

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Insurance
Regulation/Package Title: Suitability in Annuity Transactions
Rule Number(s): 3901-6-13

Date: April 22, 2013

Rule Type:

- | | |
|------------------------------------|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input type="checkbox"/> Amended | <input checked="" type="checkbox"/> No Change |
| <input type="checkbox"/> Rescinded | |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The rule requires insurers, including fraternal benefit societies, to establish a system to supervise recommendations and to set forth standards that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers, at the time of the transaction, are appropriately addressed.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

3901.041 and 3901.19 to 3901.26 of the Revised Code.

3. Does the regulation implement a federal requirement? ☒ Yes ☐ No

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Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

☐ Yes ☒ No

If yes, please briefly explain the source and substance of the federal requirement.

The rule, when amended in 2011, brought Ohio law into compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law Number 111-203, 111th Cong., 2d sess. (July 21, 2010).

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The purpose of this rule is to require insurers, including fraternal benefit societies, to establish a system to supervise recommendations and to set forth standards that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers, at the time of the transaction, are appropriately addressed.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The Department will receive fewer complaints from consumers regarding the purchasing of unsuitable annuity products and there will be fewer administrative actions against insurers for violating provisions of this rule.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.*

In January 2013, an email requesting comment on the rule was sent to the general public, various stakeholders, interested parties, and trade associations who signed up for updates on the Department's rules and bulletins. The Department also reached out to the Association of Ohio Life Insurance Companies (AOLIC), the American Council of Life Insurance (ACLI), the National Association of Insurance and Financial Advisors (NAIFA), and the Professional Independent Agents Association (PIAA). The rule was also posted on the Department's web site for review.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

This rule was reviewed as part of the five year rule review. Department staff decided that the rule should not be changed. The Department received no comments on the rule from industry or the general public.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Not applicable.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

This rule is based upon the current NAIC model rule which was adopted in 2010 and amended in 2011 by states providing consistent regulatory requirements for multi-state insurance companies/agencies.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

Not applicable.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Department reviewed Ohio statutes and rules and determined that it does not duplicate other regulations.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The rule will be applied consistently and predictably through the form review process, which has specific standards that providers are required to meet in order to use certain forms, and CE requirements for agents.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;

- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

Companies and agents who sell annuity products will be impacted by this rule. Staff time and resources are required to comply with the rule. However, since the rule has been in effect for over five years and companies and agents are already meeting the provisions of the rule, those staff and resources appear to already be in place.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The consumer benefit this rule provides outweighs the impact on insurers and insurance agents. Even if Ohio rescinded the rule, insurers and agents would still be required to follow similar requirements in other jurisdictions which have adopted the NAIC model in which the insurer does business.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No, the rule provides important consumer protections for recommendations to consumers that result in transactions involving annuity products that are critical regardless of the insurer's size.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Minor paperwork errors would be handled by pointing out the mistake to the insurer and giving them an opportunity to fix the error.

18. What resources are available to assist small businesses with compliance of the regulation?

Department staff is available to answer questions, regardless of the size of business.