

Summary: Comments Received on Exposure Draft of Proposed Revisions to CFP Board's Ethical Standards

On July 24, 2006, CFP Board released an Exposure Draft of proposed changes to its *Code of Ethics and Professional Responsibility* and *Financial Planning Practice Standards* for a 60-day public comment period. The Exposure Draft contained proposed revisions to CFP Board's ethical standards developed over a period of several years. The revisions were developed through a series of committees organized by CFP Board's Board of Governors (the Board) and Board of Professional Review, which included experts on a wide range of regulatory issues related to financial planning. The Board reviewed a draft of the proposed revisions at its May 2006 meeting and determined it would be helpful at that time to solicit input from a broader range of stakeholders. The Board voted to release the draft for a 60-day public comment period. The comment period ran from July 24, 2006 through September 25, 2006.

The process of releasing the Exposure Draft for a 60-day comment period was addressed by many commenters, sometimes to the exclusion of comments on the contents of the Exposure Draft itself. Many expressed the opinion that the comment period was too short to allow for meaningful comment, given the substantial changes proposed in the Exposure Draft. Many argued that the process of creating the proposed revisions had been done too privately and suggested that more stakeholders should have been involved earlier in the revision process. Many expressed frustration that the comments received were not posted for public view.

At its October 24, 2006, meeting, the Board reviewed the comments received and determined to 1) appoint a task force of Board members to consider the comments more thoroughly, 2) post the comments received during the comment period on CFP Board's Web site, and 3) publish articles in upcoming CFP Board publications addressing some of the important issues raised during the comment period. The entire Board will revisit the proposed changes in January 2007.

The following summary provides an overview of the comments received during the comment period. Excerpts from selected comments are included at the end of the summary document and referenced in the text with endnotes.

Individual comments may be viewed in their entirety on CFP Board's Web site, where the comments are organized by writer or organization name, at:

www.CFP.net/aboutus/Exposure_Draft_Comments.asp



Overview

During the public comment period, which was open from July 24, 2006 through September 25, 2006, CFP Board received 336 comments. Two hundred and ninety-eight (89%) of the comments came from current CFP® certificants, 22 comments came from non-certified individuals working in the financial services industry (including ten who identified themselves as working toward obtaining CFP® certification), 15 comments came from organizations related to the financial planning profession (including firms, trade associations and membership organizations), one came from a consumer advocacy organization, and one came from a consumer of financial planning services. The certificants who responded represented a wide variety of business models and practice types. Many certificants indicated they were independent investment advisers with fee-only practices, and at least 138 (46% of certificant commenters) have records with CFP Board indicating broker/dealer affiliations.

Some who commented on the Exposure Draft were pleased with the proposed changes, noting such things as the clarity provided by eliminating repeated or redundant language and the benefits of the increased written disclosure and documentation required by the proposed changes.¹ Overall, however, the proposed revisions were not received positively. Some were simply opposed to any changes to existing standards.² Some objected to the re-organization of the standards. Others provided comments reflecting misunderstanding of the content of CFP Board's current standards. Most objections focused on only one or two sections of the proposed revisions.

The two primary topics addressed during the comment period were the proposed changes to the duty of care CFP® certificants owe to clients (as expressed in proposed Rule of Conduct 1.1(e) and the proposed definition of "fiduciary") and the proposed definition of "fee-only." The majority of the comments indicated a belief that the proposed standards weakened rather than strengthened CFP Board's standards, based on the possibility of increased confusion among individuals seeking financial planning services, and based on the divisions within the financial planning community that commenters believed would be exacerbated by the proposed changes.

The sections below highlight certain focal points of the comments CFP Board received.

1) Proposed Rule of Conduct 1.1(e) and Definition of "Fiduciary"

The feature of the Exposure Draft that received the most attention was proposed Rule of Conduct 1.1(e), which received 274 comments. The text of proposed Rule 1.1(e) stated that the written agreement between a certificant and client must specify:

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 those actions.

The Exposure Draft also introduced the definition of a key word in proposed Rule 1.1(e):

“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.

The proposed Rule 1.1(e) related to the current Rules 201 and 202:

Rule 201: A CFP Board designee shall exercise reasonable and prudent professional judgment in providing professional services.

Rule 202: A financial planning practitioner shall act in the interest of the client.

While the proposed Rule and definition of “fiduciary” altered the standard of judgment and care from that of a “reasonable and prudent professional” to that of an “ordinarily prudent person in a like position,” the proposed Rule expanded the applicability of Rule 202 from the subset of “financial planning practitioners” (those who provide services involved in some part of the six-step financial planning process) to all those who hold CFP[®] certification. The proposed Rule 1.1(3) and related definition of “fiduciary” also raised the duty of care standard expressed in Rule 202 from “in the interest of the client” to “in the best interests of the client.”

The last sentence of proposed Rule 1.1(e), however, introduced an option for certificants to enter into agreements with clients that set a duty of care standard other than fiduciary. This option was intended to accommodate client engagements for services where a fiduciary duty of care might be inappropriate or situations when a client might desire a more specific duty of care.³

Ninety-three percent of the comments received on proposed Rule 1.1(e) were negative. Thirty comments objected entirely to the use of the term “fiduciary.” Many of these comments expressed concerns that the use of the term “fiduciary” set too high a standard and introduced unnecessary legal liability for CFP[®] certificants or their employers.⁴ Several expressed concern that differences between the proposed definition of “fiduciary” and the various definitions of “fiduciary” used in different legal and regulatory systems across the country added an unacceptable element of uncertainty to potential liability.⁵

In contrast to those concerned with the ramifications of using the term “fiduciary,” most commenters focused on the portion of proposed Rule 1.1(e) that would allow certificants and clients to agree to a duty of care other than fiduciary. Some expressed concern that proposed Rule 1.1(e) could allow a certificant and client to agree to non-fiduciary standard of care even when that certificant is engaged in activities on which regulatory bodies such as the SEC have imposed fiduciary obligations, thereby putting CFP Board in a position where it inadvertently allows or encourages certificants to violate regulatory requirements.⁶

Most comments addressing the option for agreements setting non-fiduciary duty of care standards expressed concern about the possible confusion the provision might cause for consumers; these comments speculated that having a flexible duty of care standard would reduce the value of CFP[®] certification for consumers, as consumers want the security of knowing that someone holding a certain credential is

required to abide by one specific set of standards.⁷ Some of these commenters referred to studies that demonstrate the public's lack of financial sophistication, and many cited personal experience with clients and potential clients. Even the non-certificant commenters who responded were concerned that the flexible duty of care for CFP[®] certificant proposed by Rule 1.1(e) would cause confusion among consumers.⁸ Nine of the 10 commenters who represented themselves as working to become CFP[®] certificant also reacted negatively to the option for non-fiduciary duty of care.⁹ Notably, the one consumer who provided a comment addressed exclusively the confusion that proposed Rule 1.1(e) might cause to the public.¹⁰

