

STANDARD OF CARE COMPARISON CHART

SEC Regulation Best Interest, Massachusetts Fiduciary Rule, New Jersey Proposed Fiduciary Rule and Iowa Proposed Best Interest Rule

Category	SEC Regulation Best Interest (Reg BI)	Massachusetts Adopted Fiduciary Rule	New Jersey Proposed Fiduciary Rule	Iowa Proposed Best Interest Rule ¹
Timeline	Adopted: June 5, 2019 Effective: September 10, 2019 Compliance Date: June 30, 2020	Adopted: February 2020 Effective: March 6, 2020 Enforcement Date: September 1, 2020	Proposed: April 15, 2019 The comment period has closed, and consideration of rule remains ongoing. ¹	Filed: February 27, 2020 Comment Period Ended: April 28, 2020 The Iowa Insurance Division, which oversees securities, indicated after the comment period that they will make changes to the proposed requirements in response to the comments they received.
Who does the duty apply to?	Broker-dealers (BDs) and associated “natural persons”	Broker-dealers (BDs) and agents	Broker-dealers (BDs), investment advisers and their agents	Broker-dealers (BDs) and agents
When does the duty apply?	When making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer	When providing investment advice or recommending an investment strategy, opening of or transferring of assets to any type of account, or the purchase, sale or exchange of any security	When providing investment advice or recommending to a customer an investment strategy, the opening of, or transfer of assets to, any type of account, or the purchase, sale or exchange of any security	When recommending that a customer purchase, sell or exchange a security.
Is the duty solely episodic?	Generally episodic, with limited exceptions (see “Is the duty ongoing?”)	Generally episodic, with limited exceptions (see “Is the duty ongoing?”)	Generally, when making recommendations, yes; when providing investment advice, no	Yes (rule text explicitly notes “at the time recommendation is made”)

¹ Per the New Jersey Administrative Code, the state’s Bureau of Securities originally had a deadline of April 15, 2020 to adopt the proposal as is (i.e., one year from the date of the proposal). However, on April 14, 2020, the Governor of New Jersey issued an [Executive Order](#) that, in light of the state’s COVID-19 public health emergency, extended the one-year deadline for rule proposals originally published on or after April 15, 2019 which would have expired without the extension. The Order extended the rulemaking proposal deadline to 90 days after the end of the public health emergency.

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Is the duty ongoing?	No, however the Reg BI Adopting Release notes that a recommendation of an “investment strategy” covers instances where BD agrees to monitor retail customer’s account, since it involves an implicit recommendation to hold (and not buy or sell). 84 FR 33318, 33334-33336 (Jul. 12, 2019)(“Adopting Release”). Therefore, with mutual agreement, Reg BI <i>could</i> apply on an ongoing basis, though we understand that most (if not all) firms are not offering account monitoring as a service. ²	Only in certain circumstances. (See “What triggers the ongoing duty?” for more detail.)	Yes, when providing investment advice.	No
What triggers the ongoing duty?	Agreement with customer to monitor. (See discussion above in “Is the duty ongoing?”)	<ul style="list-style-type: none"> - Discretionary authority over customer account; - Contractual fiduciary duty or obligation to monitor customer account on regular or periodic basis (as determined by agreement with customer). 	Provision of investment advice or contractual agreement.	N/A

² Furthermore, the SEC’s interpretation regarding the standard of conduct for investment advisers.84 FR 33669 (Jul. 12, 2019)(“Interpretive Release” and part of the Reg BI package) provides additional details on ongoing duties. For example, the Interpretive Release notes that, unlike BD’s, the standard of conduct for IA’s will generally impose ongoing duties in their relationships with clients, depending on the nature of the IA’s relationship with clients.

