

ACTION: Original

DATE: 08/31/2023 8:18 AM

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 3901-6-02

Rule Type: Rescission

Rule Title/Tagline: Correlated sales of life insurance and mutual funds or other securities.

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? 8/31/2023
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, 3901.21, 3901.212
5. What statute(s) does the rule implement or amplify? 3901.19 to 3901.26, 3915.14, 3999.04, 3999.05, 3999.08, 3999.10
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.

The purpose of this rule is to establish minimum standards for the form of proposals and statements used to solicit, service, or collect premiums for life insurance which is sold in correlation with a mutual fund or other security.

Rule is being rescinded to new per the fifty per cent filing guideline. The proposed amendments will reduce regulatory restrictions and make the rule easier for the public to read and understand.

9. **Does the rule incorporate material by reference?** Yes
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.**

Rule cites section of the Ohio Revised Code exempt under R.C. 121.75(A)(1).

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?**

The nature of any adverse impact from this rule would be employee time for compliance. This rule implements existing nationwide standards for proposals provided to prospective consumers related to the sale of insurance so any regulated entity would already have compliance programs in place as part of their ordinary business operations to meet those standards.

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
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

This rule requires a dual license. A person must be licensed and appointed as a life insurance agent in accordance with the provisions of sections 3905.02 and 3905.20 of the Revised Code. In some cases, they must also be licensed to sell securities by the Ohio Department of Commerce in accordance with Chapter 1707. of the Revised Code.

- 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? Yes

A violation of this rule shall subject companies or persons to a fine, revocation or suspension of their license to do business; a denial of the renewal of their license to do business; to proceedings under section 3999.08 of the Revised Code relating to misrepresentations; and to proceedings under Chapter 3901. of the Revised Code relating to unfair methods of competition and unfair and deceptive acts and practices.

- 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

Rule implements existing nationwide standards for proposals provided to prospective consumers related to the sale of insurance so any regulated entity

would already have compliance programs in place as part of their ordinary business operations to meet those standards.

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? 15

(B) - shall

(B)(1)(a) - shall

(C) - shall

(D) - shall

(D) - must

(E) - Must

(F) - Must

(G) - must

(G)(5) - must

(H) - must

(H) - shall

(I)(1) - shall

(I)(1) - shall

(J) - shall

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(L) - shall

- 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

3901-6-02 Correlated sales of life insurance and mutual funds or other securities.**(A) Purpose**

This rule is issued by the superintendent of insurance pursuant to section 3901.041 of the Revised Code, which empowers the superintendent "... to adopt, amend and rescind rules and to make adjudications necessary to discharge his duties and exercise his powers ..." under various sections of the Revised Code, subject to sections 119.01 to 119.13 of the Revised Code. This rule implements sections 3901.21, 3901.99, 3905.02, 3905.20, 3909.07, 3911.20, 3911.22, 3911.23, 3911.24, 3915.14, 3999.08, and 3999.11 of the Revised Code by establishing minimum standards for the form of proposals and statements used to solicit, service, or collect premiums for life insurance which is sold in correlation with a mutual fund or other security.

(B) Applicability

This rule shall apply:

- (1) To acts and practices in the advertising promotion, solicitation, negotiation of or effecting the sale of:
 - (a) Life insurance policies (which term shall include annuity contracts for purposes of this rule) in correlation with the sales of shares of a mutual fund or other security;
 - (b) Contracts which contemplate the purchase of a life insurance policy in correlation with the sale of shares of a mutual fund or other security;
- (2) To any acts and practices, whether they involve the use of language disseminated by means of sales kits, policy jackets or covers, letters, personal presentations, visual aids and other sales media in connection with the solicitation, sale, servicing or collection of premiums for life insurance in correlation with a mutual fund or other security engaged in by any insurance company, agent, or person, defined as an individual, corporation, partnership, association, trust, or fund.

As used in this rule, "security" shall have the same meaning as set forth in Chapter 1707. of the Revised Code, and shall mean, in addition, participation in common trust funds of any financial institution.

