

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

EXHIBIT 7

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](http://www.insurance.ohio.gov). Alternatively, a request for the web link and/or telephone number may be submitted to [ecomment@insurance.ohio.gov](mailto: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The purpose of rescinding this rule is LSC requires that the rule be rescinded and adopted as a new rule because greater than 50% of the text is affected.

The purpose of promulgating this rule is LSC requires that the rule be rescinded and adopted as a new rule because greater than 50% of the text is affected.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, 3<sup>rd</sup> Floor, Suite 300 Columbus, Ohio 43215, or proposed rules can be viewed online at [www.insurance.ohio.gov](http://www.insurance.ohio.gov).

C. Daniel Bradford, Staff Attorney

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**EXHIBIT 8**

**Rule Number:** 3901-6-13

**Rule Type:** New

**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?** No
  - A. **What is the rule's five year review date?**
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 3901.041, 3901.19 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.**

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

3901-6-13

**Suitability in annuity transactions.****EXHIBIT 9****(A) Purpose**

- (1) 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.
- (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 sale or recommendation of an annuity.
- (2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule or to subject an insurance agent to civil liability under the best interest standard of care outlined in this rule or under standards governing the conduct of a fiduciary or a fiduciary relationship.

**(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; or
- (d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
- (3) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- (4) Formal pre-need 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) "Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by an insurance agent in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.
- (3) "Consumer profile information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs and financial objectives, including, at a minimum, the following:
  - (a) Age;
  - (b) Annual income;
  - (c) Financial situation and needs, including debts and other obligations;
  - (d) Financial experience;
  - (e) Insurance needs;
  - (f) Financial objectives;



- (g) Intended use of the annuity;
  - (h) Financial time horizon;
  - (i) Existing assets or financial products, including investment, annuity and insurance holdings;
  - (j) Liquidity needs;
  - (k) Liquid net worth;
  - (l) Risk tolerance, including but not limited to, willingness to accept non-guaranteed elements in the annuity;
  - (m) Financial resources used to fund the annuity; and
  - (n) Tax status.
- (4) "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.
- (5) "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.
- (6) "FINRA" means the "Financial Industry Regulatory Authority" or a succeeding agency.
- (7) "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.
- (8) "Insurance agent" or "agent" means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. For purposes of this rule, "insurance agent" or "agent" include an insurer where no insurance agent is involved.
- (9) "Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by insurance agents.
- (10) "Material conflict of interest" means a financial interest of the agent in the sale of an annuity that a reasonable person would expect to influence the

impartiality of a recommendation. Material conflict of interest does not include cash compensation or non-cash compensation.

- (11) "Non-cash compensation" means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support and retirement benefits.
- (12) "Non-guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.
- (13) "Recommendation" means advice provided by an insurance agent to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice. Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.
- (14) "Replacement" means a transaction in which a new annuity is to be purchased, and it is known or should be known to the proposing agent, or to the proposing insurer whether or not an agent is involved, that by reason of the transaction, an existing annuity or other insurance policy has been or is to be any of the following:
- (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.
- (15) "SEC" means the United States Securities and Exchange Commission.

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

(1) Best interest obligations. An insurance agent, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the agent's or the insurer's financial interest ahead of the consumer's interest. An agent has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:

(a)

(i) Care obligation. The agent, in making a recommendation shall exercise reasonable diligence, care and skill to:

(A) Know the consumer's financial situation, insurance needs and financial objectives;

(B) Understand the available recommendation options after making a reasonable inquiry into options available to the agent;

(C) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and

(D) Communicate the basis or bases of the recommendation.

(ii) The requirements under paragraph (F)(1)(a)(i) of this rule include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

(iii) The requirements under paragraph (F)(1)(a)(i) of this rule require an agent to consider the types of products the agent is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the agent or other possible alternative products or strategies available in the market at the time of the recommendation. Agents shall be held to standards applicable to agents with similar authority and licensure.

