NAIFA

NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS

**STATEMENT OF THE
NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS**

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

**FINANCIAL SERVICES COMMITTEE**

**UNITED STATES HOUSE OF REPRESENTATIVES**

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This testimony is submitted on behalf of the National Association of Insurance and Financial Advisors (NAIFA) (formerly the National Association of Life Underwriters). NAIFA is a federation of nearly 1,000 state and local associations that together have almost 80,000 individual members who sell and service a broad spectrum of financial products: individual and group life and health insurance, pension plans, securities products, business continuation insurance, business and estate planning, retirement planning, deferred compensation, and employee benefits.

Originally founded in 1890, NAIFA is the nation's oldest and largest trade association of insurance agents and financial advisors. NAIFA's mission is to improve the business environment, enhance the professional skills and promote the ethical conduct of agents and others engaged in insurance and related financial services who assist the public in achieving financial security and independence. NAIFA appreciates this opportunity to offer its views on a topic of great interest and critical importance to its members.

## I. Introduction

It is essential in this new world of financial services regulation ushered in by the Gramm-Leach-Bliley Act that financial institutions have the opportunity to compete with one another on a level playing field. Unfortunately, the reality is that banking institutions and securities firms currently enjoy a distinct advantage over state-regulated insurance agents, who are hampered by palpable flaws in the current state-based system of insurance regulation. As a result, insurance companies – and, derivatively, NAIFA's members who sell and service their products – are at a significant competitive disadvantage compared to their counterparts in other industries.

As the Committee is aware, there is renewed interest among some members of the insurance industry in the adoption of a federal approach to insurance regulation. Supporters of optional federal chartering maintain, for example, that the inefficiency and lack of uniformity in the current state-based system is best achieved by establishing a federal insurance regulator. Invariably, federal models propose to charge a distant, detached and inexperienced federal regulator with the implementation and enforcement of a single set of rules that would apply equally across all states and all insurance markets. While the promise of increased uniformity and efficiency sounds appealing, proponents of this approach appear to have lost sight of the undeniable *benefits* of the state-based system and have overlooked the increased havoc that a federal system could cause.

Without question, significant weaknesses exist in state insurance regulation today. Unnecessary distinctions among the states and inconsistencies within the states thwart competition, reduce predictability, and add unnecessary expenses to the cost of doing business. Similarly, outdated rules and practices do not serve the goals of regulation in today's financial services marketplace. Nevertheless, there is much that is good about the current state-based system that would be lost through the creation of a federal regulator, including an enforcement infrastructure upon which consumers throughout the nation heavily rely to protect their interests.

Historically, NAIFA has supported state regulation. It continues to believe that the states will be more responsive to its members' concerns than a federal regulator would be and that, ultimately, the states are the best laboratories for change. Thus, NAIFA remains skeptical at this juncture that the creation of a federal bureaucracy is necessary to achieve reform. That said, NAIFA is currently in the process of reviewing the various regulatory options and is developing a position on the most workable solution.

## II. Flaws In The Current System

### A. Duplicative Licensing Obligations

Currently, insurance agents and brokers must be licensed in every state in which they conduct business. In order to obtain and maintain licenses, they must comply with different and often inconsistent standards in numerous states and contend with duplicative licensing processes. For NAIFA's members that place and service group health and group life benefits, which necessitates doing business across state lines, multi-state licensing obligations are unbearable.

For NAIFA's members who sell and service individual life and health products and securities, the current state of affairs is equally disconcerting. Over 75 percent of NAIFA's members are licensed not only at the state level but are also registered representatives of broker-dealers with the National Association of Securities Dealers (NASD). These individuals regularly face duplicative, inconsistent and often conflicting obligations – such as with regard to privacy obligations – that are unnecessary to protect consumers and are driving up the cost of doing business.

### B. Speed to Market

One of the most significant impediments to successful product launches is a slow response to filing. It is not uncommon for a company to file a new product for approval but not hear back about its application for two or more years. This delay is a significant problem in states where approval is required before a product can enter the marketplace. Cumbersome inefficiencies create opportunity costs, which ultimately drive consumers into alternative market mechanisms. These costs can be avoided and, moreover, far exceed what is necessary to protect the public. For NAIFA members, the speed to market problem is most acute with regard to life insurance products, where there is little or no regional variation warranting disparate treatment in the first instance. Agents selling sophisticated life insurance investment products are at a distinct competitive disadvantage compared to their counterparts who offer non-insurance investment products, because it is almost impossible for them to keep pace with the range of comparable products able to be brought to market so quickly in the securities marketplace.

