Comments of the Center for Economic Justice
11/16/09 Draft Annuity Suitability Model
November 24, 2009

The Center for Economic Justice (CEJ) appreciates the efforts of the working group to strengthen the Suitability in Annuity Transactions Model Regulation. The proposed model makes several important changes to better protect consumers, including clear requirements for insurer responsibility for suitable sales – not simply responsibility for establishing a supervisory system. It is very important to make insurers responsible for the market place outcomes and not just responsible for procedures.

We are unable to support the proposed model because Section 6 E continues to create incentives for an insurer or insurance producer not to obtain suitability information. Our earlier comments identified this problem in the earlier draft, but the 11/16/2009 draft fails to address the problem and makes the subsection more confusing.

1. It is unclear why and how the first phrase of E(a) is different from the E(b). It is unclear how "incomplete information" is different from "not providing relevant information." Subsection (b) should be limited to accurate information – if the consumer provides materially inaccurate information. By simply saying inaccurate information, the rule creates a loophole to avoid suitability requirements for trivial misinformation.

2. The second phrase of (a) should be a separate Section: If a consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or insurance producer, the insurer or the insurance producer shall not issue an annuity unless there is a reasonable basis to believe the annuity transaction is suitable. In such an event, the insurer or insurance producer shall document the decision of the consumer and the reasonable basis for belief that the consumer's choice is suitable.

Ideally, the requirement should be that an insurer or insurance producer shall not issue an unsuitable annuity under any circumstances, where unsuitable is defined as a product which can harm a consumer or defeat the consumer's financial objectives. This would be a far easier standard to enforce and more meaningful to consumers, but the NAIC long ago decided for the more difficult to define and more difficult to enforce suitable standards.

3. The first phrase of Subsection (a) should be a separate section. If a consumer refuses to provide relevant information requested by the insurer or insurance producer, the insurer or insurance producer shall not issue an annuity.

4. Section E should be limited to: An insurance producer or an insurer shall not have obligation to a consumer under subsection A or D related to any annuity transaction if the consumer provides materially inaccurate information.

The loophole in the current language is that an insurer or insurance producer can issue an annuity in the absence of a consumer providing necessary information if the insurer or insurance producer has a reasonable basis to do so. This guts the regulation because it allows – even incentivizes – an insurance producer or insurer to avoid gathering relevant information to avoid becoming aware of information which would eliminate a desired recommendation.

The insurers argue: *For certain types of transactions, such as products that are purchased as alternatives to Bank CDs, many consumers do not want to provide the required financial information. In other instances, consumers have other reasons for not wanting to provide suitability information, including their view that financial information is highly personal in nature. In these instances, the producer and insurer should not be liable for the customer's purchase decision.*

This regulation addresses the sale of annuities – the simplest of which is far more complex than any bank CD. If the recommendation of a product to a consumer does not require a suitability analysis, then that product should not be covered by this regulation. If a product does require suitability analysis, then an inability to perform such an analysis must mean that the product cannot be recommended. A consumer always has the option not to provide suitability information, but such a decision must mean that a suitability analysis cannot be performed and the insurer and insurance producer may not issue an annuity covered by the regulation. A consumer can choose not provide a social security number when seeking a variety of financial services, but that choice means the investment will not be sold to the consumer. The flexibility sought by insurers for some rare instance clearly does not justify creating a loophole that endangers the vast majority of consumers.

We suggest the following language to close the loophole.

E: An insurance producer or an insurer shall not have obligation to a consumer under subsection A or D related to any annuity transaction if the consumer provides materially inaccurate information.

F: If a consumer refuses to provide relevant information necessary to determine suitability and requested by the insurer or insurance producer, the insurer or insurance producer shall not issue an annuity.

G: If a consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or insurance producer, the insurer or the insurance producer shall not issue an annuity unless there is a reasonable basis to believe the annuity transaction is suitable. In such an event, the insurer or insurance producer shall document the decision of the consumer and the reasonable basis for belief that the consumer's choice is suitable.