

NASAA 2022

Investment Adviser Section Annual Report

April 2022 | Highlighting 2021 Section Activities



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION

Introduction

The North American Securities Administrators Association (NASAA) is the oldest international organization devoted to investor protection. NASAA members include 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, the 13 provinces and territories of Canada, and the country of Mexico.

2021 continued to provide challenges for most, and state securities regulation was no exception. The membership and industry both had to adjust to the changing landscape. With the continued shift from traditional regulatory processes to the use of virtual tools and technology, communication and flexibility were key to ensuring registrants stayed in compliance and investors were protected. Through everything, the Investment Adviser Section and Project Groups continued to work on important matters that impact state-registered investment advisers.

NASAA's 2021 Investment Adviser Section Committee Annual Report provides an updated

snapshot of the United States investment adviser population, an updated profile of the average state-registered investment adviser, and a recap of the work of NASAA's Investment Adviser Section over the year.

A highlight from the report includes the Investment Adviser Section Committee's work with members of the Broker-Dealer Section to develop and propose a new model rule addressing unpaid arbitration awards by broker-dealers, agents, investment advisers, and investment adviser representatives.

Even with the remote environment many states still found creative ways to continue important outreach and educational opportunities. The report closes by highlighting outreach programs from members in Ohio, Virginia, Nebraska, and California.

We hope NASAA members and outside stakeholders, particularly state-registered investment advisers, find this report useful and welcome suggestions on ways to improve future editions. If there is ever anything that either of us can do to help with state investment adviser regulation, please do not hesitate to contact us directly.



William R. Carrigan, CFE
Chair, Investment Adviser Section



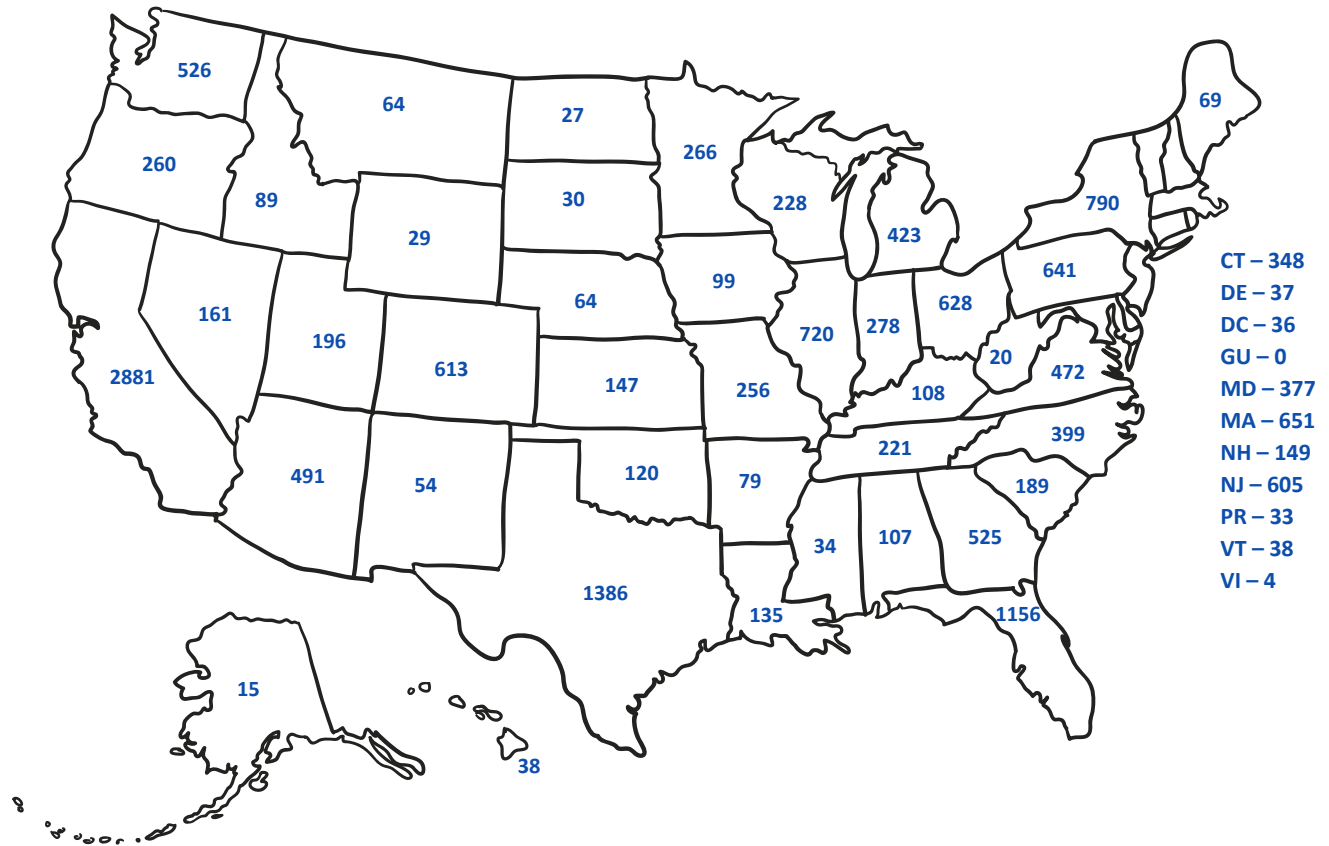
Linda Cena
Vice-Chair, Investment Adviser Section

SECTION COMMITTEE MEMBERS:

Stephen Bouchard, District of Columbia; Tung Chan, Colorado; Eric Pistilli, Pennsylvania; Scott Laskey, Ontario, Canadian Liaison; Dylan White, NASAA Staff Liaison

While statistics and information regarding the broker-dealer population have always been fairly easy to obtain, information on state-registered investment advisers has been more elusive. The following facts and figures present a snapshot of the current status of state-registered investment advisers.