Some of those concerned with possible confusion among consumers faulted the logic behind the proposed requirement that the duty of care standard be set in writing, noting that written disclosures have not been shown to decrease client confusion and that adding more written disclosures to those already required is likely to encourage clients to read written disclosures even less often than they currently do.¹¹

A few commenters, including Ameriprise Financial Services, suggested that if CFP Board is adamant in keeping the proposed option to allow duty of care standards other than the default fiduciary standard, CFP Board should help avoid confusion among the public by specifying what activities were to be conducted with a fiduciary standard of care and which activities were eligible for a non-fiduciary standard of care. Some suggested creating or requiring a standard disclosure document designed to make clear to consumers the difference between the fiduciary and other legal standards or at least require certificant to have clients initial beside the disclosure of a non-fiduciary duty of care.¹²

Several commenters thought the change from current Rule 202 to proposed Rule 1.1 inadvertently lost the duty of care to clients required by the current code and suggested that if CFP Board wishes to raise the duty of care standard and avoid the issues associated with the term "fiduciary," it should use in Rule 1.1 the elements of its proposed definition of "fiduciary" and raise the standard to "in the best interests of the client."¹³

2) Proposed Definitions of "Fee-only" and "Commission"

The Exposure Draft proposed a revised definition of "fee-only" to the terminology section of CFP Board's *Standards of Professional Conduct*. The proposed revision read as follows:

"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.

Much of the proposed revision stated in more concise form the content of Advisory Opinion 2003-1 in the current *Standards of Professional Conduct*. The second sentence of the proposed revision, however, extended the acceptable use of the term "fee-only" by applying the term to individual client engagements,

rather than a financial planner's entire client practice. That second sentence was the subject of the second largest number of comments. Sixty-three comments addressed the proposed definition of "fee-only," and 55 of those comments expressed concern that the expansion of the "fee-only" term to individual engagements would lead to confusion among consumers.¹⁴

Those commenters who addressed the "fee-only" definition frequently had other suggestions for improving disclosure of compensation, including suggestions that more specific references to fee types be added (such as 12b(1) fees, front and back loads and contingent sales charges), suggestions that CFP[®] certificants be required to disclose exact dollar amounts of compensation, and suggestions that references to "as required by industry regulation" be eliminated and replaced with more specific requirements.¹⁵

3) Proposed Rule 1.1 and Requirement of Written Agreement for All Client Engagements

While proposed Rule 1.1(e) was the focal point of the comments received at CFP Board, one significant element of Rule 1.1 received relatively little attention – the proposed requirement that a certificant (or certificant's employer) and client enter into a binding written agreement. Proposed Rule 1.1 stated that the agreement could be comprised of several written documents and set forth basic items that would be required in such a binding written agreement:

- 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.

Although the proposed rule was drafted with the understanding that the required information would typically be contained in the existing written documents used by certificants across many different practice situations, the comments received reflected concerns that proposed rule would require entirely new written documents. The approximately 20 commenters who responded to this aspect of proposed Rule 1.1 expressed concern that the additional requirement would create more work for certificants – both independent investment advisers and representatives of large broker/dealers – even though those certificants currently use various written documents that meet requirements set by other regulatory bodies.¹⁶ These commenters repeated the concern that while the motive for additional written disclosure was good, when it comes to practice, more written disclosures simply overwhelms consumers and makes it more likely that the disclosures will not be read.

The Securities Industry Association (SIA) suggested that the terminology be changed from "binding written agreement" to a "writing," to clarify that documents already in use and required by a certificant's employer will comply with the Rule. SIA also suggested that a definition for "certificant's employer" be included for further clarification.

4) Proposed Inclusion of “Compensation” in the Definition of “Client”

The proposed change to the definition of “client,” which limited the definition to engagements involving compensation, received few comments. However, those comments, notably the comment from the Financial Planning Association (FPA), suggested that adding compensation could effectively disenfranchise those consumers who receive financial advice through charitable or pro bono services.¹⁷ These comments suggested that individuals who are offered financial services without cost would effectively be disallowed the protections intended by CFP Board’s ethical standards.

The American Council of Life Insurers also expressed concern that many of the proposed rules referencing “clients” were appropriate for investment advisory services but inappropriate for other client services such as insurance and securities sales. They proposed adding to the definition of “client” an explanation that it refers solely to “financial planning engagements.”

5) Proposed Use of Term “Certificant” to Replace Term “CFP Board Designee”

Another proposed change to terminology also evoked some confusion. The proposed change from “CFP Board designee” to “Certificant” was designed to clarify the focus of CFP Board’s jurisdiction. In the current ethical standards, “CFP Board designee” is the term used to identify those required to adhere to CFP Board’s standards, but its definition includes “current certificants, candidates for certification, and individuals that have any entitlement, direct or indirect, to the CFP® certification marks.” The term “CFP Board designee” has always been considered an awkward term, and its inclusion of candidates for certification was a problem only recently resolved through the creation of separate Candidate Fitness Guidelines. The removal of candidates from the scope of the definition made it more practical to use the more familiar term “Certificant” in the Exposure Draft. Nevertheless, the seven comments that addressed this proposed change all expressed concern that “certificant,” the common term for someone who currently meets CFP Board’s certification requirements, could be used to refer to individuals who had relinquished their CFP® certification.¹⁸

6) Proposed References to “Regulatory” and “Legal” Standards

The Exposure Draft eliminated some references to specific rules of other regulatory organizations (such as the elimination of Rule 608, with its explicit reference to the Investment Advisors Act of 1940) and introduced several general references to “regulatory rules” and “legal standards.” While some commenters, such as SIA, expressed a desire for the Exposure Draft to contain more frequent references to the regulatory requirements applicable to those involved in financial services, other commenters, including FPA, felt that the references were too general to provide meaningful guidance to CFP® certificants or to the public. In proposed Rules 1.1(e), 3.8(b) and 6.1, for example, the references to “legal standard” and the legal-sounding phrase “content, nature and scope” caused some certificants to comment that they were uncertain what standards were referenced and would not know how to comply with the proposed rule without additional guidance.¹⁹

7) Proposed Rule 6.2: Supervision of Services Delegated to Third Parties

The Exposure Draft introduced a slightly stricter requirement for supervising third parties to whom a CFP® certificant refers a client. Proposed Rule 6.2 stated the following:

A certificant must provide professional supervision or direction to any subordinate or third party to whom the certificant delegates responsibility for any client services.

