

**CFP BOARD**

**ANNOTATED**

**VERSION OF THE REVISED  
PROPOSED CODE OF ETHICS  
AND STANDARDS OF CONDUCT**

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# ANNOTATED

## VERSION OF THE REVISED PROPOSED CODE OF ETHICS AND STANDARDS OF CONDUCT

Certified Financial Planner Board of Standards, Inc. (“CFP Board”) today is issuing for public comment a revised version of the proposed Code of Ethics and Standards of Conduct (“Code and Standards”). CFP Board issued the original version of the proposed standards for public comment on June 20, 2017, and received more than 1,300 written comments, and hundreds of oral comments, during the sixty-day comment period. This document discusses specific components of the Code and Standards and some of the comments that CFP Board received on the original proposal. CFP Board intends for this document to provide context for, and to help inform comment on, the revised proposal. This document also identifies specific areas where CFP Board is requesting comment during the comment period, which ends on February 2, 2018.

CFP Board is a certification and standards-setting organization that was founded in 1985 as a non-profit under section 501(c)(3) of the Internal Revenue Code. CFP Board benefits the public by establishing and enforcing education, examination, experience, and ethics requirements for CFP® professionals. All CFP® professionals agree to abide by the high standards for competency and ethics set forth in CFP Board’s Standards of Professional Conduct (“Standards”). CFP Board periodically reviews and updates the Standards to maintain the value, integrity, and relevance of the CFP® certification.

CFP Board’s predecessor organization, the International Board of Standards and Practices for Certified Financial Planners (“IBCFP”), introduced the first Code of Ethics in 1985. In 1986, IBCFP revised the Code of Ethics and integrated new Standards of Practice. In 1993, IBCFP adopted a new name, the Code of Ethics and Professional Responsibility, divided the standards into Principles and Rules, added a Terminology section, and made substantive revisions. In 1998, CFP Board adopted the first two steps of the Financial Planning Practice Standards (“Practice Standards”). CFP Board added the third step of the Practice Standards in 1999, the fourth and fifth steps in 2000, and the sixth and final step in 2001. CFP Board adopted the current version of the Standards in 2007, which substantively revised and renamed as Rules of Conduct the Rules portion of the Code of Ethics and Professional Responsibility.

In December 2015, CFP Board announced the formation of a Commission on Standards for the purpose of reviewing and recommending to CFP Board’s Board of Directors proposed changes to the Terminology, Code of Ethics and Professional Responsibility, Rules of Conduct, and Practice Standards sections of the Standards. Following a deliberative and inclusive process that included nine public forums in locations across the country, CFP Board issued for public comment an initial version of a proposed Code and Standards that would consolidate these four documents into the proposed Code and Standards. After eight additional public forums and careful consideration of the oral and written comments, CFP Board today issues a revised version for public comment. CFP Board intends to issue the final Code and Standards before the end of the first quarter of 2018.

CFP Board appreciates the comments so many members of the profession provided on the original proposal, and looks forward to receiving additional comments on the revised proposal.

**PREAMBLE**

CFP Board's Code of Ethics and Standards of Conduct reflects the commitment that all CFP® professionals make to high standards of competency and ethics. CFP Board's Code and Standards benefits and protects the public, provides standards for delivering financial planning, and advances financial planning as a distinct and valuable profession. Compliance with the Code and Standards is a requirement of CFP® certification that is critical to the integrity of the CFP® marks. Violations of the Code and Standards may subject a CFP® professional to discipline.

**CODE OF ETHICS**

A CFP® professional must:

1. Act with honesty, integrity, competence, and diligence.
2. Act in the client's best interests.
3. Exercise due care.
4. Avoid or disclose and manage conflicts of interest.
5. Maintain the confidentiality and protect the privacy of client information.
6. Act in a manner that reflects positively on the financial planning profession and CFP® certification.

**PREAMBLE AND CODE OF ETHICS**

The initial proposal sets forth a four-sentence Preamble that captures the purpose and effect of the Code and Standards, and proposed revisions to the Code of Ethics, which currently contains both principles and explanatory language. When CFP Board combined the Code with the other sections of the Standards, the Code no longer needed explanatory language. Thus, the initial proposal presented a Code that crisply delineated principles guiding the behavior of CFP® professionals, with elaboration provided in the standards that follow. CFP Board believes that a concise Code is a meaningful vehicle for communicating the commitment that CFP® professionals make to high standards of competency and ethics. CFP Board received few substantive comments on either the proposed Preamble or the proposed Code set forth in the initial proposal. One commenter offered the supportive statement that the proposed Code is "simple and straight-forward." The revised proposal retains the initial proposed Preamble and Code of Ethics in its entirety.

## STANDARDS OF CONDUCT

### A. DUTIES OWED TO CLIENTS

#### 1. FIDUCIARY DUTY

When providing Financial Advice to a Client, a CFP® professional must at all times act as a fiduciary, and therefore, act in the best interest of the Client. In this regard:

- a. **Duty of Loyalty.** A CFP® professional must:
  - i. Place the interests of the Client above the interests of the CFP® professional and the CFP® Professional's Firm;
  - ii. Seek to avoid Conflicts of Interest, or fully disclose Material Conflicts of Interest to the Client, obtain the Client's informed consent, and properly manage the conflict; and
  - iii. Act without regard to the financial or other interests of the CFP® professional, the CFP® Professional's Firm, or any individual or entity other than the Client, which means that a CFP® professional acting under a Conflict of Interest continues to have a duty to act in the best interest of the Client and place the Client's interest above the CFP® professional's.
- b. **Duty of Care.** A CFP® professional must act with the care, skill, prudence, and diligence that a prudent professional would exercise in light of the Client's goals, risk tolerance, objectives, and financial and personal circumstances.
- c. **Duty to Follow Client Instructions.** A CFP® professional must comply with all objectives, policies, restrictions, and other terms of the Engagement and all reasonable and lawful directions of the Client.

### DUTIES OWED TO CLIENTS

#### FIDUCIARY DUTY

The current Standards impose a fiduciary duty on CFP® professionals when providing Financial Planning. The original proposal extended the application of the fiduciary duty to all Financial Advice. No aspect of the proposal received more comment, with commenters both supporting and opposing the proposed change. The revised proposal retains the original's expanded application of the fiduciary duty with only one minor clarification. CFP Board's reasons for that decision are set forth below.

As a 501(c)(3) non-profit corporation, CFP Board is required to act in the public interest. CFP Board's vision is for the public to value financial planning and benefit from professionals' adherence to a fiduciary standard. CFP Board's mission is to benefit the public by granting the CFP® certification and upholding it as the recognized standard of excellence for competent and ethical personal financial planning. CFP Board's Board of Directors and executive leadership team have developed a strategic plan for the organization's operations in support of that mission. The latest plan, adopted in November 2016, sets forth four strategic priorities, one of which is assuring accountability by, among other things, advocating for fiduciary advice.

CFP Board first adopted a fiduciary duty in 2007, when it issued revised Standards providing that a CFP® professional owes to the client a fiduciary duty when providing financial planning or material elements of financial planning. CFP Board defined a fiduciary as one who acts in utmost good faith, in a manner he or she reasonably believes to be in the best interest of the Client.

Consistent with its vision and mission, and in furtherance of a strategic plan that is committed to a fiduciary standard, CFP Board's initial proposal expanded the application of the fiduciary duty set forth in the Standards to all Financial Advice. The initial proposal defined Financial Advice to include discretionary authority as well as communications that would be viewed as a suggestion that the Client take or refrain from taking a particular course of action with respect to a wide range of financial matters. Communications that do not fall within that definition, such as responses to directed orders, would not be Financial Advice. The definition of Financial Advice also would exclude the provision of services or the furnishing or making available of marketing materials, general financial education materials, or general financial communications that a person would not reasonably view as Financial Advice.

The fiduciary duty is the crown jewel that animates a CFP® professional's commitment to high standards. Under the initial proposal, the public would know that a CFP® professional is committed to acting as a fiduciary at all times when providing Financial Advice, and not just when providing Financial Planning, as is the case under the current Standards. As a result, a CFP® professional would owe Clients the same fiduciary duty when providing Financial Planning and when providing other Financial Advice, thereby eliminating any confusion when the CFP® professional provides both types of services.

CFP Board proposed an objective standard requiring a CFP® professional providing Financial Advice to act in the best interest of the Client. In that regard, a CFP® professional would be subject to a duty of loyalty, a duty of care, and a duty to follow client instructions. The initial proposal provided explanations of each of these duties drawn from the common law of fiduciaries. The duty of loyalty requires CFP® professionals to:

- (1) Place the interests of the Client above the interests of the CFP® professional and the CFP® Professional's Firm;
- (2) Seek to avoid Conflicts of Interest, or fully disclose Material Conflicts of Interest to the Client, obtain the Client's informed consent, and properly manage the conflict; and
- (3) Act without regard to the financial or other interests of the CFP® professional, the CFP® Professional's Firm, or any other individual or entity other than the Client, which means that a CFP® professional acting under a Conflict of Interest continues to have a duty to act in the best interest of the Client and place the Client's interest above the CFP® professional's.