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Disclosure obligation	<p>Prior to or at the time of a recommendation, BDs and reps are required to make full and fair disclosure in writing of:</p> <ol style="list-style-type: none"> 1. All material facts relating to the scope and terms of the relationship with the retail customer, including: <ol style="list-style-type: none"> i. That the broker, dealer or such natural person is acting as a broker, dealer, or an associated person of a broker or dealer with respect to the recommendation; ii. The material fees and costs that apply to the retail customer's transactions, holdings, and accounts; and iii. The type and scope of services provided to the retail customer, including any material limitations on the securities or investment strategies involving securities that may be recommended to the retail customer. 2. All material facts relating to conflicts of interest that are associated with the recommendation. 	<p>Part of fulfilling duty of loyalty, which includes requirement to disclose all material conflicts of interest(see below section on mitigation).</p>	<p>No explicit disclosure requirement nor is it implicitly required as part of duty of loyalty, rather proposal just states, "[r]here shall not be a presumption that disclosing a conflict of interest in and of itself shall satisfy the duty of loyalty." Only reference to affirmative disclosure is in accompanying release, in discussion of fiduciary standard's traditional requirement for investment adviser that has material conflict of interest to either eliminate the conflict "or fully disclose to its clients all material facts relating to the conflict."51 N.J.R. 493(a)(Apr. 15, 2019) However, this concept is not included in the text of the proposed regulation.</p>	<p>Prior to or at the time of a recommendation, BD or agent required to make full and fair disclosure of:</p> <ol style="list-style-type: none"> 1. All material facts relating to the scope and terms of the relationship with the retail investor, including: <ol style="list-style-type: none"> i. That the BD or agent is acting as a BD or agent with respect to the recommendation; ii. The material fees and costs that apply to the retail investor's transactions, holdings, and accounts; and iii. The type and scope of services provided to the retail investor, including any material limitations on the securities or investment strategies involving securities that may be recommended to the retail investor. 2. All material facts relating to conflicts of interest that are associated with the recommendation.

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Care obligation / Duty of Care	<p>Care Obligation: Exercise reasonable diligence, care and skill to:</p> <ol style="list-style-type: none"> 1. Understand the risks, rewards and costs of a recommendation; 2. Have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer, based on the retail customer's investment profile, and that the recommendation does not place the BD 's interest ahead of the retail customer's interest ; and 3. Have a reasonable basis to believe that a series of transactions is in the best interest of the retail customer and does not place the interest of the BD ahead of the retail customer's interests. 	<p>Duty of "Utmost" Care: Use the care, skill, prudence, and diligence that a person acting in a like capacity and familiar with such matters would use, taking into consideration all of the relevant facts and circumstances; and make reasonable inquiry of:</p> <ol style="list-style-type: none"> 1. The risks, costs, and conflicts of interest related to all recommendations made and investment advice given; 2. The customer's investment objectives, risk tolerance, financial situation, and needs; and 3. Any other relevant information. 	<p>Use the care, skill, prudence and diligence that a prudent person acting in a like capacity and familiar with such matters would use taking into consideration all of the facts and circumstances; and make reasonable inquiry of 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.</p>	<p>Care Obligation: In making a recommendation, exercise reasonable diligence, care and skill to:</p> <ol style="list-style-type: none"> 1. Know and understand the retail investor's investment profile (rule proposal includes traditional factors of age, other investments, financial situations and needs etc.); 2. Know and understand the potential risks, rewards, and costs associated with the recommendation; 3. Have a reasonable basis to believe the recommendation, including its potential risks, rewards, and costs, effectively addresses the retail investor's investment profile, and does not place the financial or other interest of the BD or agent ahead of the interest of the retail investor; 4. Have a reasonable basis to believe that a series of recommendations, even if in the retail investor's best interest when viewed in isolation, is not excessive and effectively addresses the retail investor's investment profile and does not place the financial or other interest of the BD or agent making the series of recommendations ahead of the interest of the retail investor; and

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Care obligation / Duty of Care				<p>5. Have a reasonable basis to believe that prior to or at the time of the recommendation the retail investor has been reasonably informed of the basis of the recommendation and the potential risks, rewards, and costs associated with the recommendation. (This could be read to introduce a transaction-by-transaction requirement, which is however at odds with the stated goal of the Insurance Division of aligning its proposal to Reg BI.)</p>

