

— ATTACHMENT A —

EXPOSURE DRAFT

Proposed Revisions to

CFP Board's *Code of Ethics and Professional Responsibility*

and *Financial Planning Practice Standards*



CERTIFIED FINANCIAL PLANNER™


CFP®

CERTIFIED FINANCIAL PLANNER

BOARD OF STANDARDS, INC.

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Introduction

Certified Financial Planner Board of Standards, Inc. (CFP Board) is a regulatory organization founded in 1985 to benefit the public by establishing and enforcing education, examination, experience and ethics requirements for CFP® professionals. CFP Board has exclusive authority to determine who may use the CFP®, CERTIFIED FINANCIAL PLANNER™ and  certification marks (collectively “the marks”). CFP Board conditions the permission it grants certificants to use these marks on their agreement to abide by certain terms and conditions specified by CFP Board, as set forth below.

As part of the certification process and the terms and conditions imposed upon certificants, CFP Board maintains professional standards necessary for competency in the financial planning profession. Through its *Code of Ethics and Professional Responsibility (Code of Ethics)*, CFP Board identifies the ethics standards which certificants should strive to meet. Through its *Rules of Conduct*, CFP Board establishes binding professional norms that protect the public and advance professionalism. Through its *Disciplinary Rules and Procedures (Disciplinary Rules)*, CFP Board enforces its *Rules of Conduct* and furthers its *Code of Ethics*. This booklet contains the *Code of Ethics*, *Rules of Conduct* and *Disciplinary Rules* that guide and govern CFP® certificants.

Code of Ethics. CFP Board adopted the *Code of Ethics* to provide certificants with the highest principles and standards. These ethical principles are aspirational in nature and intended to help guide all certificants, regardless of practice area, and to help certificants interpret and understand the spirit of the *Rules of Conduct* and the *Disciplinary Rules*. CFP Board’s *Code of Ethics* and *Rules of Conduct* reflect its recognition of certificants’ responsibilities to the public, clients, colleagues and employers.

Rules of Conduct. The *Rules of Conduct* establish a minimum level of professionalism required of certificants. The *Rules of Conduct* are binding on certificants, regardless of their title, position, type of employment or method of compensation, and govern all those who have the right to use CFP Board’s marks, whether or not those marks are used.

Violations of the *Rules of Conduct* may give rise to CFP Board disciplinary causes of action. While they are not designed to be a basis for legal liability to third parties, CFP Board and CFP® certificants must expect that the *Rules of Conduct* might be used by third parties for such liability and other purposes.

Disciplinary Rules: The *Disciplinary Rules* describe the procedures followed by CFP Board in enforcing the *Rules of Conduct*. The *Disciplinary Rules* provide a fair process pursuant to which certificants are given notice of potential violations and an opportunity to be heard by a panel of other professionals.



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The certification marks above are owned by Certified Financial Planner Board of Standards Inc. and are awarded to individuals who successfully complete CFP Board's initial and ongoing certification requirements.

Terminology

- ▶ “*CFP Board*” denotes Certified Financial Planner Board of Standards, Inc.
- ▶ “*Certificant*” denotes individuals who are currently certified by CFP Board and individuals who have been certified by CFP Board in the past but are not currently certified and have any entitlement, direct or indirect, to the CFP® certification marks. This includes individuals who have relinquished their certification and who may apply for reinstatement without being required to pass the current CFP® Certification Examination.
- ▶ “*Client*” denotes a person, persons, or entity who engages a certificant and for whom professional services are rendered for compensation. Where the services of the certificant are provided to an entity (corporation, trust, partnership, estate, etc.), the client is the entity acting through its legally authorized representative.
- ▶ “*Commission*” denotes the compensation generated from a transaction involving a product or service and received by an agent or broker from a party other than the client, usually calculated as a percentage on the amount of his or her sales or purchase transactions.
- ▶ “*Compensation*” is any non-trivial economic benefit, whether monetary or non-monetary, that a certificant or related party receives from performing his or her professional activities.
- ▶ “*Conflict(s) of interest*” exists when a certificant’s financial, business, property and/or personal interests, relationships or circumstances reasonably may impair his/her ability to offer objective advice, recommendations or services.
- ▶ “*Fee-only.*” A certificant may describe his or her practice as “fee-only” if, and only if, all of the certificant’s compensation from all of his or her client work comes exclusively from the clients in the form of fixed, flat, hourly, percentage or performance-based fees. A certificant may describe an individual agreement with an individual client as a fee-only arrangement if the certificant’s compensation for that client comes exclusively from fees paid by the client in flat, hourly, fixed, percentage or performance-based fees. A certificant who has both fee-only and non-fee-only client compensation agreements may not refer to him or herself as a fee-only certificant.
- ▶ A “*financial planning engagement*” exists when a client signs a binding written agreement under which a certificant performs some type of financial planning service.
- ▶ “*Fiduciary.*” In good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in manner he or she reasonably believes to be in the best interests of the client.
- ▶ “*Personal financial planning*” or “*financial planning*” denotes the process of determining whether and how an individual can meet life goals through the proper management of financial resources. It is not necessary to provide a written financial plan to engage in financial planning.