The duty of care requires CFP® professionals to act with the care, skill, prudence and diligence that a prudent professional would exercise in light of the Client's goals, risk tolerance, objectives, and financial and personal circumstances. The duty to follow client instructions requires CFP® professionals to comply with all objectives, policies, restrictions, and other terms of the Engagement and all reasonable and lawful directions of the Client.

There was strong support among CFP® professionals for CFP Board to adopt the fiduciary standard set forth in the initial proposal. More than 96% of CFP® professionals who responded to a survey agreed that CFP® professionals should be required to act in their Client's best interest when providing Financial Advice. (See survey question number 16 and the response thereto, which is available on CFP Board's public website at the following URL: [CFP.net/2017-proposed-standards-survey](http://CFP.net/2017-proposed-standards-survey). The two leading Financial Planning membership organizations, the Financial Planning Association (FPA) and the National Association of Personal Financial Advisers (NAPFA), also voiced their support for the initial proposal. FPA applauded CFP Board "for taking the bold and necessary step in expanding the fiduciary standard for CFP® professionals." NAPFA also commented that the proposal "supports CFP Board's efforts to [broaden] fiduciary requirements for CFP® professionals. Working under fiduciary principles is the most transparent - and we believe the most objective - way of serving the public. Consumers have come to expect advice delivered in their best interest and will now be able to count on CFP® professionals to provide it at all times when giving financial advice."

Investor and consumer organizations, including AARP, Americans for Financial Reform, Better Markets, Center for American Progress, Consumer Action, Consumer Federation of America, Institute for the Fiduciary Standard, National Consumers League, and the National Employment Law Project, offered the same view. According to Consumer Action: "By extending the fiduciary duty to all financial advice, clients will receive fiduciary-level advice whenever CFP professionals offer any kind of financial advice, no matter the services being provided. This is a crucial distinction and one that provides a model for advice standards throughout the financial industry, regardless of the business model and pricing used by the CFP professional. The proposed revisions clarify what fiduciary duty entails, including the duty of loyalty, a duty of care, and a duty to follow client instructions."

Other commenters, including the Securities Industry and Financial Markets Association (SIFMA) and the Financial Services Institute (FSI), opposed the proposed expansion of the application of the fiduciary duty from Financial Planning to Financial Advice. They contend that the proposed fiduciary duty would harm low-income investors, impede lower-cost brokerage services, expose firms and individual advisors to greater risk of liability for non-compliance, and impose significant implementation costs on firms that are required to supervise CFP® professionals. They encouraged CFP Board to await

final fiduciary rulemaking from the Securities and Exchange Commission (SEC) and the Department of Labor (DOL). They also asserted that the initial proposal was confusing, difficult to apply, and inconsistent with other industry rules. Others argued that CFP Board is not a regulator and should not have standards that exceed existing law. A few commenters expressed their opinion that CFP Board is seeking to protect fee-only planners.

For the reasons provided below, CFP Board disagrees with the commenters who opposed extending the application of the fiduciary duty from Financial Planning to all Financial Advice.

**CFP Board Properly Sets Professional Standards:**

CFP® professionals currently are subject to several levels of oversight. Most CFP® professionals are subject to federal and state laws and regulations, including those imposed by self-regulatory organizations such as FINRA. On top of the law's baseline requirements, firms may impose on CFP® professionals an added level of requirements. Professional standards-setting organizations, like CFP Board, exist in part to impose standards that exceed those required by the law or the firm. CFP Board historically has imposed ethical standards that some CFP® professionals could not meet merely by complying with the law or their firm's policies. For example, in 2007, CFP Board adopted a requirement that CFP® professionals act as a fiduciary when providing Financial Planning, even in circumstances where the law did not so require. The proposal reflects this private ordering, and provides, in the first sentence of the Preamble, that "CFP Board's Code of Ethics and Standards of Conduct reflects the commitment that all CFP® professionals make to high standards of competency and ethics."

Although CFP Board sets standards for financial planners, the standards, as currently in place, are not limited to when CFP® professionals are providing Financial Planning. The Standards contain several rules that distinguish between Financial Planning and other services that a CFP® professional provides to Clients. The Standards also governs conduct that occurs in a non-professional capacity. To suggest that CFP Board should issue Standards that govern only Financial Planning is to ignore CFP Board's history and mission.

**Consumers Expect Financial Professionals to Act in Their Best Interest:** A growing body of evidence shows that consumers want and expect Financial Advice that is in their best interest. For example, in a study conducted by Financial Engines in 2016 titled, “In Whose Best Interest? What Americans know and what they want when it comes to retirement investment advice,” ninety-three percent of respondents said it is important that all financial advisors be legally required to put their clients’ best interest first when providing advice on retirement savings. A 2016 survey of retirement savings account holders by AARP found that more than nine in ten (ninety-two percent) of investors who have received professional Financial Advice in the past believe it is important that professional financial advisors give advice that is in the best interest of their clients. A 2010 study conducted by Info Group found that “[n]early all U.S. investors support the fiduciary standard for investment professionals providing advice.” These and other studies make clear that consumers expect financial professionals to act in their best interest. As CFP Board’s mission is to promote the public interest, CFP Board must set standards that take into account the public’s reasonable expectations, including the expectation that CFP® professionals will act as fiduciaries when providing Financial Advice to a Client.

**The Fiduciary Duty is not Confusing or Difficult to Apply:** CFP Board does not agree that the fiduciary duty is confusing or difficult to apply. That was not a significant concern during the nearly ten years that CFP Board has held CFP® professionals to a fiduciary standard. Moreover, CFP Board’s fiduciary standard is consistent with the Investment Advisers Act of 1940 and the principles set forth in the Impartial Conduct Standards of the DOL’s Conflict of Interest Rule. CFP® professionals operating under those laws and regulations have been able to act in their Clients’ best interest when providing Financial Advice; indeed, many firms have built policies and procedures specifically designed to meet the fiduciary obligations set forth therein. Moreover, most commenters voiced strong support for CFP Board’s articulation of the fiduciary duty. Comments requesting specific changes to the standard are addressed below.

Some commenters opposed CFP Board’s inclusion of the words “at all times” in the fiduciary duty. These commenters appear to have misinterpreted the standard to mean that the fiduciary duty applies at all times, rather than at all times when providing Financial Advice. While keeping (or removing) “at all times” would not have a substantive impact here because the words do not broaden or narrow the scope of the standard (the obligation applies “when



providing Financial Advice,” regardless of whether the words are included or excluded), the language serves the important purpose of reinforcing that there are no exceptions to a CFP® professional’s duty to act as a fiduciary when providing Financial Advice. In response to the comments, however, the revised proposal makes a technical edit to the language, by moving the “when providing Financial Advice to a Client” language to the beginning of the sentence, to clarify that the fiduciary duty applies only when a CFP® professional is providing Financial Advice, and not at all times.

Other commenters, including NAPFA, requested that the standard encourage “avoidance” of conflicts over “disclosure” of conflicts. Some commenters would require CFP® professionals to “avoid” conflicts whenever possible, and provide a “disclosure/informed consent” alternative only in circumstances where it was impossible to avoid the conflicts. While many conflicts can be avoided, at least in theory, there are some conflicts that, as a practical matter, cannot be avoided. There is, for example, a conflict when a Client pays a CFP® professional for providing services, regardless of the compensation method. CFP Board believes the language in the original proposal strikes the appropriate balance. The revised proposal retains the language stating that CFP® professionals shall “seek to avoid” conflicts (and disclose and manage conflicts that are not avoided).

Some commenters questioned whether the duty to follow Client instructions contradicts the obligation to act in the best interest of the Client. CFP Board does not agree that there is such a conflict. A CFP® professional acts as an agent of the Client, and has a duty to follow the terms of the Engagement and the Client’s reasonable and lawful instructions. In response to a question that FPA forwarded from one of its members, the obligation to comply with “all reasonable and lawful directions of the Client” presents an objective standard. A Client with capacity who is not acting under the undue influence of another has the authority to determine what is in his or her best interest. Where the CFP® professional believes that the Client’s instructions are not in the best interest of the Client, the CFP® professional must so advise the Client. If the CFP® professional wants to terminate the Engagement because of Client instructions that a CFP® professional believes are not in the Client’s best interest, the CFP® professional may do so at an appropriate time and in an appropriate manner.

A few commenters suggested that the fiduciary duty should apply only where there is compensation and a written engagement agreement. CFP Board does not agree with that perspective. Other analogous

professions, such as attorneys, do not apply that limitation. A CFP® professional rendering Financial Advice pursuant to an oral agreement, arrangement, or understanding must act as fiduciary when providing that advice, regardless of whether the CFP® professional is compensated for the advice or the engagement was reduced to writing. As one commenter noted, harm may result from Financial Advice provided in violation of fiduciary standards, even if money does not change hands.

