

ACTION: Original

DATE: 08/30/2023 3:41 PM

STATE OF OHIO
DEPARTMENT OF INSURANCE
50 West Town Street, 3rd Floor, Suite 300
Columbus, Ohio 43215

IN THE MATTER OF PUBLIC HEARING :
FOR THE RESCISSION OF OHIO : NOTICE OF PUBLIC HEARING
ADMINISTRATIVE CODE SECTION 3901-1-47 :

Pursuant to section 119.03 of the Ohio Revised Code, the Superintendent of Insurance, State of Ohio, will hold a public hearing at 10:00 a.m., on Monday, October 2, 2023, to consider the rescission of Ohio Administrative Code section 3901-1-47 Annuity solicitation.

The public hearing will be conducted remotely by video conferencing coordinated by the Ohio Department of Insurance ("Department"). Instructions and a web link and/or telephone number for accessing the hearing will be provided on the Department's web site, www.insurance.ohio.gov. Alternatively, a request for the web link and/or telephone number may be submitted to ecomment@Insurance.ohio.gov.

The Department is committed to providing access and inclusion and reasonable accommodation in accordance with the Americans with Disabilities Act (ADA) and other applicable laws. To request a reasonable accommodation due to a disability please contact the Department's ADA Coordinator, Andrew Skal, by emailing Andrew.Skal@insurance.ohio.gov or calling 1-614-644-3264 or for TTY 711 (then dial) 614-644-3264. Requests made 14 days prior to an event will generally allow us to provide seamless access, but we will make every effort to meet request made after this date.

The purpose of rule 3901-1-47 is to amplify section 3901.21 of the Revised Code as it relates to the solicitation of annuities and to specify the disclosure statement to be used in conjunction with the sale of single premium deferred annuities.

Rule 3901-1-47 is being reviewed as part of the agency five-year rule review. The rule is being rescinded to eliminate duplicity and further streamline the sale of annuities.

Requests for copies of these rules should be addressed to Tina Chubb, Ohio Department of Insurance, 50 West Town Street, 3rd Floor, Suite 300, Columbus, Ohio 43215, or proposed rules can be viewed online at www.insurance.ohio.gov.

Matthew Walsh, Staff Attorney

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Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 3901-1-47

Rule Type: Rescission

Rule Title/Tagline: Annuity solicitation.

Agency Name: Department of Insurance

Division:

Address: 50 W Town Street Suite 300 Columbus OH 43215

Contact: Tina Chubb **Phone:** (614) 728-1044

Email: Tina.Chubb@insurance.ohio.gov

I. Rule Summary

1. Is this a five year rule review? Yes
 - A. What is the rule's five year review date? 8/30/2023
2. Is this rule the result of recent legislation? No
3. What statute is this rule being promulgated under? 119.03
4. What statute(s) grant rule writing authority? 3901.041
5. What statute(s) does the rule implement or amplify? 3901.21
6. Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires? No
 - A. If so, what is the citation to the federal law or rule? Not Applicable
7. What are the reasons for proposing the rule?

This rule is being reviewed as a part of the agency five-year rule review.
8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

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Rule Number: **3901-1-47**

Rule 3901-1-47 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).

The rule is being rescinded to eliminate duplicity and further streamline the sale of annuities.

9. **Does the rule incorporate material by reference?** No
10. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

Not Applicable

11. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

12. **Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

0.00

Not applicable.

13. **What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Not applicable.

14. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

15. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

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16. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.

Not applicable.

III. Common Sense Initiative (CSI) Questions

17. Was this rule filed with the Common Sense Initiative Office? Yes

18. Does this rule have an adverse impact on business? Yes

- A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes

The rule applies to companies authorized in the sale of annuities.

- B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No

- C. Does this rule require specific expenditures or the report of information as a condition of compliance? No

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

- A. How many new regulatory restrictions do you propose adding to this rule? 0

- B. How many existing regulatory restrictions do you propose removing from this rule? 6

(C) - Shall

(C) - Must

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(C) - shall

(C)- require

appendix - must

appendix - must

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**
- D. Please justify the adoption of the new regulatory restriction(s).**

Not Applicable

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TO BE RESCINDED

3901-1-47 **Annuity solicitation.**

(A) Authority

This rule is issued pursuant to section 3901.041 of the Revised Code.

(B) Purpose

The purpose of this rule is to amplify section 3901.21 of the Revised Code as it relates to the solicitation of annuities and to require the use of a disclosure statement in conjunction with the sale of single premium deferred annuities.

(C) Rule

No annuity shall be advertised or solicited using any language in advertisements or solicitation material of any kind that refers to the annuity as being "risk free," or "guaranteed safe," or using any language with a similar connotation.

At the time an application is taken for a single premium deferred annuity, a disclosure form must be executed by the applicant and the selling agent and attached to the application.

The disclosure language shall be in the exact form as set forth in appendix I of this rule.

(D) Severability

Each paragraph of this rule and every part of each paragraph is an independent section and part of a section, and the holding of any section or a part thereof to be unconstitutional, void, or ineffective for any clause does not affect the validity or constitutionality of any other section or part thereof.

(E) Effective Date

The effective date of this rule is December 14, 1985.

3901-1-47

TO BE RESCINDED

2

Effective:

Five Year Review (FYR) Dates: 8/30/2023

Certification

Date

Promulgated Under: 119.03
 Statutory Authority: 3901.041
 Rule Amplifies: 3901.21
 Prior Effective Dates: 12/14/1985

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RESCINDED

Appendix
3901-1-47

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3901-1-47

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APPENDIX I

SINGLE PREMIUM DEFERRED ANNUITY DISCLOSURE FORM

IMPORTANT: Read this form carefully before buying this annuity.

