Rule Summary and Fiscal Analysis
Part A - General Questions

Rule Number: 3901-6-08

Rule Type: Amendment

Rule Title/Tagline: Variable life insurance.

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

5. **What statute(s) does the rule implement or amplify?** 3907.15, 3911.01

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 provide for the regulation of fixed premium and flexible premium variable life insurance policies.

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. Fiscal Analysis

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

    This will have no impact on revenues or expenditures.

    0.00

    Not applicable.

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

    Not applicable.

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

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

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

Not applicable.

III. Common Sense Initiative (CSI) Questions

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

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

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

The rule places requirements on insurers either seeking authority to issue variable life insurance in the state or having authority to issue variable life insurance in this state. The rule requires a license to deliver or issue any variable life insurance policy.

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

The superintendent is permitted to refuse an agent's application to sell variable life insurance products. The superintendent may also suspend, revoke or choose not to renew their qualification.

C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

Insurers authorized to transact the business of variable life insurance must submit an annual statement and any forms and information that are to be provided to policy holders. Insurers must also furnish applicable forms and information to policy holders.

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? 43

(C)(5) - shall

(C)(9) - shall

(C)(16) - shall

(D)(1)(b)(iii)(c) - shall

(D)(6)(d) - shall

(D)(7) - shall

(E)(2)(a)- shall

(E)(2)(a)- shall

(E)(2)(b)- shall

(E)(2)(c)-shall

(E)(2)(d)-shall

(E)(2)(e)-shall

(E)(2)(f)-shall

(E)(2)(f)-shall

(E)(2)(f)-shall

(E)(2)(f)-shall

(E)(2)(f)-shall

(E)(3)(a)(v) - shall

(E)(3)(b)(i) - shall

(E)(3)(b)(ii) - shall

(E)(3)(g) – shall

(E)(3)(l) – shall

(E)(3)(l) - shall

(E)(3)(m) - shall

(E)(3)(o) - shall

(E)(3)(p) – shall

(E)(3)(q) - shall

(E)(4)(b) – shall

(E)(4)(c) - shall

(E)(4)(d) - shall

(E)(4)(e) - shall

(E)(4)(g) - shall

(E)(4)(i) - shall

(F)(2) - shall

(G)(1)(a) - shall

(G)(5) - shall

(G)(6)(a) - shall

(G)(8) - shall

(G)(8) - shall

(G)(9) - shall

(H) - shall

(M) – shall not

(M) - 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

3901-6-08 **Variable life insurance.**

(A) Purpose

The purpose of this rule is to amplify sections 3907.15 and 3911.01 of the Revised Code to provide for the regulation of fixed premium and flexible premium variable life insurance policies.

(B) Authority

This rule is promulgated pursuant to the authority vested in the superintendent under section 3901.041 of the Revised Code.

(C) Definitions

(1) "Affiliate of an insurer" means any person, directly or indirectly, controlling, controlled by, or under common control with such insurer; any person who regularly furnishes investment advice to such insurer with respect to its separate accounts for which a specific fee or commission is charged; or any director, officer, partner, or employee of any such insurer, controlling or controlled person, or person providing investment advice, or any member of the immediate family of such person.

(2) "Agent" means any person, corporation, partnership, or other legal entity which is licensed by this state as a life insurance agent with a variable line of authority.

(3) "Assumed investment rate" means the rate of investment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses, and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.

(4) "Benefit base" means the amount, to which the net investment return is applied.

(5) "Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control ~~shall be~~ is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing more than

ten per cent of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the superintendent that control does not exist in fact. The superintendent may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(6) "Flexible premium policy" means any variable life insurance policy other than a scheduled premium policy as specified in paragraph (C)(14) of this rule.

(7) "General account" means all assets of the insurer other than assets in separate accounts established pursuant to section 3907.15 of the Revised Code, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

(8) "Incidental insurance benefit" means all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including but not limited to accidental death and dismemberment benefits, disability benefits, guaranteed insurability options, family income, or term riders.

~~(9) "May" is permissive.~~

~~(10)~~(9) "Minimum death benefit" means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.

~~(11)~~(10) "Net investment return" means the rate of investment return in a separate account to be applied to the benefit base.

~~(12)~~(11) "Person" means an individual, corporation, partnership, association, trust, or fund.

~~(13)~~(12) "Policy processing day" means the day on which charges authorized in the policy are deducted from the policy's cash value.

~~(14)~~(13) "Scheduled premium policy" means any variable life insurance policy under which both the amount and timing of premium payments are fixed by the insurer.

~~(15)~~(14) "Separate account" means a separate account established pursuant to section 3907.15 of the Revised Code or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

~~(16) "Shall" is mandatory.~~

~~(17)~~(15) "Superintendent" means the insurance superintendent of Ohio.

~~(18)~~(16) "Variable death benefit" means the amount of the death benefit, other than incidental insurance benefits, payable under a variable life insurance policy dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of any minimum death benefit.

~~(19)~~(17) "Variable life insurance policy" means any individual policy which provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such policy, pursuant to section 3907.15 of the Revised Code, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

(D) Qualification of insurer to issue variable life insurance

The following requirements are applicable to all insurers either seeking authority to issue variable life insurance in this state or having authority to issue variable life insurance in this state.

(1) Licensing and approval to do business in this state.