FPA commented that one of its members asked how a CFP® professional may “act without regard to the financial or other interests of the CFP® professional, the CFP® Professional’s Firm, or any individual or entity other than the Client” if the CFP® professional receives compensation outside of fees. CFP Board has made clear that the standard does not require a CFP® professional to eliminate all conflicts. Rather, it “means that a CFP® professional acting under a Conflict of Interest continues to have a duty to act in the best interest of the Client and place the Client’s interest above the CFP® professional’s.” CFP Board is compensation neutral. As such, it recognizes that both fees and commissions can entail conflicts of interest, and that a CFP® professional may act in the Client’s best interest whether the CFP® professional is earning fees or commissions. The reference to “other interests” makes clear that CFP Board will consider interests beyond those that are financial.

**The Fiduciary Duty is Consistent with Existing**

**Law:** The proposed fiduciary duty is consistent with existing legal standards. The initial proposal does not require a CFP® professional to do less than the law requires. Those who comply with CFP Board’s Standards will not, by doing so, be in violation of existing laws and regulations. Instead, as noted above, CFP Board’s Code and Standards in some circumstances may match legal requirements, and in other circumstances may exceed legal requirements, for the benefit of the public and the profession.

**The Fiduciary Duty Will Not Harm or Confuse**

**Investors:** CFP Board does not agree that the proposed fiduciary rule will harm low-income investors. In today’s complex financial marketplace, many consumers turn to a financial professional to help them make good decisions. Yet when they seek Financial Advice, they face a marketplace in which it is virtually impossible to distinguish a salesperson from an advisor or between those advisors who are legally obligated to provide Financial Advice in their best interest versus those who are not. In other words, a Client may receive the same Financial Advice from a professional who receives compensation for selling products and a professional who receives compensation for providing Financial

Advice. The proposed fiduciary duty thus reflects the simple and unambiguous principle that CFP® professionals operating under all business models always must provide Financial Advice to Clients that is in their best interest.

CFP Board does not believe that the proposed fiduciary standard will negatively affect the availability of advice or the range of products for moderate- and low-income consumers. To the contrary, small account holders and moderate-income investors stand to benefit most from a fiduciary standard. The academic literature makes clear that less wealthy, financially unsophisticated consumers are most at risk of receiving Financial Advice that is not in their best interests. While the financial adviser may make a substantial profit off recommendations that are not in the consumer's best interest, the consumer pays a heavy price – through higher costs, substandard features, elevated risks, or poor returns – for Financial Advice that is not in his or her best interest.

Because consumers already expect all Financial Advice to be provided in their best interest, CFP Board also does not believe that consumers will be confused by standards that require CFP® professionals to provide Financial Advice in accordance with fiduciary standards, in their Clients' best interest.

**Cost Burdens:** The fiduciary duty is business-model neutral, as it applies to all CFP® professionals regardless of the business model in which they operate. CFP Board recognizes that firms may incur additional costs associated with CFP® professionals' compliance with CFP Board's fiduciary duty. Many of those firms, however, represent that they already are acting in their clients' best interest. Moreover, some firms have already incurred those costs because of the steps they have taken to comply with recent DOL requirements. SIFMA says, for example, that "SIFMA's member firms have already expended significant resources to adapt to the DOL [Conflict of Interest] Rule (as applicable today)," which includes the expanded definition of fiduciary and the impartial conduct standards. CFP Board also believes that CFP® professionals and their firms – as research has shown – will see benefits as they forge relationships of even greater trust with their Clients, and that they will experience measurable results in terms of stronger asset and revenue growth. Finally, CFP Board has targeted a January 1, 2019 implementation date to afford ample opportunity for CFP® professionals to implement any necessary changes or employ additional resources to comply with the Code and Standards.

## 2. INTEGRITY

A CFP® professional must perform Professional Services with integrity. Integrity demands honesty and candor, which may not be subordinated to personal gain or advantage. Allowance may be made for innocent error and legitimate differences of opinion, but integrity cannot co-exist with deceit or subordination of principle. A CFP® professional may not, directly or indirectly, in the conduct of Professional Services:

- a. Employ any device, scheme, or artifice to defraud;
- b. Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
- c. Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

**Risk of Liability:** Some commenters expressed a concern that the initial proposal presents a liability risk. CFP Board’s current Standards states that “the Rules of Conduct are not designed to be a basis for legal liability to any third party.” The proposed Code and Standards does not alter CFP Board’s intent. It remains the case that the Code and Standards are not designed to be a basis for civil liability, and that Clients of CFP® professionals and other third parties are not intended to be considered third-party beneficiaries of a CFP® professional’s agreement to adhere to the Code and Standards.

**CFP Board Does Not Intend to Wait to Adopt Revised Standards:** CFP Board, as a non-profit, standard-setting organization acting in the public interest, has a responsibility to set standards for the benefit of the public. CFP Board sees no reason to defer our Code and Standards pending potential SEC and DOL fiduciary rulemaking.

## INTEGRITY

The initial proposal contained a general description of integrity and a prohibition against fraud that appears in the existing regulatory structure, the interpretations of which will guide interpretation of this standard. Several commenters proposed edits to the anti-fraud language. CFP Board, however, has elected to retain the initial language to maintain consistency with anti-fraud laws and regulations. A commenter recommended moving integrity from the fifth to the first duty to Clients listed in the Standards. This comment persuaded CFP Board to move the integrity standard to immediately following the fiduciary duty standard. CFP Board also agreed with a technical comment to change “professional activities” to “Professional Services.”

### 3. COMPETENCE

A CFP® professional must provide Professional Services with competence, which means with relevant knowledge and skill to apply that knowledge. When the CFP® professional is not sufficiently competent in a particular area to provide the Professional Services required under the Engagement, the CFP® professional must gain competence, obtain the assistance of a competent professional, limit or terminate the Engagement, and/or refer the Client to a competent professional. The CFP® professional shall describe to the Client any requested Professional Services that the CFP® professional will not be providing.

### 4. DILIGENCE

A CFP® professional must provide Professional Services, including responding to reasonable Client inquiries, in a timely and thorough manner.

### 5. DISCLOSE AND MANAGE CONFLICTS OF INTEREST

- a. **Disclose Conflicts.** When providing Financial Advice, a CFP® professional must make full disclosure of all Material Conflicts of Interest with the CFP® professional's Client that could affect the professional relationship. This obligation requires the CFP® professional to provide the Client with sufficiently specific facts so that the Client is able to understand the CFP® professional's Conflicts of Interest and the business practices that give rise to the conflicts, and give informed consent to such conflicts or reject them. A sincere belief by a CFP® professional with a Material Conflict of Interest that he or she is acting in the best interest of the Client is insufficient to excuse failure to make full disclosure.
  - i. In determining whether to infer that a Client has consented to a Material Conflict of Interest, CFP Board will evaluate whether a reasonable Client receiving the disclosure would have understood the conflict and how it could affect the advice the Client will receive from the CFP® professional. The greater the potential harm the conflict presents to the Client, and the more significantly a business practice that gives rise to the conflict departs from commonly accepted practices among CFP® professionals, the less likely it is that CFP Board will infer informed consent absent

### COMPETENCE

The initial proposal's competency standard incorporated provisions requiring both knowledge and skill. It would require a CFP® professional, when not sufficiently competent, to gain competence, obtain assistance, limit or terminate the Engagement, and/or refer the Client to a competent professional. The CFP® professional must describe to the Client the requested services that the CFP® professional will not be providing. Commenters generally supported the standard, and no additional changes are included in the revised proposal.

### DILIGENCE

The initial proposed diligence standard set forth a concise requirement: to provide services in a prompt and thorough manner. There were few comments and the revised proposal contains no changes.

### DISCLOSE AND MANAGE CONFLICTS OF INTEREST

In developing the original proposal, CFP Board drew on requirements to disclose Conflicts of Interest set forth in the Advisers Act and articulated in the instructions to Form ADV. Under the initial proposal, CFP® professionals would be required to make full disclosure of all Material Conflicts of Interest that could affect the professional relationship, and provide sufficiently specific facts so that the Client is able to understand the conflicts and the business practices that give rise to the conflicts, and give informed consent to such conflicts or reject them. The initial proposal set forth a standard for determining the circumstances under which CFP Board would infer that a Client has consented to a Material Conflict of Interest, made clear that written consent to a conflict is not required, and noted that ambiguity in the disclosure will be interpreted in favor of the Client. CFP Board's initial proposal also required a CFP® professional to adopt and follow business practices reasonably designed to prevent Material Conflicts of Interest from compromising the CFP® professional's ability to act in the Client's best interests.

A commenter suggested that the standard should apply to all conflicts, not just material conflicts. CFP Board does not agree with this comment. Materiality is an appropriate limitation on the requirement. If a reasonable Client or prospective Client would not consider the conflict information important in making a decision (the definition of materiality under the proposed Code and Standards), then a CFP® professional is not required to disclose the conflict. FPA commented that some of its members have

clear evidence otherwise. Ambiguity in the disclosure provided to the Client will be interpreted in favor of the Client.

- ii. Written consent to a conflict is not required.
- b. **Manage Conflicts.** A CFP® professional must adopt and follow business practices reasonably designed to prevent Material Conflicts of Interest from compromising the CFP® professional's ability to act in the Client's best interests.

questioned "what constitutes material conflicts of interest." The answer to that question depends on the facts, but the proposed Code and Standards defines both Material and Conflict of Interest in the Glossary.

