



ARM

2018 Annual Educational Conference

***NASAA Panel: State Issues
Amelia Island, Florida
March 6, 2018***



Today's Agenda

- Update on state legislation and rules
- CRD/IARD Update
- NASAA Initiative: IAR-CE Survey
- Expungement update
- NASAA Policy Priorities
- State enforcement and examination efforts



Panel

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STATE LEGISLATION & RULES UPDATE



Update: Legislation & Rules*

Michigan – *proposed* its rewrite of state securities regulations in light of the MI’s adoption of the 2002 Uniform Securities Act

- The revised rules would not materially change BD or IA registration standards, however the revised rules do make some changes to the regulatory obligations of registered persons

*Disclaimer – please note that some of this legislation has been proposed or introduced, but is not FINAL; further, please confirm with the applicable state regulator for confirmation prior to reliance on any legislation or rule change discussed here today.



Update: Legislation & Rules*

Ohio – *drafting* rule changes to the minimum competency provisions in the securities salesperson and investment adviser representative licensing rules to address upcoming FINRA exam changes

- Ohio's rules specify qualifying examinations by number and name, which will be amended to conform to FINRA new co-requisite examination structure

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Update: Legislation & Rules*

Louisiana – *bill very recently introduced* creating a fingerprinting requirement for investment adviser representatives. As proposed:

- Exclusion: RR/IAR who has provided fingerprints to FINRA and FINRA has processed fingerprints.
- Prospective application to IARs: IARs registered before the statute takes effect, unless IAR applies for registration with a different IA

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Update: Policy Change*

Georgia – Revised review process related to fingerprinting process on December 21, 2017.

- IARs: all IARs applying to GA with fingerprints that are more than a year old will need to submit updated fingerprints
- RRs: all RRs applying to GA with new or updated disclosures on their records and fingerprints that are more than a year old will need to submit updated fingerprints
- For more information see:
[http://sos.ga.gov/admin/uploads/Georgia_FP_Instructions_2018_\(2.28_.2018\)_5.pdf](http://sos.ga.gov/admin/uploads/Georgia_FP_Instructions_2018_(2.28_.2018)_5.pdf)

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Update: Legislation & Rules – State-Level Fiduciary*

Nevada – *enacted legislation* to make BD agents and IARs financial planner fiduciaries. Regulations are being drafted to elucidate this duty

Connecticut – *enacted legislation* imposing fiduciary duties on financial planners who currently escape regulation as BD agents, IARs or otherwise

New Jersey & New York – *bills introduced* to impose disclosure obligations on BDs and agents clarifying when they are not acting as fiduciaries of customers

Maryland – *bill recently introduced* to impose fiduciary duties on BDs and BD agents

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CRD/IARD UPDATE



IAPD Update

- The IAPD site and reports were updated with changes to support the revised SEC mandated Form ADV changes, which include:
 - Revised to fill data gaps and provide additional information about investment advisers, including their separately managed account business
 - Schedule R was introduced as a method for private fund adviser entities operating a single advisory business to register using a single Form ADV
 - Clarified technical and other amendments to existing items and instructions



Forms Update

- NASAA CRD/IARD Steering & Forms and Process Committees are drafting possible U4/U5 amendments for future adoption
- Ongoing collaboration with FINRA
- Recommendations for changes are being evaluated by the regulatory and industry communities



NASAA Initiative: IAR-CE Survey (Deadline: March 31, 2018)



Why IAR CE?

- Investment adviser representatives (IARs) are registered with state securities regulators, whether affiliated with state-registered IA firms or SEC-registered IA firms
- Unlike most financial services professionals, IARs are not independently required to meet a continuing education requirement to maintain their licenses
- 2017 survey of NASAA U.S. members indicated strong support for closing this gap and exploring a CE program for IARs



Why IAR CE – Further Background

- Additional feedback from state securities regulators:
 - Could improve the overall quality of IA advice & professionalism enjoyed by investors
 - IA CE could foster heightened regulatory compliance & reduce the number of compliance deficiencies state securities regulators continue to see in their regulatory examinations every year
- However: external feedback on this concept is critical before moving forward
 - Qualitative feedback: stakeholder engagement
 - Quantitative feedback: stakeholder survey