STATE-REGISTERED IA STATISTICS 2021



State Registered IA Map



Top 5 State-Registered IAs Increase from 2020 – 2021

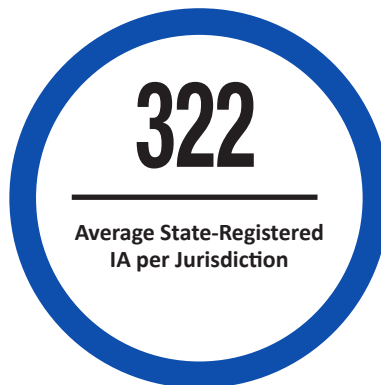
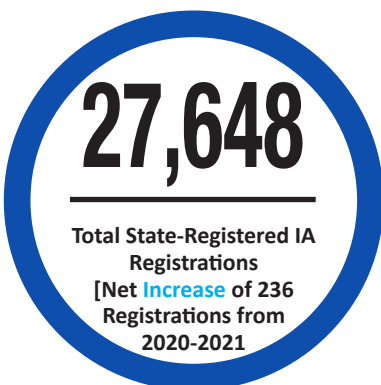
1. Florida – 53
2. Texas – 46
3. Tennessee/
North Carolina – 14
4. Missouri – 12
5. Utah – 10

Top 5 Most State-Registered IAs (Home State) [As of 12/31/21]

1. California – 2,881
2. Texas – 1,386
3. Florida – 1,156
4. New York – 790
5. Illinois – 720

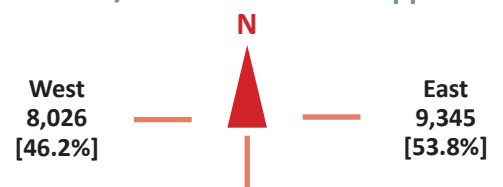
Top 5 Most State-Registered IAs (Total) [As of 12/31/21]

1. Texas – 4,228
2. California – 3,662
3. Florida – 1,867
4. New York – 1,321
5. Illinois – 1,013

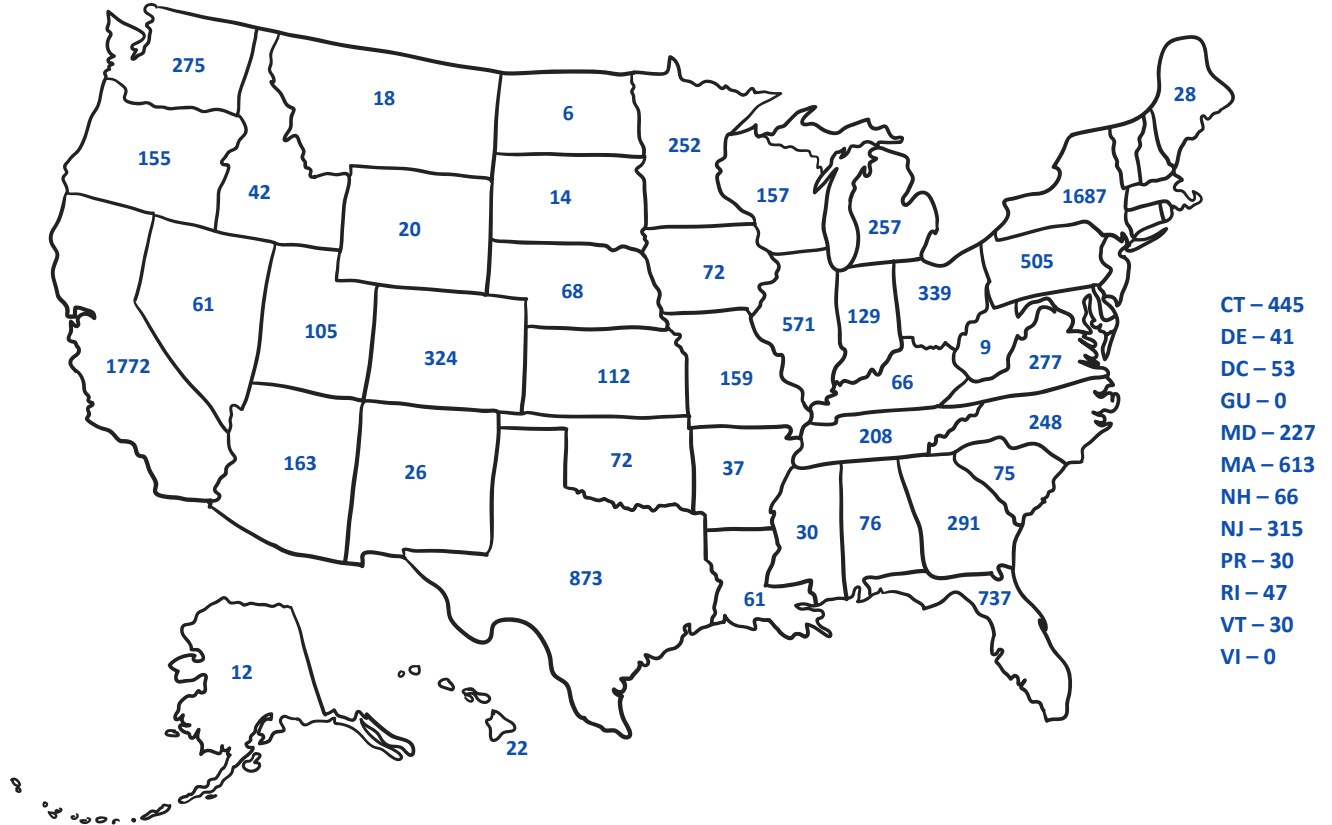


Total State-Registered IAs AUM
\$412,808,679,777

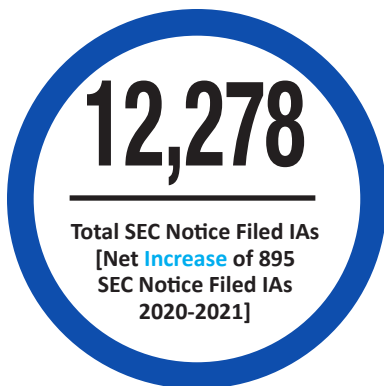
State-Registered Investment Advisers
East/West of the Mississippi