An insurer shall not deliver or issue for delivery in this state any variable life insurance policy unless:

(a) The insurer is licensed or organized to do a life insurance business in this state;

(b) The insurer has obtained the written approval of the superintendent for the issuance of variable life insurance policies in this state. The superintendent shall grant such written approval only after he or she has found that:

(i) The plan of operation for the issuance of variable life insurance policies is not unsound;

(ii) The general character, reputation, and experience of the management and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer are such as to reasonably assure competent operation of the variable life insurance business of the insurer in this state; and

(iii) The present and foreseeable future financial condition of the insurer and its method of operation in connection with the issuance of such policies is not likely to render its operation hazardous to the public or its policyholders in this state. The superintendent shall consider, among other things:

(a) The history of operation and financial condition of the insurer;

(b) The qualifications, fitness, character, responsibility, reputation, and experience of the officers and directors and other management of the insurer and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer;

(c) The applicable laws and regulations under which the insurer is authorized in its state of domicile to issue variable life insurance policies. The state of entry of an alien insurer ~~shall be~~ is deemed its state of domicile for this purpose; and

(d) If the insurer is a subsidiary of, or is affiliated by common management or ownership with another company, its relationship to such other company and the degree to which the requesting insurer, as well as the other company, meets these standards.

(2) Filing for approval to do business in this state.

The superintendent may, at his or her discretion, require that an insurer, before it delivers or issues for delivery any variable life insurance policy in this state, file with this department the following information for the consideration of the superintendent in making the determination required by paragraph (D)(1)(b) of this rule:

(a) Copies of and a general description of the variable life insurance policies it intends to issue;

(b) A general description of the methods of operation of the variable life insurance business of the insurer, including methods of distribution of policies and the names of those persons or firms proposed to supply consulting, investment, administrative, custodial or distribution services to the insurer;

(c) With respect to any separate account maintained by an insurer for any variable life insurance policy, a statement of the investment policy the issuer intends to follow for the investment of the assets held in such separate account, and a statement of procedures for changing such investment policy. The statement of investment policy shall include a description of the investment objectives intended for the separate account;

(d) A description of any investment advisory services contemplated as required by paragraph (G)(10) of this rule;

(e) A copy of the statutes and regulations of the state of domicile of the insurer under which it is authorized to issue variable life insurance policies;

(f) Biographical data with respect to officers and directors of the insurer on the "National Association of Insurance Commissioners" biographical affidavit; and

(g) A statement of the insurer's actuary describing the mortality and expense risks which the insurer will bear under the policy.

(3) Standards of suitability.

Every insurer seeking approval to enter into the variable life insurance business in this state shall establish and maintain a written statement specifying the standards of suitability to be used by the insurer. Such standards of suitability shall specify that no recommendations shall be made to an applicant to purchase a variable life insurance policy and that no variable life insurance policy shall be issued in the absence of reasonable grounds to believe that the purchase of such policy is not unsuitable for such applicant on the basis of information furnished after reasonable inquiry of such applicant concerning the applicant's insurance and investment objectives, financial situation and needs, and any other information known to the insurer or to the agent making the recommendation.

(4) Use of sales materials.

An insurer authorized to transact variable life insurance business in this state shall not use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its variable life insurance business in this state which is false, misleading, deceptive, or inaccurate.

(5) Requirements applicable to contractual services.

Any material contract between an insurer and suppliers of consulting, investment, administrative, sales, marketing, custodial, or other services with respect to variable life insurance operations shall be in writing and provide that the supplier of such services shall furnish the superintendent with any information or reports in connection with such services which the superintendent may request in order to ascertain whether the variable life insurance operations of the insurer are being conducted in a manner consistent with this chapter and any other applicable laws or rules.

(6) Reports to the superintendent.

Any insurer authorized to transact the business of variable life insurance in this state shall submit to the superintendent, in addition to any other materials which may be required by this rule or any other applicable laws or rules:

(a) An annual statement of the business of its separate account or accounts in such form as may be prescribed by the "National Association of Insurance Commissioners;" and

(b) Prior to the use in this state, any information furnished to applicants as provided for in paragraph (H) of this rule; and

(c) Prior to the use in this state, the form of any of the reports to policyholders as provided for in paragraph (J) of this rule; and

(d) Such additional information concerning its variable life insurance operations or its separate accounts as the superintendent ~~shall deem~~ deems necessary.

Any material submitted to the superintendent under paragraph (D)(6) of this rule shall be disapproved if it is found to be false, misleading, deceptive, or inaccurate in any material respect and, if previously distributed, the superintendent shall require the distribution of amended material.

(7) Authority of superintendent to disapprove.

Any material required to be filed with and approved by the superintendent ~~shall be~~ is subject to disapproval if at any time it is found by him or her not to comply with the standards established by this rule.

(E) Insurance policy requirements

Policy qualification. The superintendent shall not approve any variable life insurance form filed pursuant to this rule unless it conforms to the requirements of paragraph (E) of this rule.

(1) Filing of variable life insurance policies.

All variable life insurance policies, and all riders, endorsements, applications, and other documents which are to be attached to and made a part of the policy and which relate to the variable nature of the policy, shall be filed with the superintendent and approved by him or her prior to delivery or issuance for delivery in this state.

(a) The procedures and requirements for such filing and approval shall be, to the extent appropriate and not inconsistent with this rule, the same as those otherwise applicable to other life insurance policies.

(b) The superintendent may approve variable life insurance policies and related forms with provisions the superintendent deems to be not less favorable to the policyholder and the beneficiary than those required by this rule.

(2) Mandatory policy benefit and design requirements.

Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements:

(a) Mortality and expense risks ~~shall be~~ are borne by the insurer. The mortality and expense charges ~~shall be~~ are subject to the maximums stated in the contract.

(b) For scheduled premium policies, a minimum death benefit ~~shall be~~ is provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid subject to the provisions of paragraph (E)(4) of this rule.

