Rule Summary and Fiscal Analysis
Part A - General Questions

Rule Number: 3901-6-05

Rule Type: Amendment

Rule Title/Tagline: Replacement of life insurance and annuities.

Agency Name: Department of Insurance

Division:

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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

5. **What statute(s) does the rule implement or amplify?** 3901.19 to 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.**

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.

The proposed amendments will reduce regulatory restrictions.

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. <u>Fiscal Analysis</u>

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?**

    Insurance companies that sell life and annuity products are impacted by this rule. 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.

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. <u>Common Sense Initiative (CSI) Questions</u>

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 life insurance and annuity products.

    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

       Violations of this rule shall subject the violators to penalties that may include the revocation or suspension of an agent's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to an agent as a result of the transaction in connection with which the violations occurred. In addition, where the superintendent has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest on the amount refunded in cash.

    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? 16

(C)(1) - shall

(C)(1)(b) - shall

(C)(1)(b) - shall

(C)(5)(c) - shall

(C)(1)(f)(ii) - shall

(C)(1)(f)(ii) - shall

(C)(1)(f)(2) - shall

(C)(1)(f)(2) - shall

(D)(1) - shall

(E)(2) - shall

(F)(1) - shall

(I)(2)(a) - shall

(I)(2)(a) - shall

(J)(1) - shall

(K) – shall not

(K) - 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

3901-6-05 **Replacement of life insurance and annuities.**

(A) Purpose

The purpose of this rule is to:

(1) Regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities.

(2) Protect the interests of life insurance and annuity purchases by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will:

(a) Assure that purchasers receive information with which a decision can be made in ~~his or her~~ the purchaser's own best interest;

(b) Reduce the opportunity for misrepresentation and incomplete disclosure; and

(c) Establish penalties for failure to comply with requirements of this rule.

(B) Authority

This rule is promulgated pursuant to the authority vested in the superintendent under sections 3901.041 and 3901.21 of the Revised Code. This rule implements sections 3901.19 to 3901.221 of the Revised Code.

(C) Scope

(1) Unless otherwise specifically included, this rule ~~shall~~ does not apply to transactions involving:

(a) Credit life insurance;

(b) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance agent. Direct solicitation ~~shall~~ does not include any group meeting held by an insurance agent solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connections with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation ~~shall be~~ are subject to the provisions of paragraph (I) of this rule.

(c) Group life insurance and annuities used to fund prearranged funeral contracts;

(d) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the superintendent; or, when a term conversion privilege is exercised among corporate affiliates;

(e) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(f)

(i) Policies or contracts used to fund:

(a) An employee pension or welfare benefit plan that is covered by the "Employee Retirement and Income Security Act (ERISA)";

(b) A plan described by sections 401(a), 401(k) or 403(b) of the "Internal Revenue Code," where the plan, for the purposes of "ERISA," is established or maintained by an employer;

(c) A governmental or church plan defined in section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the "Internal Revenue Code;" or

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(ii) Notwithstanding paragraph (C)(1)(f)(i) of this rule, this rule ~~shall apply~~ applies to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance agent for the purchase of a contract or policy. As used in this paragraph, direct solicitation ~~shall~~ does not include any group meeting held by an insurance agent solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connections with enrolling that individual employee;

(g) Where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;

(h) Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;

(i) Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this rule; or

(j) Structured settlements.

(2) Registered contracts ~~shall be~~ are exempt from the requirements of paragraphs (G)(1)(b) and (H)(2) of this rule with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular ~~shall be~~ is required instead.

(D) Definitions

As used in this rule:

(1) "Agent" or "insurance agent" means any person that, in order to sell, solicit, or negotiate insurance, is required to be licensed under the laws of this state with a life line of authority. For the purposes of this rule, the term "agent" ~~shall be~~ is defined to include agents, brokers and producers.

(2) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

(3) "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described with the definition of "replacement."