The few who commented on this proposed addition to CFP Board’s standards generally agreed that it was important for CFP® certificants to acknowledge their responsibility to make certain they refer clients only to qualified parties, but they also expressed concern that the rule as stated was so general that it might cause unintended liability issues or “negligent referral” claims related to third party conduct outside the control of a CFP® certificant.²⁰

8) Elimination of Rules 603-605: Reporting Knowledge of Unethical Behavior by Other Certificants

The Exposure Draft proposed the elimination of three rules that required CFP® certificants to notify CFP Board, their employer or the proper regulatory authority when they obtain knowledge of misconduct by another CFP® certificant. The deletions were proposed in part due the difficulty of enforcing those rules and CFP Board’s experience that such notifications are rare, and due in part to the proposed clarification of the Principle of Professionalism, which included the following statement:

Certificants should cooperate with fellow Certificants to enhance and maintain the profession’s public image and improve the quality of services.

Those who commented on the proposed rule deletions expressed concern that removing the explicitly-stated obligations would generate negative impression in those outside the profession.²¹ Some, noting that the existing rules were likely hard to enforce, suggested placing additional language in the Principle of Professionalism that would capture the spirit of that obligation and foster a sense that CFP® certificants are to encourage each other to operate their business ethically.²²

One individual who commented on the elimination of Rules 603-605 also noted that CFP Board has never required CFP® certificants to inform prospective clients of concerns about possible misconduct by another CFP® certificant and suggested that informing prospective clients should be a primary responsibility if the purpose of CFP Board’s standards is to protect the public.²³

9) Questions about Particular Situations and Desire to Keep Practice Standards

The Exposure Draft was released with a statement acknowledging that the proposed revisions would create rules of a general nature that might be applied to any business activities of those holding CFP® certification. That statement also announced that a series of “Best Practices” documents were being planned to address issues related to specific business activities. That announcement received many

comments, all of which expressed concern that not having the “Best Practices” available for review made it difficult to determine how effective the proposed general rules would be. Some commenters who reviewed the proposed rules were left with questions about how the proposed disclosure requirements would apply to the situations of CFP® certificants who are captive life insurance agents, and one commenter questioned how the proposed rules would apply to CFP® certificants acting as mortgage brokers.²⁴

Many commenters also expressed a belief that the *Financial Planning Practice Standards* had been “eliminated.” CFP Board had not planned to eliminate the *Practice Standards*; rather, the Exposure Draft sought to incorporate much of their content in the revised *Rules of Conduct*, and the *Practice Standards* would remain as the “Best Practices” documents to assist certificants and the Board of Professional Review in determining whether specific conduct complied with the *Rules of Conduct*.

10) “Aspirational” Code of Ethics

The Exposure Draft’s introduction of the *Code of Ethics* and *Rules of Conduct* included a clarification that the nature of the *Code of Ethics* is “aspirational” and that the *Rules of Conduct* are “binding.” This clarification in terminology was proposed to reduce apparent contradictions in the introduction of the current *Code of Ethics*, which states at one point that the *Code of Ethics* is “aspirational in character” but later states that “CFP Board requires adherence to this *Code of Ethics* by all CFP Board designees.” The aspirational principles and binding rules in the current *Code of Ethics* document were separated in the Exposure Draft by placing the aspirational principles in a *Code of Ethics* document separate from the binding rules of the *Rules of Conduct* document.

This organizational clarification prompted several commenters to state their belief that CFP Board’s standards should not be “aspirational” but should be required of all CFP® certificants. Others, such as Financial Planning Standards Board, Ltd., commented on the language the Exposure Draft used for the principles: “Throughout the Principles, language appears indicating that certificants “should”, “shall”, “must” and “will” do a variety of things. Given that these terms are not interchangeable, what is CFP Board’s intent in varying the requirements imposed on CFP marks holders by certain Principles, and if “should” serves as the main aspirational verb of the Principles, what level of obligation is meant by the terms “must”, “will” and “shall,” which appear to be more directive than aspirational?”

Excerpts from individual comments, referenced above with endnotes:

¹ “As I read the new “rules of conduct” that I must abide by as a CFP® Professional, I felt that they were fair. I am happy to see the results of your hard work. Samples of agreement letters that can be used by a new certificant would be helpful to them.”
Barbara Fleming, CFP®

“Thank you for the diligence and follow-up to make the code of ethics enforceable and doable. Such a code is critical to the future of my practice, and to the profession as a whole. Thank you again....” Eleonore Hanson Herman CFP®

“I have looked over the documents and I'm impressed - I think the deletions as well as the additions will do a good job of firming up the goals of the code of ethics and also making financial planning a more respected and highly-regarded profession. When I first saw that revisions were being proposed, I thought to myself, “oh no, this is going to be nightmarishly convoluted” but once I

read what's being proposed, I found everything to be clear, helpful and protective not only of the client, but also the CFP® certificant (having a written agreement is beneficial for BOTH parties, no question about it)." Mario M.S. Martins, CFP®

"My first reaction in reading the draft of the new ethic standards is that they seem straightforward.... Thanks to all of you who have worked so hard on these important issues." John F. McAvoy, CFP®

"After a thorough review, I believe that the revisions are an enhancement to the current Code and Practice Standards (now Rules of Conduct). I have read comments to the contrary and believe that these revisions should be viewed in the following light: Minimum Standards. A professional looks for character standards and guidelines. The Board's approach is both rational and understandable for all Certified Financial Planner certificant to meet the minimum obligations they have to their appropriate stakeholders. All Certified Financial Planner certificants no matter what role they perform (practitioner and non-practitioners) need to develop their own written code, credo, or statement of values, etc. outlining their relationships with stakeholders at the highest level. Other organizations are clearly able to set a "higher requirement" if they choose to take that step. Commitment to Principles and Values There has been a trend even post Enron for businesses to focus on cultural standards and ethical characteristics rather than enlarging a rule book. To the Board's credit, it has focused on reasonable, do-able requirements such as establishing the fiduciary standard as the "default". This requires a burden for the Certified Financial Planner certificant to disclose, discuss and establish an agreement with his(her) client. In a trust relationship, I believe that this will mean that the Certified Financial Planner certificant will think through the appropriateness of a non-fiduciary approach. Will it mean that de facto everyone will be a fiduciary or be honest or be ethical, clearly no, however by forcing a time to think and reflect will serve everyone's best interest." Gary A. Morris, CFP®

² "I am against any changes to our existing Code of Ethics. Thank you." Laura Waller, CFP®

³ "Excellent: I strongly support the proposed ethics changes. It is entirely appropriate that a CFP® [certificant] be allowed to function as other than in a fiduciary capacity as long as the client understands and agrees to this." R.E. Myers, CFP®

⁴ "If I understand your proposal--elevating the standard ethical position to that of fiduciary-- I object strongly. Even though I have never been a fiduciary for any client other than my mother, the legal opportunities that would be opened by that standard for our litigious society might cause me to cease to advertise as a CFP® certificant." Philip Dame, CFP®

