

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

Before the
Securities Subcommittee
Committee on Banking, Housing, and Urban Affairs
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Regarding
State Implementation of the NARAB Subtitle
in the Gramm-Leach-Bliley Act

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Testimony of Terri Vaughan, Chair NAIC Financial Services Modernization Working Group on NARAB

Introduction

My name is Terri Vaughan. I serve as Commissioner of Insurance in Iowa. I also serve as Secretary-Treasurer of the National Association of Insurance Commissioners (NAIC) and 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. That subtitle requires State insurance regulators to meet Federal statutory requirements affecting 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 we 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, support the creation of NARAB itself as a separate organization because NARAB would cast a cloud of uncertainty over 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, although the NAIC and State insurance regulators did not support adding the NARAB subtitle to the Gramm-Leach-Bliley Act, we are strongly committed to implementing the NARAB provisions in the Act by doing the job ourselves as intended by Congress.
- Second, State insurance regulators are moving far beyond the minimum statutory requirements of NARAB in order to satisfy the larger goals of regulatory uniformity and efficiency that are embodied in the NARAB concept. The NAIC, through its non-profit affiliate IRIN (Insurance Regulatory Information Network), has 2.6 million of the Nation's three million agents in its Producer Data Base (PDB), and is targeting all 50 States to be online with PDB by December 31, 2000.
- Third, meeting the legal requirements and larger policy goals of NARAB will demand prompt action by several interested groups, including State insurance regulators, State legislators and governors, Congress, and industry participants.

State Insurance Regulators Are On Schedule to Meet All NARAB Requirements

During Congressional consideration of H.R. 10 and S. 900, sponsors 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 send the States a strong message, not to actually replace State insurance regulation with a new 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 sponsors of NARAB. Nonetheless, NAIC opposed adding the NARAB provisions to the Gramm-Leach-Bliley Act for two important reasons:

- (1) We believe NARAB would face severe legal challenges to its authority if it ever became operational, and that traditional State regulatory authority would inevitably be challenged as a result of NARAB. The resulting uncertainty in the marketplace regarding the supervisory powers of States would create a dangerous environment that could leave insurance purchasers, policyholders, and claimants unprotected.

- (2) We believe the NARAB concept is an unnecessary intrusion by the Federal government into State regulatory authority regarding technical issues that are being properly addressed by the States. The creation of NARAB is an unhealthy precedent that may lead to more attempts at getting a Congressional solution for specific technical issues whenever somebody is unhappy with the results of the State regulatory system.

The NAIC expects that States will meet and exceed the NARAB provisions in the Gramm-Leach-Bliley Act within the three-year time allotted by the statute. We plan to accomplish this goal by making necessary changes to the existing system of State insurance supervision so that NARAB will never be created as a separate organization. This approach will satisfy the objectives of NARAB sponsors who want to see State regulation improved without additional Federal action.

Two Options for States – Reciprocity or Uniformity

There are two options for collective action by States 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 that 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 its home State to sell in non-resident States after satisfying only minimum requirements such as submission of licensing application and payment of all applicable fees;
- (2) Accept the satisfaction by an insurer of its 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.

Starting with Reciprocity – Moving 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, it really 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 everything else.

As a matter of practical strategy, State insurance regulators have decided to comply with the NARAB provisions by first achieving reciprocity among 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) 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 IRIN 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 has been aggressively investing over the past three years in modernizing the technical infrastructure to develop a more centralized producer licensing processing center. Currently, the NAIC maintains a complex network and centralized database of over 2.6 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 29 states are online with the Producer Database and the target is to have all 50 states contributing to PDB by year end 2000. Because PDB is a mirror of the State licensing database, IRIN is creating a single system to automatically process appointments, terminations, and uniform non-resident license applications on behalf of individual State insurance departments against data in PDB within 24 hours of receipt of the 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.

The NAIC has been very successful in partnering with the State insurance departments and insurance companies to achieve uniformity and efficiencies in other regulatory areas. In 1987, the NAIC members empowered the NAIC staff to process annual and quarterly financial diskette filings on behalf of the states. The NAIC currently handles the interface to 5,100 companies, databases this information, and provides analysis tools for regulatory use. Just as insurance companies agree that a uniform annual statement blank for all States makes regulatory compliance cheaper and more efficient, the industry will recognize tremendous efficiencies in the producer licensing arena because they will be able to file once with a central entity instead of separately with 50 different State agencies using 50 different filing requirements

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 that would promote uniformity and efficiency among the

States. We moved quickly to amend this model legislation to comply fully with the NARAB provisions in the Gramm-Leach-Bliley Act when they became final. The revised version of the Producer Licensing Model Act was completed in February 2000 in order to make it available in time for consideration by several State legislatures which were just beginning their sessions.

