAIC officers and members are reaching out to these insurance industry trade groups and companies to seek their continued support for adopting the Producer Licensing Model Act in the States. Industry representatives are active and influential in State government affairs. Having them join with regulatory officials in supporting the Model Act is critical to getting it enacted into law.

If the States are successful where producer licensing legislation is currently pending, nearly 75% of the licensed agent population in this country will be covered by reciprocity. We continue to strongly urge our legislators and governors to take all appropriate steps to comply with the NARAB provisions.

Although some have complained that the States are moving too slowly in adopting the Producer Licensing Model Act, we believe we have made significant progress towards achieving our goals in a short amount of time. Achieving regulatory efficiencies and uniformity in non-resident producer licensing in all States is a huge task but it remains a top priority of the NAIC and State insurance regulators. We are optimistic that we will meet our short-term objective of reciprocity, as well as our longer-term goal of uniformity.

THE COUNCIL
of Insurance Agents + Brokers

Statement of

Albert R. Counselman, CPCU

Past Chairman

The Council of Insurance Agents + Brokers

Testifying on

NARAB & Beyond: Achieving Nationwide Uniformity in Agent Licensing

Before the

Joint Hearing of the House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises

March 16, 2001
Washington, D.C.

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 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.

TESTIMONY OF:

Ronald A. Smith, CPCU
Smith, Sawyer & Smith Inc.

On behalf of the
Independent Insurance Agents of America
National Association of Insurance and Financial Advisors
National Association of Professional Insurance Agents

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

May 16, 2001

STATEMENT OF RONALD A. SMITH
PRESIDENT – SMITH, SAWYER & SMITH, INC.
ROCHESTER, INDIANA

STATE GOVERNMENT AFFAIRS CHAIRMAN AND PAST PRESIDENT
INDEPENDENT INSURANCE AGENTS OF AMERICA

TESTIFYING ON BEHALF OF
THE INDEPENDENT INSURANCE AGENTS OF AMERICA,
THE NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS, AND
THE NATIONAL ASSOCIATION OF PROFESSIONAL INSURANCE AGENTS

ON STATE COMPLIANCE WITH THE "NARAB PROVISIONS" CONTAINED IN
TITLE III/SUBTITLE C OF THE GRAMM-LEACH-BLILEY ACT

BEFORE THE SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, AND
GOVERNMENT SPONSORED ENTERPRISES OF THE
COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

May 16, 2001

Introduction

Good afternoon. My name is Ron Smith, and I am President of Smith, Sawyer & Smith, Inc., an independent insurance agency located in Rochester, Indiana. I am the current State Government Affairs Chairman and a Past President of the Independent Insurance Agents of America (IIAA), and I am testifying today on behalf of IIAA, the National Association of Insurance and Financial Advisors (NAIFA), and the National Association of Professional Insurance Agents (PIA). IIAA, NAIFA, and PIA represent hundreds of thousands of this country's insurance agents and brokers and their employees. Our collective members are large and small businesses that offer consumers a wide array of products, ranging from property, casualty, life, and health insurance to employee benefit plans, retirement programs, and investment advice.

I appreciate the opportunity to testify today on a topic of great interest and critical importance to insurance agents – the NARAB provisions of the Gramm-Leach-Bliley Act and the urgent need for reform of our industry's multi-state licensing system. No segment of the industry is affected more by producer licensing laws than our diverse membership of small and large agents and brokers, and no group will be impacted more by reforms in this area.

Need for Reform

The organizations I am representing today strongly support state regulation of insurance, and we are committed to preserving and strengthening the current system. We also recognize that

the licensing of agents and brokers is a critical component of insurance regulation. Licensing statutes impose minimum eligibility and consumer protection requirements to ensure that a licensed individual or firm is qualified for the activities in which they are engaging. Laws regulating the licensing of insurance producers protect the insurer/insured relationship by attempting to ensure that prospective policyholders obtain reliable insurance that is adequate for their needs. As the United States Supreme Court has recognized, licensing laws embody a

> *series of regulations designed and reasonably adapted to protect the public from fraud, misrepresentation, incompetence and sharp practice which falls short of minimum standards of decency in the selling of insurance by personal solicitation and salesmanship. That such dangers may exist, may even be widely prevalent in the absence of such controls, is a matter of common knowledge and experience.*

Licensing laws are therefore designed to increase the likelihood that insurance purchasers will obtain from qualified persons products that best meet their needs – and that the insurance they purchase will be reliable and appropriate for their purposes. Demonstrating competence to sell insurance products and being subject to an appropriate set of consumer protection requirements and state enforcement mechanisms are still absolute necessities. The licensing process constitutes the primary mechanism by which regulators can stop unscrupulous actors and intervene to protect the public. Without licensing, there is little practical way for states to effectively supervise and regulate the qualifications and actions of insurance providers.

