

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Insurance
Regulation/Package Title: Life and annuity products.
Rule Number(s): 3901-6-02 Correlated sales of life insurance and mutual funds or other securities.
3901-6-05 Replacement of life insurance and annuities.
3901-6-13 Suitability in annuity transactions.
Date: June 8, 2018

Rule Type:

☐ New

☐ Amended

☐ Rescinded

☒ 5-Year Review

☒ No Change

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.

Rule 3901-6-02: The purpose of this rule is to establish minimum requirements for the forms provided to consumers when an agent or insurance company solicits, services, or collect premiums for life insurance which is sold in correlation with a mutual fund or other security. These statutorily required forms are meant to provide the consumer with a clear understanding of the transaction. The department is not proposing changes.

Rule 3901-6-05: The purpose of this rule is to regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities. This rule protects

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

the interests of life insurance and annuity purchases by establishing minimum standards for conduct in replacing life insurance or annuity policies. It will assure that purchasers receive information with which a decision can be made in his or her own best interest; reduce the opportunity for misrepresentation and incomplete disclosure; and establish penalties for failure to comply with requirements of this rule. The department is not proposing changes.

Rule 3901-6-13: The purpose of this rule is to require insurers, including fraternal benefit societies, to establish standards and procedures for recommending annuity products to consumers so that their individual insurance needs and financial objectives, at the time of the transaction, are appropriately addressed. The department is not proposing changes.

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

Section 3901.041 of the Revised Code.

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

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.

Not applicable.

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 rules listed provide important consumer protections by issuing guidance to insurance companies and agents in regard to the solicitation, sale, replacement and determination of suitability in annuity and life insurance transactions.

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 about agents and/or companies regarding the solicitation, sale, replacement and determination of suitability for life insurance policies and annuities.

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 March 2018, an email requesting comment on the rule was sent to the 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), among others. 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?

During the vetting period, one comment was received in regard to the Replacement of Life Insurance and Annuities rule (3901-6-05), stating that the rule is duplicative of the Annuity Suitability rule (3901-6-13). The interested party requested the rule be amended to remove the language pertaining to annuities or to rescind 3901-6-05 in it's entirety.

After review and after discussion with the commenter, the department determined that while these rules may appear similar, they are separate protections– specifically as they relate to annuities and therefore the repeal of Administrative Code 3901-6-05 would erode important consumer protections already in place for Ohio consumers. Rule 3901-6-05, serves as a protection against potential misconduct, misrepresentation and oversight in the replacement of both life insurance policies and annuities and allows insurers to attain sufficient information in determining whether a policy is in the best interest both the insurer and the consumer. Without the standards set forth in the rule, the consumer could choose a policy that may not be the right fit for them and could potentially face negative tax or other financial consequences.

Furthermore, both rules are based on an NAIC models which were adopted to work in concert with each other and both models have been implemented nationwide. By repealing or changing rule 3901-6-05, Ohio would be no longer hold the same standards for life insurance and annuity replacement as many other states that have adopted the model.

No comments were received in regard to rules 3901-6-02 or 3901-6-13.

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?

All of the listed rules follow models that have been adopted by the National Association of Insurance Commissioners. When developing a model, the NAIC works with a subgroup

consisting of representatives from multiple states. Stakeholders also provide comment as to find the right balance between consumer protection and ease of compliance.

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?

These rules are based upon current NAIC models which represent nationwide industry standards and provide important consumer protections. These rules assure consistent regulatory requirements for insurance carriers among all states.

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.

These rules serve as important consumer protections by establishing requirements for insurers and agents to follow in regard to the solicitation, sale, replacement and determination of suitability for life insurance policies and annuities. Performance based regulations are not appropriate for these rules.

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 these rules do 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.

These rules will be applied consistently and predictably through the product filing process, which has specific standards that companies are required to meet in regard to the solicitation, sale, replacement and determination of suitability for life insurance and annuity products.

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.

Insurance companies that sell life and annuity products would be impacted by implementation of these rules. Staff time would be required to explain the policy to consumers each time a life insurance or annuity transaction takes place. Resources such as printed copies of the policies and disclosures are also required to comply with the rule. These required resources are relative to the type and the frequency of the transactions. However, these rules are already in effect and the companies are meeting the provisions of the rules, so those staff and resources appear to be in place and the transactions are critical for the protection of consumers.

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

These rules provide guidelines to which companies must adhere to solicit, sell, replace or determine suitability for life insurance or annuity products. Consumers could face significant financial harm if companies do not adhere to these standards promulgated by the department.

Regulatory Flexibility

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

No, the rules provide important consumer protections and are adopted from the respective NAIC models. All insurance agents, agencies, and companies must adhere to this rule regardless of 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 errors would be handled by advising the agent or insurer and giving them an opportunity to remedy the omission.

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. Furthermore, the department provides filing information and instructions on its website. The department intends to continue dialogue with stakeholders through the implementation process to ease confusion and facilitate questions.