

Best Interest Compliance Team

STATE FIDUCIARY AND BEST INTEREST DEVELOPMENTS

State ▼	Fiduciary/Best Interest Development ▼	Sources ▼
Alabama	<ul style="list-style-type: none"> The Alabama Department of Insurance has adopted a rule that sets forth a best interest standard for annuity producers in recommending an annuity to their customers. The new rule requires a producer, “when making a recommendation of an annuity, [to] act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer’s or the insurer’s financial interest ahead of the consumer’s interest.” The rule also requires the producer to satisfy certain duties regarding care, disclosure, conflict of interest, and documentation. To satisfy the duty of care, the producer must exercise reasonable diligence, care, and skill in knowing the consumer’s financial situation, insurance needs, and financial objectives and have a “reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs, and financial objective[s] over the life of the product, as evaluated in light of the consumer profile information.” The duty of care does not mean the producer must necessarily recommend the annuity with the lowest one-time or multiple- occurrence compensation structure, nor does it mean the producer has an ongoing duty to monitor. Prior to recommending an annuity, the producer must prominently disclose to the consumer the scope and terms of the relationship with the consumer and the role of the producer in the transaction, must “identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest,” and must make a written record of any recommendation and the basis for the recommendation. The rule does not create a fiduciary obligation or relationship with the consumer, and producers are not subject to civil liability for breaching any fiduciary standard of conduct. The new rule took effect on January 1, 2022. 	Chapter 482-1-137
Alaska	<ul style="list-style-type: none"> Effective November 23, 2022, the Alaska Division of Insurance adopted rules establishing best interest standards on insurance producers and insurers for annuity recommendations to consumers based on the NAIC model (discussed below). These standards do not create a fiduciary obligation or relationship. When making a recommendation, the producer must act in the best interest of the consumer. To do that, the producer must know the consumer’s financial situation, insurance needs and financial objectives; understand the annuity options recommended; and have a reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs and financial objectives based on the consumer profile information. 	Alaska Division of Insurance

This chart is regularly updated based on current developments. Please check our blog page at <http://www.brokerdealerlawblog.com/resources> for the most recent version of this chart.

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	<p>system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed.</p> <ul style="list-style-type: none"> • The regulation does not apply to recommendations involving contracts used to fund certain retirement plans, including an ERISA plan, a tax-qualified retirement plan, governmental plans, church plans and nonqualified deferred compensation arrangements. • The regulation does not create a fiduciary relationship nor does it create a private cause of action for enforcing these new standards. • In recommending the annuity, the producer must have a reasonable basis for believing the recommendation effectively addresses the consumer's financial situation, insurance needs and financial objectives based on consumer profile information obtained by the producer prior to the recommendation. • Prior to recommending the annuity, the producer is obligated to prominently disclose to the consumer the producer's role in the transaction, the types of products the producer is authorized to sell, a description of the compensation the producer will receive and notice of the consumer's right to request additional information. The regulation includes a form of disclosure that can be used for this purpose. • At the time of the recommendation or sale, the producer must make a written record of any recommendation and the basis for the recommendation and obtain a signed statement from the consumer if the consumer refuses to provide or provides insufficient consumer profile information. • The regulation also requires the insurer to establish and maintain a supervision system reasonably designed to achieve compliance with these requirements by the insurer and the producer. 	
Connecticut	<ul style="list-style-type: none"> • Connecticut HB 7161, "An Act Requiring Administrators of Certain Retirement Plans to Disclose Conflicts of Interest," went into effect on October 1, 2017. • 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." • 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. 	HB 7161, now Public Act No. 17-142
Delaware	<ul style="list-style-type: none"> • The Delaware Department of Insurance has amended its Suitability in Annuity Transactions Regulation ("Regulation 1214") to adopt the NAIC's model suitability standard (discussed below). • The amended regulation took effect on August 1, 2021. 	Final Regulatory Implementing Order 1214
Hawaii	<ul style="list-style-type: none"> • Effective January 1, 2023, Hawaii enacted a law governing the duties of insurers and producers similar to the NAIC model rule (discussed below). • It provides that in recommending the purchase or exchange of annuity to a consumer that results in an insurance transaction, the insurance producer, or the insurer where no producer is involved, 	Laws of Hawaii, ch. 58, sec.7

