

**CFP BOARD**

**PROPOSED REVISED  
FITNESS STANDARDS  
FOR CANDIDATES FOR  
CFP<sup>®</sup> CERTIFICATION  
AND FORMER  
CFP<sup>®</sup> PROFESSIONALS  
SEEKING REINSTATEMENT**

ISSUED FOR PUBLIC COMMENT ON SEPTEMBER 5, 2023

## FITNESS STANDARDS

## ANNOTATION

CFP Board's initial ethics standard for CFP® certification requires an applicant to (1) commit to CFP Board to comply with the *Code of Ethics and Standards of Conduct*, and (2) demonstrate ethical fitness for CFP® certification.

The introduction provides a summary of the Ethics standard for applicants for CFP® certification.

The *Fitness Standards* provides the standards against which CFP Board will evaluate the ethical fitness of a candidate for CFP® certification and a former CFP® professional seeking reinstatement whose certification CFP Board has not suspended or temporarily barred (collectively "Applicant"). (A current or former CFP® professional whose certification CFP Board has suspended or temporarily barred must demonstrate ethical fitness for certification and rehabilitation in accordance with the *Procedural Rules*.) CFP Board assesses an Applicant's ethical fitness for certification only after an Applicant successfully has completed the CFP® certification standards for education, examination, and experience.

The proposed revised *Fitness Standards* provides the standards for ethical fitness for candidates for CFP® certification and former CFP® professionals who are eligible for reinstatement.

In assessing ethical fitness, CFP Board evaluates information that may reveal an Applicant's prior misconduct. An Applicant is ethically fit for CFP® certification if the Applicant has not engaged in conduct that (a) presents a permanent absolute bar to certification ("Conduct that Presents an Absolute Bar"), (b) renders the Applicant currently ineligible for certification ("Conduct that Renders an Applicant Currently Ineligible"), or (c) the Disciplinary and Ethics Commission ("DEC") determines presents a bar to certification.

This paragraph identifies when an applicant is fit for CFP® certification.

CFP Board Enforcement Counsel has authority to determine, based on the Categories of Adverse Conduct Relevant to Fitness set forth below, whether an Applicant has engaged in (a) Conduct that Presents an Absolute Bar, (b) Conduct that Renders an Applicant Currently Ineligible, or (c) conduct that requires the Applicant to petition the DEC for a fitness determination in accordance with CFP Board's *Procedural Rules* ("Conduct that Requires an Applicant to File a Petition for Order Finding Ethical Fitness for CFP® Certification").

This language describes CFP Board Enforcement Counsel's role.

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## I. Categories of Adverse Conduct Relevant to Fitness

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Set forth below is the (a) Conduct that Presents an Absolute Bar, (b) Conduct that Renders an Applicant Currently Ineligible, and (c) Conduct that Requires an Applicant to File a Petition for Fitness Determination. CFP Board will assess conduct that falls under more than one category in accordance with the most restrictive category.

The current *Fitness Standards* identify three categories of conduct relevant to fitness:

- Conduct Deemed Unacceptable which always bars an individual from being certified;
- Conduct Deemed a Presumptive Bar; and
- Other Adverse Conduct.

The proposed revised *Fitness Standards* also have three categories of conduct, but the scope of them is different from the current. *Conduct that Renders an Applicant Currently Ineligible* does not have an equivalent in the current standards. *Conduct that Requires an Applicant to File a Petition for Fitness* is a combination of the current categories *Conduct Deemed a Presumptive Bar* and *Other Adverse Conduct*, which both currently require an applicant to file a Petition for Fitness.

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### A. Conduct that Presents an Absolute Bar

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If an Applicant has engaged in conduct that resulted in any of the following, then Applicant is subject to an Absolute Bar.

1. Professional Discipline that was based upon Applicant's intentional or reckless fraud, theft of Client funds, misrepresentation to Clients, or other dishonest conduct involving Clients.