SEC NOTICE-FILED INVESTMENT ADVISER STATISTICS 2021



SEC Registered IA Map

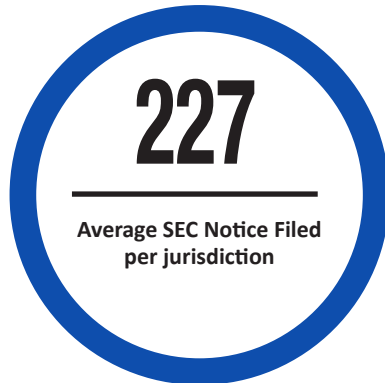
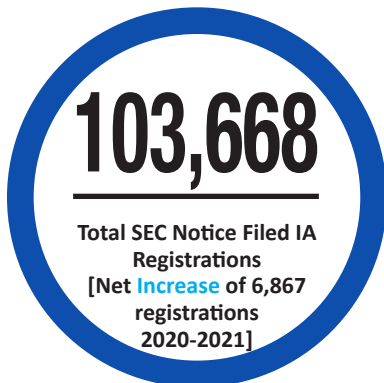


Top 5 Most SEC Notice Filed Investment Advisers [As of 12/31/21]

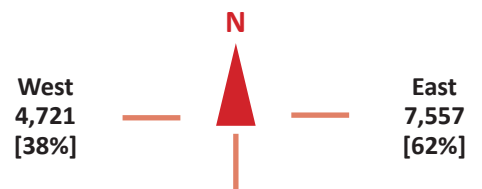
1. California – 1,772
2. New York – 1,687
3. Texas – 873
4. Florida – 737
5. Massachusetts – 613

Top 5 SEC Notice Filed Investment Advisers Increase from 2020 – 2021

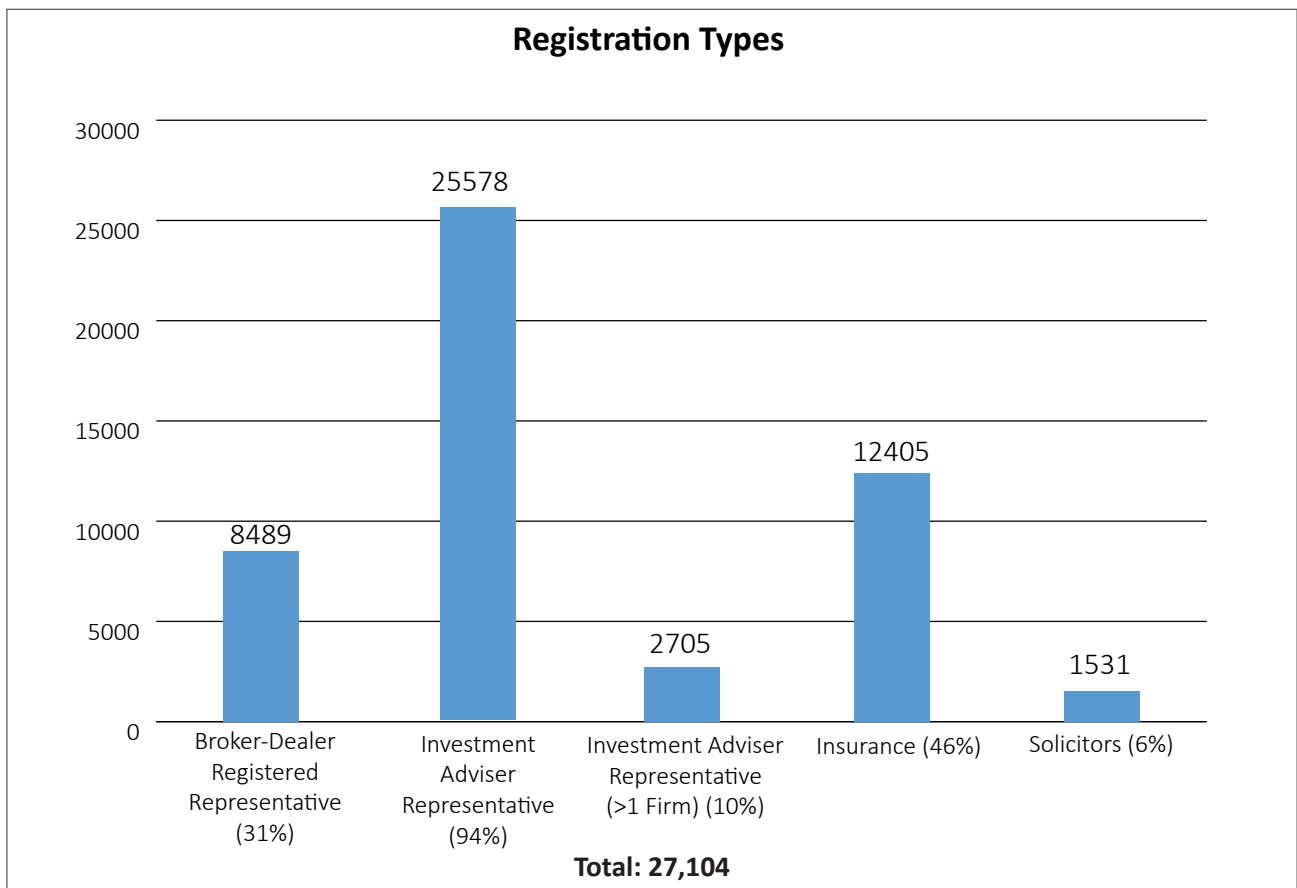
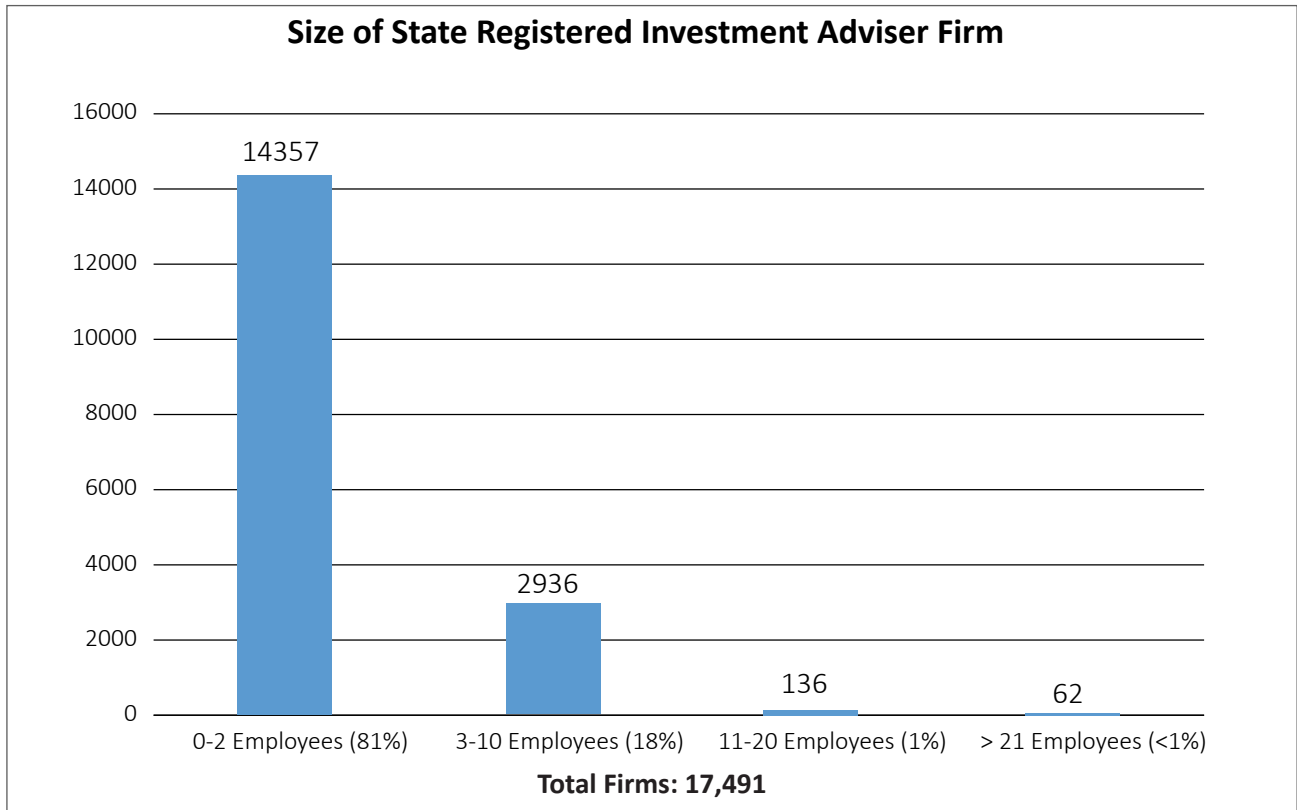
1. Florida – 130
2. California – 106
3. Texas – 94
4. Washington – 41
5. New York – 32