Some commenters requested that CFP Board define "informed consent." CFP Board does not agree that such a definition is necessary. The Advisers Act requires disclosure of and consent to conflicts, and has been interpreted to require informed consent, but the Advisers Act does not define informed consent. Whether a Client has provided informed consent depends on the facts and circumstances and may be inferred when not explicit. For example, silence after disclosure may constitute informed consent if the disclosure contains sufficiently specific facts that are understandable to a reasonable Client, but may not constitute informed consent if that is not the case. CFP Board intends for its "informed consent" standard to be interpreted in a manner that is consistent with interpretations of the Advisers Act, and CFP® professionals may refer to guidance and case law interpretations.

A commenter noted that both the SEC (under the Advisers Act) and the DOL (under the revised Conflict of Interest Rule) have set forth standards concerning specific types of Conflicts of Interest, and requests that CFP Board do the same. CFP Board believes, however, that the initial proposal sets forth a strong principle that is appropriate for the Code and Standards and the variety of business models in which CFP® professionals operate.

FPA reported that its members question how a CFP® professional should address Material Conflicts of Interest that arise during the Engagement. The Disclose and Manage Conflicts of Interest standard applies to all Financial Advice; therefore, a CFP® professional has an ongoing obligation to satisfy the standard when providing Financial Advice.

Several commenters strongly supported the standard requiring a CFP® professional to manage Conflicts of Interest. As Better Markets notes, "disclosure does not and cannot adequately protect investors from the harmful impact of conflicts of interest." Some commenters, however, requested that CFP Board require "mitigation" instead of management of conflicts. CFP Board prefers the term manage to the term mitigation, however, because not all conflicts are susceptible to mitigation; rather, they may continue in their existing form. Moreover, CFP Board is concerned that the use of the term "mitigate" would introduce ambiguity because the Code and Standards will not specify the extent of mitigation that is necessary. CFP Board has concluded that the more workable requirement is for a CFP® professional to manage the conflict through the adoption of disclosed business

practices that prevent the conflict from harming the Client's best interests. (As discussed above, the obligation to act in the Client's best interest remains when conflicts are present.)

A commenter stated that the standard should require written disclosure of Material Conflicts. CFP Board recognizes, however, that in some business models, in some circumstances, such a requirement may present logistical challenges, and thus the proposal does not include such a requirement. Another commenter similarly suggested that CFP Board require that consent to Material Conflicts of Interest be in writing. CFP Board's standard, however, is consistent with the Advisers Act standard, which does not require disclosure or consent in writing. Moreover, a requirement to obtain written consent to all Material Conflicts of Interest could prove difficult to implement in practice.

Other commenters have requested that CFP Board explain how CFP® professionals should manage Conflicts of Interest. Since management of conflicts will vary depending on the business model, such explanation is more appropriate for guidance documents, not in the Code and Standards.

Therefore, the revised proposal retains this standard as originally proposed.

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## **6. SOUND AND OBJECTIVE PROFESSIONAL JUDGMENT**

A CFP® professional must exercise professional judgment on behalf of the Client that is not subordinated to the interest of the CFP® professional or others. A CFP® professional may not solicit or accept any gift, gratuity, entertainment, non-cash compensation, or other consideration that reasonably could be expected to compromise the CFP® professional's objectivity.

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## **7. PROFESSIONALISM**

A CFP® professional must treat Clients, prospective Clients, fellow professionals, and others with dignity, courtesy, and respect.

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## **SOUND AND OBJECTIVE PROFESSIONAL JUDGMENT**

The initial proposal set forth a principles-based standard for addressing gifts and other consideration that could be expected to compromise objectivity. CFP Board intentionally did not identify specific dollar limitations, and was not persuaded by the comments requesting that they be added. CFP Board has revised the examples of considerations that may affect objectivity to include gifts, gratuities, entertainment, and non-cash compensation.

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## **PROFESSIONALISM**

The proposed professionalism standard required CFP® professionals to treat others with dignity, courtesy, and respect. A commenter noted the breadth of the requirement but none suggested that it was not appropriate or that CFP® professionals could not comply with the standard. CFP Board has determined to retain the standard.

**8. COMPLY WITH THE LAW**

- a. A CFP® professional must comply with the laws, rules, and regulations governing Professional Services.
- b. A CFP® professional may not intentionally or recklessly participate or assist in another person's violation of these Standards or the laws, rules, or regulations governing Professional Services.

**9. CONFIDENTIALITY AND PRIVACY**

- a. A CFP® professional must keep confidential and may not disclose any non-public personal information about any prospective, current, or former Client ("client"), except that the CFP® professional may disclose information:
  - i. For ordinary business purposes:
    - a. With the client's consent, so long as the client has not withdrawn the consent;
    - b. To a CFP® professional's employer, partners, employees, or other persons with whom the CFP® professional is providing services to or for the client, when necessary to perform those services;
    - c. As necessary to provide information to the CFP® professional's attorneys, accountants, and auditors; and
    - d. To a person acting in a representative capacity on behalf of the client;
  - ii. For legal and enforcement purposes:
    - a. To law enforcement authorities concerning suspected unlawful activities, to the extent permitted by the law;
    - b. As required to comply with federal, state, or local law;
    - c. As required to comply with a properly authorized civil, criminal, or regulatory investigation or examination, or subpoena or summons, by a governmental authority;

**COMPLY WITH THE LAW**

The obligation to comply with the law serves as a foundation for the Code and Standards. The initial proposal required a CFP® professional to comply with laws, rules, and regulations governing professional activities and prohibited intentional or reckless participation or assistance in another person's violations. Violations of the law in areas outside of professional activities are addressed in the Duties to CFP Board section of the Code and Standards. Commenters noted that compliance with the law is a "known obligation." CFP Board thus made only a technical change to the standard.

**CONFIDENTIALITY AND PRIVACY**

The initial proposal included a confidentiality and privacy standard that identified specific circumstances under which non-public personal information may be disclosed, limited a CFP® professional's use of the information, and required a CFP® professional to take reasonable steps (directly or indirectly) to protect the security of the information and to adopt, implement, and provide notice to Clients of policies regarding the protection, handling, and sharing of the information.

A few commenters suggested that the standard is not aligned with the SEC's Regulation S-P (17 C.F.R. Part 248) and the CFPB's Regulation P (12 C.F.R. Part 1016), both of which apply to firms, but they did not provide the factual basis for the comment. Others said that the standard would encourage CFP® professionals to violate firm policies and procedures. CFP Board, however, intends for the proposal – which applies to CFP® professionals – to be consistent with regulatory requirements that apply to their firms. Moreover, the standard does not conflict with firm policies because it does not require the CFP® professional to disclose the information; rather, the standard identifies the information that a CFP® professional may disclose without violating CFP Board's standards. Another commenter requested that CFP Board adopt a safe harbor that would apply if a CFP® professional satisfies either firm policies or Regulation S-P. CFP Board determined that such a safe harbor is unnecessary.



- d. As necessary to defend against allegations of wrongdoing made by a governmental authority;
  - e. As necessary to present a civil claim against, or defend against a civil claim raised by, a client;
  - f. As required to comply with a request from CFP Board concerning an investigation or adjudication; and
  - g. As necessary to provide information to professional organizations that are assessing the CFP® professional's compliance with professional standards.
- b. A CFP® professional may not use any non-public personal information about a client for his or her direct or indirect personal benefit, whether or not it causes detriment to the client, unless the client consents.
- c. A CFP® professional, either directly or through the CFP® professional's Firm, must take reasonable steps to protect the security of non-public personal information about any client, including the security of information stored physically or electronically, from unauthorized access that could result in harm or inconvenience to the client.
- d. A CFP® professional, either directly or through the CFP® Professional's Firm, must adopt and implement policies regarding the protection, handling, and sharing of a client's non-public personal information and must provide clients with written notice of those policies.

A commenter suggested that an exception be added to the confidentiality standard for SRO investigations and examinations. CFP Board intends for subsection ii.c. to provide that exception. Another commenter offered that a CFP® professional should not be permitted to provide non-public personal information to law enforcement authorities when unlawful activities are suspected. While CFP® professionals are not required to provide such information, CFP Board determined that the confidentiality standard should not operate to prohibit such disclosure, and thus elects to retain that exception. Finally, a commenter stated that consent should be required for all of the ordinary business purpose exceptions. CFP Board disagrees. In those circumstances where the standard does not require Client consent, such consent is reasonably inferred.

Therefore, having carefully considered the comments, CFP Board is making no changes to this standard from the initial proposal.