(C) Statement of policy

3901-6-02

TO BE RESCINDED

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There shall be full disclosure of relevant facts in the sale of life insurance in correlation with the sale of shares of a mutual fund or other security. Accordingly, this rule sets forth certain proposed procedures and requirements establishing minimum standards for disclosure of information in sales of life insurance and mutual fund shares or other securities.

(D) Responsibility of company and agent

No insurance company, agent, or person to whom this rule applies shall make, in connection with correlated sales of life insurance and mutual fund shares or other securities, a proposal or billing other than in accordance with the requirements of this rule. Every such company must inform its agents of the requirements of this rule.

(E) Tie-in sales

The agent, at the commencement of and throughout the sales presentation, must fully disclose to the purchaser that he has the right to purchase life insurance only, mutual fund shares or other securities only, or both life insurance and mutual fund shares or other securities.

(F) Written proposal

In any solicitation of an offer to buy, or in any sale of life insurance in correlation with the sale of shares of a mutual fund or other security, the prospect or policyholder must be furnished a copy of a clear and unambiguous written proposal not later than at the time the solicitation or proposal is made. A copy of such written proposal shall be kept on file by the agent, or by the company if no agent is involved.

(G) Contents of proposal

Any proposal referred to in this rule must:

- (1) Be dated and signed by the insurance agent;
- (2) State the name of the company in which the life insurance is to be written;
- (3) State that the purchaser has the right to purchase life insurance only, mutual fund shares or other securities only, or both life insurance and mutual fund shares or other securities;
- (4) Contain no misrepresentations or false, deceptive or misleading words, figures or statements. It must be accurate and complete and state all facts without which the proposal would have the capacity or tendency to mislead or deceive;

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TO BE RESCINDED

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- (5) Show the premium charge for life insurance separately from any other charge;
- (6) If values which may accrue prior to the death of the insured are involved in the presentation, show the value of the life insurance policy separately from any other values;
- (7) Show, if it is involved in the presentation, the amount of the death benefit for the life insurance separately from any other benefit which may accrue upon the death of the insured;
- (8) Set forth all matters pertaining to life insurance separately from any matter not pertaining to life insurance;
- (9) Set forth policy numbers, name of company, face values and cash values of all existing policies of the insured, indicating those policies which are to be surrendered if the proposal is accepted.

(H) Statement to be separate

Any bill, statement, draft, or representation sent or delivered to any prospect or policyholder must show the premium charge for the life insurance and any other information mentioned concerning life insurance separate from any other charges or values shown in the same billing, but nothing in this section shall prevent the total of the premium charge for life insurance with any other charges or values shown in the same billing to arrive at the total billing charge.

(I) Maintenance of advertising and other sales material files by company

(1) File of advertising and other sales material:

Each insurance company to whom this rule applies shall maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement, advertising material, sales literature and sales aid of any other kind used in connection with the correlated sale of life insurance and mutual fund shares or other securities as may hereafter be prepared or disseminated in this state, with a notation attached to each such piece of material which shall indicate the manner and extent of distribution, the nature of use and the form number of any policy issued in connection with such correlated plan and such document. Such file shall be subject to regular and periodical inspection by this department. All such material shall be maintained in said file for a period of not less than three years.

(J) Exclusion

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The provisions of this rule shall not apply to any arrangement for the correlated purchase of life insurance and mutual fund shares or other securities which arrangement would be deemed a "security" as defined by the Securities Act of 1933 or the Ohio Securities Act of July 22, 1929 (Chapter 1707. of the Revised Code). However, any sales literature and contract to purchase life insurance in connection with such arrangement shall be furnished to the department of insurance prior to the sale of any life insurance under such arrangement.

(K) Dual license required

No person shall solicit an offer to buy or a sale of life insurance in correlation with a sale of shares of a mutual fund or other security unless he is licensed and appointed as a life insurance agent in accordance with the provisions of sections 3905.02 and 3905.20 of the Revised Code and is also licensed to sell securities by the division of securities of the department of commerce, state of Ohio, in accordance with Chapter 1707. of the Revised Code.