(4) "Existing policy or contract" means an individual life insurance policy (policy) or annuity contract (contract) in force, including a policy under a binding or

conditional receipt or a policy or contract that is within an unconditional refund period.

(5) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or thirteen months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in paragraph (F)(1)(e) of this rule.

(6) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in rule 3901-6-04 of the Administrative Code.

(7) "Policy summary":

(a) For policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information: current death benefit; annual contract premium; current cash surrender value; current dividend; application of current dividend; and amount of outstanding loan.

(b) For universal life policies, means a written statement that shall contain at least the following information: the beginning and end date of the current report period; the policy value at the end of the previous report period and at the end of the current report period; the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders); the current death benefit at the end of the current report period on each life covered by the policy; the net cash surrender value of the policy as of the end of the current report period; and the amount of outstanding loans, if any, as of the end of the current report period.

(8) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

(9) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the "Securities Act of 1933," as amended.

(10) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing agent, or to the proposing insurer if there is no agent, that by reason of the transaction, an existing policy or contract has been or is to be:

(a) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

(b) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(c) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(d) Reissued with any reduction in cash value; or

(e) Used in a financed purchase.

(11) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or agent and used in the presentation to the policy or contract owner related to the policy or contract purchased.

(E) Duties of agents

(1) A agent who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the agent as to whether the applicant has existing policies or contracts. If the answer is "no," the agent's duties with respect to replacement are complete.

(2) If the applicant answered "yes" to the question regarding existing coverage referred to in paragraph (E)(1) of this rule, the agent shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in "Appendix A" to this rule or other substantially similar form approved by the superintendent. However, no approval ~~shall be~~ is required when amendments to the notice are limited to the omission of references not applicable to the product being sold or replaced. The notice shall be signed by both the applicant and the agent attesting that the

notice has been read aloud by the agent or that the applicant did not wish the notice to be read aloud (in which case the agent need not have read the notice aloud) and left with the applicant.

(3) The notice shall list all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(4) In connection with a replacement transaction, the agent shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. With respect to electronically presented sales material, it shall be provided to the policy or contract owner in printed form no later than at the time of policy or contract delivery.

(5) Except as provided in paragraph (G)(3) of this rule, in connection with a replacement transaction the agent shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

(F) Duties of insurers that use agents

Each insurer shall:

(1) Maintain a system of supervision and control to ensure compliance with the requirements of this rule ~~that shall include at least~~ including the following:

(a) Inform its agents of the requirements of this rule and incorporate the requirements of this rule into all relevant agent training manuals prepared by the insurer;

(b) Provide to each agent a written statement of the company's position with respect to the acceptability of replacements providing guidance to its agent as to the appropriateness of these transactions;

(c) A system to review the appropriateness of each replacement transaction that the agent does not indicate is in accordance with paragraph (F)(1)(b) of this rule;

(d) Procedures to confirm that the requirements of this rule have been met; and

(e) Procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or agent. Compliance with this rule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring.

(2) Have the capacity to monitor each agent's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the superintendent of insurance. The capacity to monitor shall include the ability to produce records for each agent's:

(a) Life replacements, including financed purchases, as a percentage of the agent's total annual sales for life insurance;

(b) Number of lapses of policies by the agent as a percentage of the agent's total annual sales for life insurance;

(c) Annuity contract replacements as a percentage of the agent's total annual annuity contract sales;

(d) Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by paragraph (F)(1)(e) of this rule; and

(e) Replacements, indexed by replacing agent and existing insurer;

(3) Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the agent as to whether the applicant has existing policies or contracts;

(4) Require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in "Appendix A" to this rule.