"I am particularly concerned about the use of the term fiduciary as 'the default duty of care standard.' Fiduciary as defined in the same document is an acceptable standard and one I keep foremost in my mind when dealing with clients and others, i.e. 'In good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner he or she reasonably believes to be in the best interests of the client.' However, fiduciary has many other meanings... How can we restrict the CFP Board's definition of fiduciary to the above and nothing more? If we cannot, what potential consequences might this raise with those defining fiduciary differently?" Judith H. Heltzel, CFP®

"My concern on going too far with 'fiduciary duty' is that you cause compliance departments of Broker/Dealers to seriously rethink their involvement with the CFP Board, and the capability of overseeing what is clearly a higher set of rules by which to be governed. This not only opens up CFP® certificants as a whole for repercussions (not from the CFP Board, but from attorneys who get hold of documents that hold us to the utmost standards), but also opens up Broker/Dealer firms to the point that they will say 'you can't use this designation because the risk of suit, based on the CFP Boards rules, is just too great.' I hope you will take this seriously. While fiduciary duty is very nice in theory, these are words that cannot be reversed in a court room and put you one step below a client's guardian." Chris Beard, CFP®

"Although I have always considered myself a fiduciary and acting as such; broker/dealer tell us we can not be a fiduciary. In fact, we are forbidden to do so. I am afraid that this wording will be me in between my broker /dealer and the CFP Board." Brian E. Bartkus, CFP®

"As a newly certificated CFP® [certificant] I am concerned in the extreme that the time, energy, expense and dedication I have expended to achieve what has been described as an "industry credential" is in serious danger of being taken away simply because I hold a Series 7 license and am employed by a broker - dealer. By including the "fiduciary" standard in the language the CFP

Board is attempting to force its certificants to choose whether to be registered representatives of a broker-dealer or not. Most, if not all broker-dealers (particularly the top 20, possibly even the top 50 b-ds) will likely not allow their employees who hold the CFP® designation to continue to use the mark in any professional capacity. This is absolutely not in the best interests of the public who have come to depend upon the CFP® mark as a sign of expanded education and knowledge. The effect of requiring the fiduciary standard will force all CFP® certificants to drop their Series 7 license or give up their CFP® designation. Likely these certificants will drop their CFP® certification rather than force or expect their clients to switch from the B-D they currently are associated with. This is hardly in the interests of the client being served by a CFP® certificant working for a B-D, or for the CFP® certificants themselves.” James Seifert, CFP®

“I object to the proposed change in the way that it would impact my practice. I am primarily an Insurance Agent: that is how I came into the profession. I cannot extend fiduciary responsibility and due diligence to the thousands of insurance only clients: they are unable/unwilling to pay for that level of service and frequently unwilling to divulge that level of information. I do maintain the fiduciary standard in the Planner Practice and clearly identify when I am acting as their CFP® certificant and when I am acting as an insurance agent. HOWEVER, it is impractical to expect us to submit a written "lower standard" with every individual who contacts us in relationship to a potential policy or even to each and every insurance only client -- even those who would trash it unread as more junk mail. This standard is impractical and will be difficult to accomplish.” Corwin M. Robison, II, CFP®

“I am ashamed of our leadership. You who represent 50,000+ have been manipulated by a group representing 1,000 (NAPFA). When attorneys prepare an estate plan or draft the documents, they are **NOT FIDUCIARIES**. The TRUSTEE of a TRUST is a FIDUCIARY. This is a ploy by the fee-only folks. Certificants with an insurance and/or investment license are **prohibited** from being fiduciaries. I cannot be the trustee of a client’s trust.” Herbert K. Daroff, CFP®

⁵ “The most commonly accepted definition [of fiduciary] is the legal one and certainly NOT your definition, which uses terms like "good faith" and "ordinary prudent person." Those are more akin to the NASD's and generally accepted "prudent man" rules, such as "acting in the client's best interest." Those are miles apart from having a fiduciary responsibility, however. We are entering upon the proverbial "slippery slope," when we start applying fiduciary the way you perceive it. A fiduciary actually occupies a powerful position such as a trustee and almost always has absolute discretion over the property which has been "entrusted" to him or her, which also carries far greater exposure to financial and punitive liability than the traditional and usual financial planner-client relationship. The typical financial planner simply does not have this level of control over clients' assets.” Ruth Gordon, CFP®

“I have some serious concerns over the use of, and definition of, the term “fiduciary.” I have been a CFP® [certificant] since 1994 and a bank trust officer since 1987. Trust departments are corporate fiduciaries in the complete sense of that term and, as such, are held to higher legal and ethical standards than individual financial professionals or other types of financial corporations. Your definition of a fiduciary seems to be a rewording of the definition and legal understanding of the laws pertaining to that of a ‘Prudent Man/Person.’ I would disagree with the definition used in the Exposure Draft. Fiduciary, as a term applied frequently in my day to day environment as a trust officer, is more than your definition would imply. While I certainly understand the CFP Board’s desire and need to have measurable standards and high qualities, I also feel that you unknowingly could be subjecting individual CFP® practitioners to a highly increased litigious exposure by using the term ‘fiduciary’ as a default relationship standard. A fiduciary is a much higher and much different level of responsibility than that of an advisor, agent, planner or “prudent man.” Charles F. Few, CFP®

“I expect that there will be a great deal of discussion about the term finally used to define the CFP® [certificant’s] polarity of allegiance and trust. Imposing the term ‘fiduciary,’ a legal concept with a rich heritage built upon years of trust case law, may be a mistake and lead to fighting over the wrong turf. I suggest finding a less contentious definition that can serve as the foundation for building case law as it applies to the financial planning process and not get sidetracked into investment terminology and regulation.” Samuel P. Hull, CFP®

⁶ “I am enclosing a recent [3rd District Court of Appeals of Ohio] decision that outlines the degree to which there is a fiduciary duty between a stockbroker and a client in Ohio. There are Ohio cases that tend to go beyond this recent opinion, but I am enclosing this decision because of its recent issuance. Your standards should not permit the parties to reduce the standard of care

in those jurisdictions and circumstances in which there is a fiduciary duty imposed upon the broker or CFP® certificant. I believe the ability of the parties to reduce that standard of care can lead to an additional abuse.” Jason C. Blackford, CFP®

“I appreciate that the CFP Board recognizes that there are times that CFP® certificant will not be acting as fiduciaries... I do feel that clarification needs to be made to the Rule of Conduct. If a CFP® certificant is acting in an investment advisory capacity, then the legal standard is that of a fiduciary. CFP® certificant should not be able to lower a legal obligation simply by entering into an agreement with a client to do so.” Nancy Lininger, who identified herself as an expert on SEC and NASD rules for The Consortium, a compliance and marketing consulting firm