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Hawaii Cont.	<p>must have reasonable grounds for believing the recommendation is suitable for the consumer based on the facts, including suitability information provided by the consumer about the customer's investments, other insurance products, financial situation and needs.</p> <ul style="list-style-type: none"> • The consumer must be reasonably informed of the various features of the annuity (surrender charges and periods, fees, product enhancements, etc.). • At the time of the sale, the producer or insurance representative must make a written record of any recommendation. • The statute also requires the insurer to establish and maintain a supervision system that is reasonably designed to achieve compliance and describes the procedures that should be implemented. 	
Idaho	<ul style="list-style-type: none"> • The Idaho legislature has amended its Annuity Consumer Protections Act to adopt the NAIC's model suitability standard (discussed below). • The amended provisions took effect July 1, 2021 	House Bill 79
Illinois	<ul style="list-style-type: none"> • In 2018, a bill entitled "the Investment Advisor Disclosure Act" was introduced, but with no text. The bill was referred to the House Rules Committee and died with no action taken. • There has been no additional legislative action on this topic. 	Illinois General Assembly - Full Text of HB4753 (ilga.gov)
Iowa	<ul style="list-style-type: none"> • On February 27, 2020, the Iowa Insurance Division proposed a best interest standard for annuity producers and securities sales representatives to act in the best interest of their customers in recommending an annuity. • In finalizing the rule, the Division indicated that, in response to comments, it was postponing the securities portion of the standard but proceeding with the insurance portion of the rule without change from the proposal. The Division indicated that it "anticipates publishing a new Notice of Intended Action related to the securities portion of the rulemaking this summer", though no proposal has been published as of July 10, 2020. • The final rule, which is similar to the NAIC model suitability standard (discussed below) and is intended to be consistent with the SEC's Regulation Best Interest, will require financial professionals to "always put the consumer's interest first" and to only make recommendations that match the customer's needs, objectives and personal situation. • The final rule specifically provides that it is not intended to give consumers a private right of action to enforce the new standard or to create a fiduciary relationship between a producer and a consumer. • The insurance portion of the rule took effect January 1, 2021. 	Proposed Rulemaking Related to Best Interest Standard in annuity sales. Rulemaking related to best interest standard for insurance professionals
Kentucky	<ul style="list-style-type: none"> • The Kentucky Department of Insurance has finalized a rule amending its Suitability in Annuity Transactions Regulation ("Regulation 12:120") to adopt the NAIC's model suitability standard (discussed below). • The new regulation took effect January 1, 2022. 	Final Regulation 12:120

