Comments of the Center for Economic Justice to the
NAIC Life Insurance and Annuities (A) Committee

Recommendations for Disclosures/Templates for Proposed Revisions to
Annuity Suitability Model Regulation

December 30, 2019

CEJ offers the following comments on the latest version of proposed disclosures accompanying the December 23, 2019 revisions to the Suitability in Annuity Transactions model regulation.

General Comments

The working group continues to employ poor practice in the development of consumer disclosures, including:

- Failure to identify the consumer protection purpose of the disclosures to guide the development of content and presentation;
- Failure to employ and rely upon subject matter experts – experts in design of consumer information, education and disclosure;
- Failure to develop and specify presentation formats for paper and digital delivery;
- Failure to utilize language familiar to and comprehensible to consumers; and
- Failure to employ consumer testing for effectiveness.

In sum, the working group continues to fail to treat consumer disclosures as a regulatory tool requiring the same rigor and subject-matter expertise as other regulatory tools.

Our specific comments are shown in redline to the December 23, 2019 disclosure versions.
Specific Comments on Agent Disclosure

APPENDIX A

AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES

Do Not Sign Unless You Have Read and Understand the Information in this Form

Why am I getting this notice?

You (the consumer) are considering the purchase of a complex financial product – an annuity. The purpose of this notice is to give you information about the person and company selling the annuity. You can use this notice to verify my (the agent’s) license, learn what products I’m licensed to sell you and how I’m paid for my work.

Annuities are insurance products. Only licensed insurance agents can sell you an annuity. You can learn about my insurance license in the Additional Information at the end of this notice.

You will receive a copy of this notice to take with you. You can ask me questions about things in this notice at any time.

Date Received: ________________________

Who I Am: the INSURANCE AGENT (PRODUCER) INFORMATION (“Me”, “I”, “My” in this notice)

First Name: ______________________________ Last Name: __________________________

Business/Agency Name: ______________________________ Website: _____________________________

Business Mailing Address:________________________________________________________

Business Telephone Number: ______________________________________________________

Email Address:__________________________________________________________________

Who You Are: CONSUMER NAME CUSTOMER INFORMATION (“You”, “Your” in this notice)

First Name: ________________________________ Last Name: __________________________

What Types of Insurance and Investment Products Can I Sell You?

I am licensed to sell annuities to you in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial needs, objectives and situation and some of Your insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds and mutual funds, also may meet Your needs.

I am licensed to sell and offer the following products. Ask me about these products:

- Fixed or Fixed Indexed Annuities
- Variable Annuities
- Life Insurance – Term, Whole, Universal, Indexed Universal
- Life Insurance – Variable

Comment [B1]: “Producer” is not a term that consumers are familiar with. It makes no sense to utilize the term without a rationale. If there is a rationale, then the term should be explained and not simply presented.

Comment [B2]: The disclosure should include a section up front about why the consumer is receiving the notice. The explanation for “why” should be guided by the consumer protection concerns – consumers are relying on agents’ recommendation to buy complex financial products, so the purpose of the notice is to empower the consumer by highlighting things that can adversely affect the recommendations and enable the consumer to check the background and history of the agent.

Comment [B3]: Again, the use of “producer” is not helpful to a consumer. If there is a reason to use the term “producer,” it should be explained in context. For example, see our treatment in the additional information section.

Comment [B4]: There is no information here about the consumer. Further, “consumer” is the term used in the other disclosures and is appropriate here as it is unclear if the consumer will be a customer.

Comment [B5]: These words hold no meaning for a consumer. The fact that an agent is licensed tells a there is some requirement to for this person to sell an annuity.

Comment [B6]: At best, an annuity can meet some of a consumer’s insurance needs.

Comment [B7]: Simply using “offer” would likely lead a consumer to equate “offer” and “licensed,” which would not be accurate.

Comment [B8]: While the use of a table to present a list of things to a consumer can be helpful, the likely response from a consumer is that the table provides the complete list of; in this case, products. Again, guided by the consumer protection purpose of the notice, the list of products should be sufficiently complete and detailed to trigger a question by a consumer. It is also important to remember that the consumer will take this notice away so the consumer may do further research based on the information in the notice.
While an annuity may best meet your needs, other investment financial products may also meet your financial security needs instead or in combination with an annuity. Examples of non-insurance investment products include stocks, bonds, mutual funds, certificates of deposit and exchange-traded funds.

I AM NOT licensed to sell non-insurance investment products.

(If licensed, include the following) You can learn about my insurance license in the Additional Information at the end of this notice.

I have checked below any non-insurance financial products that I am licensed and authorized to provide advice about or to sell.

- Mutual Funds
- Stocks/Bonds
- Certificates of Deposit

Whose Annuities Can I Sell to You?

The following insurers have authorized me to sell their annuities. Ask me what products are available and which ones I recommend and sell the most.