Despite our longstanding support for state regulation and effective licensing laws, we recognize that the current licensing system does not operate as efficiently as it should. Accordingly, we strongly support efforts to enhance and streamline producer licensing and to make the system more uniform across state lines. The average insurance agency maintains licenses in over four states today, and our members increasingly operate in multiple jurisdictions and serve clients and consumers outside of their own home states. My agency, for example, is located in a North Central Indiana town of 7000 people, yet my largest account is in Florida, and I am licensed in over 15 different states. Many of our members are licensed in 10, 20, 30, or more states, and we have numerous members that are licensed in every jurisdiction.

Agents of all kinds – whether operating in large commercial centers or small communities – face unnecessary bureaucratic hurdles that are imposed by the distinct and often idiosyncratic agent licensing laws of every state. Staying in compliance with state licensing requirements is an expensive, time-consuming, and maddening effort for many agencies, and tremendous resources are often necessary to manage an agency's compliance efforts. These opportunity costs and wasted man-hours could be better spent working on behalf of our customers. Many of our members are frustrated because they are trapped in a licensing system full of antiquated, duplicative, unnecessary, and protectionist requirements. Adding to the frustration is the fact that these inefficiencies exist at a time when advances in technology have encouraged society to expect ease, efficiency, and speed – even from government agencies and state insurance departments.

The problems associated with the current system can be divided into three main categories: (1) the disparate treatment that nonresidents receive in some states; (2) the lack of standardization, reciprocity, and uniformity; and (3) the bureaucracy generally associated with agent licensing. The NARAB provisions contained in the Gramm-Leach-Bliley Act ensure that these three problem areas will be addressed soon – either by the enactment of preemptory reforms at the state level or by the automatic implementation of the provisions themselves.

NARAB Requirements

With the enactment of the Gramm-Leach-Bliley Act (GLBA) and the so-called "NARAB provisions" in November 1999, America's insurance agents and brokers were assured that effective licensing reform was finally imminent. The GLBA gave the states three years to achieve particular licensing goals outlined by Congress. If the requisite reforms are not enacted by the necessary number of the states, then the statute provides that the National Association of Registered Agents and Brokers (NARAB), a quasi-federal licensing agency, will be established.

The GLBA is clear about what it is required to prevent the establishment of NARAB. The creation of the new "agency" will only be averted if a majority of states (defined by virtue of the statute as 29 states or territories) achieve the specified level of licensing reciprocity or uniformity. The Act is specific about the reforms that are necessary, and it gives the states two options – licensing uniformity or licensing reciprocity.

Reciprocity is the easier test to satisfy, and it is the initial goal of state policymakers. To achieve reciprocity, the Gramm-Leach-Bliley Act requires that a majority of states license nonresident agents and permit them to operate to the same extent and with the same authority with which they operate and function in their resident state. This sounds simple, but statutory and regulatory changes are needed in order to meet the level of reciprocity required. The reciprocity standard in the NARAB provisions essentially requires each qualifying state to meet a 3-part test:

- First, states may not impose any unique licensure requirements on nonresidents and may only require a nonresident to submit: (1) a license request; (2) proof of licensure and good standing in the home state; (3) the appropriate fees; and (4) an application.
- Second, states must offer continuing education reciprocity to any person who satisfies his/her home state requirement.
- Third, states must not "impose any requirement . . . that has the effect of limiting or conditioning [a] producer's activities because of its residence or place of operations," excluding countersignature requirements.

In short, to satisfy the NARAB test, states must be prepared to offer full reciprocity to nonresident agents – without imposing any additional obligations or requirements. In order to be "NARAB compliant," a state must be willing to accept the licensing process of a producer's resident state (home state) as adequate and complete. No additional paperwork or requirements may be required – no matter how trivial or important they may seem.

