COMPARING
CFP BOARD'S
CODE OF ETHICS AND STANDARDS OF CONDUCT
TO THE SEC'S
REGULATION BEST INTEREST
INTRODUCTION

On March 29, 2018, CFP Board announced that its Board of Directors unanimously approved a new *Code of Ethics and Standards of Conduct* (*Code and Standards*). The *Code and Standards* has an effective date of October 1, 2019 and an enforcement date of June 30, 2020. On June 5, 2019, the Securities and Exchange Commission (SEC) issued Regulation Best Interest (Reg BI).

CFP® professionals who are registered representatives of broker-dealers will be subject to both the *Code and Standards* and Reg BI. While the *Code and Standards* and Reg BI contain many similar requirements, there also are some important differences.

CFP Board is providing this guidance to those CFP® professionals who are subject to Reg BI, to help them understand CFP Board’s perspective on some important similarities and differences between CFP Board’s *Code and Standards* and the SEC’s Reg BI. CFP Board does not intend for this guide to provide a comprehensive list of similarities and differences between Reg BI and the *Code and Standards*, but it addresses key areas of particular significance to CFP® professionals.

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### Code and Standards

The *Code and Standards* defines this best interest obligation as a fiduciary standard. A CFP® professional must “[a]ct without regard to the financial or other interests of the CFP® professional, the CFP® Professional’s Firm, or any individual or entity other than the Client,” which means that a CFP® professional acting under a Conflict of Interest continues to have a duty to act in the best interests of the Client and place the Client’s interests above the CFP® professional’s.

- **Duty of Loyalty** (including Disclosure and Management of Conflicts of Interest)
- **Duty of Care**
- **Duty to Follow Client Instructions**

### Regulation Best Interest

A broker-dealer, when recommending any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, shall act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interests of the broker-dealer ahead of the interest of the retail customer. (§240.15l-1(a)(1).)

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For more information on CFP Board’s Fiduciary Duty, review the guidance resources that CFP Board has developed to help CFP® professionals understand the new *Code and Standards*, including FAQs, articles, videos, and case studies applying the *Code and Standards* to real world situations.

**FAQs:** [Duties Owed to Clients](#)

**Video:** [The Fiduciary Obligation](#)

**Article:** [CFP® Professional’s Fiduciary Duty When Providing Financial Advice](#)

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The Code and Standards and Reg BI include similar client-specific duties of care. CFP Board requires “prudence” while the SEC says that prudence is covered by other terms. Any difference in the duties of care will be revealed when the SEC interprets Reg BI.

**Code and Standards**

The Duty of Care in the Code and Standards utilizes the “prudent professional” standard, which is a higher Standard for fiduciaries than a “reasonable person” standard.

**Regulation Best Interest**

“The Care Obligation in Reg BI is intended to incorporate and enhance existing suitability requirements applicable to broker dealers under the federal securities laws.” (Final Rule Release at 245.)

In its initial rule release, the SEC included “prudence” as a requirement under the Care Obligation. (Proposing Release at 134, 405.) After careful consideration of public comments, the SEC decided “diligence, care, and skill” conveys the need for prudence and “its inclusion was superfluous and unnecessarily presented the possibility for confusion and legal uncertainty.” (Final Rule Release at 256–257.)

In the Final Rule Release, the SEC clarified that “removing ‘prudence’ does not lessen or otherwise change the requirements or the SEC’s expectations under the Care Obligation.” (Final Rule Release at 257.)
Both the Code and Standards and Reg BI impose a duty of loyalty that seeks to limit the effect a conflict of interest may have on a recommendation. CFP Board explicitly requires the Client’s interest to come first. The SEC does not. CFP Board requires the Financial Advice to be “without regard” to the interests of anyone but the Client’s. The SEC does not use similar language.

“[p]lace the interests of the Client above the interests of the CFP® professional AND [a]ct without regard to”

“without placing the financial or other interests of the broker-dealer ahead of the interest of the retail customer”

For more information, watch CFP Board’s video on The Duty of Loyalty

**CODE AND STANDARDS:**
A CFP® professional must
i. Place the interests of the Client above the interests of the CFP® professional and his or her firm;
ii. Avoid Conflicts of Interest, or fully disclose Material Conflicts of Interest to the Client, obtain informed consent, and properly manage the conflict; and
iii. Act without regard to the financial or other interests of the CFP® professional, his or her firm, or any individual or entity other than the Client, which means that a CFP® professional acting under a Conflict of Interest continues to have a duty to act in the best interests of the Client and place the Client’s interest above the CFP® professional’s...
(Standard A.1.a.)

**REGULATION BEST INTEREST:**
A broker-dealer when recommending any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, shall act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interests of the broker-dealer ahead of the interest of the retail customer. (§240.15l-1(a)(1).)
Mere disclosure of conflicts of interest is insufficient to satisfy either the Code and Standards or Reg BI.

CFP Board requires a CFP® professional to disclose, obtain informed consent, and manage all conflicts. The SEC requires a broker-dealer to disclose all conflicts and mitigate representative-level conflicts. However, while the Code and Standards requires a CFP® professional to adopt and follow business practices reasonably designed to prevent conflicts from compromising his or her ability to act in the Client’s best interests, Reg BI does not explicitly establish a standard by which a broker-dealer’s mitigation efforts will be evaluated. Any difference between the standards will be revealed when the SEC interprets Reg BI.

**Code and Standards**

CFP Board has determined that many conflicts operate at the firm level and are outside the control of the CFP® professional. (Commentary at 5.)

Under the Code and Standards, CFP® professionals must disclose both firm-level and individual conflicts of interest and also manage those conflicts of interest such that they are not allowed to influence a CFP® professional’s Financial Advice.