The NAIC's Producer Licensing Model Act is the primary vehicle for the States to satisfy the statutory requirements of the Gramm-Leach-Bliley Act because it fully implements the 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 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 go a long way toward achieving our ultimate goal of uniformity among the States for agent licensing.

Here are several areas where the Producer Licensing Model Act substantially 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 statutes and regulations often do not define these terms. In conjunction with these uniform definitions, the Model Act contains uniform exceptions to licensing requirements. These 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.
- (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 completing pre-licensing education and examinations 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 as to how regulators, companies, and agents should report and administratively resolve “not for cause” and “for cause” terminations.
- (9) The Model Act encourages the use of the NAIC’s Producer Database (PDB), which will help ensure the continued success of the PDB and IRIN. From a consumer protection standpoint, the use and success of the PDB is critical.

In coming months, the NAIC will be building upon the progress shown in the Producer Licensing Model Act to establish more uniformity and efficiency in State insurance regulation.

Moving Beyond NARAB – NAIC’s Regulatory Modernization Program

The NAIC recognizes that, at its heart, NARAB is a call for sensible modernization in State insurance regulation. We strongly agree with this objective. Working through the NAIC, State regulators have been developing and implementing many important modernization initiatives for several years. We have made much progress, but more needs to be done.

Commissioner George Nichols of Kentucky, the NAIC’s current President, declared in December that modernizing the State regulatory system will be his top priority during the year 2000. Passage of the Gramm-Leach-Bliley Act and our increasing interaction with Federal banking regulators means that State insurance regulators can no longer meet public expectations with outdated procedures that overly favor home-state autonomy at the expense of efficient interstate commerce.

The modernization goals emphasized by Commissioner Nichols in December are now the shared goals of insurance commissioners throughout the United States. After careful discussions at the NAIC, each of us individually signed a document entitled “Statement of Intent: The Future of Insurance Regulation” in March of this year. A copy of this important document is appended to the end of my testimony.

The insurance commissioners’ “Statement of Intent” brokered through the NAIC is a major breakthrough toward regulatory modernization. We are all personally and jointly committed in writing to achieving the same specific goals on a set schedule. We recognize that common progress cannot occur without common agreement, and that critical first step has now been taken.

Earlier in my testimony, I cited language from the “Statement of Intent” that will take insurance regulation beyond the requirements of NARAB on agent licensing. In addition, the “Statement of Intent” commits State commissioners to prompt action in the following areas –

- Working with our governors and State legislatures, we will undertake a thorough review of our respective laws and regulations to determine needed changes that accomplish functional regulation as contemplated by the Gramm-Leach-Bliley Act.
- Building on initiatives already underway, we will review our financial reporting, analysis, and examination processes to address market changes that demand consideration of the national and international impact of insurance industry operations.
- We will continue to use the NAIC process to develop and implement effective regulatory cooperation agreements with other Federal and State regulatory agencies regarding the sharing of financial monitoring and enforcement information.
- Working with our governors and State legislatures, we will take steps to improve the speed to market for new insurance products.
- We will evaluate the experience of specific States with regard to reforming the system of rate forms and filings for certain insurance lines in order to achieve greater uniformity and eliminate unnecessary requirements.
- We will review the current focus, structure, and implementation of market conduct programs to determine the merits of voluntary uniform national standards as a basis for market conduct examinations and enforcement that will protect local consumers.
- We have endorsed the Uniform Electronic Transactions Act (UETA), and will continue to identify necessary reforms that will facilitate e-commerce while maintaining important consumer protections.

- We are committed to exploring all options that could offer greater uniformity within the state-based system of insurance regulation, and we will explore the development of a proposal for a state-based system that could provide the same efficiencies as a Federal charter for insurance companies.

State Regulators Need 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 a large majority of 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.

The next step will be for State legislatures and governors to consider the Producer Licensing Model Act, and hopefully adopt it without substantial changes. Depending upon the circumstances in their home States, NAIC members will be offering specific bills to their legislatures that will implement the provisions of the Model Act. We will be urging our legislators and governors to act as quickly as possible because the clock is ticking toward the November 2002 deadline for State compliance with NARAB provisions.