The current *Fitness Standards* contains an absolute bar for Revocation of a financial (e.g., registered securities representative, broker/dealer, insurance, accountant, investment advisor, financial planner) professional license, unless the revocation is administrative in nature, i.e., the result of the individual determining not to renew the license by not paying the required fees.

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2. A Felony Conviction (which for purposes of an absolute bar shall not include the admission into a program that defers or withholds the entry of a judgment of conviction) for:
    - a. Fraud, theft, embezzlement, racketeering, antitrust, blackmail, a bank-related crime, or a tax-related crime;
    - b. False statement, false declaration, perjury;
    - c. Obstruction of justice or tampering with a witness, victim, or informant;
    - d. Identity theft or theft of trade secrets;
    - e. Treason, sedition, a national-security related offense, or a terrorism-related offense;
    - f. Drug trafficking or gambling;
    - g. Human trafficking, child pornography, or child abuse;
    - h. Arson;
    - i. A sex-related offense (including sexual assault or battery);
    - j. Homicide;
    - k. Any other violent crime (a crime which involves force or a threat of force, such as assault with a deadly weapon, aggravated assault or battery, and breaking and entering); or
    - l. An attempt to commit or conspiracy to commit any crime set forth above.
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The current *Fitness Standards* contains an absolute bar for felony convictions for (a) theft, embezzlement, or other financially-based crimes, (b) tax fraud or other tax-related crimes, (c) any degree of murder or rape, and (d) any other violent crime within the last five years.

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**B. Conduct that Renders an Applicant Currently Ineligible**

The proposed addition of the category *Conduct that Renders an Applicant Currently Ineligible* is to clarify that certain conduct renders an applicant ineligible, but if the status changes, then the Applicant may be permitted to file a Petition for Fitness.

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1. Professional Discipline that:
    - a. Currently bars (including a bar with a right to re-apply) Applicant from obtaining a license or registration to provide Professional Services (a "Professional Services License");
    - b. Resulted in a suspension or revocation (currently in effect) of Applicant's Professional Services License; or
    - c. Currently limits or prohibits Applicant from being able to appear before a regulatory authority.
  2. Statutory disqualification under the Exchange Act (15 U.S.C. § 78a) that currently prevents Applicant from obtaining a Professional Services License.
  3. A surrender (currently in effect) of a Professional Services License in response to a Regulatory Action or Regulatory Investigation.
  4. Enforcement staff detects information that requires further investigation before CFP Board may determine Applicant's ethical fitness.
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### C. Conduct that Requires an Applicant to File a Petition for Order Finding Ethical Fitness for CFP® Certification

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If the Applicant has engaged in conduct that resulted in any of the following, then Applicant must file a Petition for Fitness for CFP® Certification:

The current *Fitness Standards* identifies presumptive bars (conduct that is presumed to be unacceptable) and other conduct that may reflect adversely upon the individual's integrity or fitness, the profession, or the CFP® certification mark, which both require a Petition of Fitness. The proposed revised *Fitness Standards* refers instead to conduct that requires an Applicant to file a Petition for Fitness.

1. Professional Discipline that
  - a. Was based upon Applicant's fraud, theft, misrepresentation, or other dishonest conduct that does not result in an Absolute Bar;
  - b. Previously barred Applicant from obtaining a Professional Services License;
  - c. Previously suspended or revoked Applicant's Professional Services License;
  - d. Previously limited or prohibited Applicant from being able to appear before a regulatory authority;
  - e. Was based upon Applicant's conduct and resulted in a fine or civil monetary penalty of greater than \$5,000; or
  - f. Was based upon Applicant's conduct and resulted in disgorgement or restitution of any amount.

The current *Fitness Standards* provides that the following present a presumptive bar:

- Revocation or suspension of a non-financial professional (e.g., real estate, attorney) license, unless the revocation is administrative in nature, i.e., the result of the individual determining not to renew the license by not paying the required fees.
- Suspension of a financial professional (e.g., registered securities representative, broker/dealer, insurance, accountant, investment advisor, financial planner) license, unless the suspension is administrative in nature, i.e., the result of the individual determining not to renew the license by not paying the required fees.

