

Comments Of The Center For Economic Justice

On September 4, 2009 Draft Revisions Of
The Suitability of Annuity Transactions Model Regulation

September 17, 2009

CEJ supports the work of the A Committee to revise the model regulation to provide better guidance to insurers, more uniformity with suitability regulation of other non-insurance annuity products and to clarify regulatory authority.

CEJ supports the approach of revising the model regulation, as opposed to providing “interpretive guidance” in a bulletin. It is clear that all stakeholders need guidance in how to comply with and enforce the current NAIC suitability model. It is also clear that greater consistency with FINRA rules will help overall compliance and enforcement. The proper place for interpretive guidance is a regulation through which the regulator utilizes her statutory authority to implement a law and provide the interpretive guidance necessary to enforce a law and to develop this guidance through an administrative process which provides the public an opportunity to comment and challenge the regulator's action. It is inappropriate to provide substantive interpretation of a statute and specific compliance guidelines through a bulletin because there is no regulatory authority associated with a bulletin.

We strongly oppose the proposed change to Section 6 D. Section 6 D states:

- (1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under subsection A or C related to any recommendation if a consumer:
 - (a) Refuses to provide relevant information requested by the insurer or insurance producer, but there is a reasonable basis to believe the recommendation is suitable;

This proposal is very inappropriate because the provision gives immunity to the producer or insurer for recommending and selling an unsuitable product if the consumer does not provide the relevant information – as long as there is a reasonable basis to believe the recommendation is suitable. The provision is illogical – how can a suitable recommendation be made if the relevant information to evaluate suitability is not available? There can be no reasonable basis for judging a recommendation suitable if the necessary information is not provided. Moreover, this provision would logically lead to some producers or insurers intentionally not collecting relevant information so the producer or insurer can sell a product she suspects might not meet suitability standards. And in the absence of collecting the information demonstrating the recommended product is not suitable, the insurer or producer could sell the product and claim it was reasonable given the (lack of) available information.