SEC Notice Filed Investment Advisers

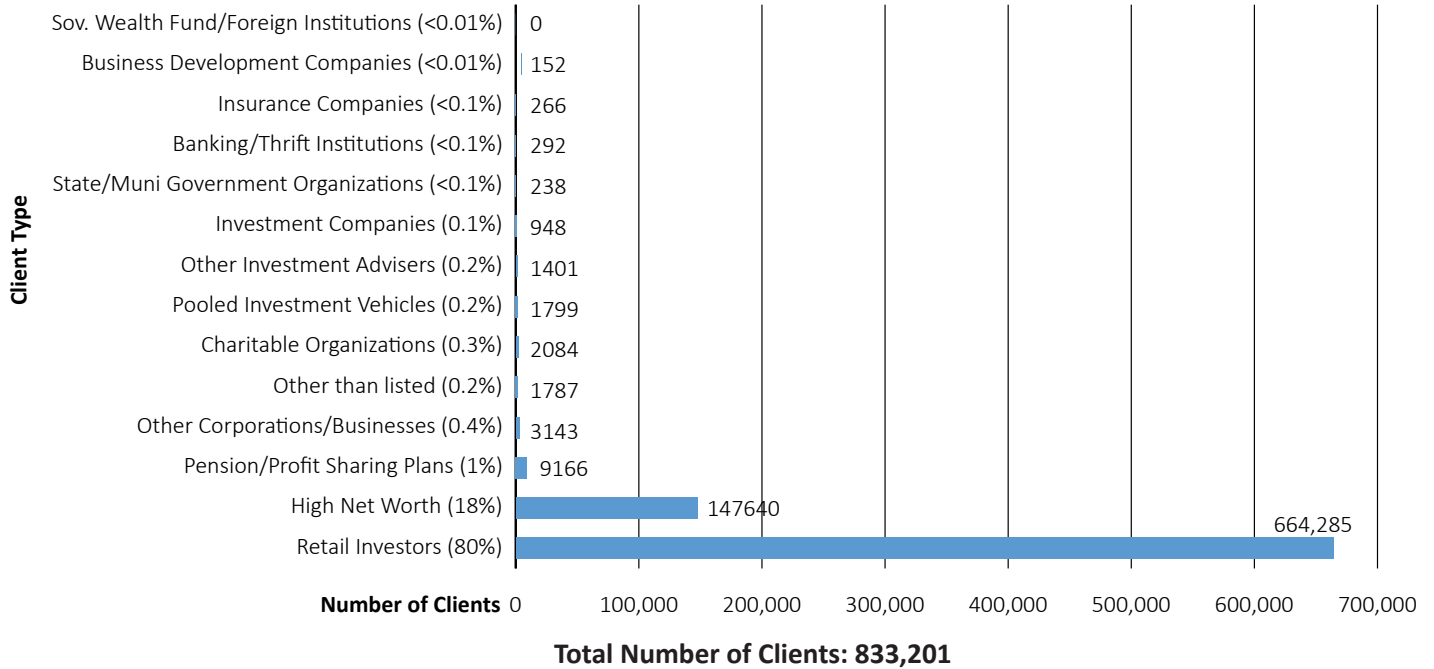


Profile of State-Registered IAs for 2021

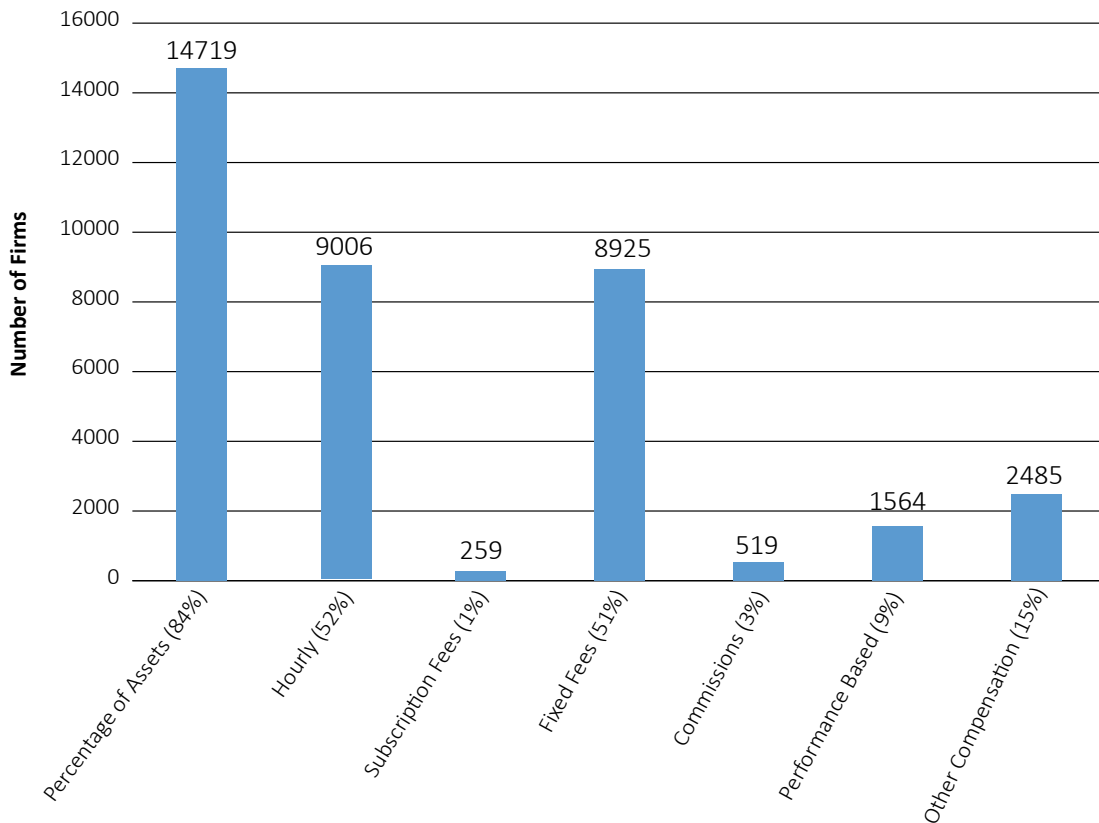


Profile of State-Registered IAs for 2021

Client Types



Types of Fees Charged

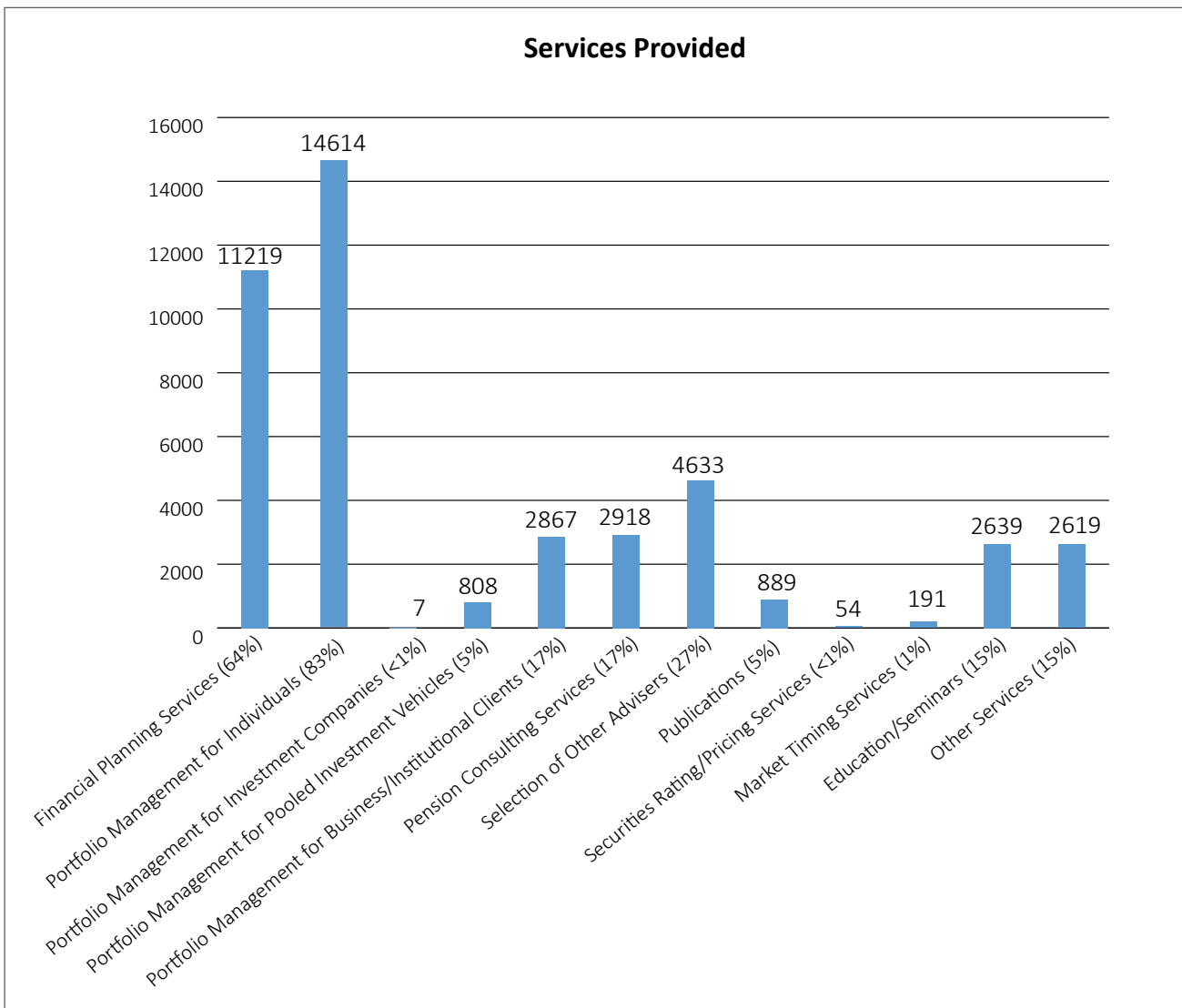


Profile of State-Registered IAs for 2021

Compensation

| Type | Yes | No | % Yes | % No |
|---|--------|--------|-------|------|
| Percentage of Assets Under Management (84%) | 14,719 | 2,772 | 84% | 16% |
| Hourly (52%) | 9,006 | 8,485 | 51% | 49% |
| Subscription Fees (1%) | 259 | 17,232 | 1% | 99% |
| Fixed Fees (51%) | 8,925 | 8,566 | 51% | 49% |
| Commissions (3%) | 519 | 16,972 | 3% | 97% |
| Performance Based (9%) | 1,564 | 15,927 | 9% | 91% |
| Other Compensation (15%) | 2,485 | 15,006 | 14% | 86% |

Services Provided



Project Group Reports

CYBERSECURITY AND TECHNOLOGY

Michelle Ray, Co-Chair (AL), Teresa Williams, Co-Chair (CT), Eric Chandra (CA), Victor Clark (DE), Rosemary Gonzalez (NJ), Clay Johnson (KS), Ryan Sullivan (MT), Patrick Willmore (CO)

During 2021, the Cybersecurity and Technology Project Group worked on the second edition of Cybersecurity and State-Registered Investment Advisers Resource Document for State Securities Regulators. It was originally drafted in July 2017 by the NASAA Investment Adviser section. This resource document is designed to assist state-registered investment advisers with the evolving cybersecurity challenges that threaten their clients and business.

The scope of cybersecurity topics is wide, even when applied to the narrow universe of state-registered investment advisers within the broader financial services industry. However, the topics covered in this resource document are likely universal in their application to the majority of state-registered investment advisers: compliance risk assessments and management, e-mail communications, cloud services, firm websites, anti-virus protection, encryption, cybersecurity insurance, custodians and third-party vendors, and robo-advisers. Each topic includes a brief description and a checklist of questions state-registered investment advisers should consider. State securities regulators can also use these checklists to