In essence, the NARAB provisions put the ball in the states' court – and gave them three years to achieve the level of reform mandated by federal law. If 29 states fail to offer reciprocity to nonresidents by November 12, 2002, then the process of establishing NARAB will begin. In this way, the threat of NARAB has created a strong incentive for the states to reinvent and streamline the current multi-state licensing process.

Early State Activity / Development of the Producer Licensing Model Act

Even before the passage of the GLBA, efforts were underway to reform and streamline the existing licensing system, and some significant strides had already been made. The National Association of Insurance Commissioners (NAIC), for example, had developed a national application form for agents, established the Uniform Treatment Initiative (an initial step toward reciprocity), and developed groundbreaking regulatory tools such as the Producer Database

and Producer Information Network. In addition, many states had recently taken action to eliminate longstanding discriminatory barriers, such as countersignature laws, residency requirements, and solicitation restrictions. The focus on agent licensing reform, however, has clearly intensified since the enactment of the GLBA.

The most critical response has been the development of the Producer Licensing Model Act, a model law drafted by the NAIC. The NAIC finally adopted the model act in October 2000 after more than two years worth of hard work by state policymakers and many in the private sector. We are particularly proud of the pivotal role that our groups played in the development of the proposal. Early in the process, our organizations assumed a leadership role by bringing together all of the various private sector groups to discuss many of the issues that had divided the insurance industry. Our efforts to broker consensus were successful in a number of key areas and helped enable the NAIC to proceed with its consideration of the model.

In the aftermath of the GLBA's enactment, the NAIC hurried to complete its consideration of the Producer Licensing Model Act. In this rush, the regulator association included an ambiguously worded licensing exemption that could have allowed unlicensed and unqualified individuals to offer advice and guidance, discuss policy options with unknowledgeable consumers, and materially revise existing policies and insurance contracts. To its credit, the NAIC ultimately deleted the unnecessary provision and thus eliminated the potential for conflicting interpretations, avoided the need for judicial interference, and most importantly, protected insurance consumers. As expected, the Producer Licensing Model Act has been the starting point for agent licensing reform in nearly every state, and our organizations have supported and promoted its enactment.

The hope is that every state legislature will consider and adopt the proposal, thus providing much needed uniformity to the current licensing system. The NAIC model law contains the provisions necessary for a state to become "NARAB compliant" and enables a state to achieve the requisite level of reciprocity. The reciprocity provisions, however, are only a small aspect of the total bill, and adoption of the model will bring unprecedented uniformity to the licensing process in many ways that are not required under the NARAB provisions. Among other items, the Producer Licensing Model Act includes the following:

- A requirement that any person "selling," "soliciting," or "negotiating" insurance be licensed and a prohibition against unlicensed individuals performing these same functions without a license – regardless of the context;
- Definitions of the major lines of insurance;
- The recognition of a uniform process for obtaining a resident license;
- The creation of a common set of requirements for obtaining nonresident licenses;
- The recognition and acceptance of a common national application – for both residents and nonresidents;
- Uniform standards for agent/insurer appointments;
- The establishment of true licensing reciprocity; and
- The elimination of discriminatory licensing requirements.

Status and Success of Licensing Reform Efforts

We have now crossed the halfway point on the way to the NARAB deadline, and I would like to offer some reflections on the progress that has been made in the 18 months since the passage of the Gramm-Leach-Bliley Act.

Initially, some believed the establishment of NARAB was inevitable, and other naysayers suggested that the agent community would oppose state reform efforts and block the passage of meaningful reform. Nevertheless, our organizations consistently maintained that state lawmakers would forestall the creation of NARAB and ultimately implement a licensing system better than that offered by the NARAB provisions. I am happy to declare today that we were right and the pessimists could not have been more wrong. In the last several months, the states have achieved reforms unprecedented in the history of insurance licensing, and our organizations have been the leading proponents of these state-level measures. Even those who just a few months ago believed the creation of NARAB was a fait accompli now recognize that the entity is unlikely to ever come into existence.

The associations I represent today have affiliated organizations in every state capital, and our members and state affiliates have been working closely with state lawmakers to enact reform. This partnership has resulted in a staggering amount of reform in a short window of time, and *the NARAB threshold of 29 states will be cleared before the end of 2001 – over one year ahead of the timeframe established in the GLBA*.

Our success at the state level cannot be overstated. Here are the numbers:

- Twenty-two states have enacted reforms that achieve reciprocity and significant uniformity. These states are Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Utah, Virginia, Washington, and Wyoming.

