



**Comments of the Center for Economic Justice**  
**To the NAIC Life Insurance and Annuity (A) Committee**  
**Regarding Proposed Revisions to the Annuity Suitability Model Regulation**

**November 26, 2019**

The Center for Economic Justice offers the following comments on the proposed revisions to the November 5, 2019 exposure draft revisions to the NAIC Suitability in Annuity Transactions Model Regulation.

While we have significant disagreements with many of the decisions of the working group, we acknowledge and thank Director Froment and the working group members for the thorough and inclusive discussions and opportunity to present consumer views.

Our comments start with proposed consumer disclosures, followed by section-by-section comments.

**Disclosures**

We start our comments with proposed disclosures. Sadly, as is usually the case with consumer information and disclosures developed by NAIC working groups, the development of the Annuity Suitability model disclosures has been an afterthought. The working group has spent little time discussing the content or format of the disclosures, has not referenced the NAIC *Best Practices*, has not engaged in any consumer testing and has not discussed the purpose and intended outcomes of the disclosures.

More important, the working group has not analyzed whether any consumer disclosure in these areas can effectively empower consumers. While consumer testing might prove us wrong, we don't believe the proposed disclosure regarding refusal to provide consumer profile information or decision to purchase an annuity not based on a recommendation will deter bad practices by producers. We believe the proposed disclosures will serve as a liability shield for producers and insurers.

In support of this view, we refer the working group to a recent report by financial service regulators in Australia and the Netherlands entitled, "Disclosure: Why It Shouldn't Be the Default." Key findings of the report include:

Financial services disclosure has traditionally been assumed to inform us (as consumers), help us make 'good' financial decisions, and drive competition.

This report focuses on the real-world context in which disclosure operates. It shows that, and explains why, disclosure and warnings can be less effective than expected, or even

ineffective, in influencing consumer behaviour. In some instances it shows that disclosure and warnings can backfire, contributing to consumer harm.

The report is a joint publication by the Australian Securities and Investments Commission (ASIC) and the Dutch Authority for Financial Markets (AFM). Both of these regulators have, over a number of years, identified limitations to disclosure in their respective retail financial services markets.<sup>1</sup> Although the Australian and the Dutch financial markets and regulatory regimes differ, there is also much common ground.

### **Case studies in disclosure limitations**

The report explores the limits of disclosure, using case studies from ASIC, the AFM and other relevant sources as evidence. These case studies are drawn from the full range of financial products and services in different financial markets, and include all forms of disclosure.

As the case studies are specific to products and contexts, the findings from each are not generalisable. However, together they show how overloaded the expectations on disclosure and consumers can be; and why firms providing mandatory information does not necessarily result in ‘informed consumers’ and often does not correlate with good consumer outcomes. Disclosure is necessary, but not sufficient.

Why? Because:

#### **Disclosure does not solve the complexity in financial services markets**

Disclosure cannot solve complexity that is inherent in products and processes. Simplifying disclosure, for example, does not reduce the underlying complexity in financial products and services. Nor does it ease the contextual and emotional dimensions of financial decision making, both at the point of purchase and over time.

#### **Disclosure must compete for consumer attention**

We are constantly saturated with competing attempts to capture our attention and influence our decisions. Many firms have the commercial opportunity and means to effectively attract, distract and influence us; but regulators, and the disclosures they mandate, generally do not. Firms can also work around or undermine disclosure requirements that, once set, are generally slow to change.

#### **One size does not fit all – the effects of disclosure are different from person to person and situation to situation**

Like other forms of regulation, mandated disclosure requirements are often ‘one size fits all’ interventions – yet people and contexts differ and shift. It is hard to predict the individual and context-specific differences in how we will behave, make decisions, and engage with and process information.

#### **In the real world, disclosure can backfire in unexpected ways**

At worst, disclosure creates unintended detrimental outcomes for some consumers – in effect contributing to consumer harm (e.g. by increasing rather than decreasing trust in conflicted advisers, and decreasing rather than increasing credit card repayments). Ongoing monitoring of disclosure is needed because of these unexpected effects.