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Maine Maine Cont.	<ul style="list-style-type: none"> The Maine Bureau of Insurance has finalized a rule amending its Suitability in Annuity Transactions Regulation (“Chapter 917”) to adopt the NAIC’s model suitability standard (discussed below). The new rule took effect January 1, 2022. 	Final Rule Chapter 917 The primary source for Chapter 917 is the Secretary of State. Follow the link above and choose Ch. 917. You can then download a Word version of the rule.
Maryland	<ul style="list-style-type: none"> On March 30, 2022, Maryland adopted new regulations titled Suitability in Annuity Transactions based on the NAIC model (discussed below) which became effective October 8, 2022. The rule requires insurers to establish a system to supervise recommendations and set forth standards and procedures for each recommendation that results in a transaction involving an annuity product so that the insurance needs and financial objectives of the consumer are appropriately addressed. The rule applies to each recommendation to purchase, exchange or replace an annuity made to a consumer by an insurance producer or an insurer where no insurance producer is involved. In recommending the purchase, exchange or replacement of the annuity, the insurance producer or insurer must have reasonable grounds for believing the recommendation is suitable based on investment and financial information provided by the consumer and based on evaluation of the various features of the annuity (e.g., fees, expenses, limitation on interest returns, market risk, insurance and investment components, etc.). The rule does not apply to recommendations involving contracts used to fund certain retirement plans, including an ERISA plan, a tax-qualified retirement plan, governmental plans, church plans and nonqualified deferred compensation arrangements. The rule does not create a private cause of action for enforcing these new standards. 	The Financial Protection Act of 2019 House Version
Massachusetts (Advisor Fee Table)	<ul style="list-style-type: none"> The Massachusetts Securities Division (“Division”) has adopted a rule requiring investment advisers registered with the Division to create a stand-alone Table of Fees for Services. The Division has provided instructions for creation of the form and a template for development of the Table. Specifically, an investment adviser must create a one-page fee table, which includes all fees and services provided by the adviser. The Division notes that the “Fee Table supplements, but does not replace” an adviser’s disclosure obligations. The fee table must be updated annually in coordination with the timing of required amendments to the adviser’s Form ADV, and must be delivered annually in paper or electronic form to the investment adviser’s current advisory clients. The requirement took effect January 1, 2020. 	Adoption of Amendments to Investment Adviser Disclosure Regulations
Massachusetts (Broker-Dealer Fiduciary Standard) Cont.	<ul style="list-style-type: none"> On March 30, 2022, in Robinhood Financial, LLC v. Galvin, a Massachusetts Superior Court Judge declared that the Massachusetts fiduciary duty rule (the “Rule”) is unlawful. The Rule, which went into effect on March 6, 2020, and became enforceable on September 1, 2020, imposes a fiduciary conduct standard on broker-dealers and their agents and provides that a failure to adhere to that standard is deemed a dishonest or unethical practice subject to 	Final Regulation

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Massachusetts (Broker-Dealer Fiduciary Standard)	<p>sanctions by the Secretary of the Commonwealth of Massachusetts (the “Secretary”).</p> <ul style="list-style-type: none"> • Robinhood Financial challenged the validity of the Rule following an administrative enforcement action brought by the Secretary alleging that it had breached its fiduciary duty under the Rule. Robinhood argued that the Rule is invalid on its face, the Secretary lacked authority to adopt it, and that it is preempted by the SEC’s Regulation Best Interest (“Reg BI”). • The court determined that adoption of the Rule was beyond the Secretary’s authority and, therefore, the Rule is invalid. As a result, the court did not need to address the preemption issue. • In reaching its conclusion, the court found that the Rule overrides common law as defined by the Supreme Judicial Court of Massachusetts in a 2001 decision (<i>Patsos v. First Albany Corp.</i>) by enlarging the universe of broker-dealers subject to fiduciary obligations beyond those subject to such duties under that decision. Under the <i>Patsos</i> decision, the determination of whether a broker-dealer is subject to a fiduciary obligation depends on the level of discretion exercised by the broker-dealer on behalf of the customer. In contrast, the fiduciary standard under the Rule applies whenever a broker-dealer makes a recommendation or provides investment advice to a customer. Accordingly, broker-dealers who are not subject to fiduciary obligations under common law as defined by the <i>Patsos</i> court could be subject to those obligations under the Rule. • The court also pointed out that the Massachusetts Uniform Securities Act directs that Massachusetts law be coordinated with federal and state law elsewhere. The court reasoned that because the Rule creates conflicts with Reg BI and possibly other state laws - as acknowledged by the Secretary - this is further evidence that the Secretary acted outside his delegated authority and, therefore, the Rule is void as contrary to that Act. • The Secretary had an opportunity to appeal the decision during the 30-day period following issuance of the court order, but did not. 	
Massachusetts (Suitability in Annuity Transaction)	<ul style="list-style-type: none"> • The Massachusetts Division of Insurance (the “Division”) has finalized a rule that sets forth a best interest standard for producers in recommending an annuity to consumers and requires insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of the consumer are effectively addressed. The rule is based on the NAIC model (discussed below). • The regulation applies to sales or recommendations of an annuity made on or after June 1, 2023. • Under the rule, when recommending an annuity, the producer must exercise reasonable diligence, care, and skill in knowing the consumer’s financial situation, insurance needs, and financial objectives. The producer must also understand the available recommended options after making a reasonable inquiry into the options available to the producer and 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.” • Prior to recommending an annuity, the producer must prominently disclose the scope and terms of the relationship with the consumer, the role of the producer in the transaction, and the sources and types of cash compensation and non-cash compensation to be received by the producer and must notify the consumer of the right to receive additional information. The Division’s website 	211 CMR 96.00: Suitability in annuity transactions