(c) The policy ~~shall reflect~~ reflects the investment experience of one or more separate accounts established and maintained by the insurer. The insurer must demonstrate that the reflection of investment experience in the variable life insurance policy is actuarially sound.

(d) Each variable life insurance policy ~~shall be~~ is credited with the full amount of the net investment return applied to the benefit base.

(e) Any changes in variable death benefits of each variable life insurance policy ~~shall be~~ are determined at least annually.

(f) The cash value of each variable life insurance policy ~~shall be~~ is determined at least monthly. The method of computation of cash values and other non-forfeiture benefits, as described either in the policy or in a statement filed with the superintendent of the state in which the policy is delivered, or issued for delivery, ~~shall be~~ is in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other non-forfeiture benefits must be at least equal to the minimum values required by section 3915.07 of the Revised Code (standard non-forfeiture law) for a general account policy with such premiums and benefits. The assumed investment rate ~~shall~~ is not to exceed the maximum interest rate permitted under the standard non-forfeiture law of this state. If the policy does not contain an assumed investment rate, this demonstration ~~shall be~~ is based on the maximum interest rate permitted under the standard non-forfeiture law. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee that the amount payable at death or maturity ~~shall be~~ is at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

(g) The computation of values required for each variable life insurance policy may be based upon such reasonable and necessary approximations as are acceptable to the superintendent.

(3) Mandatory policy provisions.

Every variable life insurance policy filed for approval in this state shall contain at least the following:

(a) The cover page or pages corresponding to the cover pages of each such policy shall contain:

(i) A prominent statement in either contrasting color or in boldface type that the amount or duration of death benefits may be variable or fixed under specified conditions;

(ii) A prominent statement in either contrasting color or in boldface type that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;

(iii) A statement describing any minimum death benefit required pursuant to paragraph (E)(2)(b) of this rule;

(iv) The method, or a reference to the policy provision which describes the method, for determining the amount of insurance payable at death;

(v) To the extent permitted by state law, a captioned provision that the policyholder may return the variable life insurance policy within ten days of receipt of the policy by the policyholder, and receive a refund equal to the sum of (a) the difference between the premiums paid including any policy fees or other charges and the amounts allocated to any separate accounts under the policy, and (b) the value of the amounts allocated to any separate accounts under the policy, on the date the returned policy is received by the insurer or its agent. Until such time as state law authorizes the return of payments as calculated in the preceding sentence, the amount of the refund ~~shall be~~ is the total of all premium payments for such policy;

(vi) Such other items as are currently required for fixed benefit life insurance policies and which are not inconsistent with this rule.

(b)

(i) For scheduled premium policies, a provision for a grace period of not less than thirty-one days from the premium due date which ~~shall provide~~ provides that where the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date.

(ii) For flexible premium policies, a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amounts available under the policy to pay such charges in accordance with the terms of the policy. Such grace period ~~shall end~~ ends on a date not less than sixty-one days after the mailing date of the report to policyholders required by paragraph (J)(3) of this rule.

(iii) The death benefit payable during the grace period will equal the death benefit in effect immediately prior to such period less any overdue charges. If the policy processing days occur monthly, the insurer may require the payment of not more than three times the charges which were due on the policy processing day on which the amounts available under the policy were insufficient to pay all charges authorized by the policy that are necessary to keep such policy in force until the next policy processing day.

(c) For scheduled premium policies, a provision that the policy will be reinstated at any time within two years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

(i) All overdue premiums and any indebtedness in effect at the end of the grace period following the date of default with interest as provided in section 3915.051 of the Revised Code.

(ii) One hundred ten per cent of the increase in cash value resulting from reinstatement plus all overdue premiums for incidental insurance benefits using an interest rate provided in section 3915.051 of the Revised Code.

(d) A full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy;

(e) A provision designating the separate account to be used and stating that:

(i) The assets of such separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account.

(ii) The assets of such separate account shall be valued at least as often as any policy benefits vary but at least monthly.

(f) A provision specifying what documents constitute the entire insurance contract under state law;

(g) A designation of the officers who are empowered to make an agreement or representation on behalf of the insurer and an indication that statements by the insured, or on his behalf, ~~shall be~~ are considered as representations and not warranties;

(h) An identification of the owner of the insurance contract;

(i) A provision setting forth conditions or requirements as to the designation, or change of designation, of a beneficiary, and a provision for disbursement of benefits in the absence of a beneficiary designation;

(j) A statement of any conditions or requirements concerning the assignment of the policy;

(k) A description of any adjustments in policy values to be made in the event of misstatement of age or sex of the insured;

(l) A provision that the policy ~~shall be~~ is incontestable by the insurer after it has been in force for two years during the lifetime of the insured; provided, however, that any increase in the amount of the policy's death benefits subsequent to the policy issue date, which increase occurred upon a new application or request of the owner and was subject to satisfactory proof of the insured's insurability, ~~shall be~~ is incontestable after any such increase has been in force, during the lifetime of the insured, for two years from the date of issue of such increase;

(m) A provision stating that the investment policy of the separate account ~~shall~~ will not be changed without the approval of the insurance superintendent of the state of domicile of the insurer, and that the approval process is on file with the superintendent of this state;

(n) A provision that payment of variable death benefits in excess of any minimum death benefits, cash values, policy loans, or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:

(i) For up to six months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account, or

(ii) Otherwise, for any period during which the "New York Stock Exchange" is closed for trading (except for normal holiday closing) or when the "Securities and Exchange Commission" has determined that a state of emergency exists which may make such payment impractical.