#### **A warning about warnings**

There is emerging evidence from financial services regulators about the limitations of the effectiveness of warnings that firms have to display about the risks and features of certain products and services. There is, for instance, some evidence of the effectiveness of warnings on our understanding of the risks associated with products, and in encouraging us to avoid unsuitable or harmful products.

Warnings are not a cure-all for problems in financial

It makes no sense to create a “best interest” standard based on a producer’s collection and analysis of consumer profile information in order to make a recommendation that best meets the consumer’s needs only to permit recommendations based on incomplete – potentially significantly incomplete – consumer profile information or to permit a consumer to purchase a complex financial product against the, or in the absence of a, recommendation by a producer based upon the best interest analysis. The producer and insurer should simply be prohibited from selling an annuity in these circumstances. The potential harm to consumers from such prohibitions – that a consumer sufficiently knowledgeable about the complex annuities that no assistance or provision of only limited information is required will be forced to provide information to the producer– is dwarfed by the benefits to consumers of preventing bad sales and sales practices.

On the chance that the A Committee does not agree with CEJ’s view on this issue, we offer the following regarding the proposed disclosures. The development of the content, format and delivery mechanism for a consumer disclosure must start with the purpose or goal of the disclosure. What do we hope to accomplish?

Reviewing the draft disclosures, we would conclude that the goal is to protect producers and insurers from challenges to their practices and not to protect consumers. For example, the goal of the "refuse to provide information" disclosure should be to encourage consumers to provide the relevant consumer profile information by explaining why it is important and necessary, what consumer protections will be lost if not provided and to guard against a producer using the form simply to facilitate a sale. The proposed form will not accomplish any of these goals.

Further, the "refuse to provide info" disclosure should be two separate forms -- one for refusing to provide any or all information and a second form for a purchase not based on the producer's or insurer's recommendation. Purchasing a product not based on the insurer’s or producer’s recommendation is a distinct action from and unrelated to purchasing a product based on a recommendation developed using incomplete consumer profile information.

With the caveat that any of these forms should be consumer-tested, we suggest the following forms for refusal to provide any or all consumer profile information and decision to purchase an annuity not based on a recommendation.

**Consumer Refusal to Provide Information Necessary for a Best Interest Recommendation**

**Do Not Sign This Form Unless You Have Read and Understand It.**  
The Insurance Commissioner Has Created This Form for Your Protection.

**If You Have Questions That the Agent, Broker or Company Cannot Answer to Your Satisfaction, Contact the Department of Insurance at [contact info]**

**Why are you being given this form?** You're buying a complex financial product -- an annuity. To recommend a product that's in your best interest and meets your needs, the agent, broker or company needs information about you, your financial situation, insurance needs, and financial objectives.

If you sign this form, it means you're refusing to give the agent, broker or company some or all of the information needed to decide if this annuity is in your best interest. **You lose important protections if you refuse to give the insurance agent, broker or company accurate and complete information.**

The agent is required to consider the categories of information listed below about your situation. **Your insurance commissioner recommends you provide this information before you buy an annuity.** If the agent discourages you from giving any of the information, don't buy the annuity and contact your state insurance department.

**I have chosen to provide LIMITED information at this time at shown below.** For your protection, if there's any information you're not willing to give the agent, initial the box next to the category of information.