1. A single premium deferred annuity (SPDA) is an insurance product (with certain investment features) which, under current federal tax laws, allows the buyer to accrue interest for a period of years without having to pay tax on the interest until he cashes the annuity or arranges to receive regular payments.
2. This annuity is NOT “risk free” or “guaranteed safe.” It is only as sound as the issuing insurance company.
3. From the beginning of this annuity contract the insurance company guarantees an interest rate of _____% for a period of _____ month(s) or _____ year(s).

(Selling agent must fill in all blanks if applicable; if not applicable, write “N/A”.)

Subsequent interest guarantees are as follows:

4. Early cash surrender of this annuity may result in your being charged a penalty.
5. The selling agent earns a commission on the sale of this annuity which he may have to pay back to the company if you cash in your annuity early.
6. This form must be completed at the time the application for the SPDA is taken and must be attached to the application.

Buyer’s Signature _____ Date _____

Seller’s Signature _____ Date _____

[No other language shall be printed or written on this page.]

ACTION: Original
CSI – Business Impact Analyst

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Common Sense
Initiative

Mike DeWine, Governor

Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

RESCINDED RULES

This form is intended for rules that are being permanently rescinded and not replaced by a new rule. *New, Amended, No Change, and Rescind/New rules must use the standard BIA.*

Agency Name: Ohio Department of InsuranceRule Contact Name: Loretta MedvedRule Contact Information: loretta.medved@insurance.ohio.govRegulation/Package Title *a general description of the rules' substantive content*:Annuity solicitation.Rule Number(s): 3901-1-47Date of Submission for CSI Review: June 26, 2023Public Comment Period End Date: July 12, 2023, 12:00AM

Rule Type/Number of Rules:

☒ Rescinded/ 1 rules (FYR? 2023)

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 require 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 describe in plain language the regulation that is being rescinded.
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).
3. Why is the regulation being rescinded?
Please be specific (ORC change, request from stakeholders, etc.)
The department received a request from The Association of Ohio Life Insurance Companies (AOLIC) to rescind the rule.
4. Please describe in general terms the adverse impacts to business, including currently impacted industries, in the existing rule(s).
This rule requires a specific disclosure that is not required in other jurisdictions and is therefore burdensome to multi-state business.

5. Are there other regulations (either existing or to be created) which will replace the regulation being rescinded or which will now apply because this regulation is being rescinded? This can include rules, statute, federal regulations, agency policies, or industry standards etc.

Generally, Chapter 6 rules speak to the solicitation and sale of annuities. Collectively these rules work to ensure that effective and competitive annuity products are marketed and sold in a transparent and stable market. SPDA products are a part of the annuity umbrella and therefore solicitation standards remain in place.

6. Does the rescission of this regulation eliminate flexibility or create more adverse impacts for stakeholders? ☐ Yes ☒ No

If yes, please describe stakeholder outreach and justify the impacts.

Not applicable.

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**Common Sense
Initiative****Mike DeWine**, Governor
Jon Husted, Lt. Governor**Joseph Baker**, Director**MEMORANDUM**

TO: Loretta Medved, Ohio Department of Insurance

FROM: Michael Bender, Business Advocate

DATE: August 2, 2023

RE: **CSI Review – Annuity Solicitation (OAC 3901-1-47)**

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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of one rescinded rule proposed by the Ohio Department of Insurance (ODI) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on June 26, 2023, and the public comment period was held open through July 12, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on June 26, 2023.

Ohio Administrative Code (OAC) 3901-1-47 prohibits annuities from being advertised or solicited as “risk free” or “guaranteed safe” and requires a disclosure form to be executed in conjunction with an application for a single premium deferred annuity (SPDA). The rule is rescinded as it requires a specific disclosure that is not required in other jurisdictions and is therefore burdensome to multi-state business.

During early stakeholder outreach, ODI received a request from the Association of Ohio Life Insurance Companies to rescind the rule. No comments were received during the CSI public comment period.

The business community impacted by the rule includes insurance companies and agents selling

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

CSIPublicComments@governor.ohio.gov

annuities. The adverse impacts created by the rule include providing proper disclosure and prohibitions on certain advertising and soliciting activities. ODI notes that OAC 3901-6 still regulates the solicitation and sale of annuities to ensure that effective and competitive annuity products are marketed and sold in a transparent and stable market. ODI states that SPDA products fall under the annuity category, meaning solicitation standards remain in place.

Recommendations

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

Conclusion

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



Mike DeWine, Governor | Judith L. French, Director
Jon Husted, Lt. Governor

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50 West Town Street
Third Floor – Suite 300
Columbus, OH 43215-4186
614-644-2658
insurance.ohio.gov

MEMORANDUM

To: Michael Bender, Business Advocate, Common Sense Initiative Office
CC: Joseph Baker, Director of the Common Sense Initiative Office
From: Loretta Medved, Policy Analyst
Date: August 22, 2023
Re: Response to CSI Review – Rescind 3901-1-47

On August 2, 2023, the Ohio Department of Insurance (the Department) received the Recommendation Memorandum (CSI Recommendation) from the Common Sense Initiative Office for rescinding rule 3901-1-47.

The CSI Recommendation stated that the office does not have any recommendations regarding this rule package, and therefore should proceed with a formal filing of the rule.

At this time, the Department plans to move forward with the filing of this rule with the Joint Committee on Agency Rule Review.

If you have any questions, please contact Loretta Medved at 1-614-644-0239 or Loretta.Medved@insurance.ohio.gov.