

**Regulation Best Interest:**

**Frequently Asked Questions v.5**

***See highlighted sections for most recent updates.***

1. **What is Regulation Best Interest?**

The SEC’s Regulation Best Interest (“Reg BI”) imposes principles-based standards on recommendations made to retail customers and requires that broker dealers and their associated persons to act in the best interest of the retail customer at the time a recommendation is made, without placing the financial or other interest of the broker dealer ahead of the customer.

Brokers Dealers, like PCS, that provide investment recommendations to their retail customers must adhere to four components under the new rule:



1. **What is a retail customer?**

Regulation BI defines a retail customer as a “natural person, or the legal representative of a nature person, who: A) receives a recommendation of any securities transaction or investment strategy involving securities from a broker dealer; and B) uses the recommendation primarily for personal, family, or household purposes”.

1. **What does it mean to “use a recommendation”?**

A retail customer “uses” a recommendation of a securities transaction or investment strategy involving securities when, as a result of the recommendation: (1) the retail customer opens a brokerage account with the broker-dealer, regardless of whether the broker-dealer receives compensation; (2) the retail customer has an existing account with the broker-dealer and receives a recommendation from the broker-dealer, regardless of whether the broker-dealer receives or will receive compensation, directly or indirectly, as a result of that recommendation; or, (3) the broker-dealer receives or will receive compensation, directly or indirectly as a result of that recommendation, even if that retail customer does not have an account at the firm.

1. **What account recommendations are covered by Reg BI?**

Regulation Best Interestexpressly applies to account recommendations including recommendations of securities account types generally (e.g., to open an IRA or other brokerage account type, or an advisory account), as well as recommendations to roll over or transfer assets from one type of account to another (e.g., from a workplace retirement plan account to an IRA).

Reg BI also applies to a recommendation of a securities transaction or investment strategy involving securities to a retail customer.

1. **If a financial professional meets with a prospective retail customer in an informal setting, such as a golf course or social gathering, is that communication subject to Regulation Best Interest?**

Not all communications with a prospective client are subject to Reg BI since many of these conversations do not involve making a recommendation. If your communication with a potential customer does not contain a “call to action” to open an account, engage in a securities transaction, or act on an investment strategy, it is not subject to Regulation Best Interest.

1. **Does Reg BI differentiate between educating my clients and making a recommendation?**

Yes, consistent with other existing regulations, certain communications with your clients are considered educational and not a recommendation. For example, a communication to a retail customer informing he or she that they may make an IRA contribution up to a certain amount annually is educational and not a recommendation. Similarly, if you inform a retail customer that he or she needs to take an RMD, such communication by itself is not a recommendation. However, if you suggest specific securities to be sold to generate the cash for the RMD, you have moved into making a recommendation to the customer.

1. **If an advisor recommends a fixed annuity (insurance product only) with no variable component and no recommendation of buying or selling securities, does Reg BI apply?**

Yes, if the fixed annuity runs through PCS since an account type recommendation was made. Delivery of Form CRS would be required. The PCS Recommendation Documentation Supplement should be completed for the Account Selection Recommendation section only since the Investment Recommendation section would not apply.

1. **Does PCS have recommendations for portfolio construction under Reg BI?**

Yes, PCS has created recommendations for portfolio construction by investment objective and risk tolerance. *Please see the Regulation Best Interest Recommendation Processes document for additional detail.*

**Reg BI Disclosure Obligation**

1. **What is the Disclosure Obligation under Regulation Best Interest?**

From the individual financial professional’s standpoint, the most significant impact of Regulation Best Interest is the requirement for brokers and investment advisor representatives to use a new form to disclose all material facts of the investor-advisor relationships, including the products and services provided, in writing.

1. **How is PCS Addressing the Disclosure Obligation?**

Like all broker dealers, PCS has created new documents to address the Disclosure obligation. The **Client Relationship Summary** document, required by the SEC, is designed to cover the relationship and services offered through Private Client Services. See additional information below.

The **Regulation Best Interest Disclosure** is a detailed explanation of the services offered through PCS, and the fees, costs, and expenses associated with the products and services available. See additional information below.