- |   |   |
|---|---|
| <input type="checkbox"/> (1) Age;   | insurance holdings;   |
| <input type="checkbox"/> (2) Annual income;   | <input type="checkbox"/> (10) Liquidity needs;  |
| <input type="checkbox"/> (3) Financial situation and needs, including debts and other obligations;    | <input type="checkbox"/> (11) Liquid net worth;   |
| <input type="checkbox"/> (4) Financial experience;  | <input type="checkbox"/> (12) Risk tolerance, including but not limited to, willingness to accept features that are not guaranteed in the future; |
| <input type="checkbox"/> (5) Insurance needs;   | <input type="checkbox"/> (13) Financial resources used to fund the annuity; and   |
| <input type="checkbox"/> (6) Financial objectives;  | <input type="checkbox"/> (14) Tax status.   |
| <input type="checkbox"/> (7) Intended use of the annuity;   |   |
| <input type="checkbox"/> (8) Financial time horizon;  |   |
| <input type="checkbox"/> (9) Existing assets or financial products, including investment, annuity and |   |

I **REFUSE** to provide **ANY** information at this time. By not providing this information, I understand I will lose important consumer protections.

\_\_\_\_\_  
Client Signature

\_\_\_\_\_  
Agent/Broker Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Consumer Decision to Purchase an Annuity NOT Based on a Recommendation**

**Do Not Sign This Form Unless You Have Read and Understand It.**  
The Insurance Commissioner Has Created This Form for Your Protection.

**If You Have Questions That the Agent, Broker or Company Cannot Answer to Your Satisfaction, Contact the Department of Insurance at [contact info]**

**Why are you being given this form?** You're buying a complex financial product -- an annuity. The agent, broker or company has a responsibility to learn about you, your financial situation, insurance needs, and financial objectives to recommend a product that is in your best interest.

If you sign this form, it means you know that you're buying an annuity even though the agent, broker or company didn't have enough information about you to know if this annuity is in your best interest. **You lose important protections if you buy an annuity when the agent, broker or insurer can't recommend it as in your best interest.**

An agent, broker, or insurance company representative is trained to understand the details of the products they sell and how the products fit your needs. **Your insurance commissioner recommends you only buy an annuity if the agent, broker or company has the information it needs to recommend the annuity to you as in your best interest.**

I acknowledge I am buying an annuity but the agent, broker or company did **not** recommend I buy it. If I buy it without a recommendation, I understand I will lose important consumer protections.

\_\_\_\_\_  
Client Signature

\_\_\_\_\_  
Agent/Broker Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Regarding the Producer Relationship Disclosure Form, we suggest the following edits. We believe the suggested edits are self-explanatory. They focus on better explaining the distinction between insurance and non-insurance financial products, the requirement for different licenses to sell insurance and non-insurance financial products and how a consumer can check the license and history of the agent or broker.

The suggested edits also provide some context for the disclosure regarding the insurers for whom the agent may sell insurance products.

The suggested edits also revise the compensation disclosure to simplify the disclosure while making it more meaningful to a consumer. We have deleted the part about one-time or on-going relationship as this serves no particular purpose and will be confusing to a consumer. While a producer may consider the sale of an annuity to be a one-time transaction, the consumer will likely consider the purchase of an annuity contract as an on-going relationship.

APPENDIX A

PRODUCER RELATIONSHIP DISCLOSURE FORM

Date: \_\_\_\_\_

INSURANCE AGENT/PRODUCER INFORMATION (“Me”, “I”, “My”)

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Firm Name: \_\_\_\_\_ Website: \_\_\_\_\_

Business Mailing Address: \_\_\_\_\_

Business Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Insurance License # \_\_\_\_\_ My firm has been selling XX Years

You can view my record as an insurance agent by going to the Department of Insurance website:

I am / am not also licensed to sell securities. My securities license # is

You can check my record as a broker at BrokerCheck: <https://brokercheck.finra.org/>

CLIENT INFORMATION (“You”, “Your”)

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

~~INSURANCE AUTHORIZATION~~ What Types of Products Can I Sell to You?