Survey

- NASAA has engaged Prometric, a leader in test development and the CE industry, to assist NASAA in the potential development of an IAR CE Program
- Working with Prometric & drawing from past exams (NASAA 63/65/66) surveys, a NASAA Board-Level Committee developed an online survey to elicit external views on a number of topics related to a potential IAR CE program, including:
 - Content areas for CE and preferred delivery methods
 - Program structure and requirements
 - Current CE obligations and participation



How to Access the IAR-CE Survey

- Survey results are critical for NASAA's decision-making on the design and potential implementation of an IAR CE Program and will be used by NASAA to determine next steps
- Survey opened February 13, 2018 and will remain open until March 31, 2018
- A link to the Survey was distributed via email to state-registered IAs and SEC-registered IAs, but NASAA seeks responses from compliance professionals and other stakeholders as well as IARs
- Survey can also be accessed via NASAA website
- Survey is designed to be completed in less than half an hour



IA & IAR Population (Est.)

- Firms
 - State-registered IA Firms: 17,500 to 18,100
 - SEC-registered IA Firms: 12,000-12,500
- Reps
 - IA Reps with no RR registration: ~55,000
 - Dual IAR/RR registrants (affiliated with same firm): ~210,000-220,000
 - Dual IAR/RR registrants (affiliated with multiple firms): ~70,000
 - Note, all IARs registered solely with state securities regulators

All data: 2017



Current Working Assumptions: CE Concept

- Limit duplicative requirements as much as possible (*e.g.*, if an IA rep is already completing CE, that CE will likely count towards our CE requirement)
- Continued stakeholder engagement (before and after the Survey)
- Keep costs low/reasonable
- Use this opportunity to review Series 65 waiver eligibility



Current Working Assumptions: Potential Implementation of IA CE

- States ultimately have the authority to implement any potential IA CE Requirement
- Should NASAA and its members decide to move forward with an IA CE Requirement, it would likely involve NASAA developing a model rule, which would undergo the existing process:
 - Internal NASAA Comment
 - Public Comment
 - Approval by NASAA Membership
- States would then have to implement it on a state-by-state basis through their own independent rulemaking or statutory processes
 - This would allow for additional engagement on a state-by-state level prior to adoption



2018-2019 Timeline

- Stakeholder Engagement – Began February 2018
- Survey Open – February 13, 2018 - March 31, 2018
- Compile and Analyze Results – 2Q 2018
- Committee Discussion/Review & Recommendations to Board – 3Q 2018
- Update to NASAA Membership – 3Q 2018
- Stakeholder Re-Engagement – 3Q & 4Q 2018
- Next Steps/Implementation – TBD, 2019