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Conflicts of interest obligation / Duty of Loyalty	<p>Conflict of Interest Obligation: Establish, maintain and enforce written policies and procedures reasonably designed to:</p> <ol style="list-style-type: none"> 1. Identify and at a minimum disclose, or eliminate, all conflicts of interest associated with recommendations; 2. Identify and mitigate any conflicts of interest associated with recommendations that create an incentive to place the interest of BD or agent ahead of the interest of the retail customer; 3. Identify and disclose any material limitations placed on the securities or investment strategies involving securities that may be recommended to a retail customer and any conflicts of interest associated with such limitations, and prevent any such limitations and associated conflicts of interest from causing the BD or agent to make recommendations that place the interest of the BD or agent ahead of the interest of the retail customer; and 4. Identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time. 	<p>Duty of Loyalty:</p> <ol style="list-style-type: none"> 1. Disclose all material conflicts of interest; 2. Make all reasonably practicable efforts to avoid conflicts of interest, eliminate conflicts that cannot reasonably be avoided, and mitigate conflicts that cannot reasonably be avoided or eliminated; and 3. Make recommendations and provide investment advice without regard to the financial or any other interest of any party other than the customer. 	<p>Duty of Loyalty: Requirement to make recommendations and provide investment advice without regard to the financial or any other interest of the BD, agent, adviser any affiliated or related entity and its officers, directors, agents, employees or contractors, or any other third-party.</p>	<p>Non-titled provision referring to “does not place the financial or other interest...” as well as a conflicts of interest section.</p> <p>BD or agent shall have a reasonable basis to believe that a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail investor does not place the financial or other interest of the BD or agent making the recommendation ahead of the interest of the retail investor.</p> <p>Conflicts of interest: BD shall establish, maintain or enforce policies and procedures reasonably designed to:</p> <ol style="list-style-type: none"> 1. Identify all conflicts of interest associated with recommendations of any securities transaction or investment strategy involving securities (including account recommendations) to a retail investor; 2. Eliminate or, at a minimum disclose, in accordance with the disclosure obligation, all conflicts of interest associated with recommendations of any securities transaction or investment strategy involving securities (including account recommendations) to a retail investor; <p style="text-align: right;"><i>(continued on next page)</i></p>

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Conflicts of interest obligation / Duty of Loyalty				<ol style="list-style-type: none"> 3. Mitigate any conflicts of interest associated with recommendations of any securities transaction or investment strategy involving securities (including account recommendations) to a retail investor that create an incentive for an agent to place the interest of the BD or agent ahead of the interest of the retail investor; 4. Identify and disclose any material limitations placed on the securities or investment strategies involving securities that may be recommended to a retail investor and any conflicts of interest associated with such limitations, in accordance with disclosure obligation, and prevent such limitations and associated conflicts of interest from causing the BD or agent to make recommendations that place the interest of the BD or agent ahead of the interest of the retail investor; and 5. Identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time.

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<p>Definition of conflict of interest</p>	<p>"[A]n interest that might incline a broker, dealer, or a natural person who is an associated person of a broker or dealer—consciously or unconsciously—to make a recommendation that is not disinterested." 17 CFR 240.15l-1(b)(3)</p>	<p>Not explicitly defined, however 12.207(2)(b)(3) implicitly refers to what would be a conflict of interest -- Making recommendations or providing investment advice <i>with regard</i> to the financial or any other interest of any party other than the customer. Such that making recommendations or providing investment advice <i>without regard</i> to the financial or other interest of any party other than the customer would be the only way to provide conflict-free recommendations and investment advice. As discussed below in the section on "handling financial conflicts of interest," the Adopting Release sought to clarify when conflicted advice would be prohibited.</p> <p>Separately, the Adopting Release cited several examples of conflicts, but noted that the adopted rule's provisions on duty of loyalty were constructed to permit conflicts that cannot reasonably be avoided or eliminated, and, require that such conflicts must be mitigated.</p> <p>The examples for conflicts which "arguably" cannot be reasonably avoided or eliminated are:</p> <ul style="list-style-type: none"> - Receipt of compensation in connection with making a recommendation; - Recommendation or sale of proprietary products; and - Recommendation or sale in a principal transaction. 	<p>Not explicitly defined, however presumption language in N.J.A.C. 13:47A-6.4(b)(2)(i) points to (possibly non-exhaustive list of) conflicted situations: When BD, adviser or agents offer, or receive, direct or indirect compensation for recommending the opening of, or transfer of assets to a specific type of account, or the purchase, sale or exchange of a specific security. Similarly, duty of loyalty provision suggests what would be considered a conflict: making recommendations or providing investment advice <i>with regard</i> to the financial or any other interest of the BD, agent, adviser, any affiliated or related entity, its officers, directors, agents, employees or contractors, or any other third-party.</p>	<p>"[M]eans an interest that might incline a broker-dealer or agent—consciously or unconsciously—to make a recommendation that is not disinterested."</p>