I am licensed and authorized to sell insurance products (shown in the table below with an “I”), including annuities in [State]. ~~in accordance with state laws~~ I need a separate license to sell non-insurance financial products (shown in the table below with an “N”). The table below shows what type of insurance and non-insurance financial products I’m licensed to sell (shown by an “X” next to the product. While the product that best meets your needs may be an insurance product, other non-insurance financial products may better meet your needs. I may not be authorized to sell or discuss these non-insurance products. I offer the following products:

- |  |   |
|--|---|
| <input type="checkbox"/> Fixed or Fixed Indexed Annuities <u>(I)</u>                           | <input type="checkbox"/> Mutual Funds <u>(N)</u>              |
| <input type="checkbox"/> Variable Annuities <u>(I)</u>   | <input type="checkbox"/> Stocks/Bonds <u>(N)</u>              |
| <input type="checkbox"/> Life Insurance <u>(I)</u>   | <input type="checkbox"/> Securities Options <u>(N)</u>        |
| <input type="checkbox"/> Variable Life Insurance <u>(I)</u>                                    | <input type="checkbox"/> Certificates of Deposit <u>(N)</u> s |
| <input type="checkbox"/> Other Relevant Securities, Insurance or Investments (Describe): _____ |   |

Whose Insurance Products Can I Sell to You?

I may only sell insurance products from insurance companies that appoint me as their agent. The table below shows whether I am appointed by and can sell insurance products from one or many insurance companies. Insurers often have multiple insurance companies within the insurer group. While I may be able to sell insurance products from more than one company in the insurer group, if I can only sell products from that one insurer, that is shown below as “only one insurer.” I am authorized and contracted or appointed or have access to offer:

- Products from **ONLY ONE INSURER** or Insurance Holding Company Group
- Products from Multiple Insurers
- Products from Multiple Insurers although I am primarily contracted with one insurer

**My Relationship with You:**

- ~~One Time Transaction~~
- ~~On Going Relationship~~

**How I'm Paid for My Work**

It is important for you to understand how I'm paid for my work because who pays me and how they pay me can affect the recommendations I make to you.

**My Compensation Structure:**

- You pay me by \_\_\_\_\_ Commissioned Transaction
- The insurance company pays me directly or indirectly by \_\_\_\_\_
- (An insurance company may pay me indirectly by paying another organization, like an Independent Marketing Organization, which then pays me for a sale.) An asset under management fee
- Other, please describe: \_\_\_\_\_

I am required to answer your questions about who pays me for my work, how I'm paid and if the amount I'm paid varies for different types of products I recommend for your purchase. If you feel I'm not providing the information you need about how I'm paid, contact the Department of Insurance at XXX XXX XXXX.

I am likely to be compensated by the following sources for this relationship:

- ~~Insurance Company~~
- ~~The Consumer~~
- ~~Third parties such as an Independent Marketing Organization (IMO) related to the Insurer~~

Other Sources \_\_\_\_\_

**ADDITIONAL INFORMATION**

You may obtain further information regarding the cash compensation paid to me.

\_\_\_\_\_  
Client Signature

\_\_\_\_\_  
Agent/Broker Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

We strongly support a provision in the revised model regulation to require the producer to document to the consumer the basis for the recommendation. The basis for the recommendation must be memorialized in writing. Otherwise, there will be no accountability for the seller to ensure they provide an appropriate discussion, and little likelihood that the consumer will understand the disclosure if it is provided only orally. Best practice would be to provide it in writing and explain it orally.

Industry arguments for “flexibility” to provide only oral descriptions of the basis for the recommendation would be the loophole that eats the entire rule. If permitted at all, why wouldn’t an insurer or producer resort to oral-only since such an approach is not only easier but also makes enforcement of the provision essentially impossible?

To facilitate a written disclosure of the basis of the recommendation to the consumer, we offer the following template for producers and insurers to use, to be incorporated into the model as an appendix.

## Template for Disclosure to Consumer of Basis for Annuity Recommendation

### **Why Am I Recommending This Annuity to You?**

Consumer Name (“You,” “Your”):  
Agent/Insurer Rep Name (“I,” “My,” “Me”):  
Product Recommendation (Include Amount):  
Date of Recommendation:

**Why Are You Receiving This Form?** You're buying a complex financial product -- an annuity. The agent, broker or company has a responsibility to learn about you, your financial situation, insurance needs, and financial objectives in order to recommend a product that is in your best interest.

