

Comments of the Center for Economic Justice
12/1/09 Version of Suitability in Annuity Transactions Model Regulation
December 14, 2009

The Center for Economic Justice offers the following comments on the 12/1/09 Version of Suitability in Annuity Transactions Model Regulation.

The A Committee Should Have Deliberated the Model in the Public Meeting at the Winter National Meeting

The 12/1/09 version of the model is the version passed out by the Suitability of Annuity Sales Working Group up to the parent A Committee. The A Committee did not consider the model at the Winter National meeting. Instead of taking comments and adopting the model or amending the model, the A Committee simply asked for additional comments with virtually no guidance on the comments sought. The notice for comments asked for any comments, although Commissioner Sullivan said in San Francisco that substantive changes would not be considered.

The result of this process is that the public is once again denied access to the deliberation and decision-making of regulators. Instead of discussion at the Winter National Meeting with votes on specific amendments, the model will now be amended and decided upon in private with decisions made prior to the public conference call on December 21, 2009. There was simply no reason not to discuss the model at the A Committee Meeting in San Francisco, other than to again shield regulators from public discussion of the model.

No Substantive Changes: Essential Consumer Protections Must Remain

The 12/1/09 revisions to the Suitability in Annuity Transactions Model Regulation contains greatly needed consumer protections, the most important of which is the responsibility of insurers for suitable recommendations and not just responsibility for having a supervisory system – the difference between responsibility for outcomes versus responsibility for procedures. Sections 6C and 8A, together, state the insurer responsibility and must remain unchanged from the 12/1/09 draft. Sections 6C and 8A are both essential provisions and are not substitutes for one another.

CEJ strongly opposes any substantive changes to the 12/1/09 version and urges the A Committee to adopt the model without any substantive changes to insurer or producer responsibilities.

Language Clean-Up

Section 6D provides exceptions to the requirement in 6C that a producer or insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information. This responsibility is waived if

6D(1) (a) No recommendation is made

6D(1) (c) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended

These provisions must be removed for clarity. This model addresses the sale of products for which some form of suitability analysis is needed. It may be very simple for very wealthy individuals and more detailed for middle income consumers. But, no product covered by this model should be sold without a suitability analysis and recommendation regarding suitability. If the product does not require a suitability analysis and recommendation, the product should be exempt from the regulation. The 6D(1)(a) and (c) provisions are an invitation for producers or insurers to sell products without a suitability analysis or recommendation. For example, the producer or insurer has only one product to sell and simply presents the product to the consumer. Or, the producer or insurer does not obtain suitability information to avoid obtaining information demonstrating the product is not suitable and, thereby, avoiding a suitability analysis which would prevent the product sale. In addition, subpart c repeats subpart a, which can lead to confusion.

6D(1)(b) needs some clean up:

(b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

The addition of “been” is grammatically necessary. The addition of “materially” is necessary to ensure that trivial and non-material errors in information provided by the consumer do not void the consumer’s suitability protections. This is not a substantive change because regulators would utilize this materially-inaccurate standard to evaluate producer or insurer compliance with the model. The addition of “materially” in the model simply codifies the regulatory practice.