EXHIBIT 1

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

IN THE MATTER OF PUBLIC HEARING	:	
FOR THE RESCISSION OF OHIO	:	
ADMINISTRATIVE CODE SECTION 3901-6-13	:	NOTICE OF PUBLIC HEARING
AND THE PROMULGATION OF OHIO	:	
ADMINISTRATIVE CODE SECTION 3901-6-13	:	

Pursuant to section 119.03 of the Ohio Revised Code, the Superintendent of Insurance, State of Ohio, will hold a public hearing at 10:00 a.m., on Monday, January 4, 2021, to consider the rescission of Ohio Administrative Code section 3901-6-13, Suitability in annuity transactions, and the promulgation of Ohio Administrative Code section 3901-6-13, Suitability in annuity transactions. Due to the pending COVID-19 pandemic and social distancing concerns, the hearing will be conducted remotely by video conferencing coordinated by the Department. Instructions and a web link and/or telephone number for accessing the hearing will be provided on the Department's web site, www.insurance.ohio.gov. Alternatively, a request for the web link and/or telephone number may be submitted to ecomment@insurance.ohio.gov.

The purpose of this rule is to require insurance agents, as defined in this rule, to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers, including fraternal benefit societies, 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 effectively addressed.

The purpose of rescinding this rule is LSC requires that the rule be rescinded and adopted as a new rule because greater than 50% of the text is affected.

The purpose of promulgating this rule is LSC requires that the rule be rescinded and adopted as a new rule because greater than 50% of the text is affected. The proposed changes will bring this rule into compliance with the National Association of Insurance Commissioners' (NAIC) recently adopted national model regulation. Amendments to this rule will build on the leadership Ohio has established on this critical consumer protection and ensure that Ohio regulations are consistent with the uniform standards of the NAIC model and with all parallel federal regulations.

Additionally, Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law Number 111-203, 111th Cong., 2d sess. (July 21, 2010) gives states authority to regulate the sale of fixed annuities when certain conditions are met. This includes a limited time to substantially meet or exceed the minimum requirements of the NAIC model and any successor modifications. The NAIC considers the 2020 revisions to be a successor modification to the model, and shall be implemented to avoid federal preemption.

The new standard proposed in this rule ensures that consumers can expect that the licensed professionals they trust to make recommendations on annuity products are acting in the consumers' best interest. The revisions require agents and insurers to act with "reasonable diligence, care, and skill" in making a recommendation and add heightened supervision requirements for Insurers to ensure compliance with the new standard. These requirements include knowing the consumer's financial situation and objectives, understanding the available options, having a reasonable basis for believing the recommended option is in the consumer's best interest, and disclosing their compensation and any conflicts of interest.

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

C. Daniel Bradford, Staff Attorney

Rule Summary and Fiscal Analysis
Part A - General Questions

EXHIBIT 2

Rule Number: 3901-6-13

Rule Type: Rescission

Rule Title/Tagline: Suitability in annuity transactions.

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?** 11/30/2020

2. **Is this rule the result of recent legislation?** No

3. **What statute is this rule being promulgated under?** 119.03

4. **What statute(s) grant rule writing authority?** 3901.041, 3901.19 to 3901.26

5. **What statute(s) does the rule implement or amplify?** 3901.19 to 3901.26

6. **What are the reasons for proposing the rule?**

    Rule is being Rescinded to New due to the amendments being more than 50% of the rule.

    Proposed amendments will bring this rule into compliance with the National Association of Insurance Commissioners (NAIC) recently adopted national model law. Amendments to this rule will build on the leadership Ohio has established on this critical consumer protection and ensure that Ohio regulations are consistent with the uniform standards of the NAIC model and with all parallel federal regulations.

Additionally, Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law Number 111-203, 111th Cong., 2d sess. (July 21, 2010) gives states authority to regulate the sale of fixed annuities when certain conditions are met. This includes a limited time to substantially meet or exceed the minimum requirements of the NAIC model and any successor modifications. The NAIC considers the 2020 revisions to be a successor modification to the model, and shall be implemented to avoid federal preemption.

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

Rule is being Rescinded to New due to the amendments being more than 50% of the rule.

