

The Center for Economic Justice offers the following comments on the proposed Senior Protection in Annuity Transactions Model Regulation

1. Why is the problem – and the regulation – limited to seniors? Are these the only consumers suffering from unsuitable annuity sales? If suitability requirements are appropriate for seniors, why wouldn't they be appropriate for other consumers? Are NASD suitability requirements limited to seniors?
2. Why prohibit a private cause of action? With all respect to the hard working insurance regulators trying to police the insurance marketplace, insurance regulators have very limited resources and a spotty record of identifying and remedying market conduct abuses. Many of the major market conduct problems have been identified by the actions of consumers and their attorneys through a private cause of action. Regulators need help from the public to police the market place and a private cause of action is central to that public assistance.
3. What is the role of this regulation? Where does it fit in with existing consumer protection statutes and regulations? What is the hole in existing regulatory authority and how does this regulation fill that hole?
4. **The proposed regulation does not have a clear standard of conduct.** It allows the producer and insurer to define the standard of conduct – the insurer or produce “shall have reasonable grounds for believing that the recommendation is suitable.” This is not public regulation – it is insurer self-regulation.

Any suitability approach should have a specific standard of conduct: An insurer and/or producer shall not make an unsuitable recommendation to a consumer. An unsuitable recommendation is a recommendation for a product that is detrimental to the consumer at the time of the recommendation, based upon information provided by the consumer, including financial status, tax status, investment objectives, health condition and any other information necessary to determine if a product is unsuitable for the consumer.

I want to point out that a regulation based upon not making an unsuitable recommendation is the least restrictive of any approach to suitability. It is results oriented and not a prescription for insurer processes.

5. In section 4A, the proposed additional language, “recommendation based on information collected from the senior consumer,” eviscerates the limitation of the exemption that is intended to exclude direct response solicitations where no information is collected by the insurer. This proposed addition should be eliminated.
6. Under definitions, and as described above in item 4, recommendation should include product offers as well as product sales. It is unclear why routine offers of

unsuitable products to consumers is acceptable – up to the point that consumers actually purchase the products. It is more efficient to stop bad sales practices before they result in actual sales than to try to go in after the fact and attempt restitution for the consumers.

7. Proposed Section 6 has essentially eliminated any suitability requirement for insurers and producers and exchanged insurer self-regulation for meaningful consumer protection standards. It is unclear how a regulator could actually use this proposed regulation to stop harmful practices if the insurer employed procedures considered reasonable by the insurer. As described in item 4, above, any suitability regulation should clearly identify the prohibited actions. Further,

The bottom line is, despite regulators' best intentions, the proposed regulation is not real consumer protection. In fact, the proposed regulation is worse than doing nothing on suitability because it ostensibly offers additional consumer protection when it does no such thing and may, in fact, reduce consumer protections by providing insurers with a liability shield for inappropriate behavior.

Thank you for your consideration.

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