**Form CRS**

1. **What is Form CRS?**

This new form, known as the Client Relationship Summary, titled “Form CRS” for brokers and “Part 3 of Form ADV” for investment advisors, requires RIAs, broker-dealers, and associated persons to disseminate all material facts relating to the scope, terms, and potential conflicts of interest in regard to the relationship. These background facts, as well as any disciplinary history, must be provided to all retail customers.

1. **What is included in Form CRS?**

The SEC requires every firm’s relationship summary document to include an introduction, relationships and services, fees, costs, conflicts, standard of conduct, disciplinary history, and any additional information the firm deems pertinent to disclose.

Form CRS also includes a variety of questions retail customers are encouraged to discuss with their financial professional. Review the document in detail, including these questions, by visiting the [Recommendation Guidance](https://pcsbd.net/client-access-area/recommendation-guidance/) section of the Advisor Resources Center on [www.pcsbd.net](http://www.pcsbd.net).

1. **Who is required to receive Form CRS and when?**

Regulation BI requires delivery of Form CRS to all retail customers. PCS will be mailing Form CRS to all current retail clients as of June 29th by July 30th. For all new accounts opened June 30 or after, the rep must deliver Form CRS for each new account.

Additionally, Form CRS will be required:

* At the start of any new relationship, new account, or investment recommendation; and
* When there is a change to any account registration belonging to the retail investor; and
* When any of the disclosures in Form CRS change; and
* Upon request of the retail client.
1. **How is PCS documenting the delivery of Form CRS?**

PCS has purchased Tracker BI from Docupace and will be using it for delivery tracking of Form CRS. The Tracker BI solution is an electronic approach to documentation using a multi-step paperless workflow to document delivery of Form CRS and other disclosures based on different parameters within the system.

Additional detail and training on Tracker BI will be disseminated shortly.

1. **Do new retail customers have to formally acknowledge receipt of Form CRS?**

Yes, PCS has amended the Customer Account Form in two places to address requirements under Regulation Best Interest, including the addition of a brief attestation above the client signature section in which the client will acknowledge receipt of Form CRS.

1. **I received a verbal request during a phone call to send Form CRS via email. Is verbal consent sufficient for electronic delivery?**

 No, verbal consent is not sufficient. Electronic delivery is acceptable only when using

 BI Tracker in Docupace. Otherwise, Form CRS must be mailed or hand-delivered.

**Regulation Best Interest Disclosure Document**

1. **What is the Regulation Best Interest Disclosure Document?**

The Regulation Best Interest Disclosure is a twelve-page document explaining the important information and details of PCS offerings that retail customers must be aware of before opening an account or engaging in securities transactions with our firm to ensure all recommendations are in the customers’ best interest.

Review the document in detail by visiting the [Recommendation Guidance](https://pcsbd.net/client-access-area/recommendation-guidance/) section of the Advisor Resources Center on [www.pcsbd.net](http://www.pcsbd.net).

1. **When does a Retail Customer Receive the Regulation Best Interest Disclosure Document?**

The Regulation Best Interest Disclosure Document should be given to each retail customer prior to an account being established or a recommendation being made.

1. **Why is the Regulation Best Interest Disclosure Document so long?**

There is a lot of information for a retail customer to consider prior to opening a new account or creating a new brokerage account strategy. The document provides a customer with important background to assist him or her in discussions on a suitable brokerage or advisory account strategy.

1. **Is the Regulation Best Interest Disclosure document delivered with Form CRS using the Tracker BI in Docupace?**

No, it is not within the current scope of work to deliver the Reg BI Disclosure Document this way. The Regulation Best Interest Disclosure document will be included as an optional document in Docupace to be included with e-sign or printed paperwork packets.

Outside of Docupace, the Regulation Best Interest Disclosure document can be either manually delivered or delivered as “access equals delivery” since it is on the Customer Account Form via link and client acknowledgement.

**Reg BI CARE and Conflict of Interest Obligations**

1. **What is the CARE Obligation under Regulation Best Interest?**

The CARE obligation requires exercise of reasonable diligence, care, skill, and prudence in making customer recommendations. The potential risks, rewards, and costs associated with the recommendation must be acknowledged and understood.

