

## Best Interest Compliance Team

### RECENT STATE FIDUCIARY DUTY DEVELOPMENTS JANUARY 2019

State ▼	Fiduciary Duty Development ▼	Sources ▼
Connecticut	<ul style="list-style-type: none"> <li>• Connecticut HB 7161 “An Act Requiring Administrators of Certain Retirement Plans to Disclose conflicts of Interest” went into effect on October 1, 2017.</li> <li>• On January 1, 2019 any company that administers a retirement plan offered by a political subdivision of the state will have to disclose: “(1) The fee ratio and return, net of fees, for each investment under the retirement plan, and (2) the fees paid to any person who, for compensation, engages in the business of providing investment advice to participants in the retirement plan either directly or through publications or writings.”</li> <li>• The law applies to any person that: (1) enters into a contract or agreement with a 403(b) plan not regulated under ERISA to provide services to the plan; and (2) reasonably expects to receive \$1,000 or more in direct or indirect compensation for such services</li> </ul>	<a href="#">National Tax Deferred Savings Association Article</a>  <a href="#">Text of HB 7161</a>
Illinois	<p>Illinois Legislature HB4753, which is just a short title with no text. The legislative record so far is:</p> <ul style="list-style-type: none"> <li>• Introduced in the Illinois House by Rep. Will Guzzardi on 2/13/18</li> <li>• Read before the Illinois House also on 2/13/18</li> <li>• Referred immediately to the Illinois House’s Rules Committee, which is five individuals (three democrats and two republicans)</li> </ul>	<a href="#">HB4753</a>
Maryland	<ul style="list-style-type: none"> <li>• The Maryland Senate in February 2018 initially drafted a bill that would extend its already existing fiduciary duty to broker-dealers, agents and financial advisors.</li> <li>• However, on March 19, 2018 the Maryland Senate approved a financial reform bill that includes a provision instructing the Maryland Financial Consumer Protection Commission to study the outcome of federal efforts on fiduciary duty and then determine whether Maryland should enact its own fiduciary law.</li> <li>• However, on May 15, 2018, SB 1068 was approved by the Governor as Ch. 731. When it was first introduced, SB 1068, had a provision to establish a state-specific fiduciary duty for broker-dealers, agents, or investment advisers. After SIFMA testified at House and Senate hearings the fiduciary duty provision was removed. A study of SEC and DOL action replaced the fiduciary duty language.</li> </ul>	<a href="#">Barrons article on Fiduciary Duty Extending to Brokers</a>  <a href="#">Maryland Financial Consumer Protection Act of 2018</a>  <a href="#">SB 1068</a>  <a href="#">Ch. 731</a>

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Massachusetts	<ul style="list-style-type: none"> <li>• As of February 7, 2018, The Massachusetts Securities Division (“Division”) was seeking preliminary comments on a proposed regulation that would require investment advisers who are registered with the Division to create a fee table for advisory clients</li> <li>• Specifically, an investment adviser would create one fee table, which includes all fees and services provided by the investment adviser</li> <li>• The fee table would be updated annually and delivered annually in paper or electronic form to the investment adviser’s current advisory clients</li> </ul>	<a href="#">Preliminary Request for Public Comment on Proposed Fee Table for State-Registered Investment Advisers</a>
Nevada	<ul style="list-style-type: none"> <li>• New state law effective July 1, 2017, amends NRS 628A.010 and NRS 90.575</li> <li>• Provides that a financial planner “has the duty of a fiduciary toward a client”</li> <li>• “Financial planner” means a person who for compensation advises others upon the investment of money or upon provision for income to be needed in the future, or who holds himself or herself out as qualified to perform either of these functions</li> <li>• The law also imposes a fiduciary duty on broker-dealers, sales representatives and investment advisers who for compensation advise other persons concerning the investment of money</li> <li>• The law does not include a definition of fiduciary duty but does provide for a private right of action.</li> <li>• Implementation of the law is dependent on the adoption of regulations.</li> <li>• The law does not apply to sales of insurance, unless accompanied by investment advice</li> <li>• On January 18, 2019, Nevada released draft regulations.</li> <li>• In general, the draft regulations describe the substantive duties investment advisors and broker-dealers owe their clients, what actions constitute a breach of their fiduciary duties, as well as certain exceptions to these regulations.</li> <li>• The comment period ends on March 1, 2019.</li> </ul>	<a href="#">Senate Bill No. 383</a>  <a href="#">September 8, 2017 Notice of Regulation</a>  <a href="#">October 2, 2017 Notice of Regulation</a>  <a href="#">January 18, 2019 Draft Fiduciary Duty Regulations</a>

State ▼

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Sources ▼

New Jersey

- New Jersey proposed two related bills on January 9, 2018
- The first (Senate No. 735) would require financial advisors to disclose their fiduciary status to investors. Senate No. 735 delineates between “non-fiduciary investment advisors” and advisors subject to a fiduciary duty. Specifically, non-fiduciary investment advisors would have to advise clients—both orally and in writing—that they are not fiduciaries, and thus have no duty to act in the client’s best interests. Any advisors subject to a fiduciary duty would have to let clients know they are subject to a fiduciary duty. Both types of advisors could face a \$5,000 fine for failing to disclose this information
- The second (A208) requires disclosures from individuals who administer certain school retirement plans created in accordance with section 403(b) of the Internal Revenue Code
- Specifically A208 requires “person[s] administering annuity retirement plans for teachers to annually disclose fee ratio, return, and fees to each participant.” These disclosures would need to be made both upon enrollment and annually after