Annuities are long-term investments that come in a variety of product types and carry different degrees of risk and reward.

State insurance departments have regulated the sale of annuities since 2003, in part to ensure that insurance companies and insurance agents sell consumers products that are appropriate for them, as well as to ensure consistency with the regulation of securities. The National Association of Insurance Commissioners (NAIC) adopted a model regulation (Model #275), which established a standard of "suitability," Ohio Administrative Code rule 3901-6-13 largely mirrors the requirements of the model.

The new standard proposed in this rule, ensures that consumers can expect that the licensed professionals they trust to make recommendations on annuity products are acting in the consumers' best interest. The revisions also require agents and insurers to act with "reasonable diligence, care, and skill" in making a recommendation. Insurers now have heightened supervision requirements to ensure compliance with the new standard. These requirements include knowing the consumer's financial situation and objectives, understanding the available options, having a reasonable basis for believing the recommended option is in the consumer's best interest, and disclosing their compensation and any conflicts of interest.

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

9. **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.**

The rule references federal statutes that are readily available to the public.

10. 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

11. 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.

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

Costs associated with the continuing education requirements vary within the market, however, education requirements are already existing and should not impose additional costs. Required resources such as printed copies of the policies and disclosures are relative to the type and the frequency of the transactions.

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

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

15. 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

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

17. 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? No

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

Paragraph (H) of this rule states that if a violation of this rule occurs, the superintendent may order reasonably corrective actions to be taken for any consumer harmed by the violation and appropriate penalties and sanctions. It further provides that any applicable penalty under the Unfair and Deceptive Trade Practices Act, sections 3911.19 to 3911.26 of the Revised Code, for a violation of this rule may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

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 Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No

A. How many new regulatory restrictions do you propose adding?

Not Applicable

B. How many existing regulatory restrictions do you propose removing?

Not Applicable

TO BE RESCINDED

EXHIBIT 3

3901-6-13 **Suitability in annuity transactions.**

(A) Purpose

(1) The purpose of this rule is to require insurers, including fraternal benefit societies, to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers, at the time of the transaction, are appropriately addressed.

(2) This rule will bring Ohio law into compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law Number 111-203, 111th Cong., 2d sess. (July 21, 2010).

(B) Authority

This rule is adopted pursuant to the authority vested in the superintendent under sections 3901.041 and 3901.19 to 3901.26 of the Revised Code.

(C) Scope

(1) This rule shall apply to any recommendation to purchase, exchange or replace an annuity made to a consumer by an insurance agent, or an insurer, where no agent is involved, that results in the purchase, exchange or replacement recommended.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule.

(D) Exemptions

Unless otherwise specifically included, this rule shall not apply to transactions involving:

(1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this rule;

(2) 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), 403(b), 408(k) or 408(p) of the Internal Revenue Code, as amended, if established or maintained by an employer;

(c) A government or church plan defined in section 414 of the Internal Revenue Code, a government 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;

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

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Formal prepaid funeral contracts, as defined in division (T) of section 4717.01 of the Revised Code, provided the consideration paid to purchase, exchange or replace the annuity is reasonable related to the price of the pre-need funeral contract, and a pre-need funeral contract is in place at the time the annuity is purchased, exchanged or replaced.

(E) Definitions

(1) "Annuity" means an annuity that is an insurance product under state law that is individually solicited, whether the product is classified as an individual or group annuity.

(2) "Continuing education credit" or "CE credit" means fifty minutes of educational instruction that has been specifically approved to meet the agent annuity training requirements of paragraph (G)(2) of this rule.

(3) "Continuing education provider" or "CE provider" means an individual or entity that is approved to offer continuing education courses pursuant to rule 3901-5-02 of the Administrative Code.

(4) "FINRA" means the "Financial Industry Regulatory Authority" or a succeeding agency.

(5) "Insurer" means a company, including a fraternal benefit society, required to be licensed under the laws of this state to provide insurance products, including annuities.

(6) "Insurance agent" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

(7) "Recommendation" means advice provided by an insurance agent, or an insurer where no agent is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice.

(8) "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.