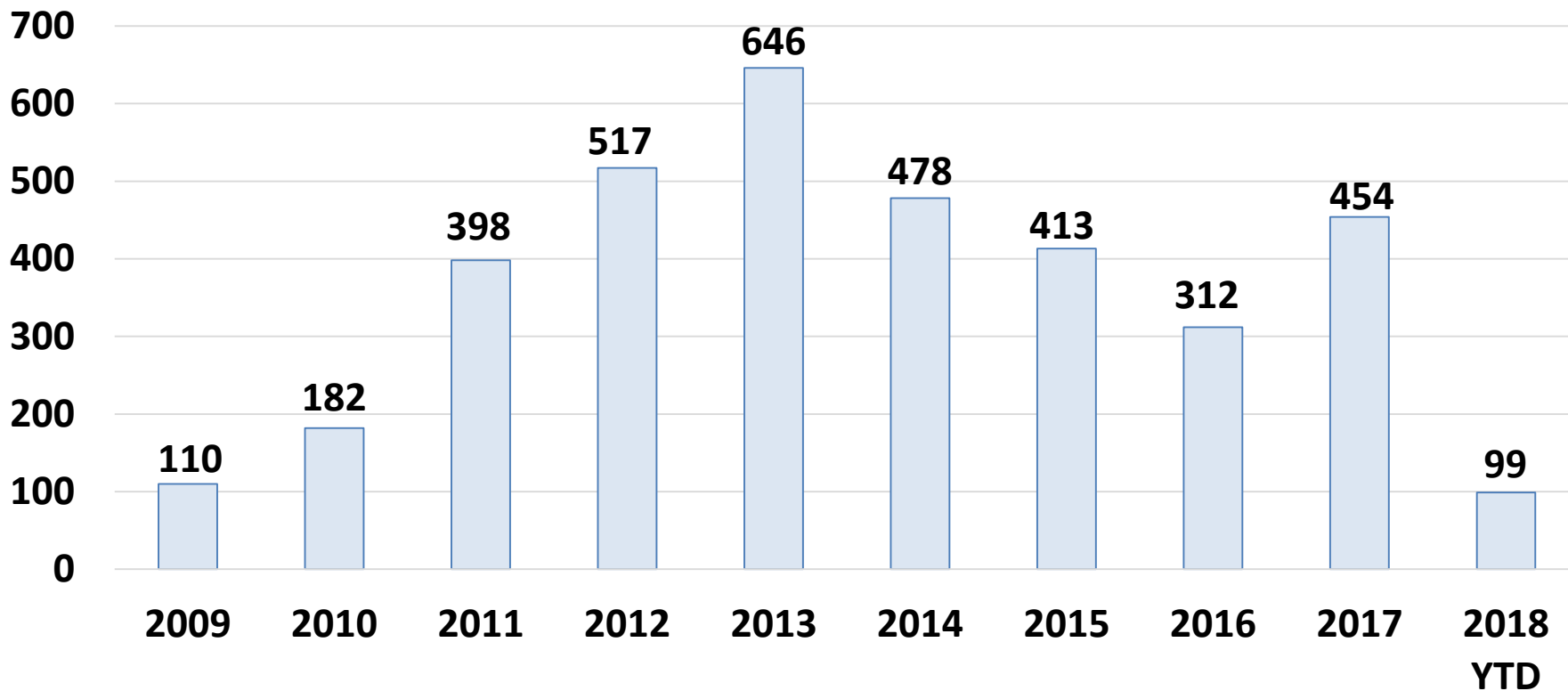


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Expungement Update

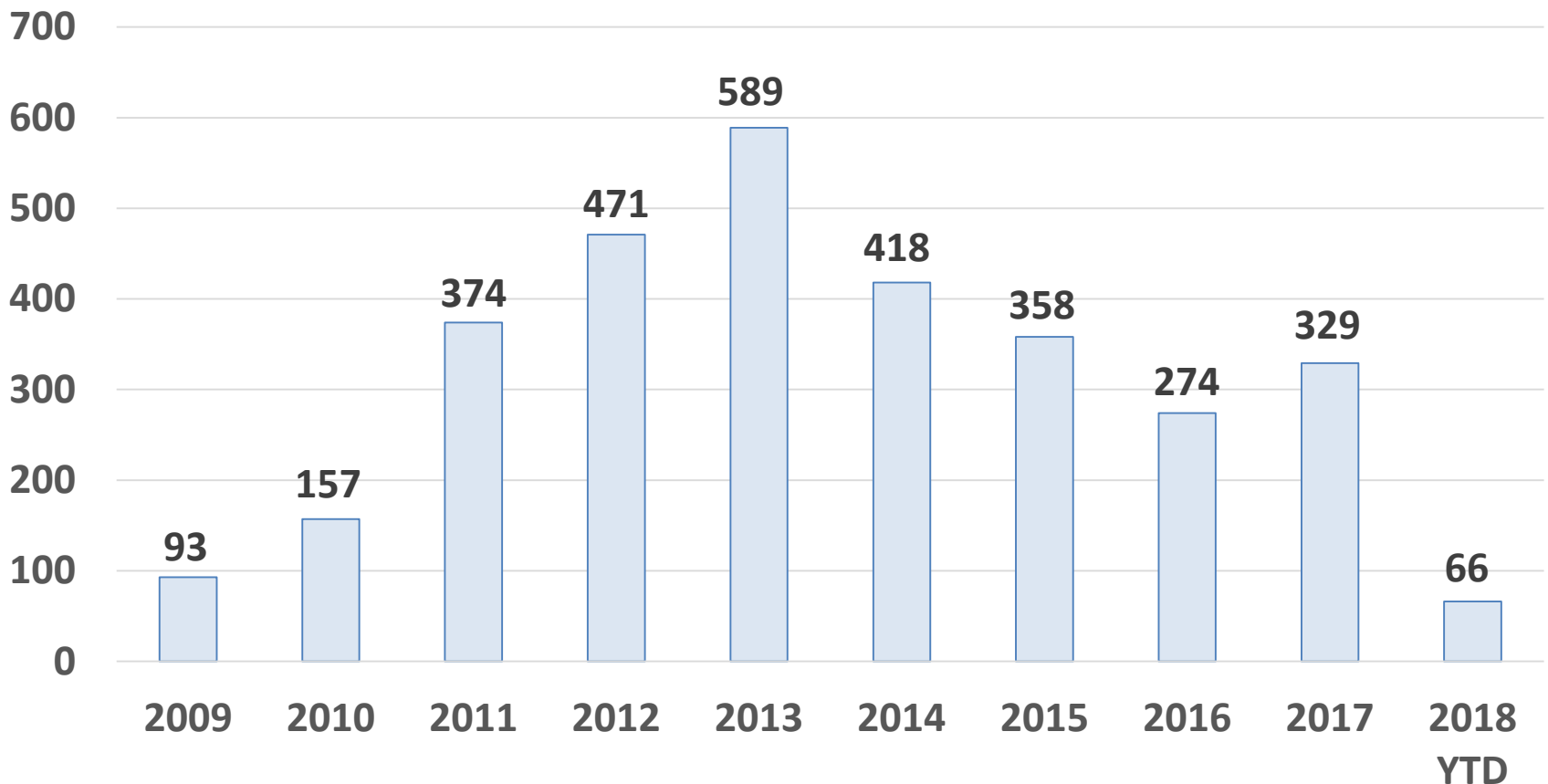


Combined Rule 2080 Waiver Requests & Litigations



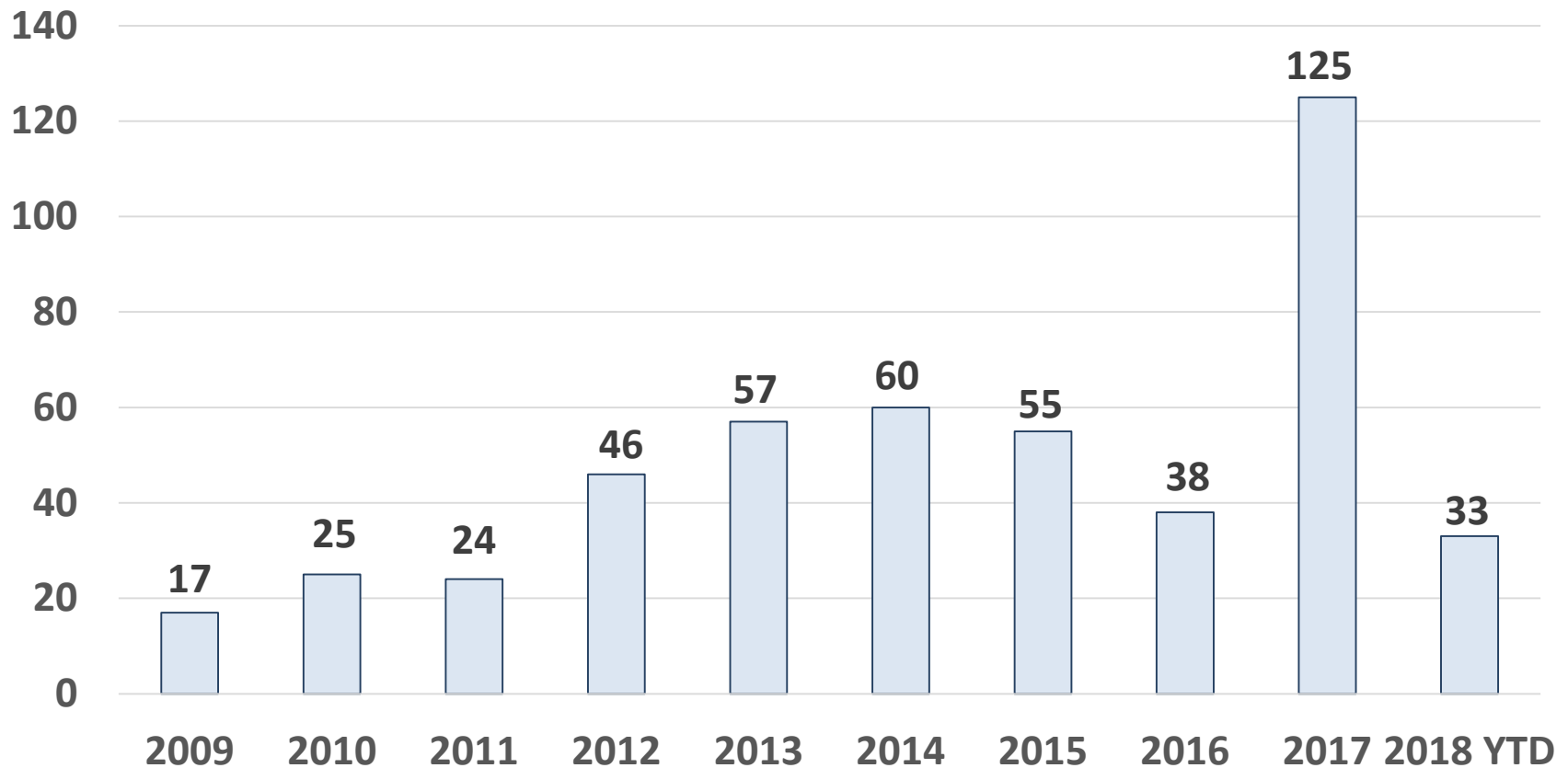


Rule 2080 Waiver Requests





Rule 2080-Related Litigation (Some Include Prior Waiver Requests)





Expungement Policy: State of Play



NASAA Policy Priorities



Protecting Seniors: NASAA Model

The NASAA Model Act has been adopted in whole or in part by 13 U.S. states.

Alabama

Arkansas

Colorado

Indiana

Louisiana

Maryland

Mississippi

Montana

New Mexico

North Dakota

Oregon

Texas

Vermont (via rule)



Protecting Seniors: NASAA Model (cont.)

NASAA continues to encourage more states to adopt the Model Act, and bills are pending in 9 jurisdictions.