(L) Violation

Companies or persons in violation of this rule shall be subject to fine, revocation or suspension of license to do business, denial of renewal of license to do business, to proceedings under section 3999.08 of the Revised Code relating to misrepresentations and to proceedings under Chapter 3901. of the Revised Code relating to unfair methods of competition and unfair and deceptive acts and practices.

(M) 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 cause does not affect the validity or constitutionality of any other section or part thereof.

3901-6-02

TO BE RESCINDED

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Effective:

Five Year Review (FYR) Dates: 8/31/2023

Certification

Date

Promulgated Under: 119.03
 Statutory Authority: 3901.041, 3901.21, 3901.212
 Rule Amplifies: 3901.19 to 3901.26, 3915.14, 3999.04, 3999.05, 3999.08, 3999.10
 Prior Effective Dates: 05/01/1965, 10/01/1997, 03/28/2004, 11/14/2008

ACTION: Original

CSI – Business Impact Analyst

DATE: 08/31/2023 8:18 AM



Common Sense Initiative

Mike DeWine, Governor

Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

Agency 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):

Chapter 3901-6 Disclosures - and Chapter 3901-4 Record RetentionRule Number(s): 3901-6-02, 3901-6-05, 3901-6-13, 3901-4-03Date of Submission for CSI Review: June 26, 2023Public Comment Period End Date: July 12, 2023, 12:00AM

Rule Type/Number of Rules:

- | | | | |
|--|----------------------|-------------------------------------|---------------|
| <input type="checkbox"/> New/ | rules | <input type="checkbox"/> No Change/ | rules (FYR?) |
| <input checked="" type="checkbox"/> Amended/ | 4 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 3901-6-02: 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. Proposed amendments will reduce regulatory restrictions and make necessary technical corrections.

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 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. Proposed amendments will reduce regulatory restrictions.

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. There are no proposed amendments.

3901-4-03: Insurance agents often have to take continuing education and training credits regarding various insurance products. This rule sets forth the requirements insurers must follow to maintain records of their insurance agent's education and training credits on long-term care insurance. Proposed amendments will reduce regulatory restrictions and make necessary 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)?

Chapter 6: 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.

Rule 3901-4-03: The public purpose of this rule is to ensure that insurers are keeping adequate and up to date records of agents education and training courses concerning long-term care insurance.

7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Chapter 6: 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.

Rule 3901-4-03: The department will not see an increase in insurers improperly retaining records concerning continuing education credits.

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 late April and early May, 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 a comment from The Association of Ohio Life Insurance Companies (AOLIC) requesting additional amendments to rule 3901-6-05. AOLIC believes that the adoption of newer, more robust regulations such as best interest standards and annuity suitability, address the same issue that the Replacement Rule addresses for annuities and creates duplicative requirements.

The department reviewed the comment internally and requested a red line draft from AOLIC indicating the areas of concern and desired amendments. The department reviewed the red line and determined that the conceptual idea of the "replacement" product would eliminate certain consumer protections on disclosures to the consumer that the other rules do not specify. The department then met with AOLIC and member John Gruber to discuss moving forward. AOLIC reiterated that specific forms required by 3901-6-05 are burdensome, the department agreed to continue the conversation with AOLIC during the CSI process with the goal of removing duplicative and unnecessary regulations while maintaining protections to the consumer.

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 Chapter 6 rules listed 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.

Rule 3901-4-03: This rule was developed to create consumer protections by establishing requirements that insurers must maintain education and training records of their agents who are selling long-term care insurance products. Specifics were derived from interested party discussion and evaluating trends in consumer complaints.

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.*

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.

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. The regulation of long-term care insurance products, the partnership program and the regulation of agent education and training records retention is exclusive to the department and the rules do not duplicate any other rules or statute.

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.

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.

Rule 3901-4-03: Continuing education retention requirements are discussed during agent continuing education classes that all licensed agents are required to take.

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.