NAIC officers and members have also been reaching out to insurance industry trade groups and companies to seek their support for adopting the Producer Licensing Model Act in each State. Industry representatives are active and influential in State government affairs. Having them join with regulatory officials in pushing the Model Act would be very helpful to getting it enacted into law.

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.

Some commercial firms have complained to Congress and others that State regulation needs to be modernized. We hope industry representatives will actively support the modernization efforts which are now the top priority of the NAIC and State insurance regulators. Now is the time for all of us to replace words with actions.

Congress Can Also Help Improve State Regulation

Improvements in several Federal laws affecting State insurance regulation would help give us all the tools we need to meet the challenges of the modern marketplace. During Congressional consideration of H.R. 10 and S. 900, the NAIC suggested several amendments to Federal laws that would be useful.

The primary benefit of making the following changes to Federal laws is to achieve uniform regulatory procedures and national enforcement quickly by using the existing system of State regulation. The extra costs and delays of establishing a NARAB organization could thus be avoided, while also preserving the legal certainty of licensing and enforcement under State and Federal law.

The NAIC proposes that Congress –

- Authorize the use of social security numbers for licensing purposes, for the producer database, and for use by the Insurance Regulatory Information Network (IRIN).
- Grant exemptions from the Fair Credit Reporting Act for IRIN, the NAIC, and State insurance departments regarding regulatory licensing activities and related databases.

- Provide State insurance regulators with access to the national criminal information database (NCIC) through the NAIC or its affiliates for regulatory purposes and for checking criminal histories as required by the Federal Insurance Fraud Prevention Act.
- Grant Federal immunity from liability for NAIC and IRIN database activities.
- Protect the confidentiality of regulatory communications between among NAIC, State regulators, and Federal agencies.

Conclusion – State Regulators Are Meeting the Challenge of Modernization

The NAIC and State insurance regulators are well on the way to implementing the NARAB provisions of the Gramm-Leach-Bliley Act as intended by Congress. More importantly, we are also well on the way to doing far more than Congress or industry representatives have asked us to do regarding uniformity, efficiency, and modernization. We will need help from other State officials, industry, and Congress to complete the job expected by consumers, policyholders, and claimants as we begin the 21st century.

We look forward to working with Congress and other interested parties as State insurance regulators continue to develop and implement our modernization programs.

National Association of Insurance Commissioners

President Commissioner George Nichols III (Kentucky)
Vice President Commissioner Kathleen Sebelius (Kansas)
Secretary-Treasurer Commissioner Terri Vaughan (Iowa)
Immediate Past President Commissioner George Reider, Jr. (Connecticut)

Statement of Intent: The Future of Insurance Regulation

Our primary goal is to protect insurance consumers, which we must do proactively and aggressively. We also recognize that consumers as well as companies are well served by efficient, market-oriented regulation of the business of insurance.

Insurance is unique in the world of financial services. Historically, insurance markets have developed from state to state reflecting the differences in population, geography, weather patterns and delivery systems. State regulation has addressed that marketplace efficiently and effectively.

Fueled by enhanced technology and globalization, the world financial markets are undergoing rapid changes. In order to protect and serve more sophisticated but also more exposed insurance consumers of the future, insurance regulators are committed to modernize insurance regulation to meet the realities of an increasingly dynamic, and internationally competitive financial services marketplace. This will include working with all parties to combat and reduce the incidence of fraud, thereby providing a safer environment for consumers and lower costs.

We pledge to work cooperatively with all our partners – governors, state legislators, federal officials, consumers, companies, agents and other interested parties – to facilitate and enhance this new and evolving marketplace as we begin the 21st Century.

I. Implementing the Gramm-Leach-Bliley Act

Proposed Amendments of State Laws

Working with our governors and state legislators, we will undertake a thorough review of our respective state laws to determine needed regulatory or statutory changes to achieve functional regulation as contemplated by the Gramm-Leach-Bliley Act. Anti-affiliation statutes, licensure laws, demutualization statutes, and various essential consumer protections, including sales and privacy provisions, will be part of this review. We will move forward quickly to both promulgate regulations and suggest statutory changes to facilitate implementation of the new law.

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) 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 IRIN 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.

Financial Examinations and Reviews of National Companies

We will consider the implications of the Gramm-Leach-Bliley Act on the regulatory authority, focus, and procedures provided by the NAIC Insurance Holding Company System Model Act and accompanying Model Regulation and will recommend changes for consistency with the functional regulatory scheme set forth in the Gramm-Leach-Bliley Act and related federal regulations.