There are some conflicts that, as a practical matter, cannot be avoided. The Code and Standards leaves it to the CFP® professional to determine how to manage conflicts to ensure they are not allowed to taint the Financial Advice. (Commentary at 5–6.)

**Regulation Best Interest**

“[The SEC does] not believe that disclosure alone sufficiently reduces the potential effect that these conflicts of interest may have on recommendations made to retail customers. Instead, [it] believe[s] that broker-dealers are most capable of identifying and addressing the conflicts that may affect the obligations of their associated persons with respect to the recommendations they make, and therefore are in the best position, to affirmatively reduce the potential effect of these conflicts of interest such that they do not taint the recommendation.” (Final Rule Release at 326.)

“By requiring that a broker-dealer establish policies and procedures reasonably designed to “mitigate” these conflicts of interest, [the SEC] mean[s] the policies and procedures must be reasonably designed to reduce the potential effect such conflicts may have on a recommendation given to a retail customer. Thus, whether or not a broker-dealer’s policies and procedures are reasonably designed to mitigate such conflicts will be based on whether they are reasonably designed to reduce the incentive for the associated person to make a recommendation that places the associated person’s or firm’s interests ahead of the retail customer’s interest.” (Final Rule Release at 330–331.)

CFP Board requires management of conflicts while the SEC requires mitigation. The terms management and mitigation may be interpreted similarly.

While the SEC has not yet interpreted how registered representatives should disclose and mitigate conflicts of interest, CFP Board has issued compliance resources that provide guidance to CFP® Professionals on how to disclose and manage conflicts of interest under the Code and Standards.

**Article:** Avoiding or Managing and Disclosing Conflicts of Interest

**Case Study:** The Duty to Disclose and Manage Material Conflicts of Interest Involving Proprietary Products

**CODE AND STANDARDS:**

Manage Conflicts. A CFP® professional must adopt and follow business practices reasonably designed to prevent Material Conflicts of Interest from compromising the CFP® professional’s ability to act in the Client’s best interests. (Standard A.5.b.)

**REGULATION BEST INTEREST:**

The broker or dealer establishes, maintains, and enforces written policies and procedures reasonably designed to... (§240.15I-(a)(2)(iii)(B)).
CFP® professionals may make oral or written disclosures of Material Conflicts of Interest under the Code and Standards, whereas Reg BI generally requires written disclosure of material facts. A CFP® professional who is a registered representative must comply with this Reg BI requirement.

**Code and Standards**

CFP Board recognizes that in some business models and in some circumstances, providing written disclosures of conflicts of interest may present logistical challenges, and thus the Code and Standards does not include such a requirement. CFP Board has made clear, however, that evidence of oral disclosure of a conflict will be given such weight as CFP Board in its judgment deems appropriate. (Commentary at 8.)

**Regulation Best Interest**

“(B)rokers-dealers must provide an initial disclosure in writing that identifies the material fact and describes the process through which such fact may be supplemented, clarified or updated.” (Final Rule Release at 138.) “Providing retail customers written summary information about material facts relating to a recommendation and indicating that additional information will be forthcoming, the point at which the additional information will be delivered, and the method by which it will be conveyed, highlights for retail customers a useful summary of information while allowing for the practical realities of the process by which securities recommendations are made and transactions are executed.” (Final Rule Release at 139.)

For more information about CFP Board’s Duty to Disclose and Manage Conflicts of Interest, review CFP Board’s compliance resources, including FAQs, articles, and case studies, applying the Code and Standards to real world situations.

**FAQs:** Disclosures Required When Providing Financial Advice and Financial Planning

**Article:** Disclosures to Clients—What and When

**Case Study:** The Duty to Disclose Material Conflicts of Interest When Responding to a Client’s Investment Inquiry

**CODE AND STANDARDS:**

When providing Financial Advice, a CFP® professional must make full and fair disclosure of all Material Conflicts of Interest with the Client that could affect the professional relationship. This obligation requires the CFP® professional to provide the client with sufficiently specific facts so that a reasonable client would be able to understand the CFP® professional’s material conflicts of interest and the business practices that give rise to the conflicts, and give informed consent to such conflicts or reject them.

**Regulation Best Interest:**

The broker, dealer, or natural person who is an associated person of a broker or dealer, prior to or at the time of the recommendation, provides the retail customer, in writing, full and fair disclosure...(§240.15I-1(a)(2)(i).)
Both the *Code and Standards* and Reg BI apply to recommendations concerning securities, transactions, and investment strategies. The *Code and Standards* also applies to a broader range of recommendations.

For example, the *Code and Standards* applies to recommendations to take action with respect to tax strategy and insurance transactions whereas Reg BI does not.
The Code and Standards defines “Client” broadly to include natural persons as well as some business organizations and entities. Reg BI only applies to retail customers, including natural persons or their legal representatives, who receive a recommendation of any securities transaction or investment strategy involving securities and uses that recommendation. Accordingly, “[B]roker-dealers should carefully consider the extent to which associated persons can make recommendations to prospective retail customers (i.e., that have received, but not yet “used” the recommendation as noted above) in compliance with [Reg BI], including having gathered sufficient information that would enable them to comply with [Reg BI] at the time the recommendation is made, should the prospective retail customer use the recommendation.” (Final Rule Release at 122.)

**CODE AND STANDARDS:**

A Client is any person, including a natural person, business organization, or legal entity, to whom the CFP® professional provides or agrees to provide Professional Services pursuant to an Engagement. (Glossary)

**REGULATION BEST INTEREST:**

Retail customer means a natural person, or the legal representative of such natural person who (i) 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 the broker or dealer; and (ii) uses the recommendation primarily for personal, family, or household purposes. (§240.15l-1(b)(1).)