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.

Rule 3901-4-03: Insurance companies and agents that sell long-term care insurance products will be impacted by this rule. Since this rule is already in existence, staff time and resources required to meet the requirements have already been accounted for.

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.*)

17. 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.

Rule 3901-4-03: The rule places requirements on insurers to ensure that agents who sell long-term care insurance products are properly trained and educated.

Regulatory Flexibility

18. 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.

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?

Minor errors would be handled by advising the agent or insurer and giving them an opportunity to remedy the omission.

20. 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 web site.

ACTION: Original

DATE: 08/31/2023 8:18 AM



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 30, 2023

RE: CSI Review – Disclosures and Record Retention (OAC 3901-4-03, 3901-6-02, 3901-6-05, and 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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of three amended rules and one no-change 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 rules filed with the CSI Office on June 26, 2023.

Ohio Administrative Code (OAC) 3901-4-03 requires insurers to maintain records of their agents' initial training and continuing education concerning long-term care insurance. The rule is amended to update language and the rule title, add clarifying language, and include a severability provision. OAC 3901-6-02 establishes minimum standards for the form of proposals and statements used to solicit, serve, or collect premiums for life insurance sold as part of a mutual fund or other security. The rule is amended to add clarifying language and update language and citations. OAC 3901-6-05 establishes minimum standards for insurers with respect to the replacement of existing life insurance and annuities. The rule is amended to update language. Three appendices referenced in the rule are

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also provided and contain notices regarding the replacement of life insurance or annuities. OAC 3901-6-13 requires insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are met.

During early stakeholder outreach, ODI posted the draft rules on its website and emailed stakeholders in late April and early May 2023 informing them of a two-week comment period. The 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, in addition to insurance companies. The Association of Ohio Life Insurance Companies (AOLIC) asserted that OAC 3901-6-05 created requirements for annuities duplicative of 3901-6-13. ODI requested that AOLIC submit a red line draft indicating desired changes. Upon reviewing the red line draft from AOLIC, ODI determined that it would eliminate certain consumer protections with respect to disclosures. ODI then held a meeting with AOLIC where the latter indicated that the specific forms required by the rules were burdensome. Despite not making any changes to the rules, ODI agreed to work with AOLIC going forward to remove duplicative and unnecessary regulations while maintaining consumer protections. During the CSI public comment period, ODI received a comment from AOLIC restating its concerns regarding duplicative requirements. ODI informed AOLIC that OAC 3901-6-05 and 3901-6-13 are based off of the Life Insurance and Annuities Replacement Model Regulation and the Suitability in Annuity Transactions Model Regulation, respectively, which are published by the National Association of Insurance Commissioners (NAIC). According to ODI, the NAIC acknowledges the overlap between these two models. Consequently, ODI declined to make any additional changes to the rules.

The business community impacted by the rules includes insurance companies that sell life and annuity products as well as insurance companies and agents that sell long-term care insurance products. The adverse impacts created by the rules include providing disclosure to consumers, following minimum standards, and recordkeeping. ODI notes that companies are already meeting the provisions of the rules and will take on no additional impacts as a result of the revisions. ODI states that the adverse impacts to business are justified to prevent consumers from facing significant financial harm and ensure the proper training and education of insurance agents.

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 rules with the Joint Committee on Agency Rule Review.



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

DATE: 08/31/2023 8:18 AM

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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 30, 2023

Re: Response to CSI Review – CSI Review – Disclosures and Record Retention (OAC 3901-4-03, 3901-6-02, 3901- 6-05, and 3901-6-13)

On August 30, 2023, the Ohio Department of Insurance (the Department) received the Recommendation Memorandum (CSI Recommendation) from the Common Sense Initiative Office for rule the packages containing the following rules; 3901-4-03, 3901-6-02, 3901-6-05, 3901-6-13.

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 package.