“The CFP Board’s Proposal to permit clients to waive the application of fiduciary status by choice of contract terms is also potentially violative of the Investment Advisers Act of 1940, a federal legislation which due to the SEC’s broad interpretation of “investment advice” applies to most financial planning activities.¹⁹ This is because the concept of waiving fiduciary duties is very similar (if not essentially identical to) the concept of a “hedge clause” in investment advisory contracts.” Ron A. Rhoades, CFP®

“Like it or not, the Supreme Court and the SEC long stated that investment advisers are fiduciaries (U.S. v. Capital Gains Research) and that anyone holding themselves out as financial planners are investment advisers and, therefore, fiduciaries for purposes of the Investment Advisers Act of 1940 (“Act”) (SEC IA-1092). While I realize that there are some cases where a certificant would not be holding themselves out as financial planners, I think that in most cases certificant are affiliated with RIAs or legally should registered. Consequently, I have never understood the supposed broad controversy over the fiduciary issue. Furthermore, if we are to be the leaders in the industry, we should embrace the designation and the resulting responsibilities. Sections 1.1.e and 1.2.e, as written are potentially misleading and could result in certificant's who misinterpret these provisions being sanctioned by the SEC or state regulators. The SEC has held that any attempt by an investment adviser to have a client waive their rights/protections under federal law, including the inclusion of exculpatory clauses in advisory contracts, may be interpreted as a fraudulent act in violation of Section 206 of the Act. In such cases, a certificant would arguably be in violation of Section 2.1 of the revised ethical standards.” James W. Watkins, III, CFP®

⁷ “The CFP Board has done such an outstanding job of educating the public about the importance of utilizing a well trained ethical advisor that the designation has become synonymous with integrity. It will muddy the waters if consumers can’t count on CFP® professionals to consistently act in their best interest and ultimately devalue the designation for those of us who do maintain high fiduciary standards.” Laurie Adams, CFP®

“If my peers and I are confused, the public at large will be very confused if the changes are implemented--that will weaken their trust in the CFP® designation.” Valerie Antonioli, CFP®

“Acting in the best interest of the client first isn’t such an arduous regulatory burden, it should be deserved by the consumer. The changes would essentially make an RIA classification hold a higher standard than a CFP® practitioner. Is this what you really want to create?” Jeffrey N. Bogue, CFP®

“The definition you used for fiduciary was extremely weak and the very idea that a certificant would not act as a fiduciary all the time no matter who he is dealing with brings me close to anger. How can one waive the idea of acting in the client’s best interest? Who would want to engage a professional who would not act in their best interest??” Brian R. Carlton, CFP®

“I do not want the public to think that CFP® licensees can opt out of their fiduciary responsibility. This is not good for our credibility nor our credentials.” Nicholas D’Ambrosio, CFP®

“The new standards create a situation where one CFP® certificant is held to one standard and another a different standard - this effectively makes the CFP® designation worthless. It won't be long before the media figures this out and all the positive press will turn negative... Implementing this new standard will prove a massive mistake and confuse people even more... The brokerage firms and insurance companies may control a lot of things, but the one thing they don't control is the media and I guarantee you that implementing your standards will represent the beginning of the end of the CFP - the decline of the CFP will begin if you pass these standards, how could it not - you are lowering the standards.” Scott Dauenhauer, CFP®

“I cannot conceive of a single instance that it would be appropriate to provide for a fiduciary “opt out.” Further more, the adoption of the lower “prudent man” standard in lieu of the “prudent expert” standard incorporated in ERISA and Prudent Investor Acts is not only embarrassing, it makes a mockery of the other practice standard related provisions.” Harold Evensky, CFP®

“At best, the current Standards provide an assumption of a fiduciary relationship and at a very low level definition of fiduciary, but at least it provides a definition, i.e., a single standard of care. The proposed ability of a CFP® certificant to “opt out” of a fiduciary relationship by simply providing something in writing is likely to cause confusion rather than “help” for the public.” V. Raymond Ferrara, CFP®

“Please do not approve the escape clause that you are currently proposing for the “opt out” from a CFP® practitioner’s fiduciary duty. To see how silly this “opt out” should -- and will -- look to the consumer if your proposed “opt out” option is not eliminated, please read the article from Bloomberg reproduced below. How many more articles like this, printed in the Wall Street Journal, Forbes, Business Week, Time, Readers’ Digest, etc. will it take before you understand the larger picture, that of all of the consumers who do not expect weasel words from their CFP® practitioner? It would be wonderful to know that the CFP Board can and will make the tough decisions necessary for the CFP® designation to continue being the “bluest of the blue chip” designations [as described below] and not subject to deserved ridicule.” Charles E. Foster, II, CFP®

“It is inappropriate to expect the general public to be able to differentiate between individuals who may or may not be acting as fiduciaries, particularly when the overwhelming message to those potential clients is uniformly ‘trust me’.” Jean Fullerton, CFP®

“By creating a loophole for broker-dealers – let us not kid ourselves about for whom the loophole was created – the CFP Board has breached its duty to establish standards for the protection of the investing public... How does one explain the standard to the silver-haired grandmother? Enough said.” Todd C. Ganos, CFP®

“Your proposal allowing certificant to “opt out” of a fiduciary standard by disclosure -- more disclosure that is overwhelming to consumers. The outcome of this approach will be greater consumer confusion as to the nature of the relationship they have with their advisor. It is naïve to expect consumers to understand and appreciate the difference that fiduciary standard represents. If you are not aware of the level of consumer confusion that already exists, look at the consumer survey conducted by TD Waterhouse (Ameritrade) in 2004. The results of that survey were submitted to the SEC as public comments for the repeal of the “Merrill rule”. According to the survey, 58% of consumers wrongly believe that both stockbrokers and Registered Investment Advisors (RIAs) have a responsibility to act in their (consumer’s) best interest (a fiduciary standard). 63% believed that stockbrokers and RIAs are required to disclose all conflicts of interest before providing financial advice. As this survey demonstrates, consumers already harbor great confusion in regards to the nature of relationships with financial advisors specifically and the financial industry in general. Let’s not add to consumers’ confusion by establishing a double standard for the relationship that they can experience by engaging the services of a CFP® certificant.” Michael P. Haubrich, CFP®

“By permitting salespeople to imply to their customers that they will place their interests ahead of their own yet denying same in the fine print of their brokerage or insurance contracts, CFP Board is ignoring the public good in favor of the profits of the wirehouses and insurance industry. Whatever the original motivation, the effect will be the same: a consumer who is more confused than ever about what it means to work with a ‘financial planner.’” Stephen D. Johnson, CFP®

