



*Independent Insurance Agents
& Brokers of America, Inc.*

**STATEMENT OF TOM MINKLER
ON BEHALF OF THE
INDEPENDENT INSURANCE AGENTS & BROKERS OF AMERICA**

BEFORE THE

**SUBCOMMITTEE ON CAPITAL MARKETS, GOVERNMENT SPONSORED
ENTERPRISES, AND INSURANCE**

COMMITTEE ON FINANCIAL SERVICES

UNITED STATES HOUSE OF REPRESENTATIVES

April 16, 2008

Good afternoon Chairman Kanjorski, Ranking Member Pryce, and Members of the Committee. My name is Tom Minkler, and I am pleased to be here today on behalf of the Independent Insurance Agents and Brokers of America (IIABA) to provide our association's perspective on insurance regulatory reform, particularly H.R. 5611, the National Association of Registered Agents and Brokers (NARAB) Reform Act. I am currently Chairman of the IIABA Government Affairs Committee and was recently elected to IIABA's Executive Committee. I am also President of Clark Mortenson, a New Hampshire-based independent agency with 51

employees that offers a broad array of insurance products to consumers and commercial clients across the country. Specifically, I am licensed to do business in nine states.

IIABA is the nation's oldest and largest trade association of independent insurance agents and brokers, and we represent a network of more than 300,000 agents, brokers, and employees nationwide. IIABA represents small, medium, and large businesses that offer consumers a choice of policies from a variety of insurance companies. Independent agents and brokers offer a broad range of personal and commercial insurance products.

Introduction

From the beginning of the insurance business in this country, states have carried out the essential task of regulating the insurance marketplace to protect consumers. However, there is little doubt that the current state-based insurance regulatory system should be reformed and modernized. At the same time we must keep in mind that the current system does have great strengths – particularly in the area of consumer protection. State insurance regulators have done an excellent job of ensuring that insurance consumers, both individuals and businesses, receive the insurance coverage they need and that any claims they may experience are paid. These and other aspects of the state system are working well.

As we have for over 100 years, IIABA supports state regulation of insurance – for all participants and for all activities in the marketplace – and we oppose any form of federal regulation, optional or otherwise. Yet despite this historic and longstanding support of state regulation, we do not believe the state system can appropriately and effectively address certain of its problems on its own. That is why we feel that there is a vital role for Congress to play in helping to modernize the state regulatory system and overcome the obstacles to reform that

currently exist; however, such an effort need not replace or duplicate at the federal level what is already in place and working well at the state level.

The most serious regulatory challenges facing insurance producers (agents and brokers) are the redundant, costly, and sometimes contradictory requirements that arise when seeking licenses on a multi-state basis, and the root cause of these problems is the failure of many states to issue licenses on a truly reciprocal basis. To rectify this problem, IIABA strongly supports H.R. 5611, the NARAB Reform Act, introduced in March by Capital Markets Subcommittee Members David Scott (D-GA) and Geoff Davis (R-KY). This legislation would streamline nonresident insurance agent licensing, but is deferential to states' rights – day-to-day state insurance laws and regulations would not be affected by this legislation. Given the strong bipartisan support for the NARAB Reform Act, there are already almost 30 cosponsors, we are excited about the prospects of this bill. I personally want to thank the Members of this Subcommittee who are cosponsors of the bill for their support, and we look forward to working with you on this important legislation.

I also want to mention briefly IIABA's support for H.R. 1065, the Nonadmitted and Reinsurance Reform Act, passed by voice vote by the House last summer, which would streamline and modernize the surplus lines and reinsurance markets. We thank Reps. Dennis Moore (D-KS) and Ginny Brown-Waite (R-FL) for their work on this bill. We believe that measures such as this legislation and the NARAB Reform Act would best promote uniformity and consistency and streamline insurance regulatory procedures from state to state, while protecting consumers and enhancing marketplace responsiveness.

