Comments of the Center for Economic Justice

To the NAIC Life Insurance and Annuities (A) Committee

NAIC Suitability Model – Inclusion of Investment-Type Life Insurance Transactions

June 20, 2018

CEJ writes to ask the A Committee to direct the Annuity Suitability Working Group to add investment-type life insurance products to the NAIC suitability model. While we firmly believe the working group’s charge allows – requires – consideration of this issue, the working group chair ruled the issue beyond the working group’s charge at the May 31 – June 1 interim meeting. Consequently, we present this request to the A Committee.

From our perspective, adding investment type life insurance to the suitability model seems obvious and necessary.

Compare investment type life insurance products with annuities:

- Both are sold as investments – variable life, universal life, indexed universal life just as annuities
- Both are sold with the same types of illustrations
- Both offer death benefits
- Both offer accelerated benefit / long term care combinations
- Both offer guaranteed lifetime income benefits
- Most important, both rely upon the same type of incentive compensation structures for sales that create material conflicts of interest for the insurer or producer selling the product.

We see no rationale for applying a best interest standard or “suitability-plus” standard of care to a fixed indexed annuity transaction, but not to an indexed universal life insurance transaction or for applying a best interest standard of care to a variable annuity transaction but not to a variable life insurance transaction.
The only argument offered against adding investment type life insurance to the suitability model is that offered by the ACLI in a letter to the working group. ACLI argues

Including life insurance in the Model Regulation is unnecessary because life insurance sales practices are already subject to comprehensive state laws and regulations which assure that life insurance products are sold consistent with the best interest of consumers.

While surely not the intention of the ACLI, the letter provides further evidence and support for the need to for the NAIC suitability model to cover investment-type life insurance transactions.

First, the same argument could be applied to annuities – in the absence of the suitability model, annuities are subject to a variety of state laws and regulations. Clearly those other laws and regulations have not been sufficient for annuities or for investment-type life insurance.

Second, none of the life insurance laws or models cited requires sales or recommendations in the best interest of the consumer.

Third, the ACLI letter provides a list of model laws and regulations that ACLI contends provide a “comprehensive” regulatory and consumer protection framework. (See attached) What the ACLI list actually shows is a history of the problems that have arisen in the sale of life insurance products. Rather than demonstrating a comprehensive regulatory framework, the list reveals a piece meal approach of reacting to problem after problem with life insurance sales. And in the last couple of years alone, we’ve seen regulatory concern and consumer complaints about IUL illustrations and cost of insurance increases. ACLI’s list is a history of market problems with life insurance – problems resulting in large part because of conflicts of interest in which producers and insurers did not act in the consumer’s best interest.

We ask the A Committee to direct the Annuity Suitability working group to include investment-type life insurance transactions among the transactions covered by the NAIC suitability model.
Life insurance company sales practices are already subject to comprehensive state laws and regulations which assure that life insurance products are sold consistent with the best interest of consumers.

1. **Unfair Trade Practices**[^1]
   Regulates trade practices in the business of insurance by defining practices that constitute unfair methods of competition or unfair or deceptive acts or practices by insurers.

2. **Advertisements**[^2]
   Sets forth minimum standards and guidelines to assure full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies.

3. **Use of Senior Specific Certifications and Professional Designations**[^3]
   Sets forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance product.

4. **Illustrations**[^4]
   Provides rules for life insurance policy illustrations that will protect consumers and foster consumer education.

5. **Disclosure, Including Buyer’s Guide**[^5]
   Provides standards for the disclosure of certain minimum information about life insurance contracts to protect consumers and foster consumer education.

6. **Multiple Policy Disclosure**[^6]
   Sets forth guidelines for insurers to utilize to search for additional policies or insurance coverages on the life of an insured upon notification of death of the insured.

7. **Small Face Amount Disclosure**[^7]
   Establishes rules that ensure meaningful information is provided to the purchasers of small face amount policies.

8. **Policy Language Simplification**[^8]
   Establishes minimum standards for language used in policies, contracts, and certifications of life insurance to facilitate ease of reading by insureds.