**10. PROVIDE INFORMATION TO A CLIENT**

- a. When providing or agreeing to provide Financial Advice that does not require Financial Planning in accordance with the Practice Standards, a CFP® professional must provide the following information to the Client, prior to or at the time of the Engagement, and document that the information has been provided to the Client:
  - i. A description of the services and products to be provided, how the Client pays for the products and services, and how the CFP® professional and the CFP® Professional's Firm are compensated for providing the products and services;
  - ii. A description of the additional types of costs that the Client may incur, including product management fees, surrender charges, and sales loads;
  - iii. Identification of any Related Party that will receive compensation for providing services or offering products;
  - iv. The location(s), if any, of the webpages of all relevant public websites of any governmental authority, self-regulatory organization, or professional organization that sets forth the CFP® professional's public disciplinary history or any personal bankruptcy or business bankruptcy where the CFP® professional was a Control Person; and
  - v. Any other information about the CFP® professional or the CFP® Professional's Firm that is Material to a Client's decision to engage or continue to engage the CFP® professional or the CFP® Professional's Firm.
- b. When providing or required to provide Financial Planning in accordance with the Practice Standards, a CFP® professional must provide the following information to the Client, prior to or at the time of the Engagement, in one or more written documents:
  - i. The information required to be provided when providing Financial Advice; and

**PROVIDE INFORMATION TO A CLIENT**

CFP Board proposed two standards setting forth requirements for CFP® professionals to provide information to clients and prospective clients.

**Information Provided to Prospective Clients:** The initial proposal included a standard entitled Duty to Provide Information to a Prospective Client that would require CFP® professionals to provide prospective clients, in plain English, several categories of material information about the CFP® professional and the CFP® Professional's Firm. CFP® professionals would be required to provide the information to prospective Clients at the time of the initial consultation or as soon as practicable thereafter. The delivery of a properly completed Form ADV Parts 2A and 2B would satisfy the standard.

Some commenters supported this proposed standard on the grounds that it would better enable consumers to decide whom to retain as their financial services professional. The Consumer Federation of America commented that: "Most investors' first and last investment decision is choosing who to rely on for advice. Prospective clients who receive this information at the outset of the relationship will have the information they need to make a truly informed choice about that decision and will have a better understanding about what the terms of that relationship will be."

Other commenters, however, stated that implementation and supervision would be cost-intensive, burdensome, and in some cases, unworkable. SIFMA and FSI commented that the document used to provide the information may be considered "Retail Communications" or "Correspondence" under FINRA Rule 2210. Moreover, because the standard would require CFP® professionals to provide information to prospective Clients that the SEC and/or FINRA does not require them to provide, and the only documents that a CFP® professional who is a registered representative may provide to prospective Clients are those created by and/or provided on behalf of the firm, the standard effectively would impose a requirement on broker dealers to spend resources developing and implementing a process for reviewing, approving, and supervising the document's creation and delivery. According to FSI, the proposed standard presents particular challenges in the independent business model where CFP® professionals are independent contractors who create their own marketing materials. Others added that it would be difficult to supervise or track delivery of documentation to individuals who may not become Clients. FSI further commented that having separate policies and procedures for CFP® professionals is unworkable,

- ii. The terms of the Engagement between the Client and the CFP® professional or the CFP® Professional's Firm, including the Scope of Engagement and any limitations, the period(s) during which the services will be provided, and the Client's responsibilities. A CFP® professional is responsible for implementing, monitoring, and updating unless specifically excluded from the Scope of Engagement.
- c. A CFP® professional has an ongoing obligation to provide to the Client any information that is a Material change or update to the information required to be provided to the Client. Material changes and updates to public disciplinary history or bankruptcy information must be disclosed to the Client within ninety days, together with the location(s) of the relevant webpages.

and that to maintain a consistent client experience, firms might need to apply the standard to all financial advisors, thereby increasing any compliance burden.

CFP Board's revised proposal does not include the Provide Information to a Prospective Client standard. CFP Board carefully considered the concerns that SIFMA, FSI, and others expressed about the burdens that the standard might impose under various business models. CFP Board recognizes the need to be practical in considering what changes to its Standards best serve the public interest, and the revised proposal focuses primarily on standards governing the provision of Financial Advice to actual Clients. While consumers benefit from receiving relevant information when deciding whom to retain for professional services, it is essential that they obtain the assistance of a professional who is committed to acting as a fiduciary in their best interest.

Therefore, rather than requiring CFP® professionals to comply with a standard governing the delivery of information to prospective Clients, CFP Board intends to collaborate with CFP® professionals and firms – both large and small – to develop a voluntary model pre-engagement disclosure that empowers consumers with relevant information in a format that enables firms to showcase their value proposition.

**Information Provided to Clients:** The initial proposal's standard entitled Provide Information to a Client would require CFP® professionals to provide six categories of information to Clients, most of which CFP® professionals are required to provide under the current Standards (as set forth in Rules 1.2, 1.3 and 2.2 of the Rules of Conduct and Practice Standard 100-1). This proposed standard would apply only when a CFP® professional is required to comply with the Practice Standards (i.e. when Financial Planning is required). The removal of the Provide Information to Prospective Clients standard thus would create a gap in the Standards when Financial Planning is not required. To close that gap, the revised proposal requires a CFP® professional to provide four categories of information when Financial Planning is not required, and an additional category when Financial Planning is required. The obligation to provide full disclosure of Material Conflicts of Interest is set forth elsewhere in the Standards, in the Duty to Disclose and Manage Conflicts of Interest, and thus was removed from this standard.

The initial proposal required CFP® professionals to provide Clients a description of how the Client pays, and how the CFP® professional and the CFP® Professional's Firm are compensated, for providing services and products. The revised proposal adds a requirement to include a description of the services

and products to be provided. Some commenters suggested requiring CFP® professionals to disclose the actual dollar amount of their compensation, or a good faith estimate. CFP Board decided not to include that requirement because CFP® professionals may not know the exact amount of compensation at the time of the engagement, and because the final dollar amount of compensation for some products may be unknown to the CFP® professional.

The initial and revised proposals also require a description of the additional types of costs the Client may incur, identification of any Related Party that will receive compensation for providing services or offering products, and a link to or URL for the relevant pages of websites that set forth the CFP® professional's public disciplinary or bankruptcy history. A commenter suggested requiring CFP® professionals to disclose a summary of their disciplinary history instead of a link to the relevant website. CFP Board decided not to require such a summary out of concern that a CFP® professional may unintentionally omit relevant information set forth in the public disciplinary history. A commenter offered that CFP Board should identify a definitive list of the relevant websites. CFP Board will evaluate whether to provide a collection of relevant websites in a guidance document. Finally, the revised proposal retains the requirement to disclose "any other information about the CFP® professional or the CFP® Professional's Firm that is Material to a Client's decision to engage or continue to engage the CFP® professional or the CFP® Professional's Firm." This recognizes that the facts of a particular engagement may require a CFP® professional to provide information not specifically delineated in the standard.

The revised proposal also requires CFP® professionals who are required to provide Financial Planning to provide the terms of the Engagement. The terms-of-the-engagement requirement was limited to Financial Planning as a practical concession in response to concerns over the burden that might result if the requirement were to apply to all engagements, regardless of their scope. A commenter offered that CFP Board should move or add to this standard the engagement requirements that originally were set forth in steps 6 and 7 of the Practice Standards. CFP Board agrees, and therefore added language to this standard stating: "A CFP® professional is responsible for implementing, monitoring, and updating unless specifically excluded from the Scope of Engagement."

**Form, Timing of Delivery, and Documentation:** The initial proposal would allow delivery of Information to Prospective Clients orally if there is a reasonable basis for doing so. Several commenters suggested that the standard should require written delivery. Commenters stated that oral disclosure jeopardizes a firm's ability to approve Client communications. CFP Board recognizes the value of providing the required information in writing, but is interested in providing flexibility to CFP® professionals who face unique challenges when operating under various business models. Therefore, consistent with the current Standards and the initial proposal, the revised proposal allows for oral delivery where Financial Planning is not required. The revised proposal also requires CFP® professionals to document that they have provided the information to the Client, but allows for flexibility in satisfying that standard by not requiring any particular form of documentation. When Financial Planning is required, a CFP® professional must provide the information in writing, but may do so in one or more documents.

The initial proposal requires CFP® professionals to deliver the information prior to the time of the Engagement, and then provide any information that is a Material change or update at least annually (except for public disciplinary history or bankruptcy information, which must be provided within ninety days). Comments requested that CFP Board align the delivery requirement with current regulatory requirements to reduce compliance and supervisory burdens. CFP Board agrees. In the revised proposal, CFP Board requires delivery prior to or at the time of the Engagement, which is consistent with the SEC's delivery requirement for the Form ADV Parts 2A and 2B. CFP Board also agrees with Vanguard's comment that an annual update should be required only if there is a change to the document. The revised proposal removes the requirement to provide the information annually, and instead states that a "CFP® professional has an ongoing obligation to provide the Client with any information that is a Material change or update..."

**Comments Requested:** CFP Board seeks comment on this standard, in particular on the specific categories of information required to be provided to a Client, and the requirement to document delivery of the information.

## 11. DUTIES WHEN COMMUNICATING WITH A CLIENT

A CFP® professional must provide a Client with accurate information, in accordance with the Engagement, and in response to reasonable Client requests, in a manner and format that a Client reasonably may be expected to understand.

## 12. DUTIES WHEN REPRESENTING COMPENSATION METHOD

A CFP® professional must not make false or misleading representations regarding the CFP® professional's or the CFP® Professional's Firm's method(s) of compensation.