(9) "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(a) Age;

(b) Annual income;

(c) Financial situation and needs, including the financial resources used for the funding of the annuity;

(d) Financial experience;

(e) Financial objectives;

(f) Intended use of the annuity;

(g) Financial time horizon;

(h) Existing assets, including investment and life insurance holdings;

(i) Liquidity needs;

(j) Liquid net worth;

(k) Risk tolerance; and

(l) Tax status.

(F) Duties of insurers, including fraternal benefit societies and insurance agents

(1) In recommending to a consumer the purchase, exchange or replacement of an annuity that results in another insurance transaction or series of insurance transactions, the insurance agent, or the insurer where no agent is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

(a) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;

(b) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;

(c) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on the consumer's suitability information; and

(d) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration whether:

(i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

(ii) The consumer would benefit from product enhancements and improvements; and

(iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six months.

(2) Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance agent, or an insurer where no agent is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(3) Except as permitted under paragraph (F)(4) of this rule, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(4)

(a) Except as provided under paragraph (F)(4)(b) of this rule, neither an insurance agent, nor an insurer, shall have any obligation to a consumer under paragraph (F)(1) or (F)(3) of this rule related to any annuity transaction if:

(i) No recommendation is made;

(ii) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

(iii) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or

(iv) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance agent.

(b) An insurer's issuance of an annuity subject to paragraph (F)(4)(a) of this rule shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(5) An insurance agent or, where no insurance agent is involved, the responsible insurer representative, shall at the time of sale:

(a) Make a record of any recommendation subject to paragraph (F)(1) of this rule;

(b) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and

(c) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance agent's or insurer's recommendation.

(6)

(a) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance agents' compliance with this rule, including, but not limited to, the following:

(i) The insurer shall maintain reasonable procedures to inform its insurance agents of the requirements of this rule and shall incorporate the requirements of this rule into relevant insurance agent training manuals;

(ii) The insurer shall establish standards for insurance agent product training and shall maintain reasonable procedures to require its insurance agents to comply with the requirements of paragraph (G) of this rule;

(iii) The insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its insurance agents;

(iv) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(v) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. These may include, but are not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this paragraph prevents an insurer from complying with this paragraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

(vi) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(b)

(i) Nothing in this paragraph restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (F)(6)(a) of this rule. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to paragraph (H) of this rule regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with paragraph (F)(6)(b)(ii) of this rule.

(ii) An insurer's supervision system under paragraph (F)(6)(a) of this rule shall include supervision of contractual performance under this paragraph. This includes, but is not limited to, the following:

(a) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(b) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(c) An insurer is not required to include in its system of supervision an insurance agent's recommendations to consumers of products other than the annuities offered by the insurer.

(7) An insurance agent shall not dissuade, or attempt to dissuade, a consumer from:

(a) Truthfully responding to an insurer's request for confirmation of suitability information;

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

(8)

(a) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this rule. This paragraph applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this paragraph shall limit the insurance superintendent's ability to enforce (including investigate) the provisions of this rule.

(b) For paragraph (F)(8)(a) of this rule to apply, an insurer shall:

(i) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

(ii) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

(G) Insurance agent training

(1) An insurance agent shall not solicit the sale of an annuity product unless the insurance agent has adequate knowledge of the product to recommend the annuity and the insurance agent is in compliance with the insurer's standards for product training. An insurance agent may rely on insurer-provided product-specific training standards and materials to comply with this paragraph.

(2) In addition to the requirements in paragraph (G)(1) of this rule, insurance agents subject to this rule shall comply with the following continuing education requirements:

(a) An insurance agent who engages in the sale, solicitation or negotiation of annuity products shall complete a one-time four credit training course provided by a department of insurance approved continuing education provider.

(i) Insurance agents who hold a life insurance or variable annuity line of authority on the effective date of this rule and who desire to sell annuities shall complete the annuity training course required under paragraph (G)(2)(a) of this rule within six months after the effective date of this rule.

(ii) Insurance agents who hold a life insurance or variable annuity line of authority on the effective date of this rule, but did not complete the annuity training course requirements within six months after the effective date of this rule may not engage in the sale of annuities until the annuity training course required under paragraph (G)(2)(a) of this rule has been completed.