- Nine additional states have passed licensing reform bills through both chambers of their legislatures, and each of these bills is expected to become law soon. These states are Alaska, Colorado, Hawaii, Illinois, Louisiana, Maine, Maryland, Minnesota, and Oregon. Once these bills become law, the 31 states that will have enacted reform will account for over 46% of all licensed individuals and over 38% the country's property and casualty insurance premiums.

- Many other states are currently considering licensing reform bills, and they are at various stages of the legislative process. Bills in Alabama, Texas, and Vermont have already passed through one legislative chamber, and these three states, combined with the 31 states named above, account for over 53% of all licensed individuals and nearly 47% of the country's property and casualty insurance premiums. Bills continue to move through the committee process in numerous other states as well.

- By the end of this year, we anticipate that over 45 states will have considered licensing reform legislation – with perhaps 40 or more enacting reciprocity and significant uniformity. We anticipate that nearly 50 jurisdictions will do the same by the November 2002 deadline.

This subcommittee may have heard concerns from some who claim that the progress made to date is insufficient because the larger states have not yet acted. These responses are ironic when you consider that many of these same groups were recently claiming that the states were unlikely to clear the 29-state NARAB threshold. Because our organizations have a presence in every state, we are in close contact with state policymakers, and we are optimistic that the remaining large states will soon begin to actively consider licensing reform.

Our optimism is based in large part on the following observations:

- Thirty state legislatures have either adjourned for the year or are scheduled to adjourn by the end of this month. Of that group, 26 are expected to enact substantive licensing reform into law this year. Florida, New Mexico, Tennessee, and West Virginia are the only states in this group not expected to take action this year, and several of these states have already indicated a desire to advance reform before the November 2002 deadline.

- Forty-one states will adjourn by August, and we anticipate that at least 35 of these states will enact reform this year.

- Most of the remaining states, including the largest states, have legislative sessions that continue on an ongoing basis. These additional states include New York, California, Illinois, Pennsylvania, Michigan, Ohio, New Jersey, and Massachusetts. Each of these states is working to enact licensing reform, and we are optimistic that most of them will do so this year. Given the overwhelming success achieved so far, we have every reason to believe that reform is imminent in most of these remaining states.

Again, we expect that approximately 40 states will enact significant licensing reform legislation in 2001, with most of the remaining states taking similar action before November 2002.

Although we are pleased to have played a part in this success, we must commend the hundreds of state legislators who have worked diligently on insurance licensing reform over the last several months. While we recognize that the enactment of the NARAB provisions has had the effect of galvanizing support for agent and broker licensing reform, state lawmakers have done their part to modernize insurance regulation. Several state legislative organizations, including the National Conference of Insurance Legislators, the American Legislative Exchange Council, and the National Conference of State Legislatures should also be commended for educating state leaders and focusing the spotlight on the need for licensing reform.

Continued Progress and Future Challenges

Given the pace of activity that has occurred so far this year, it is now extremely unlikely that NARAB will ever be created. Congress gave the states three years to collectively achieve the mandated level of reform, and the states will clear a hurdle thought to be insurmountable in only half of the allotted time. While these unprecedented accomplishments are staggering, we intend to keep the pressure on. Our organizations believe it is essential that we have "national" reform. Reaching the statutory bare minimum is not good enough in the long term, and we will not settle for uniformity and reciprocity in 29 states alone. Accordingly, we will continue to push for national reform – both in the period preceding the November 2002 deadline and in the months that follow.

As I have outlined, the states with early legislative adjournment dates have acted most quickly, and we must now focus on those states with legislatures that meet on an ongoing basis. These states also tend to be the larger states. Effective and meaningful reform must be national in scope, and it is essential that the largest states be part of the mix. Many of the larger state legislatures have been focused on difficult budget issues in the early months of this year, and such issues have necessarily dwarfed the consideration of licensing reform. States are also working diligently to implement the privacy requirements included in Title V of the GLBA. Since the privacy issue has a more immediate deadline, it has been a top insurance priority for many regulators and legislatures this year. As the privacy issue is addressed and as budget,

redistricting, and other important issues move toward resolution, licensing reform will become a priority.