(o) If settlement options are provided, at least one such option ~~shall be~~ provided will be on a fixed basis only;

(p) A description of the basis for computing the cash value and the surrender value under the policy ~~shall be included~~;

(q) Premiums or charges for incidental insurance benefits ~~shall be~~ are stated separately;

(r) Any other policy provision required by this rule;

(s) Such other items as are currently required for fixed benefit life insurance policies and are not inconsistent with this rule; and

(t) A provision for non-forfeiture insurance benefits. The insurer may establish a reasonable minimum cash value below which any non-forfeiture insurance options will not be available.

(4) Policy loan provisions.

Every variable life insurance policy, other than term insurance policies and pure endowment policies, delivered or issued for delivery in this state shall contain provisions which are not less favorable to the policyholder than a provision for policy loans after the policy has been in force for two full years which provides the following:

(a) At least seventy-five per cent of the policy's cash surrender value may be borrowed.

(b) The amount borrowed ~~shall bear~~ bears interest at a rate not to exceed that permitted by state insurance law.

(c) Any indebtedness ~~shall be~~ is deducted from the proceeds payable on death.

(d) Any indebtedness ~~shall be~~ is deducted from the cash surrender value upon surrender or in determining any non-forfeiture benefit.

(e) For scheduled premium policies, whenever the indebtedness exceeds the cash surrender value, the insurer ~~shall~~ will give notice of any intent to cancel the policy if the excess indebtedness is not repaid within thirty-one days after the date of mailing of such notice. For flexible premium policies, whenever the total charges authorized by the policy that are necessary to keep the policy in force until the next following policy processing day exceed the amounts available under the policy to pay such charges, a report must be sent to the policyholder containing the information specified by paragraph (J)(3) of this rule.

(f) The policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal, by paying an amount not exceeding one hundred ten per cent of the corresponding increase in cash value, and by furnishing such evidence of insurability as the insurer may request.

(g) The policy may specify a reasonable minimum amount which may be borrowed at any time, but such minimum ~~shall~~ does not apply to any automatic premium loan provision.

(h) No policy loan provision is required if the policy is under extended insurance non-forfeiture option.

(i) The policy loan provisions ~~shall be~~ are constructed so that variable life insurance policyholders who have not exercised such provisions are not disadvantaged by the exercise thereof.

(j) Amounts paid to the policyholders upon the exercise of any policy loan provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment, except that a stock insurer may provide the amounts for policy loans from the general account.

(5) Other policy provisions.

The following provisions may in substance be included in a variable life insurance policy or related form delivered or issued for delivery in this state:

(a) An exclusion for suicide within two years of the issue date of the policy; provided, however, that to the extent of the increased death benefits only, the policy may provide an exclusion for suicide within two years of any increase in death benefits which results from an application of the owner subsequent to the policy issue date;

(b) Incidental insurance benefits may be offered on a fixed or variable basis;

(c) Policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, such policies may offer the following dividend options:

(i) The amount of the dividend may be credited against premium payments;

(ii) The amount of the dividend may be applied to provide amounts of additional fixed or variable benefit life insurance;

(iii) The amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

(iv) The amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance;

(v) The amount of the dividend may be deposited as a variable deposit in a separate account.

(d) A provision allowing the policyholder to elect in writing in the application for the policy, or thereafter, an automatic premium loan on a basis not less favorable than that required of policy loans under paragraph (E)(4) of this rule, except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed;

(e) A provision allowing the policyholder to make partial withdrawals; and

(f) Any other policy provision approved by the superintendent.

(F) Reserve liabilities for variable life insurance

(1) Reserve liabilities for variable life insurance policies shall be established under ~~section 3903.72~~ sections 3903.721 and 3903.728 of the Revised Code in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

(2) Reserve liabilities for the guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and shall be maintained in the general account of the insurer and ~~shall be~~ not be less than the greater of the following minimum reserves:

(a) The aggregate total of the term costs, if any, covering a period of one full year from the valuation date or, if less, covering the period provided for in the guarantee not otherwise provided for by the reserves held in the separate account, on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets in the separate account, followed by a net investment return equal to the assumed investment rate; or

(b) The aggregate total of the "attained age level" reserves on each variable life insurance contract. The "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall equal the "residue," as described in paragraph (F)(2)(b)(i) of this rule, of the prior year's "attained age level" reserve on the contract, with any such "residue," increased or decreased by a payment computed on an attained age basis as described in paragraph (F)(2)(b)(ii) of this rule.

(i) The "residue" of the prior year's "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall be determined by adding interest at the valuation interest rate to such prior year's reserve, deducting the tabular claims based on the "excess," if any, of the guaranteed minimum death benefit over the death benefit that would be payable in the absence of such guarantee, and dividing the net result by the tabular probability of survival. The "excess" referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.

(ii) The payment referred to in paragraph (F)(2)(b) of this rule shall be computed so that the present value of a level payment of that amount each year over the future period for which charges for this risk will be collected under the contract, is equal to (A) minus (B) minus (C), where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future death benefits that would be payable in the absence of such guarantee, and (C) is any "residue," as described in paragraph (F)(2)(b)(i) of this rule, of the prior year's "attained age level" reserve on such variable life insurance contract. If no future charges for this risk will be collected under the contract, the payment shall equal (A) minus (B) minus (C). The amounts of future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate or the valuation interest rate, but in no event may exceed the maximum interest rate permitted for the valuation of life contracts.

