

Best Interest Regulatory Status Report

May 17, 2023



Tellus wants to help insurance professionals stay up-to-date with the latest in the “best interest” (BI) landscape. Shaded boxes below indicate an update since the [prior iteration of this status report](#).

	Securities and Exchange Commission (SEC)	Department of Labor (DOL)	National Association of Insurance Commissioners (NAIC)
Name/Citation	Regulation Best Interest and Form CRS	Prohibited Transaction Exemption (PTE) 2020-02	Suitability in Annuity Transactions Model Regulation #275 (Revised)
Applicability	Securities recommendations to retail (not commercial or professional) customers, including variable annuities and life insurance.	Recommendations regarding investments within or rollovers between qualified plans and IRAs.	All annuities, including hybrid products with annuity components, but only in states that adopt the model rule.
Status	Final regulation issued 6/5/2019. Compliance deadline was 6/30/2020.	Final regulation effective 2/16/2021. Temporary non-enforcement policy for best interest recommendations expired 1/31/2022.	Final model regulation adopted on 2/13/2020.
Next Step	Quality control on compliance with rule.	Quality control on compliance with rule.	Individual state regulators may choose to adopt the revised model in whole or in part (or not at all).
Standard of Care Required (Last Published Version)	Client’s interests first, relationship disclosures, and conflict of interest mitigation.	Producer’s interests cannot be put ahead of client’s interests; disclose and mitigate conflicts of interest; institute annual self-assessment of compliance.	Producer’s interests cannot be put ahead of client’s interests, enhanced suitability, and standardized relationship disclosures.
Potential Impact on Compensation and/or Practice	Compensation practices like sales contests that incentivize a particular product or a volume of sales within a limited period of time must be identified and eliminated. New disclosure forms likely to be implemented by broker-dealers/ RIAs.	Rollover recommendations may be deemed fiduciary advice now. Fiduciaries must use an appropriate Prohibited Transaction Exemption to receive commissions. Insurance and annuity sales may be permitted under existing PTE 84-24, which requires commission disclosure and client signature of approval.	Requires “check the box” disclosure forms, suitability analysis, and recommendation documentation similar to New York. Carriers must review compensation practices and eliminate/modify sales contest type incentives.
			State adoptions (effective date): Alabama (1/1/2022) Montana (10/1/2021) Alaska (11/23/2022) Nebraska (1/1/2022) Arizona (1/1/2021) New Mexico (10/1/2022) Arkansas (6/28/2021) North Carolina (1/1/2023) Colorado (11/1/2022) North Dakota (1/1/2022) Connecticut (3/1/2022) Ohio (8/14/2021) Delaware (8/1/2021) Pennsylvania (6/20/2022) Georgia (8/1/2023) Rhode Island (4/1/2021) Hawaii (1/1/2023) South Carolina (11/27/2022) Idaho (7/1/2021) South Dakota (1/1/2023) Illinois (8/1/2023) Tennessee (1/1/2024) Iowa (1/1/2021) Texas (9/1/2021) Kentucky (1/4/2022) Virginia (9/1/2021) Maine (1/1/2022) Washington (1/1/2024) Maryland (10/8/2022) West Virginia (6/8/2023) Massachusetts (6/1/2023) Wisconsin (10/1/2022) Michigan (6/29/2021) Wyoming (7/5/2023) Minnesota (1/1/2023) Mississippi (1/1/2022)



See our Best Interest Requirements by State map.

**New York Department of Financial Services
(NYDFS)**

Massachusetts Securities Division*

Nevada Securities Division

	New York Department of Financial Services (NYDFS)	Massachusetts Securities Division*	Nevada Securities Division
Name/Citation	Insurance Regulation 187	950 MASS. CODE REGS. 12.207	Nevada Revised Statutes 90.575
Applicability	All life insurance and annuity policies issued in New York.	All broker-dealers and agents registered in Massachusetts to sell securities.	Investments and securities, and recommendations of insurance by comparison with securities.
Status	Final regulation published 7/19/2018, effective for annuities 8/1/2019 and for life insurance 2/1/2020. Appellate court decision on 4/29/2021 found these changes unconstitutionally "vague." NYDFS appealed this decision and on 10/22/22, the State of New York Court of Appeals (New York's highest court) reversed the appellate court's decision and upheld the regulation as originally published.	Final regulation published on 2/21/2020, enforceable 9/1/2020. *See also to the adoption of the Revised NAIC model in Massachusetts.	SB 383 effective 7/1/2017, but subject to details to be determined by regulation. Rule proposed 1/18/2019, comment period closed 3/1/2019.
Next Step	Quality control on compliance with rule.	To be determined how the Massachusetts Securities Division will be monitoring and enforcing compliance.	Awaiting final regulations.
Standard of Care Required (Last Published Version)	Client's interests only can be considered, enhanced suitability, and extensive disclosures.	Fiduciary duty of care and loyalty, defined as utmost care and loyalty. Conflicts of interests must be disclosed and avoided or mitigated if possible, and client's interests only can be considered.	Fiduciary (not defined), with new commission and other disclosure requirements.
Potential Impact on Compensation and/or Practice	Must conduct extensive fact-finding and analysis and document reasons for recommendation. Insurer compensation practices as a whole must be designed to avoid recommendations not in the client's best interest.	Dual-registered insurance and securities agents may be subject to rule when recommending insurance or annuities as part of an investment strategy. Recommendations connected with sales contests are prohibited.	Using certain titles or having both transactional and ongoing advisory relationships with the same client can create ongoing fiduciary and monitoring obligation.



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