Because the NARAB Reform Act was just recently introduced, I will take the opportunity today to explain the nonresident licensing difficulties currently encountered by insurance agents and explain how this legislation will help solve these problems. Pursuant to direction from the

Subcommittee, I will not go into detail about our opposition to other proposals for insurance industry regulatory reform. However, I would like to make the following very brief points about the Treasury Department's *Blueprint for a Modernized Financial Regulatory Structure* (Blueprint). Overall, IIABA strongly opposes the Blueprint's insurance recommendations, and we believe that the Blueprint seems primarily to take into account the interests of large financial businesses operating on a national or international basis at the expense of smaller Main Street businesses, such as independent insurance agents and smaller insurance companies. Specifically, we have significant problems with the Blueprint's proposal for the creation of an optional federal charter as well as its more expansive long term overhaul plan which would lead to mandatory federal regulation through a dual state and federal structure for state-chartered entities and a single federal structure for federally-chartered entities. Of immediate concern to IIABA is the Blueprint's recommendation of the creation of an Office of Insurance Oversight (OIO) within the Treasury Department. IIABA views the OIO as a serious threat to state insurance regulation because the Blueprint specifically envisions it as the intermediate step toward the creation of an optional federal charter. We believe that an OIO with authority to preempt state laws and implement their own regulations would negatively impact the state insurance regulatory structure. IIABA would be happy to address these concerns in greater detail at a later and more appropriate time.

The NARAB Reform Act

Insurance Producer Licensing Today

State law requires insurance agents and brokers to be licensed in every jurisdiction in which they conduct business, which forces most producers today to comply with varying and inconsistent standards and duplicative licensing processes. These requirements are costly,

burdensome and time consuming, and they hinder the ability of insurance agents and brokers to effectively address the needs of consumers. In fact, the current licensing system is so complex and confusing for our members that many are forced to retain expensive consultants or vendors in order to achieve compliance with the requirements of every state in which they operate.

Some observers of our industry mistakenly believe that most insurance agents operate only within the borders of the state in which they are physically located and that the problems associated with the current licensing system only affect the nation's largest insurance providers. The reality is that the marketplace has changed in recent decades, and the average independent insurance agency today operates in more than eight jurisdictions. There are certainly agencies that have elected to remain small and perhaps only service the needs of clients in one or two states, but that is no longer the norm. Our largest members operate in all 50 states, and it is increasingly common for small and mid-sized agencies to be licensed in 25-50 jurisdictions as well. For smaller businesses, which lack the staff and resources of larger competitors, the exorbitant cost and unnecessary complexity of licensing is especially burdensome.

Congress recognized the need to reform the industry's multi-state licensing system back in 1999, when it incorporated the original NARAB subtitle into the Gramm-Leach-Bliley Act (GLBA). GLBA did not provide for the immediate establishment of NARAB and instead included a series of "act or else" provisions that encouraged the states to reinvent and simplify the licensing process. In order to forestall the creation of NARAB, at least a majority of states (interpreted to be 29 jurisdictions) were required to license nonresidents on a reciprocal basis. To be deemed "NARAB compliant," GLBA mandated that states issue a nonresident license to any applicant who meets three simple criteria: (1) is licensed in good standing in his/her home state, (2) submits the appropriate application, and (3) pays the required fee. The act is precise and states that a nonresident licensing must be issued "without satisfying any additional

requirements.” In short, GLBA required compliant states to accept the licensing process of a producer’s home state as adequate and complete, and no additional paperwork or requirements would be required (no matter how trivial or important they may seem).

Unfortunately, true reciprocity remains elusive. Our diverse membership of small and large agents and brokers hoped meaningful and tangible reform was imminent following GLBA’s passage and the subsequent enactment of at least elements of the NAIC’s Producer Licensing Model Act (PLMA) by most jurisdictions, but we are still awaiting the promised benefits almost nine years later. Although Congress’s action did spur some activity and modest state-level improvements, insurance producers have been disappointed by the lack of meaningful progress that has been made over the last decade.

The NAIC has once again identified producer licensing reform as a top regulator priority, but the organization has been unable to produce significant reforms. Their recent efforts – while appreciated and well-intentioned – have not focused on the most critical priorities and have instead generated only limited improvements on marginal issues. While the NAIC has cited the “progress” made in the licensing arena as one of its most notable success stories, our members remain frustrated by the many challenges and burdens they face and are increasingly impatient with the lack of actual progress. I have outlined some of the most prominent problems below.

Lack of Reciprocity

Despite assertions from insurance regulators to the contrary, many states have failed to embrace and implement licensing reciprocity. Both the GLBA and the NAIC’s PLMA clearly establish the limits of what may be required of a nonresident applicant – *a nonresident in good standing in his/her home state shall receive a license if the proper application or notice is submitted and the fees are paid* – yet states continue to impose additional conditions and requirements. The imposition of these extra requirements makes it impossible for many

insurance producers to quickly and efficiently obtain and maintain the necessary licenses and violates the reciprocity standards established in federal and state law.