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<p>Conflict mitigation vs. elimination vs. disclosure</p>	<p>Various requirements depending on type of conflict.</p> <p>Must have reasonably designed policies and procedures to address conflicted situations and fact patterns.</p> <p>General requirement to identify and, at a minimum, <i>disclose</i> or <i>eliminate</i> for all conflicts associated with recommendations.</p> <p>BD must <i>mitigate</i> any conflicts that create incentive to place BD's or agents' interests ahead of the retail customer's interest.</p> <p>When BD places material limitations on recommendations that may be made to a retail customer (e.g., offering only proprietary or other limited range of products), BD must disclose the limitations and associated conflicts and <i>prevent</i> the limitations from causing BD or agent from placing BD's or agent's interests ahead of the customer's interest.</p> <p>Finally, must <i>eliminate</i> sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sale of specific securities or specific types of securities within a limited period of time.</p>	<p>Disclose all material conflicts (but disclosure alone is never enough) and make all reasonably practicable efforts to <i>avoid</i> conflicts of interest, <i>eliminate</i> conflicts that cannot reasonably be avoided, and <i>mitigate</i> conflicts that cannot reasonably be avoided or eliminated</p>	<p>Disclosing conflicts alone does not satisfy duty of loyalty.</p> <p>No direct references to mitigation or elimination, however 13:47A-6.4(b)(2)(i) and 13:47A-6.4(b)(3) implicitly allows mitigation, in contrast with the general "without regard to" language in 13:47A-6.4(b)(2)</p> <p>Additional areas where mitigation could apply: within the duty of loyalty, and also within the measurement of the reasonableness of fees.</p>	<p>Disclosing conflicts alone does not satisfy duty of loyalty.</p> <p>BD or agent must:</p> <ol style="list-style-type: none"> 1. Identify all conflicts of interest associated with recommendations of any securities transaction or investment strategy involving securities (including account recommendations) to a retail investor; 2. Eliminate or, at a minimum disclose, in accordance with paragraph 50.104(3)"b" of this section, all conflicts of interest associated with recommendations of any securities transaction or investment strategy involving securities (including account recommendations) to a retail investor; and 3. Mitigate any conflicts of interest associated with recommendations of any securities transaction or investment strategy involving securities (including account recommendations) to a retail investor that create an incentive for an agent to place the interest of the BD or agent ahead of the interest of the retail investor.

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<p>Handling of financial conflicts of interest</p>	<p>Adopting Release says: SEC “[does] not intend for [Reg BI] to require a broker-dealer to provide conflict-free recommendations. For example, under Regulation Best Interest, a broker-dealer could recommend a more expensive or more remunerative security or investment strategy if the broker-dealer has a reasonable basis to believe there are other factors about the security or investment strategy that make it in the best interest of the retail customer, based on that retail customer’s investment profile.”⁸⁴ FR at 33331.</p> <p>Separately, the Adopting Release notes, in drawing a contrast to a “without regard to” alternative standard, which the SEC opted against:</p> <p>“The ‘<i>without placing the financial or other interest . . . ahead of the interest of the retail customer</i>’ phrasing recognizes that while a broker-dealer will inevitably have some financial interest in a recommendation—the nature and magnitude of which will vary—the broker-dealer’s interests cannot be placed ahead of the retail customer’s interest. Accordingly, [the SEC] believe[s] this phrasing establishes a standard that enhances investor protection by prohibiting a broker-dealer from placing its interests ahead of the retail customer’s interests, and preserves investor access (in terms of both choice and cost) to differing types of investment services and products.”⁸⁴ FR at 33332.</p>	<p>Adopting Release at page 6 (1.C.iii) says: “Without regard to” language in 12.207(2)(b)3 “does not prohibit the existence of conflicts, including the receipt of compensation in connection with making a recommendation or providing investment advice[,]” rather 12.207(2)(b)(2) and 12.207 (2)(b) (3) should be interpreted as follows: “<i>after</i> disclosing and avoiding, eliminating, or mitigating conflicts, a broker-dealer or agent may not factor its own compensation, any of its other interests, or any interest of any other party, into the decision-making process behind the recommendation or investment advice.” (emphasis added)</p>	<p>There is a presumption of a breach of duty of loyalty when “offering, or receiving, direct or indirect compensation... for recommending the opening of, or transfer of assets to a specific type of account, or the purchase, sale, or exchange of a specific security that is not the best of the reasonably available options.”</p> <p>Despite this presumption, there is no breach of the duty of loyalty “when the <i>broker-dealer or agent</i> receives a transaction-based fee, provided that the fee is reasonable and is the best of the reasonably available fee options and the duty of care is satisfied.” (Emphasis added to highlight the presumption language also includes advisers, but the no-breach language does not.) N.J.A.C. 13:47A-6.4(b)(2)(i) and 13:47A-6.4(b)(3)</p> <p>Same language referenced below re: sales contests.</p>	<p>Identify and disclose any material limitations placed on the securities or investment strategies involving securities that may be recommended to a retail investor and any conflicts of interest associated with such limitations, in accordance with the disclosure obligation, and prevent such limitations and associated conflicts of interest from causing the BD or agent to make recommendations that place the interest of the BD or agent ahead of the interest of the retail investor.</p>