- (iv) The requirements under paragraph (F)(1) of this rule do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this rule.
- (v) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation of paragraph (F)(1)(a) of this rule may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.
- (vi) The requirements under paragraph (F)(1)(a)(i) of this rule include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.
- (vii) The requirements under paragraph (F)(1)(a)(i) of this rule apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar product enhancements, if any.
- (viii) The requirements under paragraph (F)(1)(a)(i) of this rule do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.
- (ix) The requirements under paragraph (F)(1)(a)(i) of this rule do not mean the agent has ongoing monitoring obligations under the care obligation under this paragraph, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the agent.
- (x) In the case of an exchange or replacement of an annuity, the agent shall consider the whole transaction, which includes taking into consideration whether:
  - (A) 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;

(B) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

(C) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding sixty months.

(xi) Nothing in this rule should be construed to require an agent to obtain any license other than an insurance agent license with the appropriate line of authority to sell, solicit or negotiate insurance in this state, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this rule; provided the agent does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

(b) Disclosure obligation.

(i) Prior to the recommendation or sale of an annuity, the agent shall prominently disclose to the consumer on a form substantially similar to appendix A of this rule:

(A) A description of the scope and terms of the relationship with the consumer and the role of the agent in the transaction;

(B) An affirmative statement on whether the agent is licensed and authorized to sell the following products:

(i) Fixed annuities;

(ii) Fixed indexed annuities;

(iii) Variable annuities;

(iv) Life insurance;

(v) Mutual funds;

(vi) Stocks and bonds; and

(vii) Certificates of deposit.

- (C) An affirmative statement describing the insurers the agent is authorized, contracted, appointed, or otherwise able to sell insurance products for, using the following descriptions:
- (i) From one insurer;
  - (ii) From two or more insurers; or
  - (iii) From two or more insurers although primarily contracted with one insurer.
- (D) A description of the sources and types of cash compensation and non-cash compensation to be received by the agent, including whether the agent is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary or other agent or by fee as a result of a contract for advice or consulting services; and
- (E) A notice of the consumer's right to request additional information regarding cash compensation described in paragraph (F)(1)(b)(ii) of this rule.
- (ii) Upon request of the consumer or the consumer's designated representative, the agent shall disclose:
- (A) A reasonable estimate of the amount of cash compensation to be received by the agent, which may be stated as a range of amounts or percentages; and
  - (B) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages.
- (iii) Prior to or at the time of the recommendation or sale of an annuity, the agent shall have a reasonable basis to believe the consumer has been 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, any annual fees, potential charges for and features of riders, or other options of the annuity, limitations on interest returns, potential changes in

non-guaranteed elements of the annuity, insurance and investment components and market risk.

(c) Conflict of interest obligation. An agent shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

(d) Documentation obligation. An agent shall at the time of recommendation or sale:

(i) Make a written record of any recommendation and the basis for the recommendation subject to this rule;

(ii) Obtain a consumer signed statement on a form substantially similar to appendix B of this rule documenting:

(A) A customer's refusal to provide the consumer profile information, if any; and

(B) A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information.

(iii) Obtain a consumer signed statement on a form substantially similar to appendix C of this rule acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the agent's recommendation.

(e) Application of the best interest obligation. Any requirement applicable to an agent under paragraph (F)(1) of this rule shall apply to every agent who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the agent has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of an agent do not, in and of themselves, constitute material control or influence.

(2) Transactions not based on a recommendation.

(a) Except as provided under paragraph (F)(2)(b) of this rule, an insurance agent, shall have no obligation to a consumer under paragraph (F)(1) 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 consumer profile 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 insurance agent.
- (b) An insurer's issuance of an annuity subject to paragraph (F)(2)(a) of this rule shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(3) Supervision system

- (a) Except as permitted under paragraph (F)(2) of this rule, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information.
- (b) An insurer shall establish and maintain 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 establish and 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 and maintain standards for insurance agent product training and shall establish and 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 establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are



designed to ensure there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. 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 establish and maintain reasonable procedures to detect recommendations that are not in compliance with paragraphs (F)(1), (F)(2), (F)(4), and (F)(5) of this rule. These may include, but are not limited to, confirmation of consumer's consumer profile information, systematic customer surveys, agent and consumer interviews, confirmation letters, agent statements or attestations and programs of internal monitoring. Nothing in this paragraph prevents an insurer from complying with this paragraph by applying sampling procedures, or by confirming the consumer profile information or other required information under paragraph (F) of this rule after issuance or delivery of the annuity;
- (vi) The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether an agent has provided to the consumer the information required to be provided under paragraph (F) of this rule;
- (vii) The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;
- (viii) The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this paragraph are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and

(ix) The insurer shall annually provide a written 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.