1. **How is PCS Addressing the CARE Obligation?**

Because the CARE obligation requires investment professionals to consider multiple factors before making a recommendation to a retail customer, PCS created processes designed to assist investment professionals comply with the CARE obligation. See the PCS Compliance Manual and/or *Regulation Best Interest Recommendation Processes* for details related to these new processes. PCS has also developed a new tool to document the process of determining a recommendation using the CARE obligation called the **Recommendation Documentation Supplement.**

The Recommendation Documentation Supplement is a simple and direct way for our affiliated financial professionals to document the applicable information utilized when determining both account type and investment recommendations for a client. See additional information below.

1. **How is the Reg BI CARE Obligation different from the suitability rules we have been complying with under FINRA Rule 2111?**

Regulation Best Interest expands and enhances the suitability requirements found in FINRA Rule 2111. Under the existing FINRA Rule, broker dealers have been required, in making any recommendation to a customer, to “have a reasonable basis to believe” that the recommendation is “suitable” for the client based on information obtained through reasonable diligence to ascertain the customer’s investment profile.

In comparison, Regulation Best Interest now requires, as its core obligation, that any securities recommendation made to a retail customer be done through exercising “reasonable diligence, care, and skill to have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer’s investment profile.” Additionally, the potential risks, rewards, and costs associated with the recommendation cannot place the financial or other interest of the broker dealer and investment professional ahead of the interest of the customer.

It is important to note, too, that Reg BI only applies to natural persons. FINRA’s suitability rules apply to entities and institutions.

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1. **What is the Conflict of Interest Obligation under Regulation Best Interest?**

Under Reg BI, a conflict of interest is defined as “an interest that might incline a broker dealer or a natural person who is an associated person of a broker dealer – consciously or unconsciously – to make a recommendation that is not disinterested”.

1. **How is PCS Addressing the Conflict of Interest Obligation?**

PCS addresses potential conflicts on page three of the Form CRS. The document contains some examples of conflicts of interest to aid retail customers in their understanding of the concept. Conflicts of interest are also addressed in the Regulation Best Interest Disclosure document in the Compensation section.

**Recommendation Documentation**

1. **Does a Registered Representative have to document every recommendation in a brokerage account under Reg BI?**

No, Regulation Best Interest does NOT require every recommendation made within a brokerage account to be documented so long as PCS and the Registered Representative can describe the overall goal, purpose or strategy used to base recommendations.

To identify the strategy for a brokerage account (and avoid documenting each individual recommendation), you need to discuss the investment goals, timeframe, risk exposure, tax situation, and other factors with the client. Working with the client, an investment strategy should be developed which aligns with the client profile. [*Please see the Regulation Best Interest Recommendation Processes and Brokerage Account Strategy documents for additional detail.*](https://pcsbd.net/client-access-area/recommendation-guidance/)

1. **I am completing a BD Change only and the account registration is not being changed. Do I need the Recommendation Documentation Supplement?**

No, the Recommendation Documentation Supplement is not required in this case.

1. **If a recommendation is presented to a prospect who never opens an account, what should I do with the Recommendation Documentation Supplement?**

You should maintain the supplement in your branch office and submit it to Operations. A copy will then be maintained in the PCS central files. The delivery date of Form CRS should be noted on the Recommendation Documentation Supplement.

1. **If I only recommend holding current positions, no new transactions, do I still need to complete the Recommendation Documentation Supplement?**

Yes. Recommending that the client hold current positions is still a recommendation that should be documented. Hold recommendations and the need to document them were the subject matter of previous FINRA guidance, and Reg BI has strengthened that requirement. A hold recommendation is still a recommendation and the rationale should be documented in order to be in compliance with the rule.

1. **For product recommendations, the Recommendation Documentation Supplement and Securities Purchase Form seem redundant. Why do I need to complete both?**

The **Recommendation Documentation Supplement** should be used to document the **thought process and due diligence** of getting from a broad universe of available products to the specific product(s) recommended as being in the client’s best interest. This process must involve consideration of multiple factors, including client goals and profile, potential product risks, rewards and cost, along with use of various due diligence tools and reports. Check boxes are provided for convenience. Products which are considered should be listed as part of this process, whether or not they are presented to the client

The **Securities Purchase Form** should be used to document features of the accepted recommendation(s) and how the product(s) best fit the client’s goals and objectives. How does **THIS** investment meet the client’s goals and objectives? How does **THIS** investment better meet the client’s goals and objectives than other products that were presented? Tell this client’s story and the specific needs that the recommendation was intended to address with as much detail as possible.