(iii) Individuals who obtain a life insurance or variable annuity line of authority after the effective date of this rule may not engage in the sale of annuities until the annuity training courses required under paragraphs (G)(1) and (G)(2) of this rule have been completed.

(b) The minimum length of the training required under paragraph (G)(2) of this rule shall be sufficient to qualify for at least four CE credits, but may be longer.

(c) The training required under this paragraph shall include information on the following topics:

(i) The types of annuities and various classifications of annuities;

(ii) Identification of the parties to an annuity;

(iii) How fixed, variable and indexed annuity contract provisions affect consumers;

(iv) The application of income taxation of qualified and non-qualified annuities;

(v) The primary uses of annuities; and

(vi) Appropriate sales practices, replacement and disclosure requirements.

(d) Providers of courses intended to comply with paragraph (G)(2) of this rule shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

(e) A provider of an annuity training course intended to comply with paragraph (G)(2)(a) of this rule shall register as a CE provider in this state and comply with the rules and guidelines applicable to insurance agent and continuing education courses as set forth in rule 3901-5-02 of the Administrative Code.

(f) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with rule 3901-5-03 of the Administrative Code.

(g) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with rule 3901-5-04 of the Administrative Code.

(h) For Ohio non-resident agents, the satisfaction of the training requirements of another state that are substantially similar to the provisions of paragraph (G)(2)(a) of this rule shall be deemed to satisfy the training requirements of this paragraph in this state.

(i) An insurer shall verify that an insurance agent has completed the four hour annuity training course required under paragraph (G)(2)(a) of this rule before allowing the agent to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this paragraph by obtaining certificates of completion of the training course or obtaining reports provided by superintendent-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

(H) Compliance mitigation; penalties

(1) An insurer is responsible for compliance with this rule. If a violation occurs, either because of the action or inaction of the insurer, or its insurance agent the superintendent may order:

(a) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's or by its insurance agent's, violation of this rule;

(b) A general agency, business entity, independent agency or the insurance agent to take reasonably appropriate corrective action for any consumer harmed by the insurance agent's violation of this rule; and

(c) Appropriate penalties and sanctions.

(2) Any applicable penalty under the Unfair and Deceptive Trade Practices Act, sections 3911.19 to 3911.26 of the Revised Code, for a violation of this rule may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

(I) Record keeping

(1) Insurers, independent agencies, business entity agents and insurance agents shall maintain or be able to make available to the superintendent records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for eight years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance agent.

(2) Records required to be maintained by this rule may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

(J) Severability

If any paragraph, term or provision of this rule is adjudged invalid for any reason, such 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.

Effective:

Five Year Review (FYR) Dates: 11/30/2020

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	3901.041, 3901.19 to 3901.26
Rule Amplifies:	3901.19 to 3901.26
Prior Effective Dates:	03/01/2007, 01/01/2009, 07/01/2011

Ohio | Common Sense Initiative

EXHIBIT 4

Mike DeWine, Governor | Jon Husted, Lt. Governor | Carrie Kuruc, Director

Business Impact Analysis

Agency Name: ***Ohio Department of Insurance***
Rule Contact Name: ***Loretta Medved, Policy Analyst***
Rule Contact Information: ***1-614-644-0239***
Loretta.Medved@insurance.ohio.gov

Regulation/Package Title *(a general description of the rules' substantive content)*:
Suitability in annuity transactions.

Rule Number(s): ***3901-6-13***

Date of Submission for CSI Review: ***October 7, 2020***
Public Comment Period End Date: ***October 23, 2020 12:00am***

Rule Type/Number of Rules:

☐ New/ rules
☒ Amended/ ***1*** rules (FYR? ***No***)
☐ No Change/ rules (FYR?)
☐ 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.

   Annuities are long-term investments that are sold by life insurance companies and provide periodic income payments over a specified period of time. Annuities come in a variety of product types – including fixed, variable, and fixed indexed – that carry different degrees of risk and reward.