(c)

(i) Nothing in paragraph (F)(3) of this rule restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (F)(3) 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)(3)(c)(ii) of this rule.

(ii) An insurer's supervision system under paragraph (F)(3) 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.

(d) 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, or include consideration of or comparison to options available to the agent or compensation relating to those options other than annuities or other products offered by the insurer.

(4) Prohibited practices. Neither an agent nor an insurer shall dissuade, or attempt to dissuade, a consumer from:

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

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

(5) Safe harbor

(a) Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements under this rule. Paragraph (F)(5) of this rule applies to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue. However, nothing in paragraph (F)(5) of this rule shall limit the superintendent's ability to investigate and enforce the provisions of this rule.

(b) Nothing in paragraph (F)(5)(a) of this rule shall limit the insurer's obligation to comply with paragraph (F)(3)(a) of this rule, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(c) For paragraph (F)(5)(a) of this rule to apply, an insurer shall:

(i) Monitor the relevant conduct of the financial professional seeking to rely on paragraph (F)(5)(a) of this rule or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal securities laws using information collected in the normal course of an insurer's business; and

(ii) Provide to the entity responsible for supervising the financial professional seeking to rely on paragraph (F)(5)(a) of this rule, such as the financial professional's broker-dealer or investment adviser registered under federal securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.

(d) For purposes of paragraph (F)(5) of this rule, "financial professional" means an agent that is regulated and acting as:

(i) A broker-dealer registered under federal securities laws or a registered representative of a broker-dealer;

(ii) An investment adviser registered under federal securities laws or an investment adviser representative associated with the federal registered investment adviser; or

(iii) A plan fiduciary under section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.

(e) For purposes of paragraph (F)(5) of this rule, "comparable standards" means:

(i) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest and any amendments or successor regulations thereto;

(ii) With respect to investment advisers registered under federal securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940, including but not limited to, the form ADV and interpretations; and

(iii) With respect to plan fiduciaries or fiduciaries, means the duties, obligations, prohibitions and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

(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.

- (b) An insurance agent who holds a life insurance line of authority on the effective date of this rule and who desires to sell annuities shall complete the requirements of paragraph (G)(2) within six months after the effective date of this rule. Individuals who obtain a life insurance line of authority on or 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) of this rule has been completed.
- (c) 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.
- (d) The training required under paragraph (G)(2) of this rule 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 product specific annuity contract features affect consumers;
  - (iv) The application of income taxation of qualified and non-qualified annuities;
  - (v) The primary uses of annuities; and
  - (vi) Appropriate standard of conduct, sales practices, replacement and disclosure requirements.
- (e) 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.
- (f) 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.

- (g) An agent who has completed an annuity training course approved by the department of insurance prior to the effective date of this rule shall, within six months after the effective date of this rule, complete either:
- (i) A new four credit training course approved by the department of insurance after the effective date of this rule; or
  - (ii) An additional one-time one credit training course approved by the department of insurance and provided by the department of insurance-approved education provider on appropriate sales practices, replacement and disclosure requirements under this amended rule.
- (h) 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.
- (i) 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.
- (j) 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 paragraph (G)(2) of this rule in this state.
- (k) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of paragraph (G)(2) of this rule shall be deemed to satisfy the training requirements of paragraph (G)(2) of this rule in this state.
- (l) An insurer shall verify that an insurance agent has completed the four hour annuity training course required under paragraph (G)(2) of this rule before allowing the agent to sell an annuity product for that insurer. An insurer may satisfy its responsibility under paragraph (G)(2) of this rule 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 a failure to comply with this rule by the insurer, an entity contracted to perform the insurer's supervisory duties or by its insurance agent;
  - (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.
- (3) The authority to enforce compliance with this rule is vested exclusively in the superintendent of insurance.

(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, disclosures made to the consumer, including the summaries of oral disclosures, 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.

(K) Effective Date

Insurers and insurance agents shall comply with the requirements of this rule within six months after the effective date of this rule.