We are pleased, however, by the progress that we have seen in some of the larger states in recent weeks. Bills are actively under consideration and moving through the legislative process in California, Illinois, and Texas. In addition, Michigan, New York, Ohio, and Pennsylvania are all expected to begin consideration of reform bills in the coming weeks, and the insurance departments in these states are hard at work behind the scenes. These states are critically important, and we are confident that they will ultimately enact licensing reciprocity and other reforms.

The advancement of licensing reform has also been slowed in some states as a small segment of the industry has attempted to attach broad, unnecessary, and unprecedented licensing exemptions to state reform bills. Advocates of such provisions have aggressively sought loopholes that would enable unlicensed individuals to sell and negotiate insurance; offer recommendations and advice to consumers; discuss policy options with unknowledgeable consumers; materially revise existing policies and insurance contracts; and solicit policies and coverages. Although these efforts have failed in every state, they have nevertheless served as a distraction and have slowed the speed of reform.

In addition, individual state insurance commissioners will clearly have an impact on the success of legislative reform efforts in their own states. Some insurance departments have been hesitant to introduce and support the Producer Licensing Model Act, and we hope the NAIC will more actively encourage the adoption of its own model law in the remaining states. State legislators will be looking to insurance regulators for guidance on this issue, and it is important that commissioners work closely with their legislatures and stress the importance and urgency of licensing reform.

Additional Steps

As I noted previously, the Producer Licensing Model Act contains many elements that are intended to establish greater uniformity among the states. In addition to enacting these elements of the model law, there are other steps that states can take and that policymakers should consider.

First, every state should access and provide licensing information to the Producer Database (PDB). The PDB is an electronic database of information about producers and includes data about an individual's licensing status, appointment history, and disciplinary actions. Regulators accessing the database can check in real time whether an agent or broker is licensed and in good standing in a particular state or in multiple states. However, state regulators, consumers, and private industry will not be able to realize the potential of the system until every state has "joined" the PDB. The NAIC has been working for several years to add every jurisdiction to the system, but the progress has been slow in the handful of remaining states. The PDB is a core element of regulator plans to create a system in which agents can obtain nonresident licenses in multiple states through a single on-line point of entry – and every state needs to be participating.

Second, insurance regulators must also continue their efforts to achieve greater uniformity across state boundaries. While the NAIC Producer Licensing Model Act offers significant elements of uniformity, there are other steps that can be taken. The model law creates a more uniform process for obtaining licenses initially, but the renewal of insurance licenses can be a complex, logistical nightmare for agents. Reform of renewal process is a critical element of

licensing reform, and we are already working with the NAIC and others to achieve results in this area. In addition, reform is needed to address the manner in which states regulate and license corporate entities.

Third, state countersignature laws have come under increased scrutiny and criticism in recent years, and many in the industry advocate their repeal. Each of the national associations I represent today has endorsed the abolition of these and similar protectionist laws, and we have been pleased with the manner in which many states have repealed these antiquated requirements. Today, only five states (Alabama, Florida, Nevada, South Dakota, and West Virginia) retain a mandatory countersignature law, and Alabama is expected to repeal its law in the coming weeks. We anticipate that others will consider similar actions soon.

Finally, although we are strong and ardent supporters of state regulation of insurance, we believe that Congress can also assist the move toward further licensing reform and uniformity. One way in which Congress can continue to advance the reform effort is by utilizing the oversight authority of this committee. Through committee hearings such as this and in other ways, the Congress can appropriately play a role in the debate over insurance reform. Congress can also assist this effort by providing state regulators with limited and clearly defined access to federally maintained databases. This will help regulators implement a more effective and uniform procedure for those states that conduct background checks. In general, however, we look forward to working with the Financial Services Committee on these and similar issues in the future.

Conclusion

By enacting the NARAB provisions of the Gramm-Leach-Bliley Act, Congress took affirmative steps to ensure that the insurance agents and brokers of this country would finally have access to a streamlined and functional multi-state licensing mechanism. While we have consistently argued that the states were up to the challenge, we are nevertheless extremely pleased with the results of the legislative activity that has occurred in the last six months.

Although state lawmakers should be proud of the efforts and accomplishments made to date, additional work remains. We must continue to build on this progress and gain enactment of similar reforms in the remaining states. We are confident that this will occur, and we will continue to work closely with state policymakers to achieve meaningful licensing reform on a national basis. We also look forward to securing additional elements of reform in the future.

IIAA, NAFIA, and PIA appreciate the opportunity to present our views on the state and future of insurance licensing. As you continue to consider these and other insurance-related reform issues, please know that we are happy to provide any further assistance and information that this subcommittee may deem appropriate and helpful.