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

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

Accredited by the National Association of Insurance Commissioners (NAIC)

Consumer Hotline: 1-800-686-1526 Fraud Hotline: 1-800-686-1527 OSHIP Hotline: 1-800-686-1578
TDD Line: (614) 644-3745

(Printed in-house)

ACTION: Original

DATE: 08/31/2023 8:18 AM

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 3901-6-02

Rule Type: New

Rule Title/Tagline: Correlated sales of life insurance and mutual funds or other securities.

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? No
 - A. What is the rule's five year review date?
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, 3901.21, 3901.212
5. What statute(s) does the rule implement or amplify? 3901.19 to 3901.26, 3915.14, 3999.04, 3999.05, 3999.08, 3999.10
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.

The purpose of this rule is to establish minimum standards for the form of proposals and statements used to solicit, service, or collect premiums for life insurance which is sold in correlation with a mutual fund or other security.

Rule is being rescinded to new per the fifty per cent filing guideline. The proposed amendments will reduce regulatory restrictions and make the rule easier for the public to read and understand.

9. **Does the rule incorporate material by reference?** Yes
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.**

Rule cites section of the Ohio Revised Code exempt under R.C. 121.75(A)(1).

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?**

The nature of any adverse impact from this rule would be employee time for compliance. This rule implements existing nationwide standards for proposals provided to prospective consumers related to the sale of insurance so any regulated entity would already have compliance programs in place as part of their ordinary business operations to meet those standards.

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
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

This rule requires a dual license. A person must be licensed and appointed as a life insurance agent in accordance with the provisions of sections 3905.02 and 3905.20 of the Revised Code. In some cases, they must also be licensed to sell securities by the Ohio Department of Commerce in accordance with Chapter 1707. of the Revised Code.

- 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? Yes

A violation of this rule shall subject companies or persons to a fine, revocation or suspension of their license to do business; a denial of the renewal of their license to do business; to proceedings under section 3999.08 of the Revised Code relating to misrepresentations; and to proceedings under Chapter 3901. of the Revised Code relating to unfair methods of competition and unfair and deceptive acts and practices.

- 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

Rule implements existing nationwide standards for proposals provided to prospective consumers related to the sale of insurance so any regulated entity

Page 4

Rule Number: 3901-6-02

would already have compliance programs in place as part of their ordinary business operations to meet those standards.

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? 15

(B) - shall

(B)(1)(a) - shall

(C) - shall

(D) - shall

(D) - must

(E) - Must

(F) - Must

(G) - must

(G)(5) - must

(H) - must

(H) - shall

(I)(1) - shall

(I)(1) - shall

(J) - shall

Page 5

Rule Number: **3901-6-02**

(L) - shall

- 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

ACTION: Original

DATE: 08/31/2023 8:18 AM

3901-6-02**Correlated sales of life insurance and mutual funds or other securities.****(A) Purpose**

The purpose of this rule is to establish minimum standards for the form of proposals and statements used to solicit, service, or collect premiums for life insurance which is sold as part of a mutual fund or other security.

(B) Authority

This rule is promulgated pursuant to the authority invested in the superintendent under sections 3901.041, 3901.21, and 3901.212 of the Revised Code.

(C) Applicability

This rule applies to:

(1) Acts and practices in the advertising promotion, solicitation, negotiation of, or effecting the sale of:

(a) A life insurance policy or annuity contract that is part of the sales of shares of a mutual fund or other security, or

(b) A contract that assumes or requires the purchase of a life insurance policy as part of the sale of shares of a mutual fund or other security.

(2) Any acts and practices related to the solicitation, sale, servicing, or collection of premiums for a life insurance policy or annuity contract that is part of the sale of shares of a mutual fund or other security by an insurance company, agent, person, corporation, partnership, association, trust, or fund, including language disseminated by means of sales kits, policy jackets or covers, letters, personal presentations, visual aids and other sales media.

As used in this rule, "security" has the same meaning as set forth in division (B) of section 1707.01 of the Revised Code as well as participation in common trust funds of any financial institution.