[New Jersey Proposed Bill Text No. 208 Proposed Bill Text](#)

New Jersey

- In an additional development, on September 18, 2018, Governor Phil Murphy announced his intention to direct the New Jersey Bureau of Securities to adopt rules to “impose a fiduciary duty on all New Jersey investment professionals, requiring them to place their clients’ interests above their own when recommending investments”
- Governor Murphy specifically stated that “New Jersey is pursuing state-level regulatory reforms that would enhance the integrity of its financial services industry by holding every investment professional to the highest standard under the law”
- If enacted, New Jersey would become one of the first states to adopt a “uniform fiduciary standard”
- As these regulations are only proposals, we will actively monitor this and provide updates as they become available

[Governor Murphy Announces Plan to Require NJ Financial Industry to Put Customers’ Interests First](#)

[New Jersey Business Magazine article on Adopting ‘Uniform Fiduciary Standard’](#)

State ▼	Fiduciary Duty Development ▼	Sources ▼
New York	<ul style="list-style-type: none"> <li>• On July 18, 2018, the New York Department of Financial Services (NYDFS) issued a final version of New York Insurance Regulation 187 (now called “Suitability and Best Interests in Life Insurance and Annuity Transactions”) which sets forth a “best interest” standard for sellers of life insurance and annuity products. It requires an insurer to have reasonable grounds for believing a recommendation is in the best interest of the consumer.</li> <li>• While annuity products were already subject to a suitability standard, a best interest standard is new. Further, prior to the Regulation, a best interest or suitability standard did not apply to the sellers of life insurance, but now both standards apply to life insurance.</li> <li>• The Regulation expands the applicability of the regulation to apply to insurance producers, life insurance policies, and in-force policies/contracts. It applies to policies/ contracts delivered or issued for delivery in New York</li> <li>• The Regulation continues to exempt policies/contracts used to fund qualified retirement plans, ERISA plans, and employer-sponsored IRAs</li> <li>• The Regulation also will not apply to sales of mutual funds or other securities, unless related to an annuity or life insurance product</li> <li>• There are two effective dates: August 1, 2019 for annuities and February 1, 2020 for life insurance.</li> </ul>	<p><a href="#">Drinker Biddle Blog Post on Proposed Regulation</a></p> <p><a href="#">Final Version of New York Insurance Regulation 187</a></p>
New York	<ul style="list-style-type: none"> <li>• On May 8, 2018, the New York assembly reported out of Committee A.2464, (preliminarily entitled The Investment Transparency Act) a bill aimed at “mandating greater levels of disclosures by non-fiduciaries that provide investment advice”</li> <li>• This would be accomplished through amending several sections of the general obligations law.</li> <li>• Investment advisors not currently subject to a fiduciary standard would be required, at the outset of the client relationship, to specifically disclose to clients, orally and in writing, that they are not fiduciaries</li> <li>• The specific disclosure must state: “I am not a fiduciary. Therefore, I am not required to act in your best interest, and am allowed to recommend investments that may earn higher fees for me or my firm, even if those investments may not have the best combination of fees, risks, and expected returns for you”</li> <li>• Investment advisors that the bill specifically requires to make this disclosure include: “brokers,” “dealers” “financial advisors,” “retirement planners,” or any advisor whose title would suggest expertise in financial planning, retirement planning or investments</li> </ul>	<p><a href="#">The Investment Transparency Act</a></p>

## Best Interest Compliance Team

Our national Best Interest Compliance Team assists clients with the evolving and overlapping federal and state regulations related to the standard of care for broker-dealers, investment advisers, and insurance companies, agents and brokers.

The interdisciplinary group of more than 20 lawyers consists of attorneys from the firm's Investment Management, ERISA, SEC and Regulatory Enforcement Defense, Litigation/FINRA Arbitration, and Insurance Regulatory and Transactional practice areas. The team includes experienced litigators, legislative professionals, compliance supervisors and former regulators.

We actively assist investment managers, broker-dealers, registered investment advisers, retirement plan/IRA service providers and insurance companies with the challenges resulting from the ever-changing regulations from the SEC, FINRA, the Department of Labor and state agencies related to fiduciary requirements and best interest duties.

Our experience with best interest compliance and reporting obligations includes strengthening supervisory procedures and internal controls, and determining whether compliance policies and procedures are implemented as written. Our lawyers draft agreements, disclosure documents and Written Supervisory Procedures to assist with the implementation of the anticipated new standard of care, and supervision of that standard. We also advise clients on the development of products and services that are consistent with ERISA's fiduciary standards and prohibited transaction restrictions, including retirement income investments and guaranties.

We represent clients involved in investigations and enforcement matters before agencies such as the SEC, the Department of Labor, the IRS, FINRA and other self-regulatory or state agencies. Our lawyers also provide independent assessments of risk management and supervisory frameworks, and overall compliance policies and procedures related to conflicts of interest, breaches of fiduciary duty and securities law violations. In addition, our lawyers represent broker-dealers, investment advisers, insurance companies and other financial services entities in litigation and arbitration matters on standards of care and conflicts of interest.

Through articles, webinars, audiocasts and white papers, our Best Interest Compliance Team also provides investment advisers, brokers, insurance representatives and others with counsel and information to stay ahead of directives from the SEC, FINRA, the Department of Labor and other regulatory agencies.

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