The NAIC maintains that approximately 45 states have met the reciprocity standard established in the GLBA, but the suggestion that so many states license nonresidents on a truly reciprocal basis would come as a surprise to the real-world practitioners who must regularly comply with the extra hurdles and requirements imposed by states. By liberally certifying states that impose such additional requirements, the NAIC misinterprets the reciprocity standard defined by Congress and undermines efforts to bring states into compliance with the letter and spirit of GLBA and the PLMA.

Duplicative Layers of Licensing Requirements

While most outside observers are aware that insurance agents and brokers must obtain a license in every state in which they operate, few recognize that nonresidents typically confront three layers of duplicative and redundant licensing requirements in each jurisdiction.

Specifically, many insurance departments require nonresidents to (1) obtain an individual insurance license, (2) obtain a similar license for his/her agency, and (3) provide proof that the agency has registered as a foreign corporation with the Secretary of State, even when the state's corporate statutes impose no such mandate

In most states, corporate law does not apply foreign corporation registration requirements to insurance agencies, yet insurance departments often refuse to issue insurance licenses until such registration is completed. We were pleased when the NAIC recently took the position that insurance departments should (1) no longer require corporate registration to be in place in order for a nonresident to obtain and maintain a nonresident insurance license and (2) leave any enforcement of corporate law to the appropriate officials. IIABA was further encouraged in February when the NAIC stated, following the release of its Producer Licensing Assessment, that

14 of the 25 state insurance departments enforcing such a requirement had eliminated it and that other jurisdictions were planning similar action. The report even suggested that by year's end perhaps less than five state insurance departments would require registration in order for an agent to obtain or maintain a nonresident insurance license. However, we have since learned that some insurance departments claiming to have made this change are continuing to require insurance agencies to prove that registration has been completed, and we remain concerned by the lack of tangible progress in this area.

Inconsistent Implementation and Enforcement of the PLMA

Although the NAIC claims nearly every state has enacted the PLMA, the reality is that many of these jurisdictions have either not adopted all of the key provisions or enforce them in ways that run counter to the letter and spirit of the act. The model law is intended to provide a common statutory foundation to the licensing laws of every state, and its consistent adoption at the state level would establish licensing reciprocity and reasonable uniformity in key areas. Unfortunately, the NAIC's recently completed licensing assessment did not review the extent to which all states have enacted provisions of the model law or the extent to which states are consistently enforcing and implementing the law.

Barriers to the Effective Implementation of One-Stop Licensing

Both the regulatory and insurance producer communities have long identified the development of a one-stop licensing facility as a priority. The vision of one-stop licensing was outlined in May 2001 before this very Subcommittee during an oversight hearing examining the effects of the NARAB subtitle. Colorado Insurance Commissioner William Kirven, who co-chaired the NAIC's NARAB Working Group, stated that the regulators "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."

The National Insurance Producer Registry (NIPR), a non-profit affiliate of the NAIC governed by a unique public/private sector board of directors, has been working for more than ten years to achieve that goal. NIPR is intended to support the work of the states and the NAIC in reengineering, streamlining, and making uniform the insurance producer licensing process. While NIPR has made important progress and brought certain efficiencies to the marketplace, its accomplishments have been overstated by some and the objectives outlined by Commissioner Kirven remain unfulfilled. Many state insurance departments, for example, fail to participate fully with NIPR and do not offer the full range of services to the private sector that NIPR is able to provide. The NAIC's licensing assessment suggested that nonresident agents now possess the ability to obtain licenses in 46 states through NIPR, but a closer reading of the document indicates that insurance producers are only able to obtain and renew their necessary individual and entity licenses in fewer than ten jurisdictions.

The primary challenge facing NIPR is that its licensing systems must accommodate the requirements that are imposed by state law or by state insurance departments, and NIPR cannot realize its vision until states are reciprocal and the duplicative licensing problem has been addressed. H.R. 5611 would address these barriers to reform and allow for one-stop licensing.

Need for Congressional Action

Although the inclusion of the NARAB subtitle in the 1999 GLBA focused much-needed attention on insurance producer licensing and spurred some states to take action, insufficient progress has been made. Considerable problems continue to exist, and there is little reason to believe they will be satisfactorily addressed and rectified in the near future without targeted congressional intervention. State regulators have, at various occasions over the last nine years, asserted that licensing reciprocity and uniformity were imminent, but these numerous commitments and action plans have failed to deliver as promised. Our organization strongly

supports state insurance regulation and believes it provides many benefits, but state officials face hurdles, resistance, and collective action challenges that make us doubt that the states will be able to resolve these problems without assistance.