(D) Responsibility of company and agent

Any proposal or billing from an insurance company, agent, or person to whom this rule applies in connection with correlated sales of a life insurance policy or annuity contract that is part of the sale of shares of a mutual fund or other securities is subject to this rule. Every insurance company will ensure that its agents comply with this rule.

3901-6-02

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(E) Tie-in sales

A customer's or prospective purchaser's right to purchase a life insurance policy or annuity contract only, shares of a mutual fund or other securities only, or both a life insurance policy or annuity contract and shares of a mutual fund or other securities is to be fully disclosed by an agent at the commencement of and throughout any sales presentation for a life insurance policy or annuity contract sold as part of the sale of shares of a mutual fund or other security.

(F) Written proposal

A clear and unambiguous written proposal to a consumer or prospective purchaser of a life insurance policy or annuity contract sold as part of the sale of shares of a mutual fund or other security is to be provided by an agent not later than at the time the solicitation or proposal is made. A copy of that written proposal is to be retained by the agent or insurance company in accordance with paragraph (I) of this rule.

(G) Contents of proposal

Any proposal created according to this rule will:

- (1) Be dated and signed by the insurance agent or company;
- (2) State the name of the insurance company in which the life insurance policy or annuity contract is to be written;
- (3) State that the purchaser has the right to purchase the life insurance policy or annuity contract only, mutual fund shares or other securities only, or both the life insurance policy or annuity contract and mutual fund shares or other securities;
- (4) Accurately and completely state all facts related to the life insurance policy or annuity contract sold as part of the sale of shares of a mutual fund or other security;
- (5) Be free from any misrepresentations or false, deceptive, or misleading words, figures or statements that could independently or collectively have the capacity or tendency to mislead or deceive;
- (6) Show the premium for the life insurance policy or annuity contract separately from any other charge;

3901-6-02

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- (7) If values which may accrue prior to the death of the insured or contract holder are involved in the presentation, show the value of the life insurance policy or annuity contract separate from any other values;
- (8) If a death benefit is involved in the presentation, show the amount of the death benefit for the life insurance policy or annuity contract separate from any other benefit which may accrue upon the death of the insured or contract holder;
- (9) Set forth all matters pertaining to the life insurance policy or annuity contract separate from any matter not pertaining to the life insurance policy or annuity contract; and
- (10) Set forth policy numbers, name of company, face values, and cash values of all existing policies or annuity contracts of the insured or contract holder, respectively, indicating those policies or annuity contracts to be surrendered if the proposal is accepted.

(H) Statement to be separate

The premium for the life insurance policy or annuity contract is to be itemized and shown separate from any other itemized charges or values listed in any bill, statement, draft, or representation sent or delivered to any prospect, policyholder, or contract holder. However, nothing in this rule requires the total premium for the life insurance policy or annuity contract to be further itemized.

(I) Maintenance of advertising and other sales material files by company

Every insurance company subject to this rule is required to retain all advertising or other sales materials used in connection with the sale of a life insurance policy or annuity contract as part of the sale of shares of a mutual fund or other securities with a notation attached thereto that indicates the manner and extent of distribution, nature of use, and form number of any policy issued in connection with the applicable correlate plan, including every printed, published, or prepared advertisement, advertising material, sales literature, and sales aid of any other kind. Such records are to be retained for at least three years and are subject to regular and periodic inspection by this department. The records are to be made available for inspection at the insurance company's home or principal office.

(J) Exclusion

This rule does not apply to any arrangement for the correlated sale of a life insurance policy or annuity contract as part of the sale of share of a mutual fund or other securities that would be a "security" as defined by the Securities Act of 1933 or the Ohio Securities Act of July 22, 1929 (Chapter 1707. of the Revised Code). However,

3901-6-02

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any sales literature and contract to purchase a life insurance policy or annuity contract in connection with an arrangement for the correlated sale of a life insurance policy or annuity contract is subject to the requirements in Chapter 3905. of the Revised Code.

(K) Dual license required

No person shall sell, solicit, or negotiate insurance that is part of a sale of shares of a mutual fund or other security unless that person is licensed and appointed as an insurance agent in accordance with sections 3905.02 and 3905.20 of the Revised Code and licensed by the division of securities of the department of commerce, state of Ohio, in accordance with Chapter 1707. of the Revised Code.