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	<p>includes a Form that can be used for this purpose.</p> <ul style="list-style-type: none"> The producer must “identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest” and make a written record of any recommendation and the basis for the recommendation. The regulation does not apply to recommendations involving contracts used to fund certain retirement plans, including an ERISA plan, a tax-qualified retirement plan, governmental plans, church plans and nonqualified deferred compensation arrangements. The regulation does not create a fiduciary obligation or relationship with the consumer nor does it create a private cause of action for enforcing these new standards. 	
Michigan	<ul style="list-style-type: none"> The Michigan legislature has amended Chapter 41A of its insurance code (entitled “Annuity Recommendation to Consumers”) to adopt the NAIC’s model suitability standard (discussed below). The amended provisions took effect June 29, 2021. 	Public Act No. 266 (2020)
Mississippi	<ul style="list-style-type: none"> The Mississippi Insurance Department has adopted a rule that adopts the NAIC’s model suitability standard (discussed below). The new regulation took effect January 1, 2022. 	19 Miss. Admin. Code, Part 2, Chapter 18: Suitability In Annuity Transactions Model Regulation
Montana	<ul style="list-style-type: none"> On May 7, 2021, the Montana legislature passed a law amending the state’s Suitability in Annuity Transactions statute to adopt the NAIC’s model suitability standard (discussed below). The amended provisions took effect October 1, 2021. 	SB 363
Nebraska	<ul style="list-style-type: none"> On April 7, 2021, the Nebraska legislature passed a law amending the Nebraska Protection in Annuity Transactions Act to adopt the NAIC’s model suitability standard (discussed below). The amended provisions took effect January 1, 2022. 	Legislative Bill 22
Nevada Nevada Cont.	<ul style="list-style-type: none"> New state law effective July 1, 2017, amended NRS 628A.010 and NRS 90.575. Provides that a financial planner “has the duty of a fiduciary toward a client.” The term “financial planner” means a person who, for compensation, advises others on the investment of money or on provision for income to be needed in the future, or who holds himself or herself out as qualified to perform either of these functions. 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. The law does not apply to sales of insurance, unless accompanied by investment advice. The law does not include a definition of fiduciary duty but does provide for a private right of action. Implementation of the law is dependent on the adoption of regulations. On January 18, 2019, Nevada released draft regulations. Although the regulations have not yet been finalized, in early 2022 Nevada’s Securities Administrator indicated that she intends to resume work on the state’s proposed regulations in early 2022, with the aim of finalizing the regulations by November 2022. 	Senate Bill No. 383 September 8, 2017 Notice of Regulation October 2, 2017 Notice of Regulation January 18, 2019 Draft Fiduciary Duty Regulations Notice of Workshop to Solicit Comments on Proposed Regulations