2. Statutory disqualification that previously prevented Applicant from obtaining a Professional Services License.

3. A surrender (no longer in effect) of a Professional Services License in response to a Regulatory Action or Regulatory Investigation.

4. A Felony Conviction that does not result in an Absolute Bar.

The current *Fitness Standards* provides that the following present a presumptive bar:

- Felony conviction for non-violent crimes (including perjury) within the last five years.
- Felony conviction for violent crimes other than murder or rape that occurred more than five years ago.

5. A Conviction for an offense that is not a Felony, for a crime that would be an Absolute Bar if the Conviction were for a felony.

6. A Relevant Misdemeanor Conviction.

7. One or more filings or adjudications for personal bankruptcy or business bankruptcy where Applicant was a Control Person of the business.

8. An unsatisfied tax lien or judgment lien where Enforcement Staff would file a Complaint if Applicant were a CFP® professional.

The current *Fitness Standards* provides that the following presents a presumptive bar:

- Two or more personal or business bankruptcies.

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9. Applicant is the subject of a Civil Finding that applicant:
- a. Violated a law, rule, or regulation concerning Professional Services;  
or
  - b. Engaged in fraud, theft, misrepresentation, or violence.
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10. Applicant is the subject of (a) three or more Client disputes in which Clients have made allegations of misconduct concerning Applicant's conduct that are pending, have been settled, or have been resolved with an adverse award or civil judgment, or (b) a lesser number if Enforcement Counsel would recommend a public sanction under the *Sanction Guidelines* if applicant were a CFP® professional.

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11. Applicant is the subject of (a) two or more Firm Terminations, or (b) one Firm Termination if Enforcement Counsel would recommend a public sanction under the *Sanction Guidelines* if applicant were a CFP® professional.

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12. Enforcement Counsel finds probable cause to believe that Applicant has engaged in conduct for which Enforcement Counsel would recommend a public sanction under the *Sanction Guidelines* if Applicant were a CFP® professional.

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The current *Fitness Standards* require a Petition for Fitness for "other adverse conduct," which is other conduct that may reflect adversely upon the individual's integrity or fitness, the profession or the CFP® certification marks. The proposed revised *Fitness Standards* addresses some of this conduct more specifically.

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## II. Evaluation of Petition for Order Finding Ethical Fitness for CFP® Certification

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The *Fitness Standards* establishes parity between Applicants and current CFP® professionals by applying the *Sanction Guidelines* uniformly to both Applicants and CFP® professionals. In resolving a Petition for Order Finding Ethical Fitness for CFP® Certification ("Petition for Fitness"), the DEC will evaluate an Applicant's conduct against the sanction guideline for the relevant conduct set forth in the *Sanction Guidelines*, considering the aggravating and mitigating factors and policy notes, to determine what the sanction would be if the candidate were a CFP® professional ("Sanction Determination") and then issue the analogous Fitness Determination. An Applicant must prove, by a preponderance of the evidence, Applicant's fitness for CFP® certification. A preponderance of the evidence is a standard of review that means "more probable than not," i.e., evidence which shows that, as a whole, the matter sought to be proved is more probable than not to have occurred.

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The DEC may (a) grant a Petition for Fitness, (b) grant a Petition for Fitness with Private or Public Notice, or (c) deny a Petition for Fitness and Temporarily or Permanently Bar the Applicant from certification. CFP Board publishes a Public Notice, Temporary Bar, and Permanent Bar in accordance with the *Procedural Rules*, including by issuing a press release.

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CFP Board intends for the proposed revised *Fitness Standards* to explicitly provide for parity between Applicants and CFP® professionals.

The proposed revised *Fitness Standards* also provides the standards for review of Petitions for Fitness.