(List of Insurer Groups)

I am authorized to sell:

- Annuities from Only One (1) Insurer
- Annuities from Two or More Insurers
- Annuities from Two or More Insurers although I primarily sell annuities from:_____________________________

How I’m Paid for My Work:

It’s important for You to understand how I’m paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to me by the consumer. If You have questions about how I’m paid, please ask Me.

- Commissioned Transaction
- An asset under management fee
- Other, please describe:_____________________________

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

Comment [B9]: “Financial products” is too broad a term in this context. A mortgage or bank account is a financial product. Context for the naming of other investment / insurance products is needed.

Comment [B10]: The use of a table for non-insurance financial products is not helpful here. The purpose of this specific disclosure is simply to alert the consumer that other non-insurance investment products might meet or help meet the consumer’s needs and whether the agent is licensed to sell such products. A table of products doesn’t help with these purposes and would likely lead a consumer to believe that the short list is the universe of investment products.

Comment [B11]: It is very important to provide consumers with information to easily check the status of the licenses of the agent.

Comment [B12]: Again, stating that a person is licensed tells a consumer that the person is authorized.

Comment [B13]: It is unclear what purpose this list of three choices is intended to provide. If the goal is to alert the consumer to how many different products the agent can sell and how many insurers the agent represents, this goal is better achieved with the simple disclosure and list of insurers. Further, providing a list of available insurers is helpful for a consumer as it allows the consumer to research the different insurers.

Comment [B14]: It is unclear how this is intended to help consumers.
A Committee Chair’s Suggestions for the “How I’m Paid for My Work” section in lieu of the above language:

How I’m Paid for My Work:
It’s important for You to understand how I’m paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are usually paid to me by the consumer. If You have questions about how I’m paid, please ask Me.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

- □ Commission, which is usually paid directly or indirectly by the insurance company (or third parties such as independent marketing organizations).
- □ Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.
- □ Other, including, for example, bonuses for meeting sales goals.

(Description describe):

If you have any questions about how the cash compensation I’ll will be paid for this transaction, please ask me.

I may also receive other indirect compensation resulting from this transaction (sometimes called “non-cash” compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or a third party, such as an independent marketing organization.

Drafting Note: This disclosure may be adapted to fit the particular business model of the producer. As an example, if the producer only receives commission or only receives a fee from the consumer, the disclosure may be refined to fit that particular situation. This form is intended to provide an example of how to communicate producer compensation, but compliance with the regulation may also be achieved with more precise disclosure, including a written consulting, advising or financial planning agreement.

ADDITIONAL INFORMATION

Insurance Agent License Number: _________________________

An insurance agent is also known as a “producer” under insurance laws. If you want to check the agent’s license, you will be looking for the “National Producer License Number.”

Business Entity Name on License:

My firm has sold annuities for ___ years

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

(If licensed to sell securities, include the following)

The license to sell non-insurance investment products is called a securities license.

My securities license # is

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

Comment [B15]: See comments on Chair recommendation

Comment [B16]: It is confusing for a consumer to state the agent “will or may” be paid.

Comment [B17]: Regulatory terms like “cash compensation” are not helpful for a consumer.

Comment [B18]: Referencing an IMO will not be helpful to a consumer. By adding “directly or indirectly,” the consumer is prompted to ask what the difference might be and thereby get an explanation from the agent.

Comment [B19]: The “other” category should be able to capture any other types of cash and non-cash compensation. The additional explanation is need to provide context for the consumer.

Comment [B20]: Regulatory terms, such as “cash compensation” are not helpful for a consumer.

Comment [B21]: It is unclear what the intended purpose of this disclosure is. It will not be helpful to a consumer. If the purpose of the compensation section is to provide a very broad overview of compensation options, this paragraph does not contribute to that goal.

Comment [B22]: There is nothing in the regulation that prohibits additional compensation disclosure. The prescribed disclosure in this notice should be the minimum required.

Comment [B23]: It is important to note that the consumer will take this form away and be able to refer to the form. The additional information on license numbers and how to check the license is critical for a consumer wishing to verify a license and check history.

Comment [B24]: This would be the place to add information / explanation about “producer.”
By signing below, you acknowledge that you have received this notice have read and understand the information provided to you in this document.

_________________________________________________
Customer Signature

_________________________________________________
Date

_________________________________________________
Agent (Producer) Signature

_________________________________________________
Date

Comment [B25]: Requiring the consumer to acknowledge having “read and understood” the information in this notice is not appropriate. The only requirement for the consumer for this notice should be to acknowledge receipt.
Specific Comments on Refusal to Provide Information

APPENDIX B

CONSUMER REFUSAL TO PROVIDE INFORMATION NECESSARY FOR A BEST INTEREST RECOMMENDATION

Do Not Sign Unless You Have Read and Understand the Information in this Form

The Insurance Commissioner Has Created This Form for Your Protection

If You Have Questions That the Agent Can’t Answer to Your Satisfaction, Contact the Department of Insurance at [contact info]

Why are you being given this form and asked to sign it?