IIABA believes federal legislation is needed to bring about licensing reform. Our association has long asserted that the best method for addressing regulatory deficiencies is by enacting targeted legislation or federal legislative “tools” that establish greater interstate consistency and streamline redundant oversight. The use of targeted and limited federal legislation on an as-needed basis can improve rather than dismantle the current state-based system and in the process produce a more efficient and effective regulatory framework. This can be accomplished through enactment of a number of bills dealing with particular aspects of insurance regulation starting with those areas in most need of reform and where bipartisan consensus can be established. H.R. 5611 is an example of how this pragmatic, middle-ground approach can be utilized effectively.

Legislation Basics

The NARAB Reform Act, commonly referred to as “NARAB II,” employs the NARAB framework first developed by the Congress in 1999 and utilizes the experiences and insights obtained over recent years to improve upon the concept. Some might argue that the original law was not sufficiently clear, failed to set the bar high enough, or enabled states to evade its reciprocity and uniformity objectives – but key improvements have been made to NARAB in H.R. 5611. Perhaps most notably, the NARAB Reform Act would immediately establish NARAB and provide agents and brokers with a long-awaited vehicle for obtaining and maintaining licenses on a multi-state basis. It eliminates barriers faced by agents who operate in multiple states, establishes licensing reciprocity, and creates a one-stop facility for those who require nonresident licenses. The bipartisan proposal benefits policyholders by increasing

marketplace competition and consumer choice and by enabling insurance producers to more quickly and responsively serve the needs of consumers.

H.R. 5611 ensures that any agent or broker who elects to become a member of NARAB will enjoy the benefits of true licensing reciprocity. In order to join NARAB, an insurance producer must be licensed in good standing in his/her home state, undergo a criminal background check (long a priority of state insurance regulators but currently required by less than 14 states), and satisfy the independent membership criteria established by NARAB. These criteria would include standards for personal qualifications, training and experience, and – in order to discourage forum shopping and prevent a race to the bottom – the bill instructs the board to “consider the highest levels of insurance producer qualifications established under the licensing laws of the states.” NARAB also would establish continuing education requirements comparable to the requirements of a majority of the states as a condition of membership, and the term of membership would be two years.

NARAB’s simple and limited mission would be to serve as a portal or central clearinghouse for license issuance and renewal. A NARAB member agent would identify the state(s) in which he/she sought the authority to operate, and NARAB would collect and remit the state licensing fees back to the appropriate jurisdiction(s). States would be prohibited from denying a nonresident license to any NARAB member who correctly completed the process and paid the fees. NARAB would operate as a private, non-profit entity and would be managed by a nine-member board of directors comprised of state insurance regulators and private sector representatives, similar to the board structure employed by NIPR. NARAB would not be part of, or report to, any federal agency and would not have any federal regulatory power.

The NARAB Reform Act discretely utilizes targeted congressional action to produce marketplace efficiencies and is deferential to states’ rights at the same time. H.R. 5611 merely

addresses marketplace entry and leaves regulatory authority in the hands of state officials. The bill does not affect resident licensing requirements or producers who are satisfied with the current system. H.R. 5611 enables NARAB to work in concert with state regulators and NIPR in a number of ways, and NARAB would possess the authority to utilize the databases and infrastructure developed by NIPR in recent years. H.R. 5611 does not displace state regulation and oversight of producers and instead achieves many of the public policy objectives that have been pursued by regulators.

Conclusion

IIABA believes that the NARAB Reform Act would improve the state-based system of insurance regulation by providing nonresident licensing reciprocity for NARAB members through a board of state commissioners and industry representatives. Again, the current state regulatory system has worked effectively to ensure insurer solvency and protect consumers (both individuals and businesses). However, the state-based system would benefit from reform in the area of agent licensing, and the IIABA believes that the NARAB Reform Act would best achieve this reform. NARAB II would build upon regulatory experience maintained at the state level and promote consistency, streamline procedures from state to state and preserve marketplace responsiveness. The result for all stakeholders would be a more efficient, modernized and workable system of insurance agent licensing. We therefore encourage the Committee to act expeditiously in its consideration of this important legislation.