“I believe the ‘opt-put’ provisions will seriously damage the credibility and value of the mark and once again, confuse the public. Further, the description of fiduciary as held to the prudent man standard, rather than the prudent expert is inappropriate. As professionals, our standard should not be less than prudent expert. Many states have already adopted this standard as it applies to ERISA. To suggest that we should be held to a lesser standard is embarrassing.” Deena B. Katz, CFP®

“My primary concern is with the Board's proposal to allow CFP® certificant the ability to choose whether or not they will have a fiduciary responsibility to their client. I feel strongly that this should not be an option. It dilutes the value of the CFP® designation, muddies the waters for clients who are already confused over the roles and responsibility of financial planners, and weakens the professionalism of the industry. Why shouldn't every CFP® certificant (and quite frankly, everyone who calls

themselves a financial planner) act "in good faith, with the care an ordinary 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." Isn't that what we are supposed to do? Isn't that what every client expects? Isn't that what every client should expect?" Bill Moeckel, CFP®

"With respect, this is not the definition of a fiduciary, nor a correct recitation of the fiduciary duties of due care and loyalty. The duty of care requires that financial planners exercise reasonable care, prudence, and diligence in the performance of their professional duties. Fiduciaries are required to act on an informed basis, in good faith, and in the honest belief that the action taken or professional advice given is in the best interests of the client. Moreover, the standard of care is not that of "an ordinarily prudent person in a like position" but rather the higher standard of "a prudent financial planning professional" - given the fact that CFP® certificants are holding themselves out to be professionals and possessing the requisite knowledge, skill and experience to deliver financial planning services as a fiduciary and in accordance with the fiduciary's duty of utmost due care. This aspect of the definition is unclear as written, and it should be made clear with better language. The proposed definition in essence seeks to lower the true standards which govern conduct as a fiduciary, a result which, if adopted, may cause harm to millions of individual consumers of financial planning services." Ron A. Rhoades, CFP®

"Now, I ask you, when clients seek the advice and counsel of an advisor, whether it's a CFP® licensee, an insurance agent or a stockbroker, are they even remotely considering that the advice they will receive is in any way **not** in their best interest? I don't think so! Clearly the consumer loses in this scenario and so does the profession." Nathan J. Ricks, CFP®

⁸ "When asked what credential speaks most strongly to educational and ethical standards in financial planning, I say the CFP® mark... The reason "fiduciary" means something is because it's an easily understood, easily applied standard that basic common sense can decide. Anything less than a simple absolute standard is meaningless... The current proposal is the worst of all possible choices - it offers more confusion to the public, it dilutes the fiduciary standard that uncompromised CFP® certificants are trying to follow, it dilutes the whole concept of what fiduciary duty stands for and it offers cover for the most egregious application of situational ethics to benefit everyone except the client." Bill Dix

⁹ "As a graduate student at Texas Tech in the Personal Financial Planning program, I used the following as my philosophy statement for my capstone project: "I adhere to the highest ethical standards as outlined by the CFP Board of Standards. Our ethical standards will not be compromised". With the proposed opt-out fiduciary standard, the CFP Board has veered far from this commitment that the public expects from a CFP® certificant." Mary M. Bell

"To put it simply: if the CFP Board decides to NOT adopt the fiduciary standard, I will not begin the curriculum at all. I would rather establish my own standard of fiduciary responsibility than be associated with an organization that chooses to lower theirs." Christopher Dufault

"Having completed the education requirement toward CFP® certification this year, I am dismayed to learn of the changes you are proposing to the ethics rules. Until you make it clear that you intend to maintain and enforce clear ethical standards for all CFP® certificants, I will postpone taking the exam, because at this point I see no additional value either to my clients, or to myself, in holding the mark." Michael Garber

"I truly hope that you will reconsider these changes. In a time of such corruption and political unrest in the world clients need to know who they can trust. It is your fiduciary responsibility to do the right thing and consider the clients first." Beth Jones

"In a world where every financial hack calls themselves "financial planner" or financial advisor", my understanding of your job is to make the CFP® designation the premier distinction in financial planning. If you do your job correctly, the public will know that CFP® certificants are those individuals who have the knowledge and expertise to truly do financial planning and act in the client's best interests. The CFP® professional is supposed to be the person you can trust." James T. Lee, IV

"I was ... dismayed to read, even before the new rule was proposed, various comments in the financial press which implied the Board was reluctant to require certificants to accept a fiduciary standard of care. Frequently, the statements I saw were to the effect that the adoption of a fiduciary duty was not possible, because the term meant different things to different people, or was differently interpreted in different jurisdictions. These difficulties were easily solved by defining the term for purposes of our rules, as the Board has now proposed, which is a good first step. Unfortunately, the Board has also proposed that certificants be

allowed to depart from the fiduciary standard of care by contract. This proposal defies one unassailable truth: in a true profession, the professional may not reduce her standard of care to her client, by contract or otherwise. With the status of a professional comes the responsibility to act like one. The professional is, by definition, the only one involved in the transaction with the necessary knowledge, competence and ethics to understand the duty she owes to the client. No professional worth the term would expect or require the client to have the understanding or capacity to define the appropriate standard of care for the services the client needs.” Steven F. Mattaini

“I have not read in detail on any of this matter - I am finishing my course work and preparing for the November exam - my only comment is that - every time I read the WSJ they refer to the CFP® mark as the "gold standard" with that - why would you want to loose such a rating.” Nancy Reed

“The designation is becoming a reflection of its holders, rather than a designation held up for all candidate's aspirations. Lowering the fiduciary requirement to a "negotiated" version places the vulnerable party, (prospective client) at unfair risk.” Paul W. Whaley

¹⁰ “When the opportunity to receive counseling from a person working on his CFP® credentials arose, I decided to use that service.... To be honest, I am surprised reading the WSJ that the current standard does not require a CFP® certificant to assume a fiduciary obligation to clients. I am to pick up a copy of my agreement signed 10 days ago at a meeting with the CFP® certificant tomorrow, and it may be more clear there. However, when one sees the CFP® mark, the expectation intuitively is fairly high since this is the credential all the experts say you should ensure is held by your advisor. If the fiduciary responsibilities are not presently written into the agreement I have, that would likely be sought by me in the future. I trust the person because he has assisted with my annuity already. However, trust is not enough in this relationship.” Mark Beisse