(L) Violation

A violation of this rule is an unfair and deceptive practice under sections 3901.19 to 3901.26 of the Revised Code and misrepresentation under section 3999.08 of the Revised Code.

(M) Severability

If any portion of this rule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or related rules which can be given effect without the invalid portion or application, and to this end the provisions of this rule are severable.

3901-6-02

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Replaces: 3901-6-02

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03
 Statutory Authority: 3901.041, 3901.21, 3901.212
 Rule Amplifies: 3901.19 to 3901.26, 3915.14, 3999.04, 3999.05, 3999.08, 3999.10
 Prior Effective Dates: 05/01/1965, 10/01/1997, 03/28/2004, 11/14/2008

ACTION: Original
CSI – Business Impact Analyst

DATE: 08/31/2023 8:18 AM

Common Sense
Initiative

Mike DeWine, Governor

Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

Agency 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):

Chapter 3901-6 Disclosures - and Chapter 3901-4 Record RetentionRule Number(s): 3901-6-02, 3901-6-05, 3901-6-13, 3901-4-03Date of Submission for CSI Review: June 26, 2023Public Comment Period End Date: July 12, 2023, 12:00AM

Rule Type/Number of Rules:

- | | | | |
|--|----------------------|-------------------------------------|---------------|
| <input type="checkbox"/> New/ | rules | <input type="checkbox"/> No Change/ | rules (FYR?) |
| <input checked="" type="checkbox"/> Amended/ | 4 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 3901-6-02: 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. Proposed amendments will reduce regulatory restrictions and make necessary technical corrections.

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 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. Proposed amendments will reduce regulatory restrictions.

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. There are no proposed amendments.

3901-4-03: Insurance agents often have to take continuing education and training credits regarding various insurance products. This rule sets forth the requirements insurers must follow to maintain records of their insurance agent's education and training credits on long-term care insurance. Proposed amendments will reduce regulatory restrictions and make necessary 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)?

Chapter 6: 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.

Rule 3901-4-03: The public purpose of this rule is to ensure that insurers are keeping adequate and up to date records of agents education and training courses concerning long-term care insurance.

7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Chapter 6: 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.

Rule 3901-4-03: The department will not see an increase in insurers improperly retaining records concerning continuing education credits.

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 late April and early May, 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 a comment from The Association of Ohio Life Insurance Companies (AOLIC) requesting additional amendments to rule 3901-6-05. AOLIC believes that the adoption of newer, more robust regulations such as best interest standards and annuity suitability, address the same issue that the Replacement Rule addresses for annuities and creates duplicative requirements.

The department reviewed the comment internally and requested a red line draft from AOLIC indicating the areas of concern and desired amendments. The department reviewed the red line and determined that the conceptual idea of the "replacement" product would eliminate certain consumer protections on disclosures to the consumer that the other rules do not specify. The department then met with AOLIC and member John Gruber to discuss moving forward. AOLIC reiterated that specific forms required by 3901-6-05 are burdensome, the department agreed to continue the conversation with AOLIC during the CSI process with the goal of removing duplicative and unnecessary regulations while maintaining protections to the consumer.

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 Chapter 6 rules listed 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.

Rule 3901-4-03: This rule was developed to create consumer protections by establishing requirements that insurers must maintain education and training records of their agents who are selling long-term care insurance products. Specifics were derived from interested party discussion and evaluating trends in consumer complaints.

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.*

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.

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. The regulation of long-term care insurance products, the partnership program and the regulation of agent education and training records retention is exclusive to the department and the rules do not duplicate any other rules or statute.

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.

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.

Rule 3901-4-03: Continuing education retention requirements are discussed during agent continuing education classes that all licensed agents are required to take.

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.

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.

Rule 3901-4-03: Insurance companies and agents that sell long-term care insurance products will be impacted by this rule. Since this rule is already in existence, staff time and resources required to meet the requirements have already been accounted for.