The purpose of this form is so I (the agent) can show you that I understand the most important things about your circumstances, your insurance needs and your financial goals. The form also is intended to make sure you understand and agree with my analysis of what's in your best interest and why I'm recommending this product to you.

**If you think anything in this form is wrong or incomplete, tell me. Don't sign the form unless you understand and agree with the information in it.**

**Key Customer Profile Characteristics:** The product recommendation is based on an analysis of the customer profile information you gave me or the company. The list below shows my assessment of the five (5) most important things about you that helped shape my recommendation. Other customer profile information may be important and necessary for a product recommendation – see “why this product type and specific product are in your best interest” sections, below.

- 1.
- 2.
- 3.
- 4.
- 5.

**What Are The Top Goals You Hope To Achieve By Buying an Annuity?**

- 1.
- 2.
- 3.

**How Does An Annuity Meet Your Goals? Why is This Type of Product/Annuity is in Your Best Interest?**

- 1.
- 2.
- 3.

**How Does This Annuity Meet Your Goals? Why This Specific Product/Annuity is in Your Best Interest?**

- 1.
- 2.
- 3.

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Client Signature

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Agent/Broker Signature

---

Date

---

Date

## Section by Section Comments

**Section 1.** While “producer” is later defined to include an insurer where no producer is involved, it would be useful to include in section one either “or insurer where no producer is involved” or “as defined in this regulation” to make clear that producer has a broader meaning than would commonly be understood.

The drafting note in Section 1 claims that the revised model regulation “is a successor regulation that exceeds the requirements of the 2010 model regulation.” It is unclear that this claim is true. While the regulation claims a best interest standard of care, the actual care obligation remains the same – a reasonable basis for the produce to believe. The proposed treatment of material conflict of interest weakens the current rule because the new provisions eliminate any liability for material conflicts of interest. Egregious conflicts of interest that may have triggered regulatory action under the current rule are now permitted under the proposed rule as long as there is disclosure. The proposed safe harbor provisions also appear to weaken the rule by permitting a producer to forum shop for the most favorable regulatory framework. The proposed disclosures provide new liability shields for producers that don’t exist under the current rule.

The model should be extended to investment-type life insurance products. The model cannot credibly be called a best interest standard of care when it really means the best available annuity. Further, it makes no sense for a “best interest” standard of care for fixed indexed annuities, but no such standard of care for indexed universal life insurance despite the fact that investment type life insurance products and annuities typically offer the same type of investment benefits, are sold in similar manners with illustrations and are sold by the same licensed insurance producers. Failing to include life insurance in the revised model creates an un-level playing field for similar types of insurance products.

**Section 2.** The wording “recommendation to purchase, exchange or replace an annuity” is replaced by “any sale or recommendation of an annuity.” This new wording is inconsistent with the new wording in section 1 which refers to producers acting in the best interest of consumers when making a recommendation of an annuity. Further, the new language may exclude exchanges by only referencing sales or recommendations of an annuity.

The basis for the recommendation must be memorialized in writing to the consumer. Otherwise, there will be no accountability for the seller to ensure they provide an appropriate discussion, and little likelihood that the investor will understand the disclosure if it is provided only orally. Best practice would be to provide it in writing and explain it orally.

Industry arguments for “flexibility” to provide only oral descriptions of the basis for the recommendation would be the loophole that eats the entire rule. If permitted at all, why wouldn’t an insurer or producer resort to oral-only since such an approach is not only easier but also makes enforcement of the provision essentially impossible?

**Section 3.I.** After a sturdy definition of material conflict of interest in part 1, part 2 nullifies the definition by excluding cash and non-cash compensation. Given that cash and non-cash compensation comprise the universe of compensation, this definition weakens the current rule by eliminating the principal source of material conflicts of interest – the types and structure of compensation. The exclusion of compensation from material conflict of interest is particularly bizarre given that almost all of the sales abuses associated with life insurance and annuities over the past several decades can be tied to compensation structures that incentivize sales over the consumer’s interest.

