

# Implementing CFP Board's Revised Ethical Standards in a Firm Environment

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# CFP Board

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**Mission: To benefit the public by granting the CFP<sup>®</sup> certification and upholding it as the recognized standard of excellence for personal financial planning.**

Certified Financial Planner Board of Standards, Inc. owns the certification marks CFP<sup>®</sup>, CERTIFIED FINANCIAL PLANNER<sup>™</sup> and federally registered CFP (with flame design) in the U.S., which it awards to individuals who successfully complete CFP Board's initial and ongoing certification requirements.

# But First, Why Revise?

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CFP Board continually updates its *Standards* to:

- Reflect changing regulatory and business environments
- Ensure ethical standards remain strong
- Ensure enforceability of ethical standards

# *Standards* Effective July 1, 2008

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- Questions about revised *Standards* may be sent to CFP Board by mail or e-mail to:

[standards@CFPBoard.org](mailto:standards@CFPBoard.org)

# Structure of Revised *Standards*

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- *Code of Ethics*
  - Principle-Based
- *Rules of Conduct*
  - Binding
  - Specific requirements for professional activities of CFP<sup>®</sup> certificants
- *Financial Planning Practice Standards*
  - Updated with references to *Rules of Conduct*

# Rules Apply to All Certificants

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- Revised *Standards* apply to all CFP® certificants
  - Term “certificant” replaces “CFP Board designee”
- Some rules limited to CFP® certificants who provide services that are:
  - Financial planning
  - Material elements of the financial planning process--(Rules 1.2, 1.3, 1.4 and 2.2)

# The Changes and Their Impact

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- How do these changes affect what a firm does?
- What effect do they have on registered representatives? On advisors? On financial planners?
- Should they apply only to CFP<sup>®</sup> certificants? Or to everyone in firm?
- When do they apply?

# *Code of Ethics*

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- Establishes highest principles and standards
- Expresses ethical and professional ideals certificantants are expected to display in professional activities
- Aspirational in nature. . .

. . . but doesn't *everyone* want to follow these high principles?

# How Do You Require Ethics?

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- In writing?
- Verbally - as your culture of ethics & compliance within the firm?
- Does “verbal” provide enough “teeth” to enforce?
- “Require” them for everyone?
- Or just CFP<sup>®</sup> certificants?

# *Rules of Conduct*

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- Establishes high standards expected of certificants
- Describes the level of professionalism required of certificants
- Binding on all certificants – *regardless of whether they use the CFP<sup>®</sup> marks*
- Same questions
- Again - how do you monitor?

# Polling Question

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# Definition of Financial Planning

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CFP Board says it is:

“The process of determining whether and how an individual can meet life goals through the proper management of financial resources.”

# Six Steps of Financial Planning

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- 1) Establishing & defining the relationship
- 2) Gathering client data - including goals
- 3) Analyzing & evaluating the client's current financial status
- 4) Developing & presenting recommendations and/or alternatives
- 5) Implementing the recommendations
- 6) Monitoring the recommendations

# Financial Planning

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- Definition of Financial Planning integrates the process with the subject areas.
- Subject Areas:
  - Financial Statements
  - Investment planning
  - Income tax planning
  - Education planning
  - Risk management
  - Retirement planning
  - Estate planning

# Definition of Financial Planning- Resource

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- FAQ numbers 6 and 8 discuss the interplay of the financial planning process with other activities in the financial services industry.
- There are key questions under both FAQs that compliance professionals should ask:
  - Is the certificant involving the steps of the financial planning process?
  - How many financial planning subject areas are involved with meeting the client's goals?
  - With respect to the services provided, what was communicated to the client?
  - Did the certificant consider the criteria (or guidelines) for providing services using the material elements of financial planning process? [See also FAQs 18, 31 and 32]

# Material Elements of Financial Planning

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- May exist without providing a comprehensive written financial plan
- Based on activities and scope of client relationship
- May be determined by what was communicated to the client and the client's perception

# Determining Material Elements

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- In determining whether a CFP® certificant is providing financial planning or material elements of the financial planning process, issues that may be considered include, but are not limited to:
  - The client's understanding and intent in engaging the certificant
  - The degree to which multiple financial planning subject areas are involved
  - The comprehensiveness of data gathering
  - The breadth and depth of recommendations

# Determining Material Elements

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- Foresight and observation, using guidelines for determination
- See Questions 6, 8, 18, 31 and 32 of the Revised FAQs issued on June 23, 2008.