The proposed revised *Fitness Standards* identifies the potential outcomes of a Petition for Fitness and makes clear that certain outcomes will result in publication, including a press release.

The DEC must issue a Fitness Determination as follows:

This language provides parity between Applicants and CFP® professionals.

<b>Sanction Determination</b>	<b>Fitness Determination</b>
Dismiss or Dismiss with Caution	Grant the Petition or Grant the Petition with Caution and find that Applicant has satisfied the <i>Fitness Standards</i> for CFP® certification
Private Censure	Grant the Petition and find that Applicant has satisfied the <i>Fitness Standards</i> for CFP® certification with or without a Private Notice
Public Censure	Grant the Petition and find that Applicant has satisfied the <i>Fitness Standards</i> for CFP® certification with a Public Notice.
Suspension	<p>If Applicant's conduct occurred within the limitations period set forth in Article 17.8.a of the <i>Procedural Rules</i>, then Deny the Petition and find that Applicant has not satisfied the <i>Fitness Standards</i> for CFP® certification with a Temporary Bar.</p> <p>If Applicant's conduct occurred outside the limitations period set forth in Article 17.8.a of the <i>Procedural Rules</i>, and</p> <ol style="list-style-type: none"><li>The DEC does not need to conduct a further review of Applicant's fitness, then Grant the Petition and find that Applicant has satisfied the <i>Fitness Standards</i> for CFP® certification with a Public Notice.</li><li>The DEC needs to conduct a further review of Applicant's fitness, then Deny the Petition and find that Applicant has not satisfied the <i>Fitness Standards</i> for CFP® certification with a Temporary Bar.</li></ol>
Revocation	Deny the Petition and find that Applicant has not satisfied the <i>Fitness Standards</i> for CFP® certification with a Permanent Bar.

An applicant subject to a Temporary Bar may reapply for CFP® certification after the Temporary Bar has ended.

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**GLOSSARY:**

CFP Board added a glossary to the proposed revised *Fitness Standards*.

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**Civil Finding:** As defined in Article 7.3 of the *Procedural Rules*.

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**Client:** As defined in the *Code of Ethics and Standards of Conduct*.

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**Control Person:** As defined in the *Code of Ethics and Standards of Conduct*.

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**Conviction:** A final judgment resulting from a guilty verdict, guilty plea, or nolo contendere (no contest) plea, or admission into a program that defers or withholds the entry of a judgment of conviction.

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**Felony:** As defined in the *Code of Ethics and Standards of Conduct*.

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**Firm:** Any entity on behalf of which Applicant provides Professional Services to a Client, and that has the authority to exercise control over Applicant's activities, including Applicant's employer, broker-dealer, registered investment adviser, insurance company, and insurance agency.

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**Permanent Bar:** As defined in the *Procedural Rules*.

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**Private Notice:** As defined in the *Procedural Rules*.

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**Professional Discipline:** As defined in Article 7 of the *Procedural Rules*.

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**Professional Services:** As defined in the *Code of Ethics and Standards of Conduct*.

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**Public Notice:** As defined in the *Procedural Rules*.

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**Regulatory Action:** As defined in Section E of the *Code of Ethics and Standards of Conduct*.

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**Regulatory Investigation:** As defined in Section E of the *Code of Ethics and Standards of Conduct*.

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**Relevant Misdemeanor:** As defined in the *Code of Ethics and Standards of Conduct*.

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**Sanction Determination:** The sanction that would be imposed for the given conduct after considering and applying all relevant aggravating and mitigating factors and policy notes to the sanction guideline for the relevant conduct category set forth in the *Sanction Guidelines*.

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**Temporary Bar:** As defined in the *Procedural Rules*.

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**Termination:** A termination of Applicant's registration by a Firm for cause, or where a Firm permitted Applicant to resign in lieu of termination, when the basis of the termination or resignation involved allegations of dishonesty, unethical conduct, or compliance failures.

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# **CFP BOARD**

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