(c) The valuation interest rate and mortality table used in computing the two minimum reserves described in paragraphs (F)(2)(a) and (F)(2)(b) of this rule shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

(3) Reserve liabilities for all fixed incidental insurance benefits and any guarantees associated with variable incidental insurance benefits shall be maintained in the general account, and reserve liabilities for all variable aspects of the variable incidental insurance benefits shall be maintained in a separate account, in amounts determined in accordance with the actuarial procedures appropriate to such benefit.

(G) Separate accounts

The following requirements apply to the establishment and administration of variable life insurance separate accounts by any domestic insurer.

(1) Establishment and administration of separate accounts.

Any domestic insurer issuing variable life insurance shall establish one or more separate accounts pursuant to section 3907.15 of the Revised Code.

(a) If no law or other regulation provides for the custody of separate account assets and if such insurer is not the custodian of such separate account assets, all contracts for custody of such assets shall be in writing, and the superintendent ~~shall have~~ has the authority to review and approve of both the terms of any such contract and the proposed custodian prior to the transfer of custody.

(b) Such insurer shall not, without the prior written approval of the superintendent, employ in any material connection with the handling of separate account asset any person who:

(i) Within the last ten years has been convicted of any felony or a misdemeanor arising out of such person's conduct involving embezzlement, fraudulent conversion, or misappropriation of funds or securities or involving violation of section 1341, 1342, or 1343 of Title 18, United States Code; or

(ii) Within the last ten years has been found by any state regulatory authority to have violated or has acknowledged violation of any provision of any state insurance law involving fraud, deceit, or knowing misrepresentation; or

(iii) Within the last ten years has been found by federal or state regulatory authorities to have violated or has acknowledged violation of any provision of federal or state securities laws involving fraud, deceit, or knowing misrepresentation.

(c) All persons with access to the cash, securities, or other assets of the separate account shall be under bond in the amount of not less than the following amounts:

Total Assets

Under $100,000

More than:	But not more than:
$ 100,000	$ 600,000
600,000	1,200,000
1,200,000	3,200,000
3,200,000	4,450,000
4,450,000	6,450,000
6,450,000	90,450,000
90,450,000	350,450,000
350,450,000	1,070,450,000
1,070,450,000	

Minimum Amount of Bond

$10,000

$ 10,000 plus	4% of assets over	$ 100,000
30,000 plus	3 1/3% of assets over	600,000
50,000 plus	2 1/2% of assets over	1,200,000
100,000 plus	2% of assets over	3,200,000
125,000 plus	1 1/4% of assets over	4,450,000

150,000 plus	5/8% of assets over	6,450,000
675,000 plus	3/8% of assets over	90,450,000
1,625,000 plus	3/16% of assets over	350,450,000
3,075,000 plus	3/32% of assets over	1,070,450,000

Until total bond equals $5,000,000.

(d) The assets of such separate accounts shall be valued at least as often as variable benefits are determined, but in any event at least monthly.

(2) Amounts in the separate account.

The insurer shall maintain in each separate account assets with a value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies, or the benefit base for such policies.

(3) Investments by the separate account.

(a) No sale, exchange, or other transfer of assets may be made by an insurer or any of its affiliates between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(i) In case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the policies with respect to the separate account to which the transfer is made; and

(ii) Such transfer, whether into or from a separate account, is made by a transfer of cash; but other assets may be transferred if approved by the superintendent in advance.

(b) The separate account shall have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under policies funded by the account.

(4) Limitations on ownership.

(a) A separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition, the value of such investment, together with prior investments of such account in such security valued as required by this rule, would exceed ten per cent of the value of the assets of the separate account. To the extent permitted by state law, the superintendent may waive this limitation in writing if he or she believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

(b) No separate account shall purchase or otherwise acquire the voting securities of any issuer if, as a result of such acquisition, the insurer and its separate accounts, in the aggregate, will own more than ten per cent of the total issued and outstanding voting securities of such issuer. To the extent permitted by state law, the superintendent may waive this limitation in writing if he or she believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state, or jeopardize the independent operation of the issuer of such securities.

(c) The percentage limitation specified in paragraph (G)(4)(a) of this rule, shall not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940, or other pools of investment assets, if the investments and investment policies of such investment companies or asset pools comply substantially with the provisions of paragraph (G)(3) of this rule and other applicable portions of this rule.

(5) Valuation of separate account assets.

Investments of the separate account ~~shall be~~ are valued at their market value on the date of valuation, or at amortized cost if it approximates market value.

(6) Separate account investment policy.

The investment policy of a separate account operated by a domestic insurer filed under paragraph (D)(2)(c) of this rule shall not be changed without first filing such change with the insurance superintendent.

(a) Any change filed pursuant to this paragraph ~~shall be~~ is effective sixty days after the date it was filed with the superintendent, unless the superintendent notifies the insurer before the end of such sixty-day period of his or her disapproval of the proposed change. At any time the superintendent may, after notice and public hearing, disapprove any change that has become effective pursuant to this paragraph.

(b) The superintendent may disapprove the change if he or she determines that the change would be detrimental to the interests of the policyholders participating in such separate account.

(7) Charges against separate account.

The insurer must disclose in writing, prior to or contemporaneously with delivery of the policy, all charges that may be made against the separate account, including, but not limited to, the following:

(a) Taxes or reserves for taxes attributable to investment gains and income of the separate account;

(b) Actual cost of reasonable brokerage fees and similar direct acquisition and sale costs incurred in the purchase or sale of separate account assets;

(c) Actuarially determine costs of insurance (tabular costs) and the release of separate account liabilities;

(d) Charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account;

(e) A charge, at a rate specified in the policy, for mortality and expense guarantees;

(f) Any amounts in excess of those required to be held in the separate accounts;

(g) Charges for incidental insurance benefits.