# Determining Material Elements

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- Question 31 of the FAQ's discusses the difference between the six steps of the financial planning process and the material elements of the financial planning process.
  - The key idea is that using the six steps alone may not be considered financial planning.

# Activities That May Be Material Elements

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- Conducting detailed data gathering regarding multiple aspects of the client's financial situation
  - *Is it data collection or financial planning?*
- Analyzing a client's data and making wide-ranging recommendations
- Providing investment advisory services as defined by the SEC...

# Activities That May **NOT** Be Material Elements

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- What MAY NOT be a material element
  - A broker completing paperwork to open an account
  - Acting as an order-taker for brokerage services
  - An insurance agent taking an order for an insurance product
  - Acting as a mortgage broker without providing any other financial services
  - Completing tax returns without providing any other financial services
  - Teaching a financial class or CE program

# Duty of Care Standard

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- Rule 1.4
  - A certificant shall at all times place the interest of the client ahead of his or her own. When the certificant provides financial planning or material elements of the financial planning process, the certificant owes to the client the duty of care of a fiduciary as defined by CFP Board.
- Fiduciary defined:
  - One who acts in utmost good faith, in a manner he or she reasonably believes to be in the best interest of the client

# Making “Best” Recommendations

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CFP Board expects CFP® professionals:

- To recommend what they reasonably believe to be the best possible options *available to their clients within the business and regulatory setting in which they practice*
- To disclose the limitations placed on the CFP® certificant by those business or regulatory requirements

# Written Documentation

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- When services include financial planning or material elements of the financial planning process, written documentation is required:
- Rule 1.2
  - Requires written disclosures about scope of engagement to clients and prospective clients
- Rule 1.3
  - Requires written agreement
- Rule 2.2
  - Requires written disclosures about compensation and conflicts

# Written Documentation

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- CFP Board has updated its sample disclosure forms and created a new, sample agreement form that CFP® certificants may use with their clients when providing financial planning or services employing material elements of the financial planning process.
  - Form FPD is for certificants who provide financial planning services or material elements of the financial planning process;
  - Form FPDA (Financial Planning Disclosure Document and Agreement) may help certificants who provide financial planning services or material elements of the financial planning process create a document that satisfies the written agreement requirements of Rule 1.3 as well as the disclosure obligations of Rules 1.2 and 2.2.
  
- The key idea is that the substance of the disclosures matter, not the form. Whether a certificant uses Forms FPD or FPDA or an employer's form and agreement, the terms required under Rule 1.3 should be in an agreement and the information required under Rules 1.2 and 2.2 should be disclosed in writing. [See Question 29 of the Revised FAQ's issued on June 23, 2008.]

# No Written Documentation, but Still Need to Disclose

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- When services do not include financial planning or material elements of the financial planning process, no written documentation is required, but certificant must disclose information required by:
  - Rule 2.2 (a) through (d) requires disclosures about:
    - Compensation and Conflicts
    - Material information that could be reasonably expected to affect the client's decision to engage the certificant
    - Contact information about certificant and employer

# No Written Documentation, but Still Need to Disclose

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- In order to aid certificants to disclose information to clients for services other than financial planning or material elements of the financial planning process, CFP Board has updated Form OPS (Other than Financial Planning Services).
  - Form OPS is for certificants who provide services that do not rise to the level of financial planning.
  - Form OPS will guide certificants on the type of information Rule 2.2 (a) through (d) requires.

# No Written Documentation, but Still Need to Disclose

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- Cautionary Note:

- CFP Board understands that employers of certificants who provide services other than financial planning may require certificants to have their clients sign a document or disclaimer stating that the certificant is not providing financial planning services.
- In most cases, the disclaimer may be accurate, but CFP Board reserves the right to make an independent determination of whether the certificant's services rise to the level of financial planning based on CFP Board's *Rules of Conduct*. [See Question 29 of the Revised FAQ's issued on June 23, 2008.]

# Method of Compensation

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CFP Board is compensation and business model neutral.

# Method of Compensation

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CFP Board expects CFP® professionals:

- At all times, to put the interest of the client ahead of their own. This requirement applies in the selection of products and services no matter whether compensation is through fees or commission.
- When providing financial planning or material elements of the financial planning process, to recommend what they reasonably believe to be the best possible options **available** to their clients within the business and regulatory setting in which they practice.
- **Cost** to the client is one factor in this decision.

