



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Loretta Medved, Ohio Department of Insurance

FROM: Ethan Wittkorn, Regulatory Policy Advocate

DATE: November 24, 2020

RE: CSI Review – Suitability in Annuity Transactions (OAC 3901-6-13)

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This Ohio Department of Insurance (Department) rule package consists of one amended rule. The rule was submitted to the CSI Office on October 7, 2020, and the public comment period was open through October 23, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on October 7, 2020.

The rule covers the sale of annuities to consumers and serves to ensure that annuities sold to consumers are products appropriate for them. The rule was initially adopted as part of the National Association of Insurance Commissioners' (NAIC) model regulations setting a standard of suitability for annuities. In 2017, the NAIC started a working group to update this regulation and enhance standards of annuity sales so that consumers are provided information to better understand the products that they are purchasing, are made aware of conflicts of interest, and can be confident that insurers are not placing their financial interests above that of the consumer.

Proposed amendments include adding definitions for "cash compensation," "consumer profile information," "intermediary," "material conflict of interest," "non-cash compensation," "financial

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professional,” “comparable standards,” and “non-guaranteed elements.” Further amendments are proposed to clarify the role of insurance agents to act in the best interest of consumers, adjust the definition of “insurance agent” to include insurers without the involvement of an agent, add exclusions to what entails a recommendation, replace language about recommendations from the duties of an insurer with provisions about interest and disclosure obligations, update references, add language on the role of insurers to recommend effective annuities to consumers, establish procedures for insurers, and add training requirements.

During the period of early stakeholder outreach, the Department worked with the NAIC and stakeholders from 2017 through 2020 when the model regulation was adopted by the NAIC. Subsequently, the proposed rule was shared with the Association of Ohio Life Insurance Companies, American Council of Life Insurers (ACLI), Ohio Insurance Agents Association, Independent Insurance Agents and Brokers of America, The Council of Insurance Agents and Brokers, National Association of Insurance and Financial Advisors the Ohio Chapter of the American Fraternal Alliance, the Ohio Insurance Institute, Insured Retirement Institute (IRI), and American International Group. The Department received several suggestions that were included in the rules to make organizational updates.

During the CSI public comment period, the Department received comments from The National Association for Fixed Annuities, the ACLI, the IRI, and Nationwide Insurance. These comments led to updates that allow for a six-month delay of the implementation of the rules following the effective date to accommodate needs of stakeholders. Additionally, stakeholders requested that the Department issue guidance on the NAIC model regulation that incorporates frequently asked questions, which is currently being drafted by the NAIC. The Department stated that when that material is made available by the NAIC, they intend to review it and continue a dialogue with stakeholders to provide the requested guidance.

Impacted communities include insurance companies and agents that sell annuities in Ohio. Potential adverse impacts identified by the Department include requirements for training, disclosure form submission, continuing education, providing resources such as printed copies of policies and disclosures, and staff time to explain policies to consumers. The Department states that the rules are necessary to protect consumers, and to stay in compliance with federal requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Department should proceed in filing the proposed rule with the Joint Committee on Agency Rule Review.