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.*)

17. 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.

Rule 3901-4-03: The rule places requirements on insurers to ensure that agents who sell long-term care insurance products are properly trained and educated.

Regulatory Flexibility

18. 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.

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?

Minor errors would be handled by advising the agent or insurer and giving them an opportunity to remedy the omission.

20. 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 web site.

ACTION: Original

DATE: 08/31/2023 8:18 AM



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 30, 2023

RE: CSI Review – Disclosures and Record Retention (OAC 3901-4-03, 3901-6-02, 3901-6-05, and 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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of three amended rules and one no-change 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 rules filed with the CSI Office on June 26, 2023.

Ohio Administrative Code (OAC) 3901-4-03 requires insurers to maintain records of their agents' initial training and continuing education concerning long-term care insurance. The rule is amended to update language and the rule title, add clarifying language, and include a severability provision. OAC 3901-6-02 establishes minimum standards for the form of proposals and statements used to solicit, serve, or collect premiums for life insurance sold as part of a mutual fund or other security. The rule is amended to add clarifying language and update language and citations. OAC 3901-6-05 establishes minimum standards for insurers with respect to the replacement of existing life insurance and annuities. The rule is amended to update language. Three appendices referenced in the rule are

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CSIPublicComments@governor.ohio.gov

also provided and contain notices regarding the replacement of life insurance or annuities. OAC 3901-6-13 requires insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are met.

During early stakeholder outreach, ODI posted the draft rules on its website and emailed stakeholders in late April and early May 2023 informing them of a two-week comment period. The 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, in addition to insurance companies. The Association of Ohio Life Insurance Companies (AOLIC) asserted that OAC 3901-6-05 created requirements for annuities duplicative of 3901-6-13. ODI requested that AOLIC submit a red line draft indicating desired changes. Upon reviewing the red line draft from AOLIC, ODI determined that it would eliminate certain consumer protections with respect to disclosures. ODI then held a meeting with AOLIC where the latter indicated that the specific forms required by the rules were burdensome. Despite not making any changes to the rules, ODI agreed to work with AOLIC going forward to remove duplicative and unnecessary regulations while maintaining consumer protections. During the CSI public comment period, ODI received a comment from AOLIC restating its concerns regarding duplicative requirements. ODI informed AOLIC that OAC 3901-6-05 and 3901-6-13 are based off of the Life Insurance and Annuities Replacement Model Regulation and the Suitability in Annuity Transactions Model Regulation, respectively, which are published by the National Association of Insurance Commissioners (NAIC). According to ODI, the NAIC acknowledges the overlap between these two models. Consequently, ODI declined to make any additional changes to the rules.

The business community impacted by the rules includes insurance companies that sell life and annuity products as well as insurance companies and agents that sell long-term care insurance products. The adverse impacts created by the rules include providing disclosure to consumers, following minimum standards, and recordkeeping. ODI notes that companies are already meeting the provisions of the rules and will take on no additional impacts as a result of the revisions. ODI states that the adverse impacts to business are justified to prevent consumers from facing significant financial harm and ensure the proper training and education of insurance agents.

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 rules with the Joint Committee on Agency Rule Review.



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

DATE: 08/31/2023 8:18 AM

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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 30, 2023

Re: Response to CSI Review – CSI Review – Disclosures and Record Retention (OAC 3901-4-03, 3901-6-02, 3901-6-05, and 3901-6-13)

On August 30, 2023, the Ohio Department of Insurance (the Department) received the Recommendation Memorandum (CSI Recommendation) from the Common Sense Initiative Office for rule the packages containing the following rules; 3901-4-03, 3901-6-02, 3901-6-05, 3901-6-13.

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 package.

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

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

Accredited by the National Association of Insurance Commissioners (NAIC)

Consumer Hotline: 1-800-686-1526 Fraud Hotline: 1-800-686-1527 OSHIP Hotline: 1-800-686-1578
TDD Line: (614) 644-3745

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