► “*Personal financial planning process*” or “*financial planning process*” denotes a process for providing any type of financial planning service which typically includes, but is not limited to, one or more of these six elements:

- establishing and defining the client-planner relationship
- gathering client data including goals,
- analyzing and evaluating the client’s current financial status
- developing and presenting financial planning recommendations and/or alternatives
- implementing the financial planning recommendations and
- monitoring the financial planning recommendations.

► “*Personal financial planning subject areas*” or “*financial planning subject areas*” denotes the basic subject fields that may be covered, all or in part, in the financial planning process, which typically include, but are not limited to, financial statement preparation and analysis (including cash flow analysis/planning and budgeting), investment planning (including portfolio design, i.e., asset allocation and portfolio management), income tax planning, education planning, risk management, retirement planning and estate planning.

CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITY

Principle 1 – Integrity

Certificants should provide professional services with integrity.

Certificants are placed in positions of trust by clients and the ultimate source of such public trust is the certificant’s personal integrity. Integrity demands honesty and candor which must not be subordinated to personal gain and advantage. Allowance can be made for innocent error and legitimate differences of opinion, but integrity cannot co-exist with deceit or subordination of one’s principles.

Principle 2 – Objectivity

Certificants should provide professional services objectively.

Objectivity requires intellectual honesty and impartiality. Regardless of the particular service rendered or the capacity in which a certificant functions, Certificants should protect the integrity of their work, maintain objectivity and avoid subordination of their judgment.

Principle 3 – Competence

Certificants should exert best efforts to maintain the knowledge and skill necessary to provide professional services competently.

Competence means attaining and maintaining an adequate level of knowledge and skill, and application of that knowledge and skill in providing services to clients. Competence also includes the wisdom to recognize the limitations of that knowledge and when consultation or client referral is appropriate. Certificants must make a continuing commitment to learning and professional improvement.

Principle 4 – Fairness

Certificants should be fair and reasonable in their professional relationships with clients, principals, partners and employers. Certificants shall disclose material conflicts of interest.

Fairness requires impartiality, intellectual honesty and disclosure of conflicts of interest. It involves a subordination of one's own feelings, prejudices and desires so as to achieve a proper balance of conflicting interests. Fairness is treating others in the same fashion that you would want to be treated.

Principle 5 – Confidentiality

Certificants shall make best efforts to not disclose any confidential client information without the specific consent of the client unless in response to proper legal process, to defend against charges of wrongdoing or in connection with a civil dispute.

A relationship of trust and confidence between certificant and client can only be built upon the understanding that information supplied to the certificant will be confidential.

Principle 6 – Professionalism

Certificants should be a credit to the profession.

Certificants should behave with dignity and courtesy to clients, fellow professionals, and those in related professions. Certificants should cooperate with fellow Certificants to enhance and maintain the profession's public image and improve the quality of services.

Principle 7 – Diligence

Certificants shall strive to provide professional services diligently.

Diligence is the provision of services in a reasonably prompt and thorough manner, including the proper planning for, and supervision of, the rendering of professional services.

RULES OF CONDUCT

1. Scope, Nature and Content Of The Engagement

- 1.1 The certificant and the client shall mutually agree upon the client's personal financial goal(s) that are relevant to the services to be provided by the certificant under the agreement between the client and the certificant. The certificant or the certificant's employer shall then enter into a binding written agreement with the client governing those services. This agreement may consist of multiple written components and must specify:
 - a. The parties to the agreement.
 - b. The date of the agreement and its duration.
 - c. How and on what terms each party can terminate the agreement.
 - d. The scope, nature and content of the engagement.

- e. Whether the certificant will be held to the duty of care of a fiduciary under the agreement. It will be presumed that the duty of care of a fiduciary is to be applied to the professional judgments made by the certificant pursuant to the agreement unless the parties specify in their agreement a different legal standard governing these actions.

1.2 Prior to entering into a written agreement, the certificant and the client must discuss as appropriate:

- a. The obligations and responsibilities of each party under the agreement with respect to:
 - i. defining the client's goals, needs and objectives,
 - ii. gathering and providing appropriate client data,
 - iii. examining the result of the current course of action without changes,
 - iv. the formulation of any recommended actions,
 - v. implementation responsibilities, and
 - vi. monitoring responsibilities.
- b. Compensation that any party to the agreement or any legal affiliate to a party to the agreement will or could receive under the terms of the agreement; and factors or terms that determine the cost to the client, how client decisions benefit the certificant and the relative benefit to the certificant.
- c. Terms under which the agreement permits the certificant to offer the client proprietary investment products.
- d. Terms under which the certificant will use other firms to meet any of the agreement's obligations.
- e. Whether the certificant will be held to the duty of care of a fiduciary under the agreement.