(8) Standards of conduct.

Every insurer seeking approval to enter into the variable life insurance business in this state shall adopt by formal action of its board of directors, a written statement specifying the standards of conduct of the insurer, its officers, directors, employees, and affiliates with respect to the purchase or sale of investments of separate accounts. Such standards of conduct ~~shall be~~ are binding on the insurer and those to whom it refers. A code or codes of ethics meeting the requirements of section 17j under the Investment Company Act of 1940 and its applicable rules and regulations thereunder ~~shall satisfy~~ satisfies the provisions of this paragraph.

(9) Conflicts of interest.

Rules under any provision of the insurance laws of this state or any rule applicable to the officers and directors of insurance companies with respect to conflicts of interest ~~shall~~ also apply to members of any separate account's committee or other similar body.

(10) Investment advisory services to a separate account.

An insurer shall not enter into a contract under which any person undertakes, for a fee, to regularly furnish investment advice to such insurer with respect to its separate accounts maintained for variable life insurance policies unless:

(a) The person providing such advice is registered as an investment adviser under the Investment Advisers Act of 1940; or

(b) The person providing such advice is an investment manager under the Employee Retirement Income Security Act of 1974 with respect to the assets of each employee benefit plan allocated to the separate account; or

(c) The insurer has filed with the superintendent and continues to file annually the following information and statements concerning the proposed adviser:

(i) The name and form of organization, state of organization, and its principal place of business;

(ii) The names and addresses of its partners, officers, directors, and persons performing similar functions or, if such an investment advisor be an individual, of such individual;

(iii) A written standard of conduct complying in substance with the requirements of paragraph (G)(8) of this rule which has been adopted by the investment adviser and is applicable to the investment adviser, his officers, directors, and affiliates;

(iv) A statement provided by the proposed adviser as to whether the adviser or any person associated therewith:

(a) Has been convicted within ten years of any felony or misdemeanor arising out of such person's conduct as an employee, salesman, officer or director of an insurance company, a banker, an insurance agent, a securities broker, or an investment adviser involving embezzlement, fraudulent conversion, or misappropriation of funds or securities, or

involving the violation of section 1341, 1342, or 1343 of Title 18 of the United States Code;

(b) Has been permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or as an employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity;

(c) Has been found by federal or state regulatory authorities to have willfully violated or have acknowledged willful violation of any provision of federal or state securities laws or state insurance laws or of any rule or regulation under any such laws; or

(d) Has been censured, denied an investment adviser registration, had a registration as an investment adviser revoked or suspended, or been barred or suspended from being associated with an investment adviser by order of federal or state regulatory authorities; and

(d) Such investment advisory contract shall be in writing and provide that it may be terminated by the insurer without penalty to the insurer or the separate account upon no more than sixty days' written notice to the investment adviser.

The superintendent may, after notice and opportunity for hearing, by order require such investment advisory contract to be terminated if he or she deems continued operation thereunder to be hazardous to the public or the insurer's policyholders.

(H) Information furnished to applicants

An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver the following to the applicant for the policy, and obtain a written acknowledgment of receipt from such applicant coincident with or prior to the execution of the application. The requirements of this paragraph ~~shall be~~ are deemed to have been satisfied to the extent that a disclosure containing information required by this paragraph is delivered, either in the form of a prospectus included in the requirements of the Securities Act of 1933 and which was declared effective by the "Securities and Exchange Commission"; or all information and reports required by the employee retirement income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to section 3 (a)(2) thereof.

(1) A summary explanation, in non-technical terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation. Such explanation must include notices of the provision required by paragraphs (E)(3)(a)(v) and (E)(3)(f) of this rule;

(2) A statement of the investment policy of the separate account, including:

(a) A description of the investment objectives intended for the separate account and the principal types of investments intended to be made; and

(b) Any restriction or limitations on the manner in which the operations of the separate account are intended to be conducted.

(3) A statement of the net investment return of the separate account for each of the last ten years or such lesser period as the separate account has been in existence;

(4) A statement of the charges levied against the separate account during the previous year;

(5) A summary of the method to be used in valuing assets held by the separate account;

(6) A summary of the federal income tax aspects of the policy applicable to the insured, the policyholder and the beneficiary;

(7) Illustrations of benefits payable under the variable life insurance contract. Such illustrations shall be prepared by the insurer and shall not include projections of past investment experience into the future or attempted predictions of future investment experience, provided that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that such assumed rates are hypothetical only.

(I) Applications

The application for a variable life insurance policy shall contain:

(1) A prominent statement that the death benefit may be variable or fixed under specified conditions;

(2) A prominent statement that cash values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees); and

(3) Questions designed to elicit information which enables the insurer to determine the suitability of variable life insurance for the applicant.

(J) Reports to policyholders

Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at his or her last known address the following reports:

(1) Within thirty days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge, any optional payments allowed pursuant to paragraph (E)(4) of this rule under the policy computed as of the policy anniversary date. Provided, however, that such statement may be furnished within thirty days after a specified date in each policy year, so long as the information contained therein is computed as of a date not more than sixty days prior to the mailing of such notice. This statement shall state that, in accordance with the investment experience of the separate account, the cash values and the variable death benefits may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by this paragraph. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in such statement, the statement shall be modified to so indicate. For flexible premium policies, the report must contain a reconciliation of the change since the previous report in cash value and cash surrender value, if different, because of payments made (less deductions for expense charges), withdrawals, investment experience, insurance charges and any other charges made against the cash value. In addition, the report must show the projected cash value and cash surrender value, if different, as of one year from the end of the period covered by the report assuming that: (a) planned periodic premiums, if any, are paid as scheduled; (b) guaranteed costs of insurance are deducted; and (c) the net investment return is equal to the guaranteed rate or, in the absence of a guaranteed rate, is not greater than zero. If the projected value is less than zero, a warning message must be included that states that the policy may be in danger of terminating without value in the next twelve months unless additional premium is paid.