   State insurance departments have regulated the sale of annuities since 2003, in part to ensure that insurance companies and insurance agents sell consumers products that are appropriate for them, as well as to ensure consistency with the regulation of securities. The National Association of Insurance Commissioners (NAIC) adopted a model regulation (Model #275), which established a standard of "suitability," rule 3901-6-13 of the Ohio Administrative Code largely mirrors the requirements of the model.

   Beginning in 2017, the NAIC established a working group – chaired by Ohio – to revise the model regulation. In part, this effort was based on parallel movement to increase the standard of care for retail investors within the financial industry. The goal of the working group was to seek clear, enhanced standards for annuity sales so consumers understand the products they purchase, are made aware of any material conflicts of interest, and are assured those selling the products do not place their financial interests above consumers' interests. In February 2019, the NAIC membership approved the revisions to the model establishing a "best interest" standard.

The amendments to this rule will build on the leadership Ohio has established on this critical consumer protection and ensure that Ohio regulations are consistent with the uniform standards of the NAIC model and with all parallel federal regulations.

3. Please list the Ohio statute(s) that authorize the Agency to adopt the rule(s) and the statute(s) that amplify that authority.

   Sections 3901.041, and 3901.19 to 3901.26 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.

   This rule brings Ohio law into compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law Number 111-203, 111th Cong., 2d sess. (July 21, 2010).

5. If the regulation 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)?

   Annuities are long-term investments that come in a variety of product types and carry different degrees of risk and reward. The new standard ensures that consumers can expect that the licensed professionals they trust to make recommendations on annuity products are acting in the consumers' best interest. The revisions also require agents and insurers to act with "reasonable diligence, care, and skill" in making a recommendation. Insurers now have heightened supervision requirements to ensure compliance with the new standard. These requirements include knowing the consumer's financial situation and objectives, understanding the available options, having a reasonable basis for believing the recommended option is in the consumer's best interest, and disclosing their compensation and any conflicts of interest.

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

   The rule provides important consumer protections by issuing guidance to insurance companies and agents in regard to annuity transactions. Success will be measured by a decrease in consumer complaints and improvement in consumer confidence.

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.*

Initial development of the newly enacted NAIC model began with the formation of a working group in 2017. The working group held regular meetings in which various national stakeholders gave input into the drafting of the model. During the spring 2020 national meeting the model regulation was enacted by the NAIC. Since then, multiple states have began the process to enact the model regulation. The department incorporated the new model into existing rule 3901-6-13 of the Ohio Administrative Code.

On Wednesday, June 10th the department sent the draft rule with request for comment to the following stakeholders: Association of Ohio Life Insurance Companies (AOLIC); American Council of Life Insurers (ACLI); Ohio Insurance Agents Association (OIA); Independent Insurance Agents and Brokers of America (IIABA); The Council of Insurance Agents and Brokers; National Association of Insurance and Financial Advisors; Ohio Chapter, American Fraternal Alliance; Ohio Insurance Institute (OII); Insured Retirement Institute (IRI); and American International Group (AIG).

Based on comments received the department followed up via phone call with OIA and IIABA on Thursday July 23, 2020.

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 multiple comments over the two week comment period. Most of the comments received were technical and structural in nature. Following internal review, many of the suggested amendments are incorporated into the final draft. Additionally, commenters raised issues similar to those discussed as part of NAIC deliberations. The department supports the national model and recognizes the necessity of uniformity in this area of regulation to support consumer protections. IRI requested an effective date for the rule of January 1, 2021. The department intends to file the rule accordingly. Nationwide Insurance submitted a comment of support for the draft rule.

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?

Over the last two years the working group held multiple discussions with and received significant input from a wide array of stakeholders on incorporating into the model a heightened standard of conduct for producers and insurers to follow when recommending annuity products to consumers. Many state regulators and industry leaders worked to establish a regulatory framework that strikes a balance between regulatory flexibility and consumer protection. The working group also made significant efforts to remain cognizant of the work being done by other regulatory jurisdictions that overlap with the sale of annuities in order to reduce regulatory duplication and burden for those agents holding multiple licenses. As a result, these revisions align well with the Security & Exchange Commission's (SEC) Regulation Best Interest.

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?