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	<ul style="list-style-type: none"> In general, the draft regulations describe the substantive duties investment advisors and broker-dealers owe their clients, and what actions constitute a breach of their fiduciary duties, as well as certain exceptions to these regulations. The comment period ended on March 1, 2019. On July 8, 2022, the Nevada Commissioner of Insurance issued a proposed regulation (NAC 688A.460) regarding the training to be provided by an insurer before a producer is permitted to sell an annuity for the insurer. The proposed regulation (1) establishes new requirements for training producers; (2) revises procedures for the review of recommendations and monitoring of compliance to ensure there is a reasonable basis to determine that the recommendation furthers the insurance needs and financial objectives of the consumer, including oversight of required functions which are contracted out to third parties; and (3) requires annual reporting to senior management of insurers. 	
New Jersey (Legislation)	<ul style="list-style-type: none"> 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 inform clients that 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.A208, now A5151 New Jersey Senate No. 735, now Senate No. 2240 and Assembly No. 4655
New Jersey (Regulation) New Jersey (Regulation) Cont.	<ul style="list-style-type: none"> On April 15, 2019, the New Jersey Bureau of Securities issued a proposal to establish a fiduciary standard for broker-dealers in making recommendations, which include “investment strategy, the opening of or transfer of assets to any type of account, or the purchase, sale, or exchange of any security.” To meet their fiduciary duty, broker-dealers would need to satisfy duties of loyalty and care. The duty of care would require a broker to “make reasonable inquiry, including risks, costs, and conflicts of interest related to the recommendation or investment advice and the customer’s investment objectives, financial situation, and needs, and any other relevant information.” To satisfy the duty of loyalty, the broker would need to ensure their advice is made without regard to their financial interest or the financial interest of any third party. The proposed regulation also seeks to “codify” the fiduciary standard for investment advisors, who already “owe their customers a fiduciary duty as a matter of law.” Insurance providers also owe their clients a fiduciary duty under existing law. 	Rule Proposal to Require NJ Financial Industry to Put Customers’ Interests First April 14 Executive Order extending the deadline for finalizing proposed rules.

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	<ul style="list-style-type: none"> The regulation itself does not create a new private right of action concerning a breach of fiduciary duty, though New Jersey securities law has an existing private right of action should a broker commit fraud or deceit. Because the proposal has not been finalized, it was set to expire on April 14, 2020, under New Jersey law. To avoid this, the Governor issued an executive order on that date extending the deadlines for rulemaking for state agencies until 90 days after the end of the current coronavirus health emergency. 	
New Mexico	<ul style="list-style-type: none"> On February 24, 2022, the New Mexico Office of Superintendent of Insurance (OSI) issued a rule (1) requiring insurance producers to act in the best interest of a consumer when making a sale or recommendation of an annuity in New Mexico or to a resident of New Mexico and (2) requiring an insurer to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of the consumer are effectively addressed. The best interest obligation is comprised of a duty of care, a disclosure obligation and a conflict of interest obligation. The rule does not create a fiduciary obligation or relationship. Under the care obligation, the producer must exercise reasonable diligence, care and skill to know the consumer's financial situation, insurance needs and financial objectives, understand the consumer's available options and have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives. The rule also requires that the producer make a written record of the basis for the recommendation. Before recommending the annuity, the producer is obligated to prominently disclose to the consumer the producer's role in the transaction, the types of products the producer is authorized to sell, a description of the compensation the producer will receive and notice of the consumer's right to request additional information. The rule includes a form of disclosure that can be used for this purpose. The producer must also identify and avoid or reasonably manage and disclose material conflicts of interest. Under the rule, the producer must complete an OSI-approved training course. The rule also imposes an obligation on the insurer to establish and maintain a supervision system to ensure that an annuity recommendation to a consumer complies with these rules. The rule is effective October 1, 2022. 	Final Adopted Rule
New York (Regulation)	<ul style="list-style-type: none"> 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. 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. 	Faegre Drinker Blog Post on Proposed Regulation Final Version of New York Insurance Regulation 187

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	<ul style="list-style-type: none"> 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. The Regulation continues to exempt policies/contracts used to fund qualified retirement plans, ERISA plans, and employer-sponsored IRAs. The Regulation also will not apply to sales of mutual funds or other securities, unless related to an annuity or life insurance product. There are two effective dates: August 1, 2019 for annuities and February 1, 2020 for life insurance. NOTE: On April 29, 2021, a state appeals court struck down the Regulation as unconstitutional. <i>See Indep. Ins. Agents & Brokers of New York, Inc. v. New York State Dep't of Fin. Servs.</i>, 195 A.D.3d 83 (N.Y. App. Div. 2021). New York is expected to appeal the decision. 	
New York (Legislation)	<ul style="list-style-type: none"> The Investment Transparency Act (the ITA), aimed at “mandating greater levels of disclosures by non-fiduciaries that provide investment advice,” is pending in the New York legislature. The bill was introduced previously, but did not pass. The enhanced disclosures would be accomplished through amending several sections of the general obligations law. 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. 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.” 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. 	The Investment Transparency Act
North Carolina	<ul style="list-style-type: none"> Effective January 1, 2023, the North Carolina Department of Insurance adopted the NAIC Suitability in Annuity Transactions Model Regulation (discussed below). 	11 NCAC 12.0462