Alaska

Delaware

District of Columbia

Florida

Kentucky

Michigan

Minnesota

New York

Utah



Protecting Seniors: Additional Information

- Ohio also separately enacted legislation adding investment advisers and accredited financial planners its adult protective services statute, ORC 5101.63, which requires mandatory reports by certain professionals when they have a reasonable belief that a senior citizen is the victim of elder abuse or exploitation.
- A bill is pending in Ohio to add IARs, securities dealers and securities salespersons to the list of mandatory reporters as well.



Additional Policy Priorities

- Seniors advocacy at federal level: Senior\$afe Act
- Cybersecurity collaboration & readiness
- Enhance Collaboration between Securities Regulators
- Protect the Integrity of the Securities Markets
- Maintain State Authority in Capital Formation



Policy Priority: Preserve and Promote Protections for Retail Investors

- **Fiduciary Standard for Broker-Dealers.**
- **Regulator Independence and Timely Action.**
- **Maintain and Expand Bad Actor Exclusions.**



STATE ENFORCEMENT AND EXAMINATIONS TRENDS



NASAA 2017 Enforcement Report

NASAA's 2017 Enforcement Report (re: 2016 activities) reflected that NASAA Members:

- Conducted 4,341 investigations.
- Took 2,017 enforcement actions resulting in
 - More than \$231 million in restitution ordered returned to investors
 - 1,346 years of incarceration, probation, and deferred prosecution
- NASAA Members' work also resulted in 2,843 licenses being withdrawn, denied, revoked, suspended or conditioned.



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Questions?