**Section 3.M.** Part 1 is an improvement over the current definition of recommendation. Part 2 is also useful up to the last few words “or other product and sales material.” This language would permit an illustration for a specific product to be excluded from the definition of recommendation, allowing a producer to prepare an illustration for a particular annuity, present the illustration to the consumer without making a “recommendation” and then permit the consumer to purchase the illustrated product without a recommendation, as permitted by Section 6.B.

The definition of recommendation refers to purchase, exchange or replacement. While the model has a definition for replacement, there is no definition for exchange. We suggest that, just as a definition of replacement is needed, so is a definition for exchange.

**Section 6A:** The definition of “best interest” fails to identify the outcome for the consumer. Rather, best interest of the consumer is defined as carrying out certain procedures. The only reference in these procedures to a good consumer outcome is in 6.A.1.(a).(iii) which requires the producer to “have a reasonable basis to believe the recommended option effectively addresses the consumer’s” needs. Having such a “reasonable basis” is a far cry from acting in the consumer’s best interest.

We have previously commented that a best interest standard should be defined as a recommendation for a product or products that best meets the consumer’s needs without consideration of the producer’s interest. The current language sets up an impossible balancing test of the consumer’s and producer’s interest.

**Section 6.A.1.(a).(ii)** requires the producer to “understand the available recommendation options after making a reasonable inquiry into options available to the producer.” This provision appears to be circular reasoning – a producer inquiring into the options available to the producer. It is unclear what such an inquiry might look like – “Let me inquire of myself what products I’m permitted to sell?”

This provision, along with other provisions in the model limiting the producer's responsibility to only those products they sell (such as 6.A.1.(c)) – even if they sell only a single product – points to a fundamental problem with model regulation. The producer is tasked with being a financial adviser by virtue of collecting and analyzing consumer profile information to provide a “best interest” recommendation. Yet, insurance producers are not required by the model to be knowledgeable about other products that would better meet the consumer's needs. The model cannot credibly be called a best interest standard of care when it really means the best available annuity.

The care obligation in Section 6.A.1 has 11 subparts, four of which limit or exclude certain responsibilities for the producer.

While the revised model contains much more detail on the care obligation than the current model, the standard of care has not been upgraded. The current model requires the producer to have reasonable grounds to believe the recommendation is suitable, while the revised model also requires the producer to have a reasonable basis to believe the recommendation meets the consumer's needs. Neither current nor proposed is a best interest standard of care. In effect, the revised model is simply repackaging suitability as best interest without a material upgrade in the standard of care.

**Section 6.A.(2).** Part (a) requires disclosure of the Producer Relationship Disclosure Form – but not until at the time of the recommendation or sale. This timing of delivery defeats the purpose of the disclosure, which is to educate the consumer about the producer, give the consumer an opportunity to research the history and performance of the producer, learn about the products the producer can offer and learn about the types and methods of compensation received by the consumer. All of this information is necessary for a consumer to determine whether to do business with the producer and should be provided prior to the consumer providing consumer profile information and receiving a recommendation or making a purchase. The proposed timing of this disclosure ensures the disclosure will fail to empower the consumer while serving as a liability shield for the producer. The proposed timing of delivery is simply inexplicable. This form should be provided to the consumer prior to the consumer giving consumer profile information to the producer.

Our proposed edits to the Producer Relationship Disclosure Form do a better job of operationalizing the requirements of part (a) than the exposed form.

While the care obligation requires the producer to communicate the basis or bases of the recommendation to the consumer, the disclosure obligation fails to include any provision for such communication. Instead Section 6.A.(2).(c) – in the disclosure obligation section – is a care obligation requirement for the producer to have a reasonable basis to believe the consumer is informed of the product features. This provision should be moved to the care obligation section and replaced with an affirmative responsibility for the producer to disclose in writing the basis for the recommendation. We have provided a template for such written disclosure to be included in the model.