North Dakota	<ul style="list-style-type: none"> • The North Dakota legislature has amended its annuity transaction practices law to adopt the NAIC's model suitability standard (discussed below). • The amended provisions took effect January 1, 2022. 	House Bill 1160
Ohio	<ul style="list-style-type: none"> • The Ohio Department of Insurance has amended its Suitability in Annuity Transactions Rule ("Rule 3901-6-13") to adopt the NAIC's model suitability standard (discussed below). • The amended regulation took effect February 14, 2021, although individuals and entities subject to the rule will be allowed six months from its effective date (<i>i.e.</i>, until August 14, 2021) to comply with the amended provisions. 	Final Rule 3901-6-13
Pennsylvania	<ul style="list-style-type: none"> • On December 22, 2021, Pennsylvania Governor Tom Wolf signed legislation amending the state's Suitability of Annuity Transactions statute to adopt the NAIC's model suitability standard (discussed below). • The new law requires a producer, "when making a recommendation of an annuity, [to] act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest." The law also requires the producer to satisfy certain duties regarding care, disclosure, conflict of interest, and documentation. • To satisfy the duty of care, the producer must exercise reasonable diligence, care, and skill in knowing the consumer's financial situation, insurance needs, and financial objectives, make a reasonable inquiry into the options available to the producer, and 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." • The duty of care does not mean the producer must necessarily recommend the annuity with the lowest one-time or multiple-occurrence compensation structure, nor does it mean the producer has an ongoing duty to monitor, unless the monitoring obligation is separately owed under the terms of an agreement with the consumer. • Prior to recommending an annuity, the producer must prominently disclose to the consumer: the scope and terms of the relationship with the consumer and the role of the producer in the transaction; a description of the compensation to be received by the producer and notice of the consumer's right to request additional information about the compensation. • The producer must also "identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest." • At the time of the recommendation or sale, the producer must make a written record of any recommendation and the basis for the recommendation and obtain a consumer-signed statement on a form substantially similar to a model form established by the Insurance Department of the Commonwealth of Pennsylvania and following NAIC Model #275's Appendix B (or following Appendix C if the customer decides to enter into an annuity transaction not based on the producer's recommendation). • The law does not create a fiduciary obligation or relationship with the consumer and only creates a regulatory obligation. • The law takes effect June 20, 2022. 	SB772 Senate Fiscal Note PN 0912 Legislature's explanation <p>(As indicated in the Legislature's explanation, the bracketed shaded language indicates that the language has been removed in the final law).</p>