Building on initiatives already underway, we will review our financial reporting and financial analysis and examination processes in light of the new law and changes occurring in the market place. We will refine our risk-based approach to examining the insurance operations of financial holding companies to place greater emphasis on a company's unique risk exposures and how it manages those risks.

We will recommend mechanisms to enhance communication and coordination among all functional regulators, and we will review the role of the NAIC resources in supporting such communication and coordination.

We will pursue development of a group-wide approach to regulating insurer groups and enhancing coordination among states. As a part of this initiative, we will consider consolidated financial statements for the insurance operations of groups.

Implementing Functional Regulation and Sharing Regulatory Information

We will continue to use the NAIC process for the development of model agreements, and we will build on our progress to date. We will actively encourage the execution of information sharing agreements between the individual states and each of the key federal functional regulators.

In addition, we will develop a comprehensive agreement for the sharing of information among states.

The NAIC adoption of the model confidentiality law provisions demonstrates its commitment to break down barriers to sharing information between the States. We will work with state legislators to support such confidentiality legislation. We will pledge to form coalitions with interested parties to promote uniform and consistent enactment of the confidentiality provisions.

II. Year 2000 National Regulatory Priorities

"Speed to Market"

Working with our governors and state legislators, we will take steps to improve speed to market for insurance products. This will include development and implementation of a system of deference to the state of domicile using one-stop filing for products issued on a multi-state basis, where appropriate. To support this system, we will develop and implement

state-based uniform standards for policy form and rate filings for appropriate product lines. In pursuing this evaluation, we will keep in mind the need for flexibility to allow local treatment of conditions produced by local markets. For lines that do not lend themselves to uniform standards, we are committed to reviewing market barriers for further efficiencies. We will take steps to shift the focus of states away from a prior approval system, where appropriate. We will also develop an e-repository for filings, a system for tracking data, and a state certification process.

Regulatory Re-engineering

The benefits of uniform regulatory procedures for insurers selling products to large, sophisticated commercial policyholders are compelling. Many states have adopted and are implementing laws to re-engineer their commercial lines regulatory functions.

We will evaluate the progress of specific states with respect to commercial lines reform, and compare those actions with the Property and Casualty Model Rate and Policy Form Law. Based on this evaluation, we will consider amending the Model and taking other appropriate steps to achieve greater uniformity and consistent application of rate and form requirements with our members.

We will continue to explore avenues to reduce unnecessary requirements for policies sold to insurance purchasers with insurance knowledge and market power. Where appropriate, we will explore increased reliance on the benefits of open competition.

Market Conduct Reform

Market conduct is an essential regulatory tool. Its importance to regulators, producers and consumers will increase as the “Speed to Market” reforms are implemented and the marketplace evolves.

We will examine the current focus, structure and implementation of market conduct programs in the states to identify the issues and concerns that currently exist in this area. This examination will help us determine the merits of voluntary uniform national standards as a basis for market conduct examinations and enforcement actions. In pursuing this evaluation, we will keep in mind the need for flexibility to allow local treatment of conditions produced by local markets.

Facilitating Electronic Commerce that Protects Consumers

The insurance-buying public and industry must be allowed to benefit from the broad range of opportunities that e-commerce offers. As a result, we adopted the recommendations of the Electronic Commerce and Regulation Working Group and endorsed the Uniform Electronic Transactions Act (UETA) for consideration and enactment in each of the states. As e-commerce evolves, we will continue to identify necessary reforms that will facilitate e-commerce while maintaining important consumer protections.

Treatment of National Insurance Companies

We are committed to exploring all options that could offer greater uniformity within the state-based system of insurance regulation.

An initial step toward this streamlined system is already available through the Accelerated Licensure Evaluation and Review Techniques (ALERT) program, which is a streamlined insurer licensing procedure. We will encourage all states to join ALERT and initiate use of the newly developed expansion application process. This will allow streamlined admissions for those companies already admitted in one ALERT state simply through the filing of an expansion application in another ALERT state. The expansion application process introduces elements of reciprocal reliance on the more detailed work of the state reviewing the complete application. We will pursue development of an e-repository for company applications to facilitate one-stop filing.

In addition, we will evaluate the broad range of regulatory issues and concerns and develop a proposal for a state-based system that could provide the same efficiencies as a federal charter for insurance companies.