    With the goal of ensuring that consumers that are purchasing these types of products understand them and that the purchase of such a product is in their financial interest, and not driven by a particular product's compensation package – the state regulators and industry considered many different provisions and worked hard to strike a balance between flexibility and consumer protection. Additionally, the working group was keenly aware of the regulatory efforts of the SEC on this same topic and the NAIC model aligns with the SECs new regulations in this space. Further, the Dodd Frank Act generally requires that states must meet or exceed minimum requirements of the NAIC regulations regarding annuities or potentially face federal preemption.

13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

    The proposed amendments to this rule establish a best interest standard. As outlined in the rule, to make appropriate product recommendations for consumers crucial consumer profile information is to be reviewed and considered. The regulation provides a minimum course of conduct and a minimum amount of information that must be considered. The course of conduct is described because the actual outcome for each customer may and likely will be different. A performance based regulation is not appropriate as the rule seeks to maintain a process of accountability to the consumer.

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

    The NAIC working group worked carefully to avoid duplication or conflict with other regulatory jurisdictions that overlap with the sale of annuities, including the Security & Exchange Commission's (SEC) Regulation Best Interest. When drafting the amendments to

the rule, the department reviewed Ohio statutes and rules and determined that these rules do not duplicate other regulations.

15. 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.

    The rule has been amended to delay implementation to January 1, 2021 at the earliest to allow industry more time for implementation and the development of industry training and compliance measures. Department staff will continue dialogue with stakeholders to ensure the rule is implemented clearly and applied consistently and address any issues that arise on an ongoing basis. The department maintains agent licensing, enforcement and market conduct divisions to assist both industry and Ohio consumers. Additionally, information will be available on our web site to address questions regarding the updated rule.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:
    a. Identify the scope of the impacted business community;
    b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
    c. Quantify the expected adverse impact from the regulation.
    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.

    a. Insurance companies and agents engaging in the sale of annuities in the state of Ohio are impacted by the requirements of this rule.

    b. The existing rule and proposed amendments impact insurance agent training and diclosure requirements. Agents and companies will need to ensure complaince with training standards and will need to provide the new disclosure forms furnished in the rule, or one that is substantially similar. Staff time would be required to explain the policy to consumers each time an annuity transaction takes place.

    c. Costs associated with the continuing education requirements vary within the market, however, education requireemnts are already existing and should not impose additional costs. Required resources such as printed copies of the policies and disclosures are relative to the type and the frequency of the transactions.

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

Ohio adopting the national model for standard of conduct allows the industry to foster consistency and predictability in regulation. The standards included in the model are critical for the protection of consumers and must be met or exceeded in order to remain in compliance with federal requirements established in Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law Number 111-203, 111th Cong., 2d sess. (July 21, 2010).

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

    This rule is promulgated to establish consumer protections and professional standards, the rule is adopted from the recently amended NAIC model which is established for national consistency. All insurance agents, agencies, and companies are expected to 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. The department intends to continue dialogue with stakeholders through the finalization of the amendments to ensure compliance and facilitate questions. Additionally, the department will provide a guide for frequently asked questions regarding this rule on the department web site.

Ohio | Common Sense Initiative

EXHIBIT 5

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Loretta Medved, Ohio Department of Insurance

FROM: Ethan Wittkorn, Regulatory Policy Advocate

DATE: **November 24, 2020**

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

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

Analysis

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

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

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

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

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

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

Recommendations

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

Conclusion

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

Ohio Department of Insurance

Mike DeWine, Governor
Jon Husted, Lt. Governor

Tynesia Dorsey, Interim Director

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EXHIBIT 6

MEMORANDUM

To: Ethan Wittkorn, Regulatory Policy Advocate, Common Sense Initiative Office (CSI)

CC: Carrie Kuruc, Director of the Common Sense Initiative Office (CSI)

From: Loretta Medved, Policy Analyst

Date: November 27, 2020

Re: Response to CSI Review – (OAC 3901-6-13)

On November 24, 2020, the Ohio Department of Insurance (the Department) received the Recommendation Memorandum (CSI Recommendation) from the Common Sense Initiative Office for rule(s) 3901-6-13 Suitability in annuity transactions.

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.