- a. **Specific Representations**
  - i. **Fee-Only.** A CFP® professional may represent his or her compensation method as “fee-only” only if:
    - a. The CFP® professional and the CFP® Professional's Firm receive no Sales-Related Compensation; and
    - b. Related Parties receive no Sales-Related Compensation in connection with any Professional Services the CFP® professional or the CFP® Professional's Firm provides to Clients.
  - ii. **Fee-Based.** CFP Board uses the term “fee and commission” to describe the compensation method of those who receive both fees and Sales-Related Compensation. A CFP® professional who represents that his or her compensation method is “fee-based” or any other term that is not fee-only must:
    - a. Not use the term in a manner that suggests the CFP® professional or the CFP® Professional's Firm is fee-only; and
    - b. Clearly state that either the CFP® professional earns fees and commissions, or the CFP® professional is not fee-only.
- b. **Sales-Related Compensation.** Sales-Related Compensation is more than a de minimis economic benefit, including any bonus or portion of compensation, for purchasing, holding for purposes other than providing Financial Advice, or selling a Client's

## DUTIES WHEN COMMUNICATING WITH A CLIENT

The initial proposal sets forth a largely new standard for communicating with a Client that requires CFP® professionals to provide accurate and understandable information in accordance with the Engagement and in response to reasonable requests, and to disclose public discipline and bankruptcies. Some commenters disagreed with the public discipline and bankruptcy disclosure requirement. The revised proposal retains this standard but moves and consolidates it with the duty to provide information to a Client.

## DUTIES WHEN REPRESENTING COMPENSATION METHOD

Some members of the public are interested in working with a fee-only financial planner. This has created an incentive for CFP® professionals (and others) to describe their compensation method as fee-only. Given the strong public interest, CFP Board has had standards, for more than two decades, for when a CFP® professional may represent his or her compensation method as “fee-only.” CFP Board is compensation neutral. The focus of the standard always has been on accurate representations.

The initial proposal builds upon this experience. The standard begins with the principle that a CFP® professional may not make false or misleading representations of compensation method, and then addresses two specific compensation representations: fee-only and a term that the Standards previously did not specifically address, fee-based.

The initial proposal defines the term fee-only by exclusion, and addresses whose compensation the standard should consider for this purpose. A CFP® professional may describe his or her compensation method as fee-only only where:

- (a) The CFP® professional and the CFP® professional's Firm receives no Sales-Related Compensation; and
- (b) Related Parties receive no Sales-Related Compensation in connection with any Professional Services the CFP® professional or the CFP® Professional's Firm provides to Clients.

“Sales-Related Compensation,” “Related Party,” and “In Connection with any Professional Services” are defined terms that are discussed below.

The term “fee-based” is frequently used in the profession but does not have a universally-accepted meaning. At public forums CFP Board held at the outset of the standards-setting process, some

Financial Assets, or for the referral of a Client to any person or entity other than the CFP® Professional's Firm. Sales-Related Compensation includes, for example, commissions, trailing commissions, 12(b)-1 fees, spreads, transaction fees, revenue sharing, referral or solicitor fees, or similar consideration. Sales-Related Compensation does not include:

- i. Soft dollars (any research or other benefits received in connection with Client brokerage that qualifies for the "safe harbor" of Section 28(e) of the Securities Exchange Act of 1934);
  - ii. Reasonable and customary fees for custodial or similar administrative services if the fee or amount of the fee is not determined based on the amount or value of Client transactions;
  - iii. Reasonable and customary fees for Professional Services, other than for solicitations and referrals, the CFP® professional or CFP® Professional's Firm provides to a Client that are collected and distributed by another service provider, including under a Turnkey Asset Management Platform; or
  - iv. A fee the Related Party solicitor receives for soliciting clients for the CFP® professional or the CFP® Professional's Firm.
- c. **Related Party.** A person or business entity (including a trust) whose receipt of Sales-Related Compensation a reasonable CFP® professional would view as benefiting the CFP® professional or the CFP® Professional's Firm, including, for example, as a result of the CFP® professional's ownership stake in the business entity. There is a rebuttable presumption that a Related Party includes:
- i. Family Members. A member of the CFP® professional's Family and any business entity that the Family or members of the Family Control; and
  - ii. Business Entities. A business entity that the CFP® professional or the CFP® Professional's Firm Controls, or that is Controlled by or is under common Control with, the CFP® Professional's Firm.

commenters suggested prohibiting use of the term. CFP Board decided not to take that approach, but instead chose to set requirements for using the term fee-based to describe compensation method. The initial proposal makes clear that "fee-based" is equivalent to "commission and fee." The standard then provides that a CFP® professional who represents his or her compensation method as fee-based must not use the term in a manner that suggests the CFP® professional or the CFP® Professional's Firm is fee-only, and must clearly state either that the CFP® professional earns both fees and commissions, or is not fee-only.

NAPFA suggested that CFP Board address other terms that, like fee-based, may be confused with a fee-only compensation method. In response to this comment, the revised proposal applies to "any other term that is not fee-only" the same constraints that apply to the term fee-based.

Other commenters stated that the standards should define "commission" and "commission-only." CFP Board disagrees. Such definitions would add little value to the compensation-representation standard, which is already lengthy. Sales-Related Compensation includes commissions, and the proposed standard does not prohibit a CFP® professional from using the term "commission-only." A commenter also proposed that the standards require all CFP® professionals to use one of three terms to represent their compensation method: Commission and Fee, Commission-only, and Fee-only. CFP Board disagrees, and has opted to address false or misleading statements instead of dictating the ways in which CFP® professionals may describe their compensation method.

**Sales-Related Compensation:** The compensation representation standard is concerned with incentives for the purchase or sale of Financial Assets, which presents a significant Conflict of Interest. While sales incentives often are characterized as commissions, other incentives (such as 12(b)-1 fees) present the same type of conflict. The initial proposal used the term Sales-Related Compensation to capture all such compensation incentives. To account for compensation that is based on a Client's decision to hold an asset, such as an incentive to advise a Client to annuitize a pension rather than take a lump sum, the Sales-Related Compensation definition also includes compensation received from "holding" Financial Assets for purposes other than to provide Financial Advice. The latter clause thus excludes fees for managing assets.

The initial proposal sets forth common examples of Sales-Related Compensation, and explicitly excludes three types of compensation from the definition:

- d. **In Connection with any Professional Services.** Sales-Related Compensation received by a Related Party is “in connection with any Professional Services” if it results, directly or indirectly, from Client transactions referred or facilitated by the CFP® professional or the CFP® Professional’s Firm.
- e. **Safe Harbor for Related Parties.** Sales-Related Compensation received by a Related Party is not “in connection with any Professional Services” if the CFP® professional or the CFP® Professional’s Firm adopts and implements policies and procedures reasonably designed to prevent the CFP® professional or the CFP® Professional’s Firm from recommending that any Client purchase Financial Assets from or through, or refer any Clients to, the Related Party.
- f. **Misrepresentations by a CFP® Professional’s Firm.** A CFP® professional who Controls the CFP® Professional’s Firm may not allow the CFP® Professional’s Firm to make false or misleading representations of compensation method. A CFP® professional who does not Control the CFP® Professional’s Firm must correct a CFP® Professional’s Firm’s misrepresentations of compensation method by accurately representing the CFP® professional’s compensation method to the CFP® professional’s Clients.

- (1) Soft dollars (as defined in Section 28(e) of the Securities Exchange Act of 1934);
- (2) Reasonable and customary fees for custodial or similar administrative services if the fee or amount of the fee is not determined based on the amount or value of the transaction; and
- (3) A Related Party’s receipt of solicitor’s fees for soliciting clients for the CFP® professional or the CFP® Professional’s Firm.

Some commenters recommended excluding several other types of compensation, including insurance commissions, 12(b)-1 fees, and trailing commissions. CFP Board does not agree to exclude those compensation categories, as they provide an incentive for a CFP® professional to promote sales of certain kinds of products, and thus properly are treated as Sales-Related Compensation.

Others commented that CFP® professionals transitioning to a fee-only practice should be able to refer to their compensation method as fee-only while continuing to earn trailing commissions because that might more effectively promote continued product service. However, trailing commissions offer an economic incentive to retain the product that is inconsistent with a fee-only representation, and a CFP® professional who terminates trailing commissions may continue to provide Financial Advice on those products, or refer the Client to a professional who may serve as the broker-of-record or agent-of-record on the product. Therefore, CFP Board determined that the better approach is for these CFP® professionals to wait until they no longer are receiving trails before referring to their compensation method as fee-only.

A commenter also suggested that CFP Board include in the compensation-representation standard a requirement to notify Clients of changes in their compensation status. The concern underlying that comment applies to all representations, and thus is subject to the Integrity standard, which requires CFP® professionals to provide material facts that are necessary to make prior statements not misleading.

The revised proposal reflects two changes that respond to comments made about intra-firm compensation. A commenter suggested that the Sales-Related Compensation definition should address intra-firm bonuses for promoting sales of the firm’s financial products. CFP Board intended for the initial proposal to cover such compensation. For clarity, the revised proposal’s definition of Sales-Related Compensation explicitly includes “any bonus or portion of compensation.” Another commenter questioned whether referral compensation that falls within Sales-Related Compensation should include



intra-firm compensation for originating Assets Under Management to the firm. CFP Board did not intend for such compensation to be Sales-Related Compensation. Therefore, the revised proposal explicitly excludes compensation for referrals made by the CFP® professional to the CFP® Professional's Firm.