(2) Annually, a statement or statements including:

(a) A summary of the financial statement of the separate account based on the annual statement last filed with the superintendent;

(b) The net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of not less than five years when available;

(c) A list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the superintendent;

(d) Any charges levied against the separate account during the previous year;

(e) A statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account, or in the investment adviser of the separate account.

(3) For flexible premium policies, a report must be sent to the policyholder if the amounts available under the policy on any policy processing day to pay the charges authorized by the policy are less than the amount necessary to keep the policy in force until the next following policy processing day. The report must indicate the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of such amount.

(K) Foreign companies

If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially similar to that provided by this rule, the superintendent, to the extent deemed appropriate by the superintendent in his or her discretion, may consider compliance with such law or regulation as compliance with this rule.

(L) Qualifications of agents for the sale of variable life insurance

(1) Qualification to sell variable life insurance.

(a) No person may sell or offer for sale in this state any variable life insurance policy unless such person is an agent and has filed with the superintendent, in a form satisfactory to the superintendent, evidence that such person holds any license or authorization which may be required for the solicitation or sale of variable life insurance.

(b) Any examination administered by the department for the purpose of determining the eligibility of any person for licensing as an agent shall, after the effective date of this rule, include such questions concerning the history, purpose, regulation, and sale of variable life insurance as the superintendent deems appropriate.

(2) Reports of disciplinary actions.

Any person qualified in this state under this rule to sell or offer to sell variable life insurance shall immediately report to the superintendent:

(a) Any suspension or revocation of his agent's license in any other state or territory of the "United States";

(b) The imposition of any disciplinary sanction, including suspension or expulsion from membership, suspension, or revocation of or denial of registration, imposed upon him by any national securities exchange, or national securities association, or any federal, state, or territorial agency with jurisdiction over securities or variable life insurance;

(c) Any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation.

(3) Refusal to qualify agent to sell variable life insurance; suspension, revocation, or nonrenewal of qualification:

The superintendent may reject any application or suspend or revoke or refuse to renew any agent's qualification under this rule to sell or offer to sell variable life insurance upon any ground that would bar such applicant or such agent from being licensed to sell other life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of an agent's license shall also govern any proceeding for suspension or revocation of an agent's qualification to sell or to offer to sell variable life insurance.

(M) 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 or 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:	3907.15, 3911.01
Prior Effective Dates:	03/04/1986, 10/01/1997, 03/28/2004, 11/14/2008, 06/19/2014

Common Sense Initiative

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)*:
Life Insurance Group #1

Rule Number(s): ***3901-6-08, 3901-6-10, 3901-6-10.1, 3901-6-10.2, 3901-6-15***

Date of Submission for CSI Review: ***June 21, 2023***
Public Comment Period End Date: ***July 7, 2023 12:00am***

Rule Type/Number of Rules:

☐ New/ rules ☐ No Change/ rules (FYR?)
☒ Amended/ ***5*** 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 3901-6-08: The purpose of this rule is to provide clarification and guidance, to establish standards regarding fixed premium and flexible premium variable life insurance policies, and for compliance with the requirements in sections 3907.152 and 3911.01 of the Revised Code. Proposed amendments will reduce regulatory restrictions.

   Rule 3901-6-10: The purpose of this rule is to provide: (a) tables of select mortality factors and rules for their use; (b) rules concerning a minimum standard for the valuation of plans with nonlevel premiums; and (c) rules concerning a minimum standard for the valuation of plans with secondary guarantees. Additionally, the rule also provides that the method for calculating basic reserves defined in this rule will constitute the "Commissioners' Reserve Valuation Method" for policies to which this rule is applicable, based upon the National Association of Insurance Commissioners (NAIC) model. Proposed amendments will reduce regulatory restrictions, and correct a citation.

   Rule 3901-6-10.1: This rule implements sections 3915.07, 3915.071, and 3903.72 of the Revised Code by permitting the use of mortality tables that reflect differences in mortality between smokers and nonsmokers in determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits for plans of insurance with separate premium rates for smokers and nonsmokers. Proposed amendments are technical and will reduce regulatory restrictions.

Rule 3901-6-10.2: The purpose of this rule is to implement section 3915.071 of the Revised Code by permitting individual life insurance policies to provide the same cash surrender values and paid-up nonforfeiture benefits to both men and women. Proposed amendments are technical and will reduce regulatory restrictions.

Rule 3901-6-15: The purpose of this rule is to establish pre-need insurance products minimum mortality standards for reserves and nonforfeiture values. The rule requires the use of the "1980 Commissioners Standard Ordinary (CSO) Life Valuation Mortality Table" for policies established prior to January 1, 2012 and the "2001 CSO Mortality Table" for policies established on or after the effective date of the rule and before January 1, 2012 for use in determining the minimum standard of valuation of reserves and the minimum standard nonforfeiture values for preneed insurance products. Proposed amendments are technical and will reduce regulatory restrictions.

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)?

   The rules listed provide guidance to companies on how to rate insurance products adequately to maintain a sufficient reserve balance to ensure that companies are able to cover claim payments.

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

   Insurers will be holding appropriate reserves and calculating appropriate nonforfeiture values. The department will not receive an increase in complaints about life insurance policies and there will not be an increase in administrative actions against insurers for violating provisions of these rules.

