



December 4, 2019

The Honorable Doug Ommen  
Chairman  
Life Insurance and Annuities (A) Committee  
National Association of Insurance Commissioners  
1100 Walnut Street, Suite 1500  
Kansas City, MO 64106

Re: Draft Revisions to the Suitability in Annuity Transactions Model Regulation

Dear Commissioner Ommen:

The Center for Economic Justice (CEJ)<sup>1</sup> and the Consumer Federation of America (CFA)<sup>2</sup> write to voice our strong opposition to a recent request from industry trade groups urging the Committee to adopt the latest draft revisions to the Suitability in Annuity Transactions Model Regulation at the upcoming Austin meeting.<sup>3</sup> We do not believe the proposed revisions improve consumer protection from the current model regulation, nor do they represent what typical consumers would understand “best interest” to mean. On the contrary, if adopted as currently drafted, the proposal would do more harm than good by misleading consumers into expecting best interest recommendations that the standard does not deliver.

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<sup>1</sup> The Center for Economic Justice is a non-profit organization that works to increase the availability, affordability and accessibility of insurance, credit, utilities, and other economic goods and services for low income and minority consumers. Birny Birnbaum, Director of CEJ, has been a designated consumer representative at the NAIC for nearly 20 years.

<sup>2</sup> [The Consumer Federation of America](#) is a nonprofit association of more than 250 consumer groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education. Barbara Roper is Director of Investor Protection at CFA.

<sup>3</sup> See, e.g., November 26 letter from American Council of Life Insurers, the Committee of Annuity Insurers, Financial Services Institute, Insured Retirement Institute, Indexed Annuity Leadership Council, National Association for Fixed Annuities, National Association of Insurance and Financial Advisors, and Association for Advanced Life Underwriting to the Honorable Doug Ommen, Chair, NAIC Life Insurance and Annuities (A) Committee, regarding the Request for Comments on the 11-5-19 Draft of Proposed Revisions to the Suitability in Annuity Transactions Model Regulation. (“The undersigned trade groups urge the (A) Committee to vote to approve the 11-5-19 draft and to recommend its adoption by the full NAIC as expeditiously as possible.”)

In its November 26 comment letter, CEJ detailed the current draft's many flaws, from ineffective disclosures, to inconsistent standards for comparable products, to overly broad safe harbors.<sup>4</sup> While all are serious, we view the following as its most critical shortcomings:

- **The current draft does not impose a true best interest standard.** The current draft requires that the producer have a reasonable basis to believe the recommended annuity meets the consumer's needs. That is not a true best interest standard; it is simply a restatement of the obligation to make suitable recommendations.<sup>5</sup> Calling it a best interest standard is misleading. Moreover, the standard is vague and full of loopholes.
- **The current draft does not rein in the most harmful and pervasive conflicts of interest.** The proposed standard excludes all forms of cash and non-cash compensation from the definition of material conflict of interest. As a result, compensation practices at the heart of a whole host of recent life insurance and annuity sales scandals would be preserved. The associated conflicts would not even have to be mitigated to minimize their harmful impact.
- **The current draft's ban on certain sales contests and incentives is too narrowly drafted to promote real reform.** The proposed ban on time-limited, product-specific sales contests and incentives appears, at first glance, to be a major step toward eliminating some of the most anti-consumer practices common in the industry today. However, closer scrutiny reveals that it is so narrowly drafted that its only effect will likely be to force insurers to redesign, rather than eliminate, such practices.
- **The current draft relies heavily on disclosures that are poorly designed and not provided at the appropriate time.** In a number of areas, the proposed standard is satisfied through disclosure, but the Committee has failed to test the proposed disclosures to ensure that they are effective. Moreover, because of the proposal's lax delivery requirements, key disclosures, such as the Producer Relationship Disclosure Form, are likely to come too late to benefit the consumer. As a result, the disclosures are likely to do more to shield insurers and producers from liability than to inform or protect consumers.

As a result of these and other serious shortcomings in the current draft, we see no basis for the claim that the revised model "exceeds the requirements" of the current model. Certainly, the Committee has failed to provide any analysis to support that claim. Such analysis and documentation is essential before the proposed revisions are adopted. In particular, the Committee should explain whether and how the requirement to ensure that a recommendation meets the needs of the consumer enhances the existing obligation to make suitable recommendations, how compensation-related conflicts will be prevented from undermining the standard, and to what extent sales contests and other problematic practices that are common in the industry today would be eliminated under the revised standard.

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<sup>4</sup> Comment of the Center for Economic Justice to the NAIC Life Insurance and Annuity (A) Committee regarding Proposed Revisions to the Annuity Suitability Model Regulation, Nov. 26, 2019.

<sup>5</sup> We have described elsewhere what a true best interest standard would look like. See, e.g., November 26, 2019 CEJ Comment. See, also, January 22, 2018 letter from Consumer Federation of America to Jolie H. Matthews, Senior Health and Life Policy Counsel, National Association of Insurance Commissioners, <https://consumerfed.org/wp-content/uploads/2018/01/cfa-comment-letter-regarding-naic-best-interest-standard.pdf>.

In drawing up the revised model, the Committee has obviously drawn heavily on the Securities and Exchange Commission's recently adopted Regulation Best Interest (Reg BI), although the current draft remains considerably weaker than even that vague and ineffective SEC rule.<sup>6</sup> It is a curious choice, in light of the fact that Reg BI was strongly opposed by investor advocates, is currently being challenged in court by several state attorneys general, and has been strongly criticized by state securities regulators, some of whom have gone so far as to propose stronger protections for their state residents.<sup>7</sup> For the NAIC to adopt a further watered down version of this best interest standard in name only would be unconscionable.

Instead of approving the current draft, as industry groups have requested, we therefore urge the Committee to set aside time after the Austin meeting to give interested stakeholders an opportunity to explain – and for Committee members to discuss – the comments received on the draft revisions. That cannot be achieved in a 90-minute Committee A meeting packed with other agenda items. To move forward with a vote on the current draft without that more careful consideration would be a great disservice to the consumers state insurance regulators are pledged to protect.

Thank you for your attention to our concerns.

Sincerely



Birny Birnbaum  
Executive Director  
Center for Economic Justice



Barbara Roper  
Director of Investor Protection  
Consumer Federation of America

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<sup>6</sup> For example, Reg BI's care obligation includes an obligation, absent from the current NAIC model draft, to have a reasonable basis to believe the recommendation is in the investor's best interests. It also requires registered representatives' conflicts of interest and conflicts associated with a limited product menu to be mitigated, not just disclosed and managed. While key terms are undefined, including "best interest," the SEC standard at least gives lip service to these requirements and holds out the promise that they could be effectively enforced, if the Commission had the will to do so.

<sup>7</sup> See, e.g., Mark Schoeff, *Fiduciary Focus: Massachusetts advances fiduciary duty proposal; public hearing required prior to final rule*, InvestmentNews, Dec. 2, 2019 <https://www.investmentnews.com/article/20191202/FREE/191209994/massachusetts-advances-fiduciary-duty-proposal-public-hearing>.