9. **Free Look**[^9]
   Requires insurers to inform policyholders of their right to receive a refund of monies paid after the return of first-issue or replacement life insurance policies during a free look period.

10. **Universal Life Insurance**[^10]
    Supplements existing regulations of life insurance policies in order to accommodate the development and issuance of universal life insurance plans.

11. **Variable Life Insurance**[^11]
    Requires insurers to maintain suitability standards, prohibits recommendations from being made to an applicant to purchase a variable life insurance policy, and prohibits the issuance of a policy in the absence of reasonable grounds of belief that the policy is suitable for the applicant based on information furnished by the applicant.

12. **Accelerated Benefits**[^12]
    Regulates accelerated benefit provisions of individual and group life insurance policies and provides required standards of disclosure.
13. **Replacements**
   Protects the interest of life insurance policyholders by assuring they receive information with which a decision can be made in his or her own best interest.

14. **Military Sales Practices**
   Sets forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.

15. **Policy Loan Interest Rates**
   Establishes minimum standards for language used in policies, contracts, and certifications of life insurance, health insurance, credit life insurance and credit health insurance delivered or issued for delivery in to facilitate ease of reading by insureds.

16. **Retained Asset Accounts**
   Establishes disclosure standards regarding the payment of life insurance benefits to a beneficiary by means of a “retained asset account.”

17. **Producer Licensing**
   Governs the qualifications and procedures for the licensing of insurance producers.

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1 Adopted in ALL jurisdictions.
2 Adopted in 37 jurisdictions (*PA & UT similar to accident & health advertising model). Not adopted in 14 jurisdictions: AK, DE, DC, HI, ID, IN, ME, MA, MS, MT, NV, NM, SC, WT.
3 Adopted in 45 jurisdictions. Not adopted in 6 jurisdictions: ID, LA, MA, MI, MS, NE.
4 Adopted 41 jurisdictions. Not adopted in 10 jurisdictions: AZ, AR, DC, FL, GA, ID, MN, TN, VA, WY.
5 Adopted 40 jurisdictions. Not adopted in 11 jurisdictions: AK, CO, DC, HI, ID, MN, MS, OK, TX, VA, WY.
6 Not Adopted 48 jurisdictions. Adopted in 3 jurisdictions: AL, IL, NV.
7 Not Adopted 46 jurisdictions. Adopted in 5 jurisdictions: GA, IA, NV, NC, WA.
8 Adopted 35 jurisdictions (MD Health Only). Not adopted in 16 jurisdictions: AL, AK, CO, DE, ID, IL, IA, KS, LA, MS, MO, NH, PA, VT, WA, WY.
9 Adopted in ALL jurisdictions.
10 Not Adopted 32 jurisdictions. Adopted in 19 jurisdictions: AR, FL, IL, IN, IA, KS, LA, MD, MI, MS, MO, NE, NM, ND, OH, OK, VA, WA, WY.
11 Adopted 40 jurisdictions. Not adopted in 11 jurisdictions: AL, NV, NH, OK, OR, RI, SD, VA, WA, WV, WY.
12 Adopted 26 jurisdictions. Not adopted in 25 jurisdictions: AK, DE, FL, GA, HI, ID, IA, KY, MD, MO, MT, NE, NV, NH, NM, ND, RI, SC, SD, TN, UT, VT, WV, WI, WY.
13 Adopted in 49 jurisdictions. Not adopted in 2 jurisdictions: DC, ND.
14 Adopted in 50 jurisdictions. Not adopted in 1 jurisdiction: MI.
15 Adopted 50 jurisdictions. Not adopted in 1 jurisdiction: CO.
16 Adopted in 27 jurisdictions. Not adopted in 24 jurisdictions: AL, AZ, DC, GA, HI, ID, MA, MI, MN, MS, MO, NM, OK, OR, PA, SC, SD, TN, TX, UT, VT, WA, WI, WY.
17 Adopted in ALL jurisdictions.