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

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

   Not applicable.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.*

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

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

    The department received no comments from stakeholders regarding these rules.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

    The mortality tables were developed from scientific data collected and analyzed by the Society of Actuaries. The tables represent industry wide claims experience with a margin added for statutory conservatism and encourages appropriate reserving.

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. This rule provides consistent regulatory requirements for insurance carriers.

13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

    The department reviewed Ohio statutes and rules and determined that these rules do not duplicate other regulations.

14. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

    These rules will be applied consistently and predictably through the review process, which has specific standards that companies are required to meet before selling certain products. These rules are already in effect and the companies, as well as the department, are familiar with and are currently meeting the provisions of the rules.

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.

    Life insurance companies are impacted by implementation of these rules.

    Rule 3901-6-08: This rule provides guidance regarding fixed premium and flexible premium life insurance policies. The quantifiable impact would be employee time to maintain compliance. Since the rule establishes a framework for how products are determined to be suitable or unsuitable to meet the needs of the consumer, the time required to comply with the rule would follow with the daily operation of business.

    Rules 3901-6-10, 3901-6-10.1, 3901.6-10.2, 3901-6-15: These rules all provide guidance regarding mortality tables for life insurance policies to accurately determine valuation and set minimum reserve liabilities, minimum cash surrender values and amounts of paid-up nonforfeiture benefits for plans of insurance. Any time or costs associated with providing this disclosure to the consumer are well established in conducting everyday transactions as well as the number of polices underwritten. All rules have been in effect for several years, and therefore, the only impact should be that of staff time for compliance subject to the number of policies sold.

16. Are there any proposed changes to the rule(s) that will <u>reduce</u> 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.)*

    The proposed amendments to these rules will reduce regualtory restrictions.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

    These rules provide guidance to maintain appropriate reserve balances. Not adhering to the standards promulgated by the department could result in hazardous financial condition of an insurance company.

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, product development regulation and standards to maintain solvency to which all insurance companies must adhere, 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?

    Non-compliant filings or filing submission with inappropriate tables are identified in the examination process and discussed with the company. Generally, companies agree to change a filing as requested by the department, or propose an acceptable alternative. In the event that a company would refuse to revise a filing, the department proceed with the administrative remedies available.

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. The department provides filing information and instructions on its web site. The department continues regular dialogue with stakeholders and provides filing information and instructions on its web site.

Ohio | 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: July 17, 2023

RE: **CSI Review – Life Insurance Group #1 (OAC 3901-6-08, 3901-6-10, 3901-6-10.1, 3901-6-10.2, and 3901-6-15)**

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 five amended rules 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 21, 2023, and the public comment period was held open through July 7, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on June 21, 2023.

Ohio Administrative Code (OAC) 3901-6-08 establishes standards and requirements for insurers with respect to fixed premium and flexible premium variable life insurance policies. The rule is amended to update language and citations and remove unnecessary language. OAC 3901-6-10 provides for select mortality factors, minimum standards for the valuation of plans with non-level premiums or benefits, minimum standards for the valuation of plans with secondary guarantees, and the method for calculating basic reserves, the latter of which constitutes the Commissioners' Reserve Valuation Method for applicable policies. The rule is amended to update language, grammar, and citations. An appendix to the rule is also provided which contains the tables of select mortality factors that may apply under certain provisions of the rule.

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

CSIPublicComments@governor.ohio.gov

OAC 3901-6-10.1 permits the use of mortality tables that reflect differences in mortality between smokers and nonsmokers in determining minimum reserve liabilities, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits for plans of insurance with separate premium rates for smokers and nonsmokers. The rule is amended to update language. OAC 3901-6-10.2 permits individual life insurance policies to provide the same cash surrender values and paid-up nonforfeiture benefits to both men and women. The rule is amended to add clarifying language, remove unnecessary language, and update language, grammar, typography, and a citation. OAC 3901-6-15 establishes for pre-need insurance products minimum mortality standards for reserves and nonforfeiture values and requires the use of the 1980 Commissioners Standard Ordinary (CSO) Life Valuation Mortality Table in determining the minimum standard of valuation of reserves and the minimum standard nonforfeiture values for pre-need insurance products. The rule is amended to update language and citations.

During early stakeholder outreach, ODI posted the draft rules on its website and emailed stakeholders in mid-April 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. No stakeholders provided feedback in response. No comments were received during the CSI public comment period, although ODI did correct a citation.

The business community impacted by the rules includes life insurance companies. The adverse impacts created by the rules include obtaining and maintaining appropriate licensure and approval to do business, submitting reports and information, meeting minimum standards and mandatory benefit and design requirements when selling life insurance, and providing proper disclosure to customers. ODI notes that the rules have already been in effect for several years and that the total cost of the adverse impacts will depend on the number of policies sold. ODI states that the adverse impacts to business are justified to ensure that insurance companies are able to cover claim payments and prevent insurance companies from experiencing hazardous financial conditions.

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

Mike DeWine, Governor
Jon Husted, Lt. Governor

Judith L. French, Director

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

MEMORANDUM

To: Michael Bender, Business Advocate, Common Sense Initiative Office

CC: Joseph Baker, Director of the Common Sense Initiative Office

From: Loretta Medved, Policy Analyst

Date: August 1, 2023

Re: CSI Review – Life Insurance Group #1 (OAC 3901-6-08, 3901-6-10, 3901-6-10.1, 3901-6-10.2, and 3901-6-15)

On July 17, 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; 3901-6-08, 3901-6-10, 3901-6-10.1, 3901-6-10.2, and 3901-6-15

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.