### C. Countersignature Laws

NAIFA opposes state requirements that discriminate against non-resident agents, such as countersignature laws, which are in place in a handful of states. Countersignature laws require resident agents to countersign insurance policies sold by nonresident agents. The resident agent is then entitled to a percentage of the commission, despite the fact that the resident agent typically does none of the work and has no relationship with the client. These laws represent the height of protectionist state regulation. From a practical standpoint, they add unnecessary expense – millions of dollars in costs – to the agency system while adding no benefit or value whatsoever to consumers, whose interests are adequately protected by the full range of state regulations with which all agents must comply.

### D. Criminal Background Checks

One of the most persistent problems in the current state system has been the failure of many states to conduct criminal background checks of applicants for insurance licenses. The ability to conduct background checks is vital to consumers of financial services, who rely on regulators to keep bad actors out of the business and to safeguard consumer interests.

Although federal law essentially dictates that criminal background checks must be done on all participants in the insurance industry, state insurance regulators typically have been denied access to the tools that would enable them to conduct such background checks. They also have little authority to coordinate their efforts and share information when such checks are conducted. In comparison, the securities and banking regulators conduct criminal background checks on each and every individual employed in their industries, and they have full access to the FBI information that enhances their ability to do so.

## III. Nature of the Solution

As we indicated, NAIFA is in the process of developing its position on the most effective means of redressing these and other concerns with the state-based insurance regulatory system. It is exploring a variety of options and is open to a wide range of potential solutions. Having traditionally been an ardent proponent of state regulation, NAIFA is hesitant to abandon the current state system so quickly. In addition, it is apprehensive about the notion that any newly-created federal bureaucracy will be able to replace the 150 years worth of experience that the states have as insurance regulators. NAIFA is not convinced that progress necessitates an entirely new regulatory infrastructure. Instead, recent experience demonstrates that the path to reform may be shorter and easier to traverse at the state level.

State-based options available for improving the speed to market of new products, for example, include encouraging – or even requiring – the states to employ a single point of filing regime for new insurance products. In a single point of filing regime, approval of a new product by the reviewing state within a specified period of time would enable a company to use the product in multiple states. This type of system potentially could be used for all product lines, or just those products – like life and health products – that tend to be more homogenous and offered on a nationwide basis.

Significant strides have already been made in this area and future progress is anticipated. A pilot program unveiled last year by the National Association of Insurance Commissioners (NAIC) demonstrates the states' ability to work together to solve speed to market concerns. The Coordinated Advertising, Rate, and Form Review Authority (CARFRA), which has gained the support of numerous states, seeks to identify "best practices" in rate and form filing, including those which may be legislatively implemented in the individual states for greater uniformity and efficiency in filing and review procedures.

In addition, reforms in producer licensing and accreditation laws have been achieved by most states' adoption of model legislation proposed by the NAIC. Such efforts have removed unnecessary licensure requirements placed on non-resident agents and therefore increased their ability to operate efficiently in multiple states. Further improvements should build on this effort by applying similar principles of regulatory efficiency to all agent requirements and by removing remaining market access barriers.

What is clear is that additional reforms are needed; what is not clear is that change will be best achieved by adding an inexperienced and detached federal regulator to the equation.

Of course, NAIFA recognizes the important role that Congress can play in state regulatory reform. Perhaps the best example of this is H.R. 1408, the "Financial Services Antifraud Network Act of 2001," which NAIFA strongly supports. The bill would authorize the creation of an information sharing network among all financial regulators, thereby facilitating background checks and increasing their efficiency. But it would do so without creating a new database; it would simply provide links among existing regulatory databases. In addition, the bill would empower state insurance commissioners to access – through the NAIC – FBI databases containing the information about arrests, convictions and sentencing that they need to conduct such background checks efficiently and effectively. The H.R. 1408 experience demonstrates that perceived problems can be remedied without jettisoning the state-based system.

## IV. Conclusion

NAIFA is committed to finding an acceptable solution to the current problems associated with state regulation of insurance. It maintains, however, that creating a new federal bureaucracy is not necessarily the right answer. In NAIFA's view, the most successful solution will preserve the best characteristics of the current state system, including its innovation, experience and responsiveness and by drawing on its inherent strengths rather than by so quickly abandoning them. By working with state insurance departments rather than against them, the insurance industry will be better able to meet the challenges of a rapidly changing financial services environment.