Rhode Island	<ul style="list-style-type: none"> • The Rhode Island Department of Insurance has finalized a rule that sets forth a best interest standard for annuity producers in recommending an annuity to their customers. • The final rule requires a producer, “when making a recommendation of an annuity, [to] act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer’s or the insurer’s financial interest ahead of the consumer’s interest.” The rule also requires the producer to satisfy certain duties regarding care, disclosure, conflict of interest, and documentation. • Under the rule, a producer must exercise reasonable diligence, care, and skill in knowing the consumer’s financial situation, insurance needs, and financial objectives. The producer must also understand the available recommendation options after making a reasonable inquiry into the options available to the producer and 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.” • This duty does not mean the producer must necessarily recommend the annuity with the lowest one-time or multiple-occurrence compensation structure, nor does it mean the producer has an ongoing duty to monitor. • Prior to recommending an annuity, the producer must prominently disclose the scope and terms of the relationship with the consumer, the role of the producer in the transaction, the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer 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 producer or by fee as a result of a contract for advice or consulting services. • The producer must “identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest” and make a written record of any recommendation and the basis for the recommendation. • The final rule does not create a fiduciary obligation or relationship with the consumer, and producers are not subject to civil liability for breaching any fiduciary standard of conduct. • The final rule took effect on April 1, 2021. 	Final Regulation 230-RICR-20-25-1
South Carolina	<ul style="list-style-type: none"> • Effective May 27, 2022, the South Carolina Department of Insurance adopted a rule in alignment with the NAIC model regulation (described below) imposing requirements on insurance producers to ensure they will act in the best interest of consumers. 	South Carolina Code of State Regulations, chapter 69, Insurance. (Scroll to section 69-29)
South Dakota	<ul style="list-style-type: none"> • Effective January 1, 2023, South Dakota adopted rules establishing best interest standards on insurance producers and insurers for annuity recommendations to consumers and issued Bulletin 22-03 providing guidance on the new rules. • These standards do not create a fiduciary relationship. • When making a recommendation, the producer must act in the best interest of the consumer and must know the consumer’s needs, understand the annuity options they are recommending, obtain consumer profile information and apply careful consideration if replacing or exchanging annuities. • Prior to or at the time of the recommendation, the producer must disclose important information to the consumer including the scope and terms of the relationship with the consumer, the role of the 	Senate Bill 148, South Dakota Codified Laws 58-33A-16 South Dakota Bulletin 22-03

	<p>producer in the transaction, a description of the compensation to be received by the producer and notice of the consumer's right to request additional information about the compensation.</p> <ul style="list-style-type: none"> • Producers must identify and avoid or reasonably manage and disclose material conflicts of interest. • Producers must document compliance with the new standards. • Insurance companies must establish and maintain a system to supervise recommendations to ensure consumer needs and objectives are effectively addressed. • Insurance producers who offer annuity recommendations made in compliance with comparable standards as a registered broker-dealer, investment advisor, or ERISA plan fiduciary are deemed to satisfy these best interest standards. 	
Tennessee	<ul style="list-style-type: none"> • The Tennessee Department of Commerce and Insurance adopted a rule, effective January 1, 2024, requiring producers to act in the best interest of the consumer when making a recommendation of an annuity. • The rule requires insurers 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 rule applies to any sale or recommendation of an annuity. • In recommending an annuity, the producer must have a reasonable basis to believe the recommendation 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 obtained prior to the recommendation. • Prior to the recommendation or sale of the annuity, the producer is obligated to prominently disclose to the consumer the producer's role in the transaction, the types of products the producer is authorized to sell, a description of the compensation the producer will receive and notice of the consumer's right to request additional information. The rule includes a form of disclosure that can be used for this purpose. • At the time of the recommendation or sale, the producer must make a written record of any recommendation and the basis for the recommendation and obtain a signed statement from the consumer if the consumer refuses to provide or provides insufficient consumer profile information. • The rule does not create a fiduciary obligation or relationship nor does the rule create a private cause of action for enforcing these new standards. • The rule does not apply to recommendations involving contracts used to fund certain retirement plans, including an ERISA plan, a tax-qualified retirement plan, governmental plans, church plans and nonqualified deferred compensation arrangements. 	Rulemaking Hearing Rule(s) Filing Form
Texas	<ul style="list-style-type: none"> • On June 4, 2021, the Texas legislature passed a law amending the state's Suitability of Certain Annuity Transactions statute to adopt the NAIC's model suitability standard (discussed below). • The amended provisions took effect September 1, 2021. 	HB1777
Virginia	<ul style="list-style-type: none"> • The Virginia Bureau of Insurance has amended its Rules Governing Suitability in Annuity Transactions to adopt the NAIC's model suitability standard (discussed below). • The amended provisions took effect May 1, 2021. 	Rules Governing Suitability in Annuity Transactions