(5) When the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by paragraph (E)(5) of this rule, the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the agent's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;

(6) Ascertain that the sales material and illustrations required by paragraph (E)(5) of this rule meet the requirements of this rule and are complete and accurate for the proposed policy or contract;

(7) If an application does not meet the requirements of this rule, notify the agent and applicant and fulfill the outstanding requirements; and

(8) Maintain records in paper, photograph, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

(G) Duties of replacing insurers that use agents

(1) Where a replacement is involved in the transaction, the replacing insurer shall:

(a) Verify that the required forms are received and are in compliance with this rule;

(b) Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer;

(c) Be able to produce copies of the notification regarding replacement required in paragraph (E)(2) of this rule, indexed by agent, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and

(d) Provide to the policy or contract owner notice of the right to return the policy or contract within thirty days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract; such notice may be included in appendix A or appendix C to this rule.

(2) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, allow credit for the period of time that has elapsed under the replaced policy's or contract's

incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases, the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(3) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to paragraph (E)(5) of this rule, the insurer may:

(a) Require with each application a statement signed by the agent that:

(i) Represents that the agent used only company-approved sales material; and

(ii) States that copies of all sales material were left with the applicant in accordance with paragraph (E)(4) of this rule; and

(b) Within ten days of the issuance of the policy or contract:

(i) Notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the agent has represented that copies of all sales material have been left with the applicant in accordance with paragraph (E)(4) of this rule;

(ii) Provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and

(iii) Stress the importance of retaining copies of the sales material for future reference; and

(c) Be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.

(H) Duties of the existing insurer

Where a replacement is involved in the transaction, the existing insurer shall:

(1) Retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later.

(2) Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced with five business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five business days of receipt of the request from the policy or contract owner.

(3) Upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice advising the policyowner that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policyowner. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

(I) Duties of insurers with respect to direct response solicitations

(1) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change any existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a notice regarding replacement in appendix B to this rule, or other substantially similar form approved by the superintendent.

(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) Provide to applicants or prospective applicants with the policy or contract a notice, as described in appendix C to this rule, or other substantially similar form approved by the superintendent. In these instances the insurer may delete the references to the agent, including the agent's signature, and references not applicable to the product being sold or replaced, without having to obtain approval of the form from the superintendent. The insurer's obligation to obtain the applicant's signature ~~shall be~~ is satisfied if ~~it~~ the insurer can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort ~~shall~~ will be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this paragraph; and

(b) Comply with the requirements of paragraph (G)(1)(b) of this rule, if the applicant furnishes the names of the existing insurers, and the requirements of paragraphs (G)(1)(c), (G)(1)(d) and (G)(2) of this rule.

(J) Violations and penalties

(1) Any failure to comply with this rule ~~shall~~ will be considered a violation of section 3901.20 of the Revised Code. Examples of violations include:

(a) Any deceptive or misleading information set forth in sales material;

(b) Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;

(c) The intentional incorrect recording of an answer;

(d) Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or

(e) Advising a policy or contract owner to write directly to the company in such a way as to attempt to obscure the identity of the replacing agent or company.

(2) Policy and contract owners have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract owners of the same agent shall be deemed prima facie evidence of the agent's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the agent's intent to violate this rule.

(3) Where it is determined that the requirements of this rule have not been met the replacing insurer shall provide to the policyowner an in force illustration if available or policy summary for the replacement policy or available disclosure document for the replacement contract and the appropriate notice regarding replacements in appendix A or appendix C to this rule.

(4) Violations of this rule shall subject the violators to penalties that may include the revocation or suspension of a agent's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a agent as a result of the transaction in connection with which the violations occurred. In addition,

where the superintendent has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest on the amount refunded in cash.

(K) Severability

~~If any paragraph, term, or provision of this rule is adjudged invalid for any reason, the judgment shall not affect, impair, or invalidate any other paragraph, term or provision of this rule, but the remaining paragraphs, terms and provisions shall be and continue in full force and effect.~~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.

Effective:

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

____
Certification

____
Date

Promulgated Under:	119.03
Statutory Authority:	3901.041
Rule Amplifies:	3901.19 to 3901.21
Prior Effective Dates:	12/30/1979, 10/01/1997, 03/01/2007, 11/14/2008, 03/27/2014

APPENDIX A

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

This document must be signed by the applicant and the producer, if there is one, and a copy left with the applicant.

