TITLE 760 DEPARTMENT OF INSURANCE

Economic Impact Statement
LSA Document #23-518

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

IC 4-22-2.1-5(a) provides that an agency that intends to adopt a rule under IC 4-22-2 that will impose requirements or costs on small businesses must prepare a statement that describes the annual economic impact of the rule on small businesses after the rule is fully implemented as described in IC 4-22-2.1-5(b). That statement must be submitted to the Indiana economic development corporation (IEDC). The IEDC is required to review the rule and submit written comments to the agency not later than seven days before the public hearing.

The proposed rule amends 760 IAC 1-72 to align Indiana's suitability in annuity transactions rule with recent updates to the corresponding National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions Model Regulation #275 (Model #275). Model #275 was developed, in part, in response to the United States Department of Labor (DOL) fiduciary rule, which was finalized in April 2016 but vacated in its entirety in 2018. This rule would have expanded the scope of who is considered a fiduciary to federal Employee Retirement Income Security Act of 1974 retirement plans and individual retirement accounts to include a broader set of insurance agents, insurance brokers, and insurers. Separately, the United States Securities and Exchange Commission (SEC) released a proposed rule in May 2018, which was finalized in June 2019. This rule establishes a best interest standard of conduct for broker-dealers beyond the existing suitability obligation that applies to federally registered variable annuities. As consumers exploring the purchase of an annuity are better protected when, to the extent possible, there is compatibility with rules enforced by the states, the DOL, and the SEC, the NAIC revised Model #275 to establish a framework for an enhanced standard of conduct that is more than the prior model's suitability standard, but not a fiduciary standard. Under the NAIC revisions, producers and insurers making recommendations for annuities must act in the best interest of the consumer under the circumstances known at the time the recommendation is made.

Estimated Number of Small Businesses Affected:

The proposed rule will impact insurance companies licensed to issue annuities in Indiana, as well as resident and nonresident producers with variable life and annuity qualifications selling annuities in Indiana. As of May 19, 2023, there are 498 insurance companies licensed to issue annuities in Indiana. The Indiana department of insurance (IDOI) estimates that 16 insurance companies may qualify as small businesses. There are 30,896 resident and nonresident producers with variable life and annuity qualifications to sell annuities in Indiana. IDOI estimates that 30,896 resident and nonresident producers with variable life and annuity qualifications to sell annuities in Indiana may qualify as small businesses.

Estimated Administrative Costs Imposed on Small Businesses:

As of April 26, 2023, 36 states have adopted the updated Model #275, and eight more states have pending legislation or rulemaking actions. All 16 insurers that may qualify as small businesses are licensed in states that have already adopted Model #275; therefore, the proposed rule will not impact these insurers with administrative costs, as systems have been updated to comply with other states' requirements. Insurance producers selling annuities in Indiana are already required to take a four credit training course on annuities, pursuant to IC 27-1-15.6-19.5. Producers that have already complied with the state law will be required to take a one credit hour training course on the updates contained within the proposed rule. This requirement is included within the 24 hours of continuing education required of producers to renew licensure every two years, so the requirement will not impose an additional cost.

Estimated Total Annual Economic Impact on Small Businesses:

The proposed rule does not impose an annual economic impact on insurance companies or insurance producers that may qualify as small businesses.

Justification of Requirements or Costs:

The proposed rule will have a positive impact on consumer protection of Hoosiers considering purchasing an annuity. Producers will be required to act in the consumer's best interest and must satisfy the obligations regarding care, disclosure, conflict of interest, and documentation imposed by the proposed rule. When a consumer purchases an annuity that is in their best interest, the annuity can be a wise financial planning tool to create a future income stream. In addition, Indiana must adopt the amendments to Model #275 not later than February 1, 2025, to maintain the status of fixed and fixed indexed annuities as outside the scope of federal securities regulation.

Regulatory Flexibility Analysis:

The IDOI determined that adoption of the proposed rule would be most beneficial for the marketplace. There are no less intrusive or less costly alternative methods for achieving the purposes of the proposed rule. It is in Hoosier consumers' best interest for Indiana to maintain regulation over fixed and fixed indexed annuities, and the adoption of the proposed rule is the most feasible manner in which to accomplish this continued regulation.

[Notice of Intent was published in the manner set forth in IC 4-22-2, before its amendment July 1, 2023.]

Posted: 10/11/2023 by Legislative Services Agency
An html version of this document.