Statement of the Alliance of American Insurers

Submitted to

The Subcommittee on

Capital Markets, Insurance, and Government-Sponsored Enterprises

Hearing on

Agent Licensing Uniformity

May 16, 2001

The Alliance of American Insurers is a national trade association representing over 325 property/casualty insurance companies. We appreciate this opportunity to present to the House Financial Services Committee a review of producer licensing reform activity as it applies to the National Association of Registered Agents and Brokers (NARAB) mandate included in the Gramm, Leach, Bliley Act (GLB). Our member companies are committed to establishing an environment in the states for reform of outdated and inefficient statutes and regulations that govern the licensure and appointment of insurance producers.

State regulators, through the NAIC and with input from the insurance industry, began the process of establishing the Producer Licensing Model Act before the enactment of NARAB as an element of GLB. Four years ago the National Association of Insurance Commissioners (NAIC), with industry input, began deliberations that led to adoption of the Producer Licensing Model Act. Our membership continues to participate in this process as state legislatures consider enactment of reciprocal and uniform licensure laws during their 2001 legislative sessions.

There is little doubt that the presence of a potential federal solution for establishment of uniform and reciprocal licensure processes has spurred regulators to almost unprecedented action in pursuing system reform at the NAIC and, this year, in the states. The full committee, under the leadership of Chairman Oxley, and this subcommittee, under the leadership of Chairman Baker, are to be commended for their interest in and oversight of the issues related to GLB implementation.

Alliance member companies support enactment of uniform and reciprocal licensure laws at the state level. We realize that the 29-state mandate in NARAB will simply be a step along the path toward harmonizing state licensing laws. True reform will not be realized until all 50 states have enacted uniform and reciprocal licensure statutes based upon the NAIC model act. The NAIC leadership and the NARAB Working Group should be commended for their adoption of a 50-state strategy for licensure reform. It makes little sense to enact reform laws in 29 states, thus avoiding the NARAB challenge, if those states represent only a fraction of the 3 million insurance producers licensed to do business in the country.

Equally important, the Alliance believes that states must enact the critical uniform licensure standards developed in the NAIC model act in addition to the sections on reciprocal treatment of non-resident license applicants designated by the regulators as "must have" features of a new law that will comply with NARAB. Currently, states can enact language in only four sections of the 20-section model act and gain NARAB compliance. That limited level of licensure reform neglects uniform elements in the model act that are meant to level the playing field for producers who will be required to compete in a reciprocal licensure environment.

Key elements that should be look for in legislative proposals addressing agent licensing include:

- Standard definitions for "sell, solicit and negotiate", because they are acts that require licensure;
- Standard language that defines exceptions to licensure;
- Similar lines of authority for which a producer may be licensed;
- Standard provisions for the payment and receipt of commissions;
- Uniform processes for the appointment and termination of producers; and
- Inclusion of confidentiality and immunity provisions adopted by the NAIC that provide for the open exchange of information between companies, producers and regulators when licensure and appointment disputes arise.

There are additional uniformity issues for producer licensure that we believe are also important and yet are not captured within the model act. These issues include a final determination of standard information to be provided on the NAIC Uniform Application that all states will accept and a development, by the states, of a uniform approach to criminal background checks for insurance producers. HR 1408, currently before the Financial Institutions and Consumer Credit subcommittee, addresses this later issue.

The Alliance believes the progress made by states in producer licensing reform should be evaluated by the degree to which the states embrace these uniform licensure processes, as well as the reciprocal requirements of NARAB. A very early assessment of progress made this year in the legislative arena gives us reason for cautious optimism that a uniform and reciprocal system for producer licensing may be realized across the

country in the not too distant future. There is good news --- and some questions to be answered --- given the reform activity that has occurred so far.

As of this writing, reform legislation has been enacted this year in 18 states. Three of those new laws contain only the reciprocity provisions of the NAIC model act, the rest are more comprehensive and include most of the uniform provisions in the model act. In four states Comprehensive legislation has been adopted in legislatures and awaits Governors' signatures.