aid investment advisers with inquiries, or as part of their examinations and audits. In addition to these resources, state securities regulators can also continue to rely on regulatory frameworks already in place to provide informal guidance to state-registered investment advisers, such as the importance of due diligence.

Due to COVID-19 restrictions, the project group was unable to meet in person in 2021. Instead, the group held monthly meetings via Zoom to discuss future goals and plans to better assist NASAA, state securities regulators, and state-registered investment advisers.

In the upcoming year, the Cybersecurity and Technology Project Group will continue to work on creating, updating, and providing resource documents and presentations for state regulators and state-registered investment advisers so that it can provide the most current law, news, and articles relevant to cybersecurity and technology. It is essential that the resources the project group provides reflect the evolving and aggressive nature of cybersecurity threats.

Project Group Reports

OPERATIONS

Alisa Goldberg, Chair (FL). Joanne Jones, Vice-Chair (WA), Kathleen Bowne (KS), Holly Gay Butler (VA), Elizabeth Guido (NC), Katherine Perkins (MS), Glen Sgobbo (OH), Jeffrey Teichert (UT)

The Operations Project Group compiled data from the investment adviser coordinated exam sweep, which included 1,206 examinations conducted from January 1, 2021, through July 7, 2021. The majority of the examinations were conducted remotely. The project group presented the sweep results in September 2021 at NASAA's annual conference in Chicago, Illinois.

The top three deficiencies continued to be the same as those from the two previous coordinated exam sweeps in 2019 and 2017, although the order of the top two categories changed positions. The 2021 top three deficiency categories were registration, books and records, and contracts, in that order. Overall, there was a decline in the frequency of deficiencies in each of these categories. Investment advisers improved

significantly in their cybersecurity compliance; the deficiency category dropped from fourth place in 2019 to ninth place.