Wisconsin	<ul style="list-style-type: none"> • Effective October 17, 2022, Wisconsin enacted a law requiring that insurance intermediaries act in the best interest of the consumer when making a recommendation of an annuity. • The law imposes a care obligation, disclosure obligation, conflict of interest obligation and documentation obligation. • The care obligation requires that the insurance intermediary exercise reasonable diligence, care and skill in making the recommendation taking into account the consumer's financial situation, insurance, needs, financial objectives and the available options. • Prior to recommending an annuity, the insurance intermediary must prominently disclose to the consumer: the scope and terms of the relationship with the consumer and the role of the insurance intermediary in the transaction; a description of the compensation to be received by the insurance intermediary and notice of the consumer's right to request additional information about the compensation. • At the time of the recommendation or sale, the insurance intermediary must make a written record of any recommendation and the basis for the recommendation and obtain a signed statement from the consumer if the consumer refuses to provide or provides insufficient consumer profile information. • The insurance intermediary must identify and avoid or reasonably manage and disclose material conflicts of interest. • The insurer must maintain reasonable procedures to ensure compliance with these requirements. • The law does not create a private cause of action. 	2021 Wis. Act 260, Wis. Stat. § 628.347
National Association of Insurance Commissioners (NAIC)	<ul style="list-style-type: none"> • In February of 2020, the NAIC released its amended model regulation concerning suitability in annuity transactions. • The purpose of the regulation is to require producers to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers 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 regulation requires a producer, when recommending an annuity, to act in the consumer's best interest, without placing the producer's or the insurer's financial interest ahead of the consumer's. Further, the regulation requires that the producer make a written record of the recommendation and the basis for it. • Prior to recommending the annuity, the producer must disclose: (1) the scope and terms of the producer's relationship with the consumer; (2) identify the products it is licensed and authorized to sell; (3) the insurers for whom it is authorized to sell; (4) a description of the sources and types of compensation to be received by the producer; and (5) notice of the consumer's right to request additional information regarding the compensation. • Also, the producer must identify and avoid or reasonably manage and disclose material conflicts of interest. • The regulation requires that insurers establish a supervision system "reasonably designed" to achieve its compliance with the regulation. Should an insurer violate this regulation, it would need to take corrective action and could be subject to "appropriate penalties and sanctions". • This regulation does not create a private right of action. 	Suitability in Annuity Transactions Model Regulation

**Certified Financial
Planner Board of
Standards, Inc. (CFP
Board)**

- In November 2018, the CFP Board updated its Code of Ethics and Standards of Conduct by extending the fiduciary duty owed to clients. Previously, the Standard applied to financial planning, but the new Standard – which will be effective October 1, 2019 – will cover financial advice to clients.
- The Standard says that in providing financial advice, a CFP professional “must act as a fiduciary, and therefore, act in the best interest of the Client.” This duty includes duties of loyalty and care and a duty to follow client instructions.
- The duty of loyalty requires, among other things, that the interests of the client be placed above those of the CFP professional and his/her firm.
- The Standard also imposes requirements when a professional takes on a duty to monitor.
- Among other things, the Standard will require CFP professionals to make full disclosure of material conflicts, and adopt and follow business practices reasonably designed to prevent conflicts from compromising the professional’s ability to act in the client’s best interest. Before providing advice, the professional must obtain the client’s consent, which may be implicit.
- CFP professionals are also required by the new Standard to make disclosures of their services, compensation, how the client pays for the products or services being recommended, and a description of additional costs the client may have to bear.
- CFP professionals are not subject to a private right of action under the Standard, but are subject to discipline by the CFP Board.

[Code of Ethics and Standards of
Conduct](#)

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 30 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 attorneys who were former financial services in-house counsel, legislative professionals, compliance supervisors and/or 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 of the SEC, FINRA, the Department of Labor and state agencies related to fiduciary requirements and best interest duties.

Our experience with fiduciary and best interest compliance and reporting obligations includes strengthening supervisory procedures and internal controls. In addition, our lawyers draft agreements, disclosure documents and Written Supervisory Procedures to assist with the implementation of new standards of care, and supervision of those standards. 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, audio casts 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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