**Comments Requested:** Michael Kitces suggested that CFP Board exclude from the Sales-Related Compensation definition compensation for Professional Services that is collected and distributed as part of a turnkey asset management program ("TAMP"). CFP Board agrees. The revised proposal excludes the following from the Sales-Related Compensation definition: "Reasonable and customary fees for Professional Services, other than for solicitations and referrals, the CFP® professional or CFP® Professional's Firm provides to a Client that are collected and distributed by another service provider, including under a Turnkey Asset Management Platform." CFP Board seeks comment on this new exclusion.

**Comments Requested:** SIFMA suggested that CFP Board exclude from the Sales-Related Compensation definition the benefits that custodians provide to CFP® professionals based on the total-Client assets held at the custodian, because Client benefits are not tied to any specific transaction, product, or client. CFP Board seeks comment on this suggestion.

**Related Party:** CFP Board's current Standards consider the compensation that a Related Party receives in determining whether a CFP® professional may refer to his or her compensation method as fee-only. Related Party compensation is relevant because of the potential influence on a CFP® professional's recommendations.

The initial proposal defined a Related Party as a "person or business entity (including a trust) whose receipt of Sales-Related Compensation a reasonable CFP® professional would view as benefiting the CFP® professional or the CFP® Professional's Firm, including, for example, as a result of the CFP® professional's ownership stake in the business entity." Family members and controlled business entities are presumed to be Related Parties, but a CFP® professional may present facts showing that a reasonable CFP® professional would not consider a particular family member or business entity's receipt of compensation to benefit the CFP® professional or the CFP® Professional's Firm. There were few comments on this standard. For clarity, the revised proposal defines the terms Family and Control in the Glossary.

**In Connection with any Professional Services:**

The initial proposal introduced a new limitation on the relevance of a Related-Party's Sales-Related Compensation to a CFP® professional's representation of compensation method. The proposal provided that CFP Board will consider such compensation only if it is "in connection with any Professional Services the CFP® professional or CFP® Professional's Firm provides to Clients." This connection exists when the compensation results, directly or indirectly, from Client transactions referred (or facilitated) by the CFP® professional or the CFP® Professional's Firm. The initial proposal also included a safe harbor for CFP® professionals (and their firms) who adopt and implement policies and procedures designed to prevent recommendations that a Client purchase Financial Assets from or through, or refer any Clients to, a Related Party. CFP Board received no comments on the new Related-Party limitation, but a few comments expressed concern, without offering a basis for the concern, that the safe harbor presents opportunity for abuse. The revised proposal retains the Related-Party limitation, and the safe harbor, in their entirety.

**Misrepresentation by a CFP® Professional's Firm:**

The initial proposal addressed the situation where a CFP® Professional's Firm is making compensation representations that are inconsistent with CFP Board's Code and Standards. The proposal provided that if the CFP® professional Controls the firm, then the CFP® professional must not allow the firm to make a false or misleading misrepresentation of compensation method. If the CFP® professional does not Control the firm, then a different standard would apply. The CFP® professional must correct any misrepresentation of compensation method by accurately representing the CFP® professional's compensation method to the CFP® professional's clients. A few commenters expressed concern over making CFP® professionals responsible for the actions of firms they do not Control. CFP Board determined that the initial proposal properly addresses that concern, and the revised proposal retains that language.

**13. DUTIES WHEN RECOMMENDING, ENGAGING, AND WORKING WITH ADDITIONAL PERSONS**

- a. When engaging or recommending the selection or retention of additional persons to provide financial or Professional Services for a Client, a CFP® professional must:
  - i. Have a reasonable basis for the recommendation or Engagement based on the person's reputation, experience, and qualifications;
  - ii. Disclose to the Client, at the time of the recommendation or prior to the Engagement, any arrangement by which someone who is not the Client will compensate or provide some other material economic benefit to the CFP® professional, the CFP® Professional's Firm, or a Related Party for the recommendation or Engagement; and
  - iii. When engaging a person to provide services for a Client, exercise reasonable care to protect the Client's interests.
- b. When working with another financial or Professional Services provider on behalf of a Client, a CFP® professional must:
  - i. Communicate with the other provider about the scope of their respective services and the allocation of responsibility between them; and

**DUTIES WHEN RECOMMENDING, ENGAGING, AND WORKING WITH ADDITIONAL PERSONS**

The initial proposal contained a new standard that sets forth requirements when a CFP® professional recommends, engages, and works with additional persons. CFP Board received few comments on this standard. A commenter noted that the standard does not provide a timeframe in which a CFP® professional must inform a Client of a reasonable belief that the other provider's services were not performed in accordance with the scope of services to be provided and the allocation of responsibilities. The revised proposal fills that gap by requiring the information to be provided in a timely manner, and otherwise retains the initial proposal's language as-is.

#### 14. DUTIES WHEN SELECTING, USING, AND RECOMMENDING TECHNOLOGY

- a. A CFP® professional must exercise reasonable care and judgment when selecting, using, or recommending any software, digital advice tool, or other technology while providing Professional Services to a Client.
- b. A CFP® professional must have a reasonable level of understanding of the assumptions and outcomes of the technology employed.
- c. A CFP® professional must have a reasonable basis for believing that the technology produces reliable, objective, and appropriate outcomes.

#### 15. REFRAIN FROM BORROWING OR LENDING MONEY AND COMMINGLING FINANCIAL ASSETS

- a. A CFP® professional may not, directly or indirectly, borrow money from or lend money to a Client unless:
  - i. The Client is a member of the CFP® professional's Family; or
  - ii. The lender is a business organization or legal entity in the business of lending money.
- b. A CFP® professional may not commingle a Client's Financial Assets with the Financial Assets of the CFP® professional or the CFP® Professional's Firm.

#### DUTIES WHEN SELECTING, USING, AND RECOMMENDING TECHNOLOGY

CFP Board's current Standards do not explicitly address the use of technology. In view of the growing use of technology and digital advice tools in the financial planning profession, CFP Board proposed a new, principles-based standard setting forth duties when selecting, recommending, and using technology. Commenters generally supported the new standard. One commenter requested that CFP Board recognize that CFP® professionals at large firms may have a limited ability to select the technology that they may use. This issue is addressed in the standard, however, as it is one fact relevant to the reasonableness of a CFP® professional's care. Therefore, CFP Board has not made any substantive revisions to the initial proposal.

#### REFRAIN FROM BORROWING OR LENDING MONEY AND COMMINGLING FINANCIAL ASSETS

The initial proposal retained the current standards governing the borrowing and lending of money and commingling of Financial Assets, with minor revision, for example, to make the ban on commingling absolute. Professor Arthur Laby suggested that the borrowing and lending standard also should prohibit indirect borrowing and lending. CFP Board agrees, and implemented that suggestion. The revised proposal also moves to the Glossary the definition of Family initially set forth in this standard, and revises that definition based on a careful analysis of more than a dozen definitions used by the DOL, FINRA, IRS, and SEC.

## B. FINANCIAL PLANNING AND APPLICATION OF THE PRACTICE STANDARDS FOR THE FINANCIAL PLANNING PROCESS

1. **Financial Planning Definition.** Financial Planning is a collaborative process that helps maximize a Client's potential for meeting life goals through Financial Advice that integrates relevant elements of the Client's personal and financial circumstances.

## FINANCIAL PLANNING AND APPLICATION OF THE PRACTICE STANDARDS FOR THE FINANCIAL PLANNING PROCESS

### Financial Planning Definition

One of CFP Board's goals in revising the Standards was to develop a shorter Financial Planning definition that provides greater accessibility to the public without sacrificing clarity. The initial proposal set forth a new Financial Planning definition that consists of thirty carefully chosen words, discussed below.

- **“Financial Planning is a collaborative process:”** CFP Board is committed to the fundamental principle that Financial Planning is a process, not a document. The process is set forth in the Practice Standards. Collaboration also is critical. The process requires collaboration between the CFP® professional and the Client, and potentially others.
- **“That helps:”** Financial Planning is not merely designed to help. Financial Planning does help. These two words make a strong statement that recognizes the value of Financial Planning, without equivocation.
- **“Maximize a Client's potential:”** The goal is for each Client to maximize his or her potential. Financial Planning does not guarantee a particular result, but it does help maximize a Client's potential.
- **“For meeting life goals:”** The purpose of Financial Planning is to develop and meet goals. Defining the goals as “financial goals” would be too narrow. The goal of each Client is to obtain what they want in life. Financial goals are a means to that end, not the end itself.
- **“Through Financial Advice:”** Financial Advice is the financial planner's tool. While a financial planner is focused on life goals, the advice that a financial planner provides is Financial Advice.
- **“That integrates relevant elements of the Client's personal and financial circumstances.”** Integration is essential to Financial Planning. A financial planner examines a Client's circumstances and evaluates how one element of the Client's life affects another element of a Client's life. Relevant elements vary from Client to Client.