**Section 6.A.(3)** This section has been rendered meaningless and useless by exclusion of cash and non-cash compensation from the definition of material conflict of interest. Putting aside the fact that material conflicts of interest no longer exist by virtue of the definition, the treatment of material conflicts of interest is faux regulation at its worst. No matter how severe the material conflict of interest, the model requires only that a producer “reasonably manage and disclose” said conflict. As we have noted in prior comments, there is no evidence that disclosure empowers a consumer sufficiently to discipline a producer’s conflict of interest.

This section, combined with the definition of material conflict of interest weaken the current model by shielding practices that would invite regulatory scrutiny and action today – shielded simply by disclosure.

**Section 6.A.(4).** We have provided proposed forms for the two situations – consumer refusal to provide information and consumer purchase of an annuity not based on a recommendation – above. Our proposed forms better operationalize the provisions in this section.

**Section 6.A.(5)** This section should be part of 6.A. and not a separately titled “application of best interest standard.” Further, the word “individualized” should be removed before recommendation. The definition of recommendation already includes advice given to an individual consumer. At best, “individualized recommendation” is redundant. More likely, however, is that the term will create confusion because it is not used elsewhere in the model and is not defined. The addition of “individualized” before recommendation implies something different from just recommendation and such an interpretation would lead to confusion.

The qualifier “directly” before compensation is also vague and confusing and we suggest the following: “and has ~~directly~~ received compensation as a result of the recommendation or sale” These edits address the problem of interpreting what “directly receiving” compensation means by explicitly tying the compensation to the recommendation or sale of the annuity.

**Section 6.C.** We note that in part (2)(h) of this section on the insurer’s supervision system, the insurer is required to eliminate certain types of compensation, presumably because these types of compensation create material conflicts of interest for the producer which would compromise a best interest or suitability standard of care. This section, while important, is inadequate to address compensation-related material conflicts of interest and conflicts with the definition of material conflict of interest and the standard of care regarding material conflict of interest.

This section recognizes that insurers are responsible for establishing compensation structures for producers. Consistent with this reality, we suggest the supervision system section include a requirement for the insurer (or an intermediary) to provide the producer with a description of the producer’s compensation which the producer can provide to the consumer consistent with the requirements for the producer to disclose compensation to the consumer.

The section on supervision includes a requirement to identify and address “potentially suspicious” consumer refusals to provide information. “Potentially” should be deleted. A pattern of consumer refusals is either suspicious or not. “Potentially suspicious” is not a meaningful combination of words.

While this section requires the insurer to look out for suspicious patterns of consumer refusal to provide information, it does not include a requirement for an insurer to identify and address suspicious patterns of recommendations. In fact, part C(4)(b) excuses the insurer from such oversight by relieving the insurer’s system of supervision from including “consideration of or comparison to options available to the producer” other than products offered by the insurer.

We suggest the deletion of C(4)(b) and the addition of a requirement for the insurer to identify and address suspicious patterns of recommendations.

**Section 6.E.** Part (1) of this Safe Harbor section provides a safe harbor for compliance with a comparable standard “regardless of whether the particular recommendation or sale is required to otherwise comply with such comparable standard.” The effect of this provision is to allow a producer to forum shop for the most favorable standard instead of the narrower purpose of a safe harbor to permit compliance with the suitability model requirements by virtue of having to comply with a comparable standard of care. This offending language must be removed.

This section includes a vague definition of comparable standard: “With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest and any amendments or successor regulations thereto” FINRA currently has suitability requirements that apply to sales of variable annuities. Presumably, a suitability requirement is not comparable to a best interest requirement. Yet, this language includes “and supervision of annuity recommendations and sales” which might reasonably be understood to include a suitability rule regarding recommendations and sales of annuities. Such an outcome seems inconsistent with the intent of the safe harbor for comparable standards.