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interest~~s~~. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacement~~s~~ before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract?
   ___ YES ___ NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

   If you answered "yes" to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured or annuitant, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

	INSURER NAME	CONTRACT OR POLICY #	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F)
1.				
2.				
3.				

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because ________________________________.

I certify that the responses herein are, to the best of my knowledge, accurate:

____ ____________________

Applicant's Signature and Printed Name Date

____ ____________________

Producer's Signature and Printed Name Date

I do not want this notice read aloud to me. (Applicants must initial only if they do not want the notice read aloud.) A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS:

Are they affordable?

Could they change?

You're older—are premiums higher for the proposed new policy?

How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES:

New policies usually take longer to build cash values and to pay dividends.

Acquisition costs for the old policy may have been paid, you will incur costs for the new one.

What surrender charges do the policies have?

What expense and sales charges will you pay on the new policy?

Does the new policy provide more insurance coverage?

INSURABILITY:

If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.

You may need a medical exam for a new policy.

Claims on most new policies for up to the first two years can be denied based on inaccurate statements.

Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?

How will the premiums on your existing policy be affected?

Will a loan be deducted from death benefits?

What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?

What are the interest rate guarantees for the new contract?

Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?

Is this a tax free exchange? (See your tax advisor.)

Is there a benefit from favorable “grandfathered” treatment of the old policy under the federal tax code?

Will the existing insurer be willing to modify the old policy?

How does the quality and financial stability of the new company compare with your existing company?

APPENDIX B

NOTICE REGARDING REPLACEMENT
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one—or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract's benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

APPENDIX C

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacement~~s~~ and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract?
   ___ YES ___ NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

Please list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

	INSURER NAME	CONTRACT OR POLICY #	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F)
1.				
2.				
3.				

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

I certify that the responses herein are, to the best of my knowledge, accurate:

______________________________________ ____________________

Applicant's Signature and Printed Name Date

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS:

Are they affordable?

Could they change?

You're older—are premiums higher for the proposed new policy?

How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES:

New policies usually take longer to build cash values and to pay dividends.

Acquisition costs for the old policy may have been paid, you will incur costs for the new one.

What surrender charges do the policies have?

What expense and sales charges will you pay on the new policy?

Does the new policy provide more insurance coverage?

INSURABILITY:

If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.

You may need a medical exam for a new policy.

Claims on most new policies for up to the first two years can be denied based on inaccurate statements.

Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?

How will the premiums on your existing policy be affected?

Will a loan be deducted from death benefits?

What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?

What are the interest rate guarantees for the new contract?

Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?

Is this a tax free exchange? (See your tax advisor.)

Is there a benefit from favorable “grandfathered” treatment of the old policy under the federal tax code?

Will the existing insurer be willing to modify the old policy?

How does the quality and financial stability of the new company compare with your existing company?

Mike DeWine, Governor | Jon Husted, Lt. Governor | Joseph Baker, Director

Business Impact Analysis

Agency Name: ***Ohio Department of Insurance***
Rule Contact Name: ***Loretta Medved***
Rule Contact Information: ***614-644-0239***
loretta.medved@insurance.ohio.gov

Regulation/Package Title *(a general description of the rules' substantive content)*:
Chapter 3901-6 Disclosures - and Chapter 3901-4 Record Retention

Rule Number(s): ***3901-6-02, 3901-6-05, 3901-6-13, 3901-4-03***

Date of Submission for CSI Review: ***June 26, 2023***
Public Comment Period End Date: ***July 12, 2023, 12:00AM***

Rule Type/Number of Rules:

☐ New/ rules ☐ No Change/ rules (FYR?)

☒ Amended/ ***4*** rules (FYR? ***2023***) ☐ 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 ommission.

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.

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 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.

Ohio Department of Insurance

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

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.