The project group reviewed information about NASAA members' experiences with the various fee structures being used by investment advisers, particularly as they pertained to financial planning and asset management. Members of the project group also worked with the Senior Issues and Diminished Capacity Committee to develop questions for the NEMO Investment Adviser modules to address issues of potential diminished capacity of investment adviser representatives and broker-dealer agents. The questions will be included in both the broker-dealer and investment adviser modules.

Project Group Reports

REGULATORY POLICY & REVIEW

Stephen Brey, Chair (MI), Kevin Moquin, Vice-Chair (NH), Jonathan Bashi (NY), Judith Keilp (NJ), Brook Kellerman (WA), Emily Kisicki (VT), Amanda Robinson (IA)

The Investment Adviser Regulatory Policy and Review Project Group has gone through a transitional and busy year. The project group said a sad farewell to Suzanne Sarason (Washington), who passed away in December. Suzanne was a brilliant attorney and CPA who dedicated 40 years of her life to protecting Washington investors. She was a fantastic friend, teammate, source of counsel, and voice of reason for the project group, and will be dearly missed. David Smith (Arkansas) served investors in his home state for over 25 years and brought that experience and expertise to the project group for most of his illustrious career. The project group wishes David the very best that retirement has to offer, and will miss his sense of humor, expertise, wisdom, and friendship. John Harth continues to protect investors in Colorado but stepped away from the project group after serving for several years. John is a respected voice in securities regulation and proved to be a valuable contributor to the project group's review of alternative fee models. His hands-on experiences lent a unique perspective that informed the project group's work. The project group wishes John well and will miss his contributions. Blake Kennedy (South Carolina) continues to serve investors in South Carolina and provides his expertise to NASAA members in other ways. The project group valued his contributions over the last several years.