¹¹ “After almost 30 years in financial services, my experience has been that nine out of ten people don't read what they sign. The one person that may will only read it if it is brief and/or convenient. I don't think that these folks are being negligent...they are simply trusting that the person presenting the material for their approval is acting in their best interest. Think about the last time you got a mortgage for a personal example of this phenomenon. In that case, you probably didn't even trust the escrow officer, you were simply overwhelmed with the legalese. And, if you are reading this, you are amongst the more financially educated. How would someone less sophisticated feel? If the Code of Ethics is relaxed, and allows some to choose a less-than-fiduciary standard, then only those that have less-than-fiduciary intent will choose that option. It's the old argument "If we outlaw guns, then only criminals will have them". Since folks generally don't read what they sign, then "protecting the public" by making the less-than-fiduciary-inclined disclose their questionable intent in writing will only serve to protect the wolf, not the public. The wolf can just point to the fact that he/she told them up-front about the nature of their relationship, and they agreed to it in writing. All who hold themselves out to the public as financial advisors or financial planners should be held to the same, the highest, standard.” Steve Sant, CFP®

“I start off by asking you have you ever the entire rental agreement when you went to rent a car? My point is a CFP® certificant, after consultation with his/her attorney could insert fine print language on the back of the "engagement agreement" which permits an extremely low "fiduciary duty of care." Thus, if the senior citizen signed the agreement, the senior citizen would, according to the CFP Board standards, "negotiated" or agreed upon" a lesser duty of care. I would also strongly doubt that the issue was even discussed between the planner and the client. Yet legally, from the CFP Board perspective, the ethical standard s have been satisfied. Not only does it not meet my "fair play" standards, but I have a question as to whether it would stand up in court. Additionally, the various financial news media would have a field day, thus resulting in a black eye and greatly diminishing the value of the CFP® mark. From a legal perspective, it is quite amusing. You have two non-attorneys (planner and client) attempting to negotiate a legal definition and concept. Good luck. Second, the planner and client could agree upon a stricter than legal standard, however, there are legal implications and concerns when there is alleged agreement upon a fiduciary standard that is less than or weaker than what the state law provides. Your attorneys will probably tell you that in order to give up (or waive) a legal right, there must be a clear and unequivocal waiver. If the planner were able to obtain such a waiver, the waiver would be the product of at least "some" verbal discussion. In the potential lawsuit or arbitration, the client would most probably have a different version or recollection of what took place. If the client (particularly a senior citizen) has been damaged or otherwise suffered an injury, there is a greater propensity for the judge and/or jury to embrace the testimony of the senior

citizen irrespective of what did in fact take place. We are all aware of the weakness of the jury and legal system (sometimes called "the deepest pocket" doctrine." As a rippling effect, this (losing the law suit) now creates further damage to the planner's prestige and credibility even though the planner may, in reality, have done nothing wrong in the original case. One bad case would be appropriately publicized to the detriment of previously prestigious CFP® designation. If I have my negative opinions, can you imagine the field day a consumer oriented financial writer would have?" Gerald J. Rachelson, CFP®, attorney

¹² "I do not support allowing a CFP® certificant to opt out of their fiduciary responsibilities. If there is to be an opt-out mechanism, the CFP Board of Standards must specify a format which grabs the customer's attention and which makes clear that consent cannot be required for the engagement. I attach suggested wording tailored after the IRS format for permission to use or disclose tax return information for non tax purposes (Notice 2005-93). I am troubled by Rule 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." If there must be more than one standard, the CFP Board should produce a booklet addressing the various standards and Rule 6.1 should be changed to require Certificants to provide this booklet to prospective customers." Peter James Lingane, CFP®

¹³ "My main concern is that we should keep Practice Standards Rule 202, which states that the practitioner must act in the client's interest. In absence of Rule 202, nothing would require a financial planner to act in the client's interest, especially if the proposed section allowing CFP® Licensees to opt out of fiduciary status remains as is. In fact, I would raise the standard to "the client's best interest," since this would help advance the credibility of the designation and the financial planning profession. As the gold standard for financial planning, we must hold ourselves to the highest standard of consumer advocacy, or we will risk losing that label and set back the profession." C. E. Scott Brewster, CFP®

"I do understand that [fiduciary] is a legal term, and not being an attorney, I recognize that this term may be defined differently in different jurisdictions and under different circumstances. However, if the word is added to the code – how can it be optional? Perhaps the 'word' should not be there. As an alternative suggestion – why not use the words 'Always place the clients' interests first.'" Benjamin A. Tobias, CFP®

"Much of the controversy and many of the issues generated by the term "fiduciary" in the definitions and in the first Rule of Conduct in the Exposure Draft are really semantic issues. The word "fiduciary" is loaded with legal connotations, many of which have now become embodied in statutory and case law. If the name/standard were changed to "Best Interests of Client," the text of the definition could remain the same and there would be much less of an issue. That is, I suspect there would be much less opposition to a standard that requires every CFP® certificant to act "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." This definitional change might also allow us to eliminate the opt-out alternative, since those who are teaching, etc. and not working with clients, by definition, do not have "clients." Barry L. Kohler, CFP®

"On the issues of duty of care, I am in favor of the highest standard. Although anything will be better than the current standards, I do believe having an "opt out" provision to a lesser standard of duty is too confusing to the public. If the word fiduciary is too encumbered, let's get a set of statements that work for everyone and still lead us down the right path. As long as the result is a standard of care that is in the image of fiduciary care, like "doing the best for the client," I think all planners could be satisfied." Martin Kurtz, CFP®

"Use of the term "Fiduciary" is not necessary if the standards adopted by the CFP Board are established on the basis of the essential components of the term and are "fiduciary" in nature." James F. Williams, CFP®

¹⁴ "The definition was clear – the concept of fee-only – emphasis on ONLY. The idea here was that a consumer who would want to use a Fee-only certificant; would never be placed with the possibility of being present with an other than fee-only proposal – now as an engagement progresses the possibility will be there." Benjamin A. Tobias, CFP®

"The public is already confused; why confuse them more? Define Fee-Only as compensation that comes solely from the client without passing through any other entity. You can't be half-horse and half-cow! The current practice standards definition should stand." Neta M. Gagen, CFP®

“Frankly I am at a loss as to why the board would want to change the well reasoned analysis and conclusions of Advisory Opinion 2003-1, other than pressure from the securities and insurance industries. I strongly urge the board to incorporate Advisory Opinion 2003-1 into the new code.” F. Dennis De Stefano, CFP®

“I disagree with the additional provision [that allows a certificant to describe an individual agreement with an individual client as a fee-only arrangement even if the certificant’s practice includes non-fee-only compensation from other clients]. To use the term fee-only to a particular service when the certificant is a dual registrant would be confusing to the investing public. I have found that the SEC will make comment on this “misleading” practice when they are doing regulatory audits... To allow dual registrants to use “fee-only” services would cause them to run afoul of their regulatory obligations.” Nancy Lininger

¹⁵ “The use of “percentage” in the definition of fee-only may cause confusion - “percentage” is also used in the definition of commission. It seems that the important distinction is between transaction based and non-transaction based compensation.” Rick Miller, CFP®