Each client is unique. Adding details to the comment boxes on both forms provides valuable support if necessary to defend the recommendation to someone who does not know you or your client, such as in a regulatory or complaint situation.

**Advisory Scenarios**

1. **If I am affiliated with both Private Client Services and an outside RIA, do I have to provide a retail customer with both PCS’ Form CRS and my RIA’s Form ADV Part 3?**

Yes, if you are a registered representative of PCS’ broker dealer and an investment advisory representative of an unaffiliated RIA, you must provide both documents to potential clients.

1. **If I’m registered with my own RIA as an investment advisor rep and with PCS as a registered representative, when I meet with a client, do I provide them with PCS’ Form CRS or with the CRS of my RIA?**

Any dually-registered financial professional is required to provide copies of both forms since he or she is offering account services with both firms.

1. **I’m a dually-registered financial professional. I met with a new client and provided both PCS’ Form CRS and my RIA’s ADV Part 3. The client decided on advisory services; do I still have to provide PCS’ Regulation BI Disclosure?**

While a new client must be provided with both Form CRS documents, the PCS Regulation BI Disclosure is only required if the client opens an account through PCS on the broker dealer side.

1. **I am a dually-registered financial professional. I met with one of my advisory-only clients, and during the meeting recommended he open a new advisory account. Do I need to provide PCS’ Form CRS to this client?**

Since a recommendation was made, the client is required to receive both PCS’ Form CRS and the ADV Part 3 of the RIA. It is the recommendation that triggers Regulation Best Interest and the requirement for PCS’ Form CRS. If there is no recommendation, then Regulation Best Interest does not apply.

The current interpretation by FINRA and the SEC is that since a dually-registered person offered accounts through both firms, both CRS documents need to be provided.

1. **Does my RIA need to post PCS’ Form CRS on our website?**

There is no requirement for an RIA to post the PCS Client Relationship Summary document on their website. PCS’ Compliance Department recommends a link to the [www.pcsbd.net](http://www.pcsbd.net) website if the RIA website discusses brokerage products or services.

1. **Is the Recommendation Documentation Supplement required for all advisory accounts?**

 No, this document is required for PCS related business (i.e. Brokerage, Direct

 or PCS Advisory), not outside independent RIA business.

1. **Do outside RIAs have to provide PCS’ Form CRS when sending their own separate Form CRS during the initial delivery phase if no investment or account recommendation has been made?**

No. PCS is already sending its own Form CRS via a mass mailing to all of its existing clients as of 6/29/2020, so there is no requirement to include PCS’ Form CRS in the initial delivery **if no investment or account recommendation is made**.

1. **What forms are required in the following scenarios?**
2. Existing client with only an outside RIA account meets with the advisor and receives a recommendation for advisory account or PCS retail or brokerage account, but does not move forward: **Form CRS and Recommendation Documentation Supplement are required.**
3. New prospect with no existing accounts does not move forward with recommendations: **Form CRS and Recommendation Documentation Supplement are required.**
4. An existing PCS client moves forward with opening an advisory account: **Form CRS, RIA ADV and new account forms.**

**Forms and Additional Resources**

1. **Where can I find additional guidance on PCS’ policies and procedures for Reg BI?**

Additional guidance and information on PCS’ policies and procedures for Regulation Best Interest can be found in the Compliance Manual, pp.62 – 67.

1. **Where can I find a copy of the Form CRS and the Regulation Best Interest Disclosure?**

These documents have been added to the [Customer Disclosures](https://pcsbd.net/disclosures/) link at the bottom of the [www.pcsbd.net](http://www.pcsbd.net) homepage.

1. **Has the Forms and Transactions Checklist been updated for the new requirements?**

Yes, the updated checklist is posed on the [Forms Library](https://pcsbd.net/client-access-area/forms-library/) tab of the Advisor Resource Center. Check carefully for the new requirements. Your Managing Principal is available to assist with any questions.