You’re buying a complex financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, 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 have not given the agent, broker, or company some or all the information needed to decide if the annuity is in your best interest effectively meets your needs, objectives and situation.

You may lose legal protections under the Insurance Code of [this state] if you refuse to provide certain information or sign this form or provide inaccurate information.

The agent is required to consider the categories of information listed below. 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.

Statement of Purchaser:

- I REFUSE to provide this information at this time.
- I have chosen to provide LIMITED information at this time as 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.

☐ Age:
☐ Financial situation and needs, including debts and other obligations;
☐ Financial experience;
☐ Insurance needs;
☐ Financial objectives;
☐ Intended use of the annuity;
☐ Financial time horizon;
☐ Existing assets or financial products, including investment, annuity and insurance holdings;
☐ Liquidity needs;
☐ Liquid net worth;
☐ Risk tolerance, such as willingness to accept non-guaranteed features

Comment [B26]: Our comments are guided by the premise that this is a consumer protection disclosure and the consumer protection goal is to discourage consumers from refusing to provide information necessary for a suitability analysis. In addition, the disclosure should not facilitate recommendations for sales without effort by the agent to obtain the information. Consequently, the proposed edits are designed to encourage a consumer to provide the relevant information necessary for a best interest recommendation – starting with the name of the form.

Comment [B27]: Consistent with the consumer protection goals, this statement is intended to encourage the consumer to carefully review the form.

Comment [B28]: Consistent with the consumer protection goals, this statement is intended to prevent intimidation of the consumer.

Comment [B29]: It is important and necessary to stress to the consumer that an annuity – even the simplest annuity – is a complex product and, as such, requires the agent to get relevant information for a best interest recommendation.

Comment [B30]: For consistency with changes made to the agent disclosure.

Comment [B31]: The premise of the revised regulation is to create a best interest standard of care. Insurers and producers will now be able to claim they are acting in a consumer’s best interest. If such a claim is good for marketing, then it is even more relevant for a consumer protection disclosure.

Comment [B32]: The consumer will lose protections, so the insertion of “may” is inappropriate.

Comment [B33]: Legal protections is more consumer friendly than “protections under the Code.”

Comment [B34]: This key disclosure should be highlighted in bold.

Comment [B35]: Consistent with the consumer protection goals of the disclosure, this explanation provides necessary context for the consumer.

Comment [B36]: This choice architecture is designed as a liability shield for agents and thwarts the consumer protection goals of the disclosure.

Comment [B37]: Providing the list of information categories better protects consumers and agents. First, it distinguishes between a situation in which a consumer refuses to provide only, say, liquid net worth information, versus a situation in which the consumer refuses to provide any information other than age. By being specific about the information not provided, the agent is better protected. Second, the list alerts the consumer to the relevant information needed for a best interest recommendation.
☐ Financial resources used to fund the annuity: □ Tax status.

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

__________________________________
Customer Signature

__________________________________
Agent Signature

__________________________________
Date

Comment [B38]: It is important to document the agent’s acknowledgement also.
**APPENDIX C**

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 Can’t Answer to Your Satisfaction, Contact the Department of Insurance at [contact info]

Why are you being given this form and asked to sign it?

You are buying a complex financial product – an annuity.

The agent is trained to understand the details of the products they sell and how an annuity may meet your needs.

If you sign this form, it means you know that you’re buying an annuity even though the agent didn’t recommend the annuity for you.

**You lose important protections if you buy an annuity when the agent doesn’t recommend it for you.**

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company has the responsibility to learn about you, your financial situation, insurance needs and financial objectives.

If you sign this form, it means you know that you’re buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the agent, broker or company did not recommend that I buy it. If I buy it without a recommendation, I understand I will lose protections under the Insurance Code of [this state].

_______________________________________
Customer Signature

_______________________________________
Date

_______________________________________
Agent (Producer) Signature

**Comment [B39]:** Consistent with the consumer protection goals, this statement is intended to encourage the consumer to carefully review the form.

**Comment [B40]:** Consistent with the consumer protection goals, this statement is intended to prevent intimidation of the consumer.

**Comment [B41]:** It is important and necessary to stress to the consumer that an annuity – even the simplest annuity – is a complex product and, as such, requires the agent to get relevant information for a best interest recommendation.

**Comment [B42]:** This is the critical point to highlight for the consumer.

**Comment [B43]:** It is unclear what “Statement of Purchaser” is intended to accomplish.

**Comment [B44]:** The consumer will lose protections, so the insertion of “may” is inappropriate.

**Comment [B45]:** Producer is not a familiar term for the consumer and it makes no sense to introduce at this point without explanation.