

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Insurance
Regulation/Package Title: Annuity and life disclosures.
Rule Number(s): 3901-1-47 Annuity solicitation. (No Change)
3901-6-01 Solicitation of life insurance and/or annuity contracts.
(No Change)
3901-6-03 Life insurance disclosure. (Amend)
3901-6-14 Annuity disclosure. (Amend)
Date: June 28, 2018

Rule Type:

- | | |
|---|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" 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 Rescinded | |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 rules included in this packet establish a regulatory framework for insurers and insurance agents when selling, soliciting, or offering annuity or life insurance products to Ohio's consumers.

Rule 3901-1-47: This rule speaks to the solicitation of annuities, and requires the use of a disclosure statement in conjunction with the sale of single premium deferred annuities (SPDA). There are no proposed amendments to this rule.

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Rule 3901-6-01: This rule identifies and prohibits the use of certain statements, illustrations and advertisements, acts, practices and contract forms pertaining to the solicitation and sale of life insurance and annuity contracts. There are no proposed amendments to this rule.

Rule 3901-6-03: The life disclosure rule provides standards for the disclosure of certain minimum information about life contracts. The rule also prescribes the use of the NAIC Buyer's Guide. This rule is being amended to include the buyer's guide as an appendix in order to maintain compliance with rule formatting requirements and establish consistency with the annuity disclosure rule.

Rule 3901-6-14: The annuity disclosure rule provides standards for the disclosure of certain minimum information about annuity contracts. The rule specifies the minimum information that must be disclosed, the method for disclosing it and the use and content of illustrations, during the sale of annuity contracts. The rule also prescribes the use of the National Association of Insurance Commissioners (NAIC) Buyer's Guide. This rule was amended in 2013 to include the most recent NAIC model and buyers guides. Shortly after implementation industry discovered the model did not anticipate the emergence of the participating income annuity product design. A participating income annuity provides a guaranteed level of income when the annuity is paid out. Additionally, there is a potential for more income through an investment or otherwise non-guaranteed dividend. Interested parties then worked with the NAIC to draft an amendment which was adopted by the NAIC working group in early March 2018. Proposed amendments to the rule include the amendment to the NAIC model.

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

Rule 3901-1-47: Section 3901.041 of the Revised Code.

Rule 3901-6-01: Section 3901.041 of the Revised Code.

Rule 3901-6-03: Section 3901.041 of the Revised Code.

Rule 3901-6-14: 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)?

Rule 3901-1-47: The purpose of this rule is to disclose specific information to consumers purchasing a SPDA product. A SPDA is a specific type of annuity in which a consumer pays one large premium up front, it is important for the consumer to understand potential benefits and risks to make an informed decision.

Rule 3901-6-01: This rule prohibits the use of specific language, illustrations & solicitation methods that may be misleading or deceptive to the consumer. Life and annuity products can be complicated, and should be solicited in a straight forward and accurate manner. This rule works to protect the consumer from misleading statements and materials.

Rule 3901-6-03: The purpose of this rule is to improve a consumers ability to select the most appropriate life insurance policy for the buyer's needs, and improve the buyer's understanding of the basic features and costs of the policy which has been purchased or is under consideration.

Rule 3901-6-14: The goal of this rule is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts. The purpose is to protect consumers and foster consumer knowledge and understanding.

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 information disclosed in connection with the sale of annuity and life contracts.

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.*

On March 14, April 4, and May 18, respectively, an email requesting comment for these rules was sent to various stakeholders, interested parties, and trade associations. Including but not limited to: the Association of Ohio Life Insurance Companies (AOLIC), the American Council of Life Insurers (ACLI), the National Association of Insurance and Financial Advisors (NAIFA), and the Ohio Insurance Agents Association (OIA), 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?

The proposed amendment to 3901-6-14 was an industry requested change. The department worked with stakeholders, and monitored the amendment to the NAIC model.

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?

The regulations established in this rule packet are modeled from processes developed at the national level as well as processes working effectively in Ohio. These standards are in effect and are known throughout the regulated community.

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 packet requires the use of specific disclosures and forms, these documents and guidance were developed by NAIC national models. 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 compliance.

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.

The rules in this packet establish a regulatory framework for disclosure & solicitation practices. Due to the nature of the rules and requirements which require the use of specific documents, performance based regulations are not appropriate in these circumstances.

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.

The rules included in this packet have remained in effect for many years and are currently applied across the country. Proposed amendments have been vetted to interested parties and are available on the department web page. Department staff is available to answer any questions.

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.

The rules in this packet impact insurers and agents selling life and annuity products. The nature of any adverse impact from these rules would be employee time for compliance. Since these rules are in effect and are applied across the industry, the requirements such as providing disclosure forms and buyer's guides are included in conducting everyday business. The only associated increase would be familiarizing staff with the proposed changes to 3901-6-14. The proposed amendment to 3901-6-03 will assist insurers by providing quicker access to the buyers guide, potentially reducing time for compliance.

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

The consumer benefits from this rule packet outweighs the impact on insurers and respective agents. Life and annuity products are complex and can be confusing to consumers. These rules provide guidance for agents to do a thorough job of soliciting annuity and life products so that consumers can make an informed decision when purchasing these products. The rules also establish a straight forward framework for insurers and agents to conduct solicitation activities and maintain compliance.

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 that are critical regardless of the insurer's size. Uniformity across the industry ensures consistent application and use of the required disclosures.

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?

Paperwork violations and/or first time offender issues would be dealt with on a case-by-case basis due to the fact that these types of violations could have a serious impact on the consumer.

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

The department maintains the product regulation and agent licensing divisions which are available to answer general industry questions.