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Compliance obligation	Establish, maintain and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI (for all obligations), in addition to written policies and procedures required under Conflicts Obligation.	N/A (Any policies and procedures requirement deviating from the federal requirements would be vulnerable to pre-emption.)	N/A	Limited to establishing, maintaining or enforcing policies and procedures reasonably designed to meet disclosure requirements (see Disclosure Obligation above). Because this tracks closely to Reg BI, the policies and procedures requirements raises fewer pre-emption concerns than a state requirement but remains a concern.
Treatment of sales contests	<p>Requirement to establish, maintain and enforce written policies and procedures reasonably designed to: identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time.</p> <p>“Limited period of time” isn’t defined, but Adopting Release notes the SEC is “concerned about time limitations that create high-pressure situations for associated persons to increase the sales of specific securities or specific types of securities which compromise the best interests of their customers.”⁸⁴ FR at 33396.</p>	Presumption that a recommendation made in connection with any sales contest is a breach of the duty of loyalty. Adopting release notes continued concerns with both product-specific and non-product-specific sales contests.	Text of proposed regulation doesn’t explicitly refer to sales contests; however, accompanying release notes concern with sales contests and other “harmful incentives... that encourage and reward conflicted advice,” which the proposal addresses by stating there is a presumption of a breach of duty of loyalty when “offering, or receiving, direct or indirect compensation... for recommending the opening of, or transfer of assets to a specific type of account, or the purchase, sale, or exchange of a specific security that is not the best of the reasonably available options.” Despite this presumption, there is no breach of the duty of loyalty “when the <i>broker-dealer or agent</i> receives a transaction-based fee, provided that the fee is reasonable and is the best of the reasonably available fee options and the duty of care is satisfied.” (emphasis added to highlight the presumption language also includes advisers, but the no-breach language does not) N.J.A.C. 13:47A-6.4(b)(2)(i) and 13:47A-6.4(b)(3)	BD must identify and eliminate any sales contests, sales quotas, bonuses and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time.

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Definition of customer	<p>“Retail customer” defined as “a natural person, or the legal representative of such natural person, who: (1) Receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer, or a natural person who is an associated person of a broker or dealer; and</p> <p>(2) Uses the recommendation primarily for personal, family, or household purposes.”</p>	<p>“Customer” defined as current and prospective customers, but excludes certain financial services entities and, separately, “institutional buyers” as defined under separate Massachusetts regulations.</p>	<p>No affirmative definition. Text only refers to what “customer” does not include.</p> <p>“Customer” does not include: Certain financial services entities “Persons” (natural or otherwise) with assets of \$50 million or more</p>	<p>No affirmative definition for customer, but instead, uses the concept of “retail investor” to mean a natural person, or the legal representative of such natural person, who receives a recommendation of any securities transaction or investment strategy involving securities from a BD or agent primarily for personal, family or household purposes.</p> <p>(Note: No explicit reference to use of the recommendation, as compared to Reg BI definition.)</p>
ERISA Reference or Exclusion	<p>With limited exceptions, the SEC takes the position that workplace retirement plans or their representatives do not fall within the definition of retail customer for purposes of Reg BI. 84 FR at 33344.</p>	<p>Yes; 950 CMR 12.207(4)</p>	<p>Yes; N.J.S.A. 13:47A-6.4(d)</p>	<p>None</p>
Exchange Act books and records reference	<p>N/A</p>	<p>Yes; 950 CMR 12.207(5)</p>	<p>Yes; N.J.S.A. 13:47A-6.4(e)</p>	<p>None (Iowa takes the position the Proposal aligns closely to Reg BI.)</p>
Other state-specific exclusions	<p>N/A</p>	<p>Duty of loyalty does not apply to principal transactions in municipal securities, however duty of care still applies -- 950 CMR 12.207(2)(e).</p>	<p>None</p>	<p>None</p>
Statutory Authority	<p>DFA Section 913(g); Exchange Act Section 15(k)</p>	<p>ALM GL ch. 110A, § 412(a)</p>	<p>N.J.S.A. 49:3-67(a)</p>	<p>Iowa Admin Code r. 502.605 and 507B.12.</p>