The 22 jurisdictions where bills have been enacted, or are waiting Governors' signatures, when added to the enactments in four states in 2000, brings us to 26 of the 29 needed to satisfy the NARAB provision in GLBA. In addition, comprehensive bills that have passed through both legislative chambers are waiting concurrence votes in four states; and legislation that includes comprehensive reform has been introduced in at least eight other states. In another positive development, two states that enacted reciprocity provisions of the model act last year have legislation moving this year that will add the uniformity provisions of the model act to the statutes.

The progress that has been made in the states this year must be balanced against the fact that some of the larger jurisdictions have been slow, and in some cases reluctant, to participate in the reform process. For instance, it is fairly certain that legislative activity on producer licensing will not take place this year in Florida. The Texas bill arguably meets the NARAB standard, but contains few of the uniformity provisions from the model act.

The picture has brightened somewhat in California with a recent amendment to existing legislation that may meet the NARAB reciprocity standard, however we are told that bill will not be seriously considered by the legislature until next year. The recent confirmation of a new Insurance Superintendent in New York has given industry observers optimism that activity could heat up in the state this year on comprehensive reform bills that have stalled in the legislature.

In short, there is a work to do in order to realize the goal of reform in all 50 states. However, we are impressed by the positive attitude of most state regulators and legislators where producer-licensing reform is concerned. It is important to note that most of the legislation that has been enacted this year, or is in the pipeline, is the result of proposals developed by Insurance Departments with front-end input by industry and consumer organizations. For that reason, in states where new laws have been enacted this year, legislators have generally been presented a consensus reform package.

In conclusion, the Alliance believes that the first phase of producer licensing reform success that has occurred so far during the 2001 legislative sessions, establishes a positive base for progress. We anticipate action in other states before year's end. The 29 state NARAB mandate should be met a year in advance of the 2002 deadline. However, the challenge for regulators, state legislators and the insurance industry is ongoing. It will take the combined efforts

of all producer-licensing stakeholders to bring a uniform and reciprocal licensure environment to every state.

Congressional interest in the producer licensing issue has been a motivating factor for advancing positive legislative developments in the states. For that reason, we welcome the oversight activities of this subcommittee. The insurance industry can be a valuable resource for the committee in its oversight of GLB implementation. We are willing to provide committee members and staff any additional assistance on producer licensing reform progress, as well as on other GLB implementation issues, at your convenience.

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May 15, 2001

Congressman Michael G. Oxley
House Committee on Financial Services
2129 Rayburn H.O.B.
Washington, D.C. 20515

Dear Rep. Oxley:

Thank you for your office's May 14 notification of a May 16 House Financial Services hearing entitled, "NARAB & Beyond: Achieving Nationwide Uniformity in Agent Licensing." Inasmuch as the House Financial Services Committee did not extend an invitation to the National Conference of Insurance Legislators (NCOIL) to testify, as President of NCOIL I am submitting this letter to serve as written testimony for that hearing.

NCOIL recognizes the need for uniformity in agent licensing and is working with legislators and insurance departments nationwide on the issue. NCOIL legislators are sponsors of producer licensing legislation that is in compliance with the so-called NARAB provisions of the Gramm-Leach-Bliley Act of 1999 (GLBA).

Twenty-two states have already enacted such legislation. Seven other states have legislation pending in conference committee or awaiting gubernatorial signature. NCOIL is pursuing enactment of the legislation in the remaining states. In an April 20 memorandum, I urged NCOIL legislators to do all they can to ensure that their respective states enact the legislation in a timely fashion if they had not already done so.

NCOIL's efforts are pursuant to its July 7, 2000, resolution in support of the uniformity and reciprocity provisions of the NAIC Producer Licensing Model Act.

NCOIL has as one of its purposes the reaffirmation of the traditional primacy of States in the regulation of insurance as authorized under the McCarran-Ferguson Act of 1945. NCOIL opposes NARAB because it would preempt state laws in the area of producer licensing.

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NCOIL is an organization of state legislators whose main area of public policy concern is insurance legislation and regulation. Many legislators active in NCOIL either chair or are members of the committee responsible for insurance in their respective state legislative house.

I respectively remind the House Committee on Financial Services that state legislators represent the general public, similar to representatives and senators of Congress. At future hearings that deal with insurance matters, please consider inviting NCOIL to testify in person.

If you have any questions regarding NCOIL's position on NARAB and uniformity in agent licensing, please contact Bob Mackin or Susan Nolan at the NCOIL National Office at (518) 449-3210.

Sincerely,

Rep. Terry Parke (IL)
NCOIL President

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