

Common Sense
Initiative

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Business Impact AnalysisAgency Name: Ohio Department of InsuranceRule Contact Name: Loretta MedvedRule Contact Information: 614-644-0239loretta.medved@insurance.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

Life & Annuity #1 - Life insurance disclosure,Solicitation of life insurance and/or annuity contracts, Annuity disclosureRule Number(s): 3901-6-013901-6-033901-6-14Date of Submission for CSI Review: June 22, 2023Public Comment Period End Date: July 8, 2023, 12:00AMRule Type/Number of Rules:

- | | | | |
|--|----------------------|-------------------------------------|---------------|
| <input type="checkbox"/> New/ | rules | <input type="checkbox"/> No Change/ | rules (FYR?) |
| <input checked="" type="checkbox"/> Amended/ | 3 rules (FYR? 2023) | <input type="checkbox"/> Rescinded/ | rules (FYR?) |

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 requires agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the Agency determined the rule(s) create?

The rule(s):

- ☒ a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☒ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☒ c. Requires specific expenditures or the report of information as a condition of compliance.
- ☐ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

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

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

Rule 3901-6-01: 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. Proposed amendments will reduce regulatory restrictions.

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 National Association of Insurance Commissioners (NAIC) Buyer's Guide. Proposed amendments will reduce regulatory restrictions and make various technical corrections.

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. Proposed amendments will reduce regulatory restrictions and make various technical corrections.

3. Please list the Ohio statute(s) that authorize the Agency to adopt the rule(s) and the statute(s) that amplify that authority.

Section 3901.041 of the Revised Code.

4. 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.

5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

6. 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 3901-6-01: 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.

7. 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.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931? ☐ Yes ☒ No

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not applicable.

Development of the Regulation

9. 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 mid-April the department sent an email to stakeholders informing them that the rules have been posted to the department webpage for a two week comment period. Drafts of the rules have remained online for review since then. Stakeholders included; consumer groups and associations such as the Ohio Association of Health Plans, the Ohio Insurance Agents Association, the National Association of Insurance and Financial Advisors, and the Ohio Insurance Underwriters Association, as well as insurance companies.

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

The department received no comments from stakeholders regarding these rules.

11. 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.

For 3901-6-14 specifically, the 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. Interested parties then worked with the NAIC to draft an amendment which was adopted by the NAIC working group in early March 2018. These amendments have been implemented into 3901-6-14.

These standards are in effect and are known throughout the regulated community, and the department continues to monitor national trends and discussions with industry leaders.

12. 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? *Alternative regulations may include performance based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

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.

13. 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.

14. 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

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

- a. Identify the scope of the impacted business community; and
- b. Quantify and identify the nature of the adverse impact (e.g., fees, fines, employer time for compliance).

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.

16. Are there any proposed changes to the rule(s) that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors.*)

Proposed amendments will reduce regulatory restrictions.

17. 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

18. 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.

19. 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.

20. 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.