



Comments for the Center for Economic Justice
To the NAIC Annuity Suitability Working Group
Additional Issues Identified for Discussion in the Revised Best Interest Model
August 2, 2019

In response to the identification of four issues for discussion at the working group's August 3, 2019 meeting, the Center for Economic Justice offers the following comments and suggestions:

Care Obligation

Reasonable basis to believe consumer would benefit from features of annuity [Model #275, Section 6A(2)]

Reasonable basis to believe product as a whole would address consumer's needs [Model #275, Section 6A(3)]

We note that the Iowa proposal replaces “is suitable” with “would address” in 6A(3) and adds “a reasonable basis” and “address the consumer’s insurance needs and financial objectives known at the time of the recommendation and in light of the disclosed consumer profile information.”

We suggest these two sections in the current model be replaced by:

[The best interest requirement includes] a reasonable basis to conclude the recommended product or action best addresses the totality of the consumer’s insurance needs and financial objectives known at the time of the recommendation and based on the information provided by the consumer and other information about the consumer reasonably obtained from other sources.

First, “product as a whole” does not make sense – what is the difference between a product and a product as a whole? We hope that what was intended is that the recommendation is in the best interest of the consumer as a whole. And that intent is better captured with “best addresses the totality of the consumer’s insurance needs and financial objectives.”

Second, believing the consumer will benefit or that the product addresses a consumer's needs are suitability standards and clearly not best interest standards. Explaining a best interest standard of care with examples of a suitability standard of care is illogical and undermines any prior-stated best interest requirement.

Third, listing selected considerations may undermine the broader requirement of best interest and the intent is better addressed by requiring a recommendation that best addresses the totality of the consumer's insurance needs and financial objectives.

Fourth, we add "other information about the consumer reasonably obtained from other sources," to ensure that information omitted by the consumer, but easily obtained by the insurer or producer is not omitted from the best interest analysis. For example, the consumer may not remember all the other insurance products it has with the producer or insurer, but that information is relevant to a best interest analysis and is easily assembled by the producer or insurer. Or the consumer may not remember or know all her/his debt obligations and would consent to the producer obtaining a credit report.

Documentation Obligation:

Obtain customer signed statement of customer's refusal to sign profile [Model #275, Section 6E(2)]

This provision seems tied to an earlier provision which relieves the producer or insurer of any obligation to the consumer if the consumer decides to enter into an annuity transaction not based on a recommendation. Presumably, the documentation is intended to protect the insurer or producer who sells a product demanded by a consumer who doesn't want any advice but feels they know what product they want and just want to buy it with no discussion.

As a preliminary matter, we don't believe such sales should be permitted. Even the simplest of annuities are complex financial products and should not be sold without a best interest analysis. Selling an annuity without a best interest analysis to a consumer who demands a particular product makes no more sense than a doctor performing a minor surgery or filling a prescription demanded by a consumer without any examination and diagnosis by the doctor. Current section 6D(2) should be deleted, which eliminates the need for current 6E(2).

If current section 6D(2) remains, then the documentation requirement should be oriented to the producer or insurer as follows:

If a producer, or insurer if no producer is involved, sells an annuity to a consumer who has demanded the purchase of the specific product and has refused to provide the consumer profile information necessary to prepare a recommendation and if the producer, or insurer where no producer is involved, sells the demanded product and has provided no recommendation to the consumer, the producer, or the insurer if no producer is involved, shall prepare a statement that the producer, or insurer if not producer is involved that:

- i. The consumer has demanded purchase of a specific product;
- ii. The consumer has refused to provide the information necessary to perform a best interest analysis and to prepare a recommendation;
- iii. The producer/insurer has provided no recommendation or advice to the consumer regarding this product; and
- iv. The producer/insurer strongly recommend against any purchase of an annuity in the absence of a best interest analysis of relevant consumer information.

The producer / insurer representative shall sign and date this statement. The producer / insurer shall also obtain, prior to the sale of the annuity, the consumer's acknowledgement and receipt of the statement by providing a copy of the statement to the consumer and by obtaining the consumer's signature on the producer / insurer's copy and the consumer's copy.

This approach documents not only the consumer's demand to purchase a specific product and the consumer's refusal to provide the necessary information for a best interest analysis, but also has a certification by the producer / insurer that the producer / insurer did not provide any recommendation or advice related to the demanded product. This approach better protects all parties involved than the current limited statement/acknowledgement.

Supervision Obligation

Carrier only has to supervise its own products (does not have to take into account other carrier's products) [Model #275, Section 6F(3)]

CEJ notes that the current model's provision is slightly different from the question posed. The current model states, "An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer."

We cite the current model because there is a difference between an insurer being responsible only to supervise recommendations and sales of the products it offers versus a supervision system that does not take into account other products available to a consumer. We understand the current language to mean that an insurer's system of supervision is limited to supervision and review of recommendations and sales of that insurer's products. It does not mean that such a system of supervision of producer recommendations should not consider other products available to the consumer. For example, if a consumer's top priority is to retain ownership and control of her/his assets and the insurer's products available to the producer all require a transfer of the assets to the insurer, it is reasonable and necessary to know that there are financial products not offered by the insurer that better meet the priority of the consumer.

If CEJ's understanding of this current model provision is consistent with how the model is currently being enforced, we do not object to the current language.