The project group met monthly by videoconference to discuss topics spanning the entire landscape of the regulation of investment advisers. The monthly

calls included discussion of emerging fee models, written policies and procedures, cybersecurity, custody, federal covered adviser notice-filing, CRD/IARD functionality, standing letters of authorization, IAR CE, investment adviser solicitors, unpaid arbitration awards, and many other topics affecting investment advisers and regulators.

The project group was fortunate to work with members of the Broker-Dealer Section to develop and propose a new model rule addressing unpaid arbitration awards by broker-dealers, agents, investment advisers, and investment adviser representatives. The project group was pleased to see the rule make its way through the internal and public comment processes and hopes to see it finalized for adoption by member jurisdictions soon.

The project group's 2022 priorities include continuing to engage with investor advocacy and industry groups to address the evolving nature of the investment advisory business, monitoring and assessing relevant developments in rulemaking by other regulators that could impact state-registered investment advisers, reviewing current and potential new model rules for investment advisers, and discussing and pushing forward on other topics of interest to the investment adviser and regulatory communities.

Project Group Reports

RESOURCES & PUBLICATIONS

Lindsay M. Fedler, Chair (WI), April Odom, Vice Chair (TN), David Biemel (OH), Jeffrey Eaby (CO), Joseph Joslin (AR), Judith Keilp (NJ), Holly Mack-Kretzler, (WA), Ron Matlock (IN), Elizabeth Mullin (CT), Linda Cena (MI), Liaison

The Resources and Publications Project Group spent early 2021 working on the IA Section's Annual Report. The report highlighted the state-registered investment adviser industry, trends in registration, regulator outreach events for investment advisers and other financial professionals, and all of the work performed by the Section and its project groups in 2020. The report was distributed in an entirely electronic format due to COVID-19.

As in the previous year, the project group did not meet in person due to COVID-19 but opted to work virtually to create compliance articles on topics of interest to state-registered investment advisers. In autumn 2021,

the group revisited the *Investment Adviser Resource Guide* project, heavily revising and updating content. The *Investment Adviser Resource Guide* will provide summarized information about registration, best practices, compliance, and examinations for state-registered investment advisers in the United States. The guide will also allow for jurisdictions to customize it with their own specific rules and regulations where appropriate.

The project group also took on the responsibility of organizing and administering the IA survey to all member jurisdictions, with the input of the IA Section.

Project Group Reports

TRAINING

William Baldwin (WA), Co-Chair, Teaune Trice (IN), Co-Chair, Ryan Anderson (WY), Trisha Bernier (RI), Aaron Cooper (MS), Adam Hillier (AB), Dylan Landes (VA), Kelly Lent (CT), Veronica Rodriguez (CO), Kirsten Soltner (PA), Lindsey Stout (KY), Lindy Streit (AR), Judy Watkins (NJ), James Apistolas (NASAA), Liaison

The Training Project Group annually plans an informative, interactive program focusing on investment adviser regulation for regulators across jurisdictions. Additionally, the project group produces webinars along with training materials throughout the year.

The 2021 NASAA Investment Adviser Training was a 3-day virtual event held on April 20-22, 2021. The virtual training included sessions that focused on emerging fee models, advertising, how states treat solicitors, including proper disclosures and enforcement actions from examinations. The training group reached out and facilitated obtaining speakers on topics such as the different types of cryptocurrencies, knowing the significant cybersecurity risks, and identifying fees associated with advanced products.

Additionally, the group presented two webinars on Investment Adviser Fundamentals: Mastering the ABCs, which focused on introducing new examiners to regulatory terms and concepts found during an exam and addressed typical situations encountered during the exam, registration, or investigation. Contracts 101, the second webinar, focused on evaluating whether the agreement was adequate for the client, identifying contract deficiencies, and how to differentiate between the solicitation and asset management agreements.

The group has been working diligently towards putting on the hybrid, virtual/in-person Investment Adviser Training scheduled for April 18-21, 2022, in New Orleans, Louisiana. This hybrid training will allow for an increase in participation and engagement.

Project Group Reports

ZONES

Veronica Rodriguez (CO), Chair; Zone 1 (Northeast) Lauren Munschauer (MA); Zone 2 (Southeast) Matthew Alicona (VA); Zone 3 (Mid-Atlantic) Nathan Houtz (PA); Zone 4 (Central) Will Pultinas (OH); Zone 5 (South Central) Tommy Green (TX); Zone 6 (Mountain) Ryan Sullivan (MT); Zone 7 (Western) Henry Tanji (HI); Zone 8 (Canadian) Elizabeth Topp (ON)

Member jurisdictions within NASAA have been separated into 8 zones with 8 project group members each assigned to one zone. IA Zones maintains a zone communication system, including electronic communication and quarterly calls for each zone region. In addition, IA Zones coordinates information sharing among the jurisdictions and between the NASAA corporate office and the NASAA members on issues of importance regarding investment advisers, as well as identifies issues of importance in the investment adviser area, such as patterns, trends, issues, and best practices.

The project group coordinated with other project groups and committees to complete various initiatives, including the compilation of data from member surveys.

During 2021, the Zones played an important role in communication and connection among NASAA members. The project group held 10 quarterly zone

calls throughout the jurisdictions. As the pandemic continued and jurisdictions continued to work remotely, zone calls included valuable discussion of best practices, challenges, helpful resources, and efficient work processes.