Replaces: 3901-6-13

Effective:

Five Year Review (FYR) Dates:

---

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

**APPENDIX A****INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES**  
**Do Not Sign Unless You Have Read and Understand the Information in this Form**

Date: \_\_\_\_\_

**INSURANCE AGENT (PRODUCER) INFORMATION (“Me”, “I”, “My”)**

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Business/Agency Name: \_\_\_\_\_ Website: \_\_\_\_\_

Business Mailing Address: \_\_\_\_\_

Business Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

National Producer Number in [state]: \_\_\_\_\_

**CUSTOMER INFORMATION (“You”, “Your”)**

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

**What Types of Products Can I Sell You?**

I am licensed to sell annuities to You in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds and mutual funds, also may meet Your needs.

I offer the following products:

- Fixed or Fixed Indexed Annuities
- Variable Annuities
- Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non- insurance financial products that I am licensed and authorized to provide advice about or to sell.

- Mutual Funds
- Stocks/Bonds
- Certificates of Deposits

**Whose Annuities Can I Sell to You?**

I am authorized to sell:

<input type="checkbox"/> Annuities from Only One (1) Insurer	<input type="checkbox"/> Annuities from Two or More Insurers
<input type="checkbox"/> Annuities from Two or More Insurers although I primarily sell Annuities From: _____	

**How I’m Paid for My Work:**

It’s important for You to understand how I’m paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to Me by the consumer. If You have questions about how I’m paid, please ask Me.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

- Commission, which is usually paid by the insurance company or other sources. If other sources, describe: \_\_\_\_\_.
- Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.
- Other (Describe): \_\_\_\_\_.

*If you have questions about the above compensation I will be paid for this transaction, please ask me.*

I may also receive other indirect compensation resulting from this transaction (sometimes called “non-cash” compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

By signing below, You acknowledge that You have read and understand the information provided to You in this document.

---

Customer Signature

---

Date

---

Agent (Producer) Signature

---

Date

**APPENDIX B**

**CONSUMER REFUSAL TO PROVIDE INFORMATION**

**Do Not Sign Unless You Have Read and Understand the Information in this Form**

**Why are You being given this form?**

You're buying a financial product – an annuity.

To recommend a product that effectively meets Your needs, objectives and situation, the agent, broker, or company needs information about You, Your financial situation, insurance needs and financial objectives.

If You sign this form, it means You have not given the agent, broker, or company some or all the information needed to decide if the annuity effectively meets Your needs, objectives and situation. You may lose protections under the Insurance Code of Ohio if You sign this form or provide inaccurate information.

Statement of Purchaser:

- I **REFUSE** to provide this information at this time.
- I have chosen to provide LIMITED information at this time.

\_\_\_\_\_  
Customer Signature

\_\_\_\_\_  
Date

**APPENDIX C**

**Consumer Decision to Purchase an Annuity NOT Based on a Recommendation**

**Do Not Sign This Form Unless You Have Read and Understand It**

**Why are You being given this form?** You're buying a financial product – an annuity.

To recommend a product that effectively meets Your needs, objectives and situation, the agent, broker, or company has the responsibility to learn about You, Your financial situation, insurance needs and financial objectives.

If You sign this form, it means You know that you're buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the agent, broker or company did not recommend that I buy it. If I buy it **without a recommendation**, I understand I may lose protections under the Insurance Code of Ohio.

\_\_\_\_\_  
Customer Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Agent (Producer) Signature

\_\_\_\_\_  
Date

Common Sense  
Initiative

EXHIBIT 10

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  No Change/ rules (FYR? )  
 Amended/ 1 rules (FYR? No)  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 begun 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 10<sup>th</sup> 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 disclosure requirements. Agents and companies will need to ensure compliance 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 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.*

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 omission.*

20. What resources are available to assist small businesses with compliance of the regulation?

*Department staff is available to answer questions, regardless of the size of business. 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.*



# Common Sense Initiative

**EXHIBIT 11**

**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

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

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

**3901-6-13 NEW 038**

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.



**MEMORANDUM**

**EXHIBIT 12**

**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](mailto:Loretta.Medved@insurance.ohio.gov).