“On page 2 of Exposure Draft, you define “commission”. I suggest you consider the addition of “including 12-B-1 fees, front or back loads on products sold and contingent sales charges”, or something descriptive of that nature, with your existing proposed definition of “commission”. My experience is that prospective clients sometimes do not understand that a commission paid at some time other than up front is still a commission.” Mary Lynne Dahl, CFP®

“I believe the new rule 2.2 could be an improvement over the old Rule 403 by eliminating the “as required by regulatory rules governing the engagement” language in 2.2a(i). Under the old rule, all CFP® certificants were required to disclose compensation if requested by the consumer. Under the new rule, the CFP® certificant can avoid disclosure by citing regulatory rules. Eliminating the offending phrase will significantly improve consumer understanding of the engagement’s costs.” Ron S. Pearson, CFP®

“The proposed rules call for a written description (that’s the good part) of compensation arrangements **as required by industry regulation (that’s the bad part)**. The new rules also require the certificant to **discuss** terms for offering *proprietary investment products* (the really bad part) but does **not** require written disclosure of such terms. The revisions also eliminate the provision specifically requiring a certificant to inform clients of their right to ask for information about the certificant’s compensation (the really, really bad part). If allowed, these revisions seem to rely on the ADV and other disclosure documents and does not require full disclosure of all charges and compensation, particularly related to insurance commissions.” Nathan J. Ricks, CFP®

¹⁶ “The requirements for contracts and pre-contract communication risk increasing the cost of hourly financial planning services - it could take a half hour of a one hour discussion to comply fully. Perhaps a statement about the completeness of communication being proportionate to the services provided?” Rick Miller, CFP®

“These days, CFP® certificants and their clients are deluged with new disclosure forms that have to be reviewed. Beyond a certain point, disclosure forms are intended only to protect the organization that writes them - not the consumer. Short documents become long documents. Print gets smaller. What I mean is that if I have to review 10 disclosure forms with a client, their eyes will glaze over and they start signing just to get done - not because they are involved in the process of negotiating a relationship. Please don't add more paperwork to the pile that is already too deep.” Philip D. Nation, CFP®

“I provide incidental advice to my non-planning clients that can be derived from my CFP® certification training. It seems I might be held to the “writing” standard for those non-planning clients. Even if I had to simply disclose a non-planning relationship, that is another layer of red tape for each transaction. That frustrates the client, not just the planner. Because I am in a bank, I have to satisfy NASD rules, SEC rules, CFP Board rules, State Insurance rules, State Bank rules, FDIC rules, Federal Reserve rules, broker/dealer rules, product provider rules, and internal bank rules. The clients get very frustrated with the amount of fine print and signed documents.” Chris Weber, CFP®

¹⁷ “Unfortunately, CFP Board inadvertently brought compensation into the discussion by defining this fiduciary relationship when compensation is received from a client. Should I not act as a fiduciary when doing pro-bono work? Let us not forget that pro-bono work is one of the distinguishing features of a profession.” V. Raymond Ferrara, CFP®

¹⁸ “How can you use certificant with two meanings? Certificant should not include individuals that have not maintained their certification?” Steve Doucette, CFP®

¹⁹ “I am not a lawyer. I have no idea what "legal standards" you are talking about. Do you mean whether a CFP® certificant is acting as a fiduciary or a non-fiduciary?” Rick Johnson, CFP®

²⁰ “I understand the change, we as certificants, cannot remove ourselves from our responsibilities by simply delegating tasks to other people. My fear is that the wording of the section leave open the possibility of "Negligent referral". Example, The client has a significant estate, after much discussion with estate lawyers and the client, documents are drafted by the lawyer. Later, it is discovered that the lawyer did not do something correctly from a legal standpoint. Now, since the CFP® certificant must provide professional supervision would he/she not now be in violation of 6.2? I am sure there are other examples that can be derived where the CFP® certificant brings in or refers a professional with their own licenses and expertise. Is the certificant now responsible for the actions of lawyers and insurance agents? If so, to what extent? If we provide direction to the third party, and it is later discovered that the party did not follow our direction, are we in violation? I feel that clients want and request help all the way through from recommendation to implementation. The revised standard begs the question where does the certificant's job end and the outside professional begin. I agree, that we should review the work of outside professional to ensure everything is in order, but to what extent are we linked to their work? If we are tied to the work of outside professionals would the level of client service drop to simply the recommendation and stop short of assistance with implementation?” John Deyeso, CFP®

²¹ “I don’t understand why the CFP Board organization (members & the board) wouldn’t expect violations to be reported (paragraph 2 following Certain Provisions Removed). If I know of a violation and do not report it, I am further contributing to the dilution of the meaning of CFP® certificant. We don’t want to follow the poor example set by so many organizations today. We should all contribute to the maintenance of the highest standards possible or we shouldn’t even have standards. I worked hard for my designation. I work hard to uphold the highest standards possible. I expect no less from my business partners. I will not tolerate criminal or immoral behavior by others who advertise themselves as CFP® designates. I think I possess the common sense to know when an issue should be reported.” Dennis Park, CFP®

²² “While the Professional Principle should stimulate a CERTIFIED FINANCIAL PLANNER™ certificant to encourage a fellow CFP® certificant to operate ethically, this is an area that should be strengthened. I am not suggesting that the Board return to the cumbersome rules 603 through 605, nor to add the current rage of a “ethics hot line” but rather to provide some additional language to the Professional Principle.” Gary A. Morris, CFP®

²³ “The CFP Board at that time required certificants to notify the Board in the event that an ethical/Code of Conduct violation was suspected, yet, there was no responsibility/obligation to inform the prospective client of such concerns. If the CFP Board's goal is to hold certificants to higher a ethical standard and protect the interest of the client, then shouldn't the first responsibility/moral obligation of the certificant be to inform the prospective client of ethical concerns?” Robert T. Ramos, CFP®

²⁴ “[To address the captive life insurance agent situation,] I suggest that a line be added, to this effect, ‘A written agreement would not normally be expected when the CFP® certificant is acting wholly as a commissioned agent of a parent company, when no agreement is implied between the client and the certificant, and no payment is made to the certificant. In such cases, a traditional agency relationship exists, which is already regulated by law, and the certificant is not acting in an independent manner, but merely displaying his/her "credentials" regarding experience, training, and certification.’” Marty Greene, CFP®

“Please review rule 202 and 607 and clarify that a CFP® may act as a mortgage broker/mortgage banker and/ or mortgage consultant allowing the client to obtain a residential or commercial loan thru an institutional investor. There are CFP® certificants who work solely in the mortgage field or who provide mortgages service in addition to the more traditional services of the financial planning industry as part of the total client service. Many of the larger brokerage firms have added mortgage services

and many of the mortgage providers are adding financial planning services so to prevent CFP® certificants from offering mortgage services would hinder them to compete in the present market place.” Diane Haneklau, CFP®