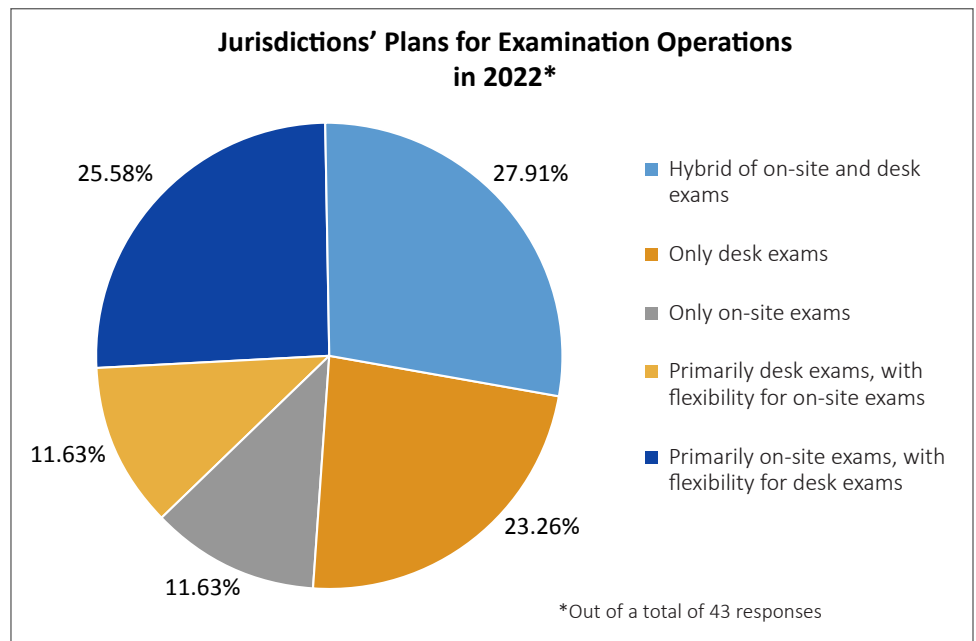
Since the Investment Adviser Training was virtual this year, IA Zones hosted 3 separate webinars inviting up to three individuals from each jurisdiction to participate in these intimate video call settings. Topics discussed during each webinar ranged from compensation models, exploring unreasonable and excessive fees, examination challenges during Covid-19, and observations regarding investment products and strategies. These webinars were highly successful and received positive feedback. These calls provided groups a chance to network, discuss challenges, and share successes within a small and comfortable setting.

Investment Adviser Exams and Outreach

While COVID-19 continues to shape the way that many jurisdictions carry out their regulatory responsibilities even more than two years after it began, NASAA members kept the lines of communication with registrants, particularly state-registered investment advisers, open and active in 2021. Below is a summary of exam findings from across the United States, and a few highlights from jurisdictions that were able to hold educational and training events in a safe, virtual format.

Exams

Most jurisdictions continued to meet their examination responsibilities using a combination of remote examinations and hybrid examinations which used technology to augment the amount of review that could be done off-site. Based on feedback received from NASAA members, most intend to continue with some combination of on-site and remote examinations in 2022, as the circumstances warrant.



Enforcement Actions Involving Investment Advisers

State securities regulators continued to resolve major deficiencies and violations of securities laws and rules uncovered during examinations in 2021. The top ten causes of enforcement actions (litigated and settled short of a hearing) were:

1. Failure to maintain adequate compliance policies and procedures;
2. Failure to register as an investment adviser representative;
3. Failure to register as an investment adviser
4. Suitability violations
5. Breach of fiduciary duty
6. Failure to disclose material information to the client
7. Violations related to Private placements
8. Failure to disclose a disciplinary action
9. Fraud
10. Senior related violations



Investment Adviser Exams and Outreach

NASAA Member Education, Training, and Outreach

Ohio

On October 22, 2021, the Ohio Division of Securities hosted its 48th annual Ohio Securities Conference, continuing a tradition of providing industry stakeholders with a quality educational experience. Sessions at the full-day event covered a variety of topics, including how broker-dealer and investment adviser compliance professionals are responding to Regulation Best Interest; recent developments in the corporate finance space, including exempt offerings and crowdfunding; the financial impact of the opioid crisis; private market solicitations made via social media; and regulatory enforcement efforts involving private placement offerings. Speakers included several financial industry representatives, as well as Jennifer Zepralka, Chief of the Office of Small Business Policy and Andy Schiff, Regional Trial Counsel from the U.S. Securities and Exchange Commission, Faith Anderson from the Washington State Department of Financial Institutions—Division of Securities, and Joe Rotunda from the Texas State Securities Board. Ohio Division staff also provided updates on the work of the Division over the previous year. The keynote address was given by former Ohio congressman Steve Stivers, who provided a comprehensive overview on potential federal legislative and regulatory changes which might affect the securities industry. Approximately 160 people attended the virtual event.

Virginia

Beginning in December of 2020, Virginia began hosting monthly investment adviser orientation and training sessions in a virtual setting for new investment adviser applicants domiciled in Virginia. To date, over sixty investment adviser representatives have attended. The training's mission is to introduce new investment advisers to the Division and set expectations on the continued regulatory relationship. The training sessions were facilitated by Principal Auditor Ashley Daniels and Principal Examiner Jonathan Hawkins.

Nebraska

On October 19, 2021, Nebraska conducted its annual compliance webinar for 43 state-registered investment advisers and their compliance officers, compliance consultants, and legal counsel. 2021's topic was investment adviser fees, and the webinar was led by Department Counsel Mark Cameron and moderated by Administrator Claire McHenry. Administrator McHenry reported that the attendees were a very active bunch and asked a lot of questions.

California

California utilized virtual meetings to schedule webinars on a monthly basis with registrants and Department of Financial Protection and Innovation staff. Webinar events were posted on the Department's Consumer Education and Outreach page and calendar. Registrants and the public could view the calendar and sign up to attend events where an assembly member would cover different financial education and licensing topics for financial professionals. The webinars were well received by the financial professionals who took advantage of smaller group settings to learn from Department members.

ABOUT NASAA

Organized in 1919, the North American Securities Administrators Association (NASAA) is the oldest international organization devoted to investor protection. NASAA is a voluntary association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, the 13 provinces and territories of Canada, and the country of Mexico.

In the United States, NASAA is the voice of state securities agencies responsible for efficient capital formation and grass-roots investor protection. Their fundamental mission is protecting investors who purchase securities or investment advice, and their jurisdiction extends to a wide variety of issuers and intermediaries who offer and sell securities to the public.

NASAA members license firms and their agents, investigate violations of state and provincial law, file enforcement actions when appropriate, and educate the public about investment fraud. Through the association, NASAA members also participate in multi-state enforcement actions and information sharing.

For more information, visit: www.nasaa.org.