2. Information Disclosed To Clients

2.1 A certificant must not communicate, directly or indirectly, to clients or potential clients any false or materially misleading information directly or indirectly related to the certificant's professional qualifications or services. Certificants must not materially mislead any parties about the potential benefits of the certificant's service. Certificants also must not fail to disclose or otherwise omit facts where that disclosure is necessary to avoid materially misleading clients.

2.2 Prior to entering into an agreement, a certificant must provide a prospective client in writing:

- a. An accurate and understandable description of the compensation arrangements being offered. This description must include:
 - i. Information related to costs to clients and compensation to the certificant and/or the certificant's employer as required by regulatory rules governing the engagement.
 - ii. Terms under which either the certificant or the certificant's employer receive compensation from other sources resulting from the agreement with the client, and if so, what the sources of these payments are and on what they are based.
- b. A general summary of the ways in which the agreement likely could present a conflict of interest between the client and the certificant, the certificant's employer or any affiliates or third parties, including, but not limited to, information about any familial, contractual or agency

relationship of the certificant or the certificant's employer that has a potential to materially affect the relationship.

- c. Any information about the certificant or the employer that could reasonably be expected to materially affect the client's decision to enter into an agreement, including, but not limited to, information about the certificant's areas of expertise that the client might reasonably want to know in establishing the scope and nature of the relationship.
- d. Contact information for the certificant and the certificant's employer if the engagement will be between the client and the employer.

3. Client Information and Property

Certificants must:

- 3.1. Treat client information as confidential except as legally required, as necessitated by obligations to a certificant's employer or partners, as needed to perform the services required by the agreement or as otherwise provided by the agreement.
- 3.2. Obtain from clients the information necessary to fulfill their obligations specified in the agreement between the parties. If certificants cannot obtain the necessary information from clients, they must inform the clients of any and all material deficiencies.
- 3.3. Take prudent steps to protect the security of client information and property, including the security of stored information, whether physically or electronically, that is within the certificant's control.
- 3.4. Clearly identify which, if any, of the client's assets are subject to the agreement between the certificant and the client, and clearly identify which, if any, of these assets the certificant will take custody and/or exercise investment discretion or supervision.
- 3.5. Keep proper records at all times during the relationship that accurately and readily identify a client's property that is subject to the agreement.
- 3.6. Not commingle a client's property that is the subject of an agreement between the client and the certificant with the property of the certificant or the certificant's employer, unless the commingling is explicitly authorized and defined in a written binding agreement between the parties.
- 3.7. Not commingle a client's property with other clients' property without both explicit written authorization to do so from each client involved and without sufficient record keeping to track each client's assets accurately.
- 3.8. Not take custody of a client's property without entering into a binding written agreement to treat that property with the care of a fiduciary unless
 - a. the client is a corporate entity, and/or
 - b. a binding, written arms-length agreement between the parties specifies a different legal standard applicable to custody of the client's assets.
- 3.9. Return a client's property, including personal records, to the client upon request and as soon as reasonably practicable, or consistent with a different time frame specified in an agreement between the parties.

4. Borrowing and Lending

Certificants must not

- 4.1 Borrow money from a client unless
 - a. the client is a member of the certificant's immediate family, or
 - b. the client is an institution in the business of lending money and the borrowing is unrelated to the financial services performed by the certificant, or
 - c. both parties to the written agreement are corporate entities, and the agreement specifically permits such a borrowing.
- 4.2 Lend money to a client unless
 - a. the client is a member of the certificant's immediate family, or
 - b. the certificant is an employee of an institution in the business of lending money and the money lent is that of the institution, not the certificant, or
 - c. both parties to the written agreement are corporate entities and the agreement explicitly permits such a loan.

5. Regulatory Requirements

A certificant must be in compliance with all appropriate regulatory requirements governing professional services provided to the client.

6. Obligations to Clients

- 6.1 A certificant must be able to answer clients' questions about the legal standards against which the certificant's professional behavior under the agreement will be measured.
- 6.2 A certificant must provide professional supervision or direction to any subordinate or third party to whom the certificant delegates responsibility for any client services.
- 6.3 A certificant must exercise reasonable and prudent professional judgment in providing professional services to clients.
- 6.4 A certificant must make and/or implement only recommendations which are suitable for the client.
- 6.5 A certificant must advise his or her current clients of any certification suspension or revocation he or she receives from CFP Board.

7. Obligations To Employers

A certificant must advise his or her current employer of any public censure or certification suspension or revocation he or she receives from CFP Board.

8. Obligations To CFP Board

- 8.1 Certificants must abide by the terms of their agreements with CFP Board, including, but not limited to, proper usage of the CFP[®] certification marks, full cooperation with CFP Board's trademark and professional review operations and requirements, and keeping CFP Board apprised of current contact information.

- 8.2. Certificants must meet all CFP Board requirements, including continuing education requirements, to retain the right to use the CFP[®] certification marks.