# Method of Compensation

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CFP Board expects CFP® professionals:

- When providing financial planning or material elements of the financial planning process, to disclose in writing the compensation that any party ... to the agreement will or could receive ... And factors or terms that determine costs, how decisions benefit the certificant and the relative benefit to the certificant.
- Specific dollar amount is not required. Factors of calculating cost are required.

# Polling Question

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# Other Requirements

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CFP Board expects CFP® professionals:

- When providing financial planning or material elements of the financial planning process:
  - To disclose in writing the terms under which the agreement permits the certificant to offer proprietary products.
  - To disclose in writing the terms under which the certificant will use other entities to meet any of the agreement's obligations.

# Other Changes to the *Standards*

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- Disclosures are clearer and writings required
- Disclosure of and fair management of conflicts of interest
- Responsibilities to prospective clients are specified
- Competency maintenance is required
- Self-reporting of criminal convictions and suspensions is required
- Many technical clarifications are provided
- Prohibition against misleading client
- Full and fair disclosure of material facts

# You'll need some answers. . .

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- Consider creating a spreadsheet –
  - 1) Define activities your firm does regularly
  - 2) Label columns - “certificant,” “broker” or “both”
  - 3) Check “who does what”
  - 4) Review the spreadsheet – which activities require an engagement agreement? Which type of agreement?
  - 5) List those agreements on the spreadsheet

# Spreadsheet Example

Activity	WA Agreement	Agreement Type	RA Activity	Advisor Activity	LLP Activity	ADV	P&P	Client Agreement
Services that may be provided by RAs and/or Advisors		FP/PMA/IC						
Detailed financial planning recommendations and/or calculations	■	FP	■	■		■	■	■
Retirement or education planning (with detailed calculations). Tax planning questions are OK.	■	FP	■	■		■	■	■
Authoring and publication of articles related to financial planning and/or estate planning (including "internal use only" articles)	None	None	■	■			■	

# More Answers Needed

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- “Audit” financial plans and engagement agreements
  - Do you follow your own requirements?
  - Are services provided in line with fees charged?
  - Are you following the *Practice Standards*?
  - Verify against the different aspects of the Standards

# More Ideas. . . .

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- Review everything:
  - Form ADV
  - Client Engagement Agreements
  - Marketing Materials or Advertisements
  - Website
- Does anything give the appearance you're providing financial planning when you:
  - Don't want to?
  - Don't intend to?
- Is it clear?

# Guidance

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- Educate on key terminology and material elements of financial planning
  - What do you consider financial planning?
  - Be specific when possible
- Try educational sessions; annual certifications and attestations

# Training

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- Never underestimate the value!
- Written memos and/or emails
- In-person training
- Provide real-life examples

*And last . . . .*

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- We're not in trouble – so we're ethical.

# Links to CFP Board Resources

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- Where you can get the *Standards of Professional Conduct*, FAQ's and Forms, effective July 1, 2008
  - [www.CFP.net/aboutus/Standards.asp](http://www.CFP.net/aboutus/Standards.asp)
- Where you can get the FAQ's
  - [www.CFP.net/Downloads/FAQ\\_CFP\\_Board's\\_Revised\\_Standards.pdf](http://www.CFP.net/Downloads/FAQ_CFP_Board's_Revised_Standards.pdf)
- Where you can get the Disclosure Forms
  - [www.CFP.net/Downloads/CFP\\_Board\\_Sample\\_Disclosure\\_Forms.pdf](http://www.CFP.net/Downloads/CFP_Board_Sample_Disclosure_Forms.pdf)
- Where you can get the *Standards of Professional Conduct*
  - [www.CFP.net/Downloads/2008Standards.pdf](http://www.CFP.net/Downloads/2008Standards.pdf)
- Where you can get the side by side comparison of the current *Standards* to the updated *Standards*
  - [www.CFP.net/Downloads/2008RulesComparison.pdf](http://www.CFP.net/Downloads/2008RulesComparison.pdf)
  - [www.CFP.net/Downloads/2008StandardsComparison.pdf](http://www.CFP.net/Downloads/2008StandardsComparison.pdf)
  - [www.CFP.net/Downloads/2008TerminologyComparison.pdf](http://www.CFP.net/Downloads/2008TerminologyComparison.pdf)
  - [www.CFP.net/Downloads/2008PrinciplesComparison.pdf](http://www.CFP.net/Downloads/2008PrinciplesComparison.pdf)
- E-mail for specific questions-[standards@CFPBoard.org](mailto:standards@CFPBoard.org)

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***Additional Questions?***