Several commenters found the initial proposal's revised Financial Planning definition to be crisp, clear, and accurate. Eighty-five percent of the CFP® professionals who responded to a survey either "strongly agreed" or "agreed" with the proposed revised Financial Planning definition.

A few commenters, including SIFMA, suggested that the initial proposal's distinction between Financial Planning and Financial Advice is not clear. These commenters suggested that the proposal defines Financial Planning so broadly that most, if not all, investment advice would meet the definition. They requested that CFP Board limit Financial Planning to those services that create an advisory relationship under the Advisers Act. CFP Board does not agree. The initial proposal sets forth separate definitions for Financial Advice and Financial Planning. The scope of the former is much broader than the scope of the latter, and the initial proposal elsewhere confirms this construct, both by stating that a CFP® professional provides Financial Planning "through" Financial Advice, and by providing factors that CFP Board will weigh in determining whether Financial Advice requires Financial Planning.

A commenter suggested that the Financial Planning definition's reference to "life goals" implies that a CFP® professional must provide life planning. CFP Board disagrees. The financial planning definition states that a CFP® professional provides Financial Advice, not life advice. Moreover, a CFP® professional does not need to engage in life planning to determine a Client's life goals.

Many commenters expressed concern that the word "maximize" is not a perfect fit for the Financial Planning definition. CFP Board carefully considered a long list of alternatives, including achieve, advance, enhance, foster, further, improve, increase, optimize, realize, and support. Ultimately, CFP Board determined that maximize is the word that best fits because the goal of a CFP® professional providing Financial Planning is to make the most out of the Client's potential. Other terms come close to capturing that meaning, but fall short. Achieve and realize are more precise modifiers for goals than the potential to meet goals. Foster might be appropriate, but only if the second or third-level definition were to apply. Optimize implies perfection, which does not capture the intended meaning. Other terms, such as advance, enhance, further, improve, increase, and support, are too weak because just getting better is not a sufficiently high standard.

2. **Examples of Relevant Elements of the Client’s Personal and Financial Circumstances.** Relevant elements of personal and financial circumstances vary from Client to Client, and may include the Client’s need for or desire to: develop goals, manage assets and liabilities, manage cash flow, identify and manage risks, identify and manage the financial effect of health considerations, provide for educational needs, achieve financial security, preserve or increase wealth, identify tax considerations, prepare for retirement, pursue philanthropic interests, and address estate and legacy matters.

CFP Board also does not agree that “maximize” is promissory given the context in which the word is used. Maximize is qualified by “helps” and modifies a client’s “potential,” not any specific financial performance. CFP Board thus respectfully determined that the comments did not call for a change to the initial proposal’s Financial Planning definition.

**Examples of Relevant Elements of the Client’s Personal and Financial Circumstances**

The initial proposal did not define “relevant elements” because those words offer appropriate precision: what is “relevant” to each Client depends on his or her personal or financial circumstances. Instead, the initial proposal provided examples of relevant elements. The examples focus on what the Client needs or wants, which is a slight departure from the current Standards, which reference (in “Financial Planning Subject Areas”) the services a CFP® professional provides.

CFP Board received a number of comments to the initial proposal’s list of relevant elements. A commenter offered that “manage cash flow” is better and more modern than “manage budget.” CFP Board agrees. CFP Board also modified “manage taxes” to “identify tax considerations” to avoid the implication, suggested by a commenter, that a CFP® professional who is not competent to provide tax advice is required to do so. The revised proposal lists “identify and manage the financial effect of health considerations” instead of “address health considerations” because of a comment that the standard should avoid any implication that a CFP® professional is required to provide health or medical advice. Another commenter requested that the list include insurance as well as risk, but CFP Board does not agree, because insurance is a potential solution for risk, and thus is not the best expression of a Client’s need or desire. Finally, CFP Board added “managing assets and liabilities” to specifically address debt, which many consumers have a need or desire to address.

The revised proposal thus identifies as relevant elements a Client’s needs or desires to develop goals, manage assets and liabilities, manage a cash flow, identify and manage risks, identify and manage the financial effect of address health considerations, provide for educational needs, achieve financial security, preserve or increase wealth, identify tax considerations, prepare for retirement, pursue philanthropic interests, and address estate and legacy matters.

3. **Application of Practice Standards.** The Practice Standards set forth the financial planning process. A CFP® professional must comply with the Practice Standards when:

- a. The CFP® professional agrees to provide or provides (i) Financial Planning; or (ii) Financial Advice that requires integration of relevant elements of the Client's personal and/or financial circumstances in order to act in the Client's best interest ("Financial Advice that Requires Financial Planning"); or
- b. The Client has a reasonable basis to believe the CFP® professional will provide or has provided Financial Planning.

### **Application of Practice Standards**

CFP Board developed Practice Standards in the late 1990s to codify the financial planning process. The current Standards provide that the Financial Planning process set forth in the Practice Standards applies when a CFP® professional is providing Financial Planning or material elements of Financial Planning. CFP Board determined that there are instances where the Financial Advice a CFP® professional will provide a Client requires a CFP® professional to provide Financial Planning. A CFP® professional should also be required to provide Financial Planning to a Client who reasonably expects to receive it. In other words, the facts and circumstances will dictate whether Financial Planning is required.

The initial proposal stated that the Practice Standards set forth the Financial Planning process, and identified the three circumstances when Financial Planning is required:

- (1) When the CFP® professional agrees to provide or provides Financial Planning;
- (2) When the CFP® professional agrees to provide or provides Financial Advice that requires integration of relevant elements of the Client's personal and/or financial circumstances in order to act in the Client's best interest; and
- (3) When the Client has a reasonable basis to believe the CFP® professional will provide or has provided Financial Planning.

Thus, while the current Standards examines the Client's subjective understanding and intent in engaging the CFP® professional as one relevant factor in determining whether Financial Planning is required, the initial proposal adopted an objective standard that is sufficient on its own to require Financial Planning, if satisfied.

Some commenters suggested that this standard would enable a CFP® professional to avoid compliance with the proposed Code and Standards. CFP Board disagrees. The proposed standard addresses only when a CFP® professional must comply with the Practice Standards. The other standards — including the fiduciary duty that applies when providing Financial Advice — applies even when the Practice Standards do not.



4. **Integration Factors.** Among the factors that CFP Board will weigh in determining whether a CFP® professional has agreed to provide or provided Financial Advice that Requires Financial Planning are:
- a. The number of relevant elements of the Client's personal and financial circumstances that the Financial Advice affects;
  - b. The portion and amount of the Client's Financial Assets that the Financial Advice may affect;
  - c. The length of time the Client's personal and financial circumstances may be affected by the Financial Advice;
  - d. The effect on the Client's overall exposure to risk if the Client implements the Financial Advice; and
  - e. The barriers to modifying the actions taken to implement the Financial Advice.

### Integration Factors

The initial proposal provided an updated list of factors CFP Board will weigh in determining whether Financial Planning is required. The updated list did not include the "Client's understanding and intent in engaging the CFP® professional" because a Client's understanding, if objectively reasonable, now would be dispositive on the issue of whether Financial Planning is required. The list also adopted a Client-centric focus that examined the relevant elements of the Client's circumstances instead of the kinds of services that a CFP® professional provides. The comprehensiveness of the CFP® professional's data gathering also did not appear in the list, because the factors focus on the advice's effect (or potential effect) on the Client, not the work that the CFP® professional performed. Finally, the initial proposal expanded upon the "breadth and depth of the recommendations" factor. The result is the following five-factor list:

1. The number of relevant elements of the Client's personal and financial circumstances that the Financial Advice affects.

Some commenters stated that CFP Board should remove this factor because a CFP® professional may be required to provide Financial Planning when addressing one relevant element. CFP Board agrees that one relevant element may be sufficient to require Financial Planning. However, that neither lessens the significance of multiple relevant elements, nor precludes a finding that Financial Planning is required based upon a weighing of all factors when the Financial Advice affects one relevant element.

2. The portion and amount of the Client's Financial Assets that the Financial Advice may affect.

Some commenters said that Financial Advice could affect something other than Financial Assets or have a significant effect on a small portion of Financial Assets. Those comments, while true, prompted no change because the factor focuses on both the portion and amount of Financial Assets, and the effect on Financial Assets is but one factor that CFP Board would weigh in conjunction with others.

5. **CFP Board Evaluation.** In a disciplinary proceeding in which a CFP® professional denies CFP Board's allegation that the CFP® professional was required to comply with the Practice Standards, the CFP® professional must demonstrate that compliance with the Practice Standards was not required.

3. The length of time the Client's personal and financial circumstances may be affected by the Financial Advice.
4. The effect on the Client's overall exposure to risk if the Client implements the Financial Advice.
5. The barriers to modifying the actions taken to implement the Financial Advice.

CFP Board received few if any comments on these three factors.

CFP Board is therefore adopting the five-factor list as proposed.

### **CFP Board Evaluation**

The initial proposal offered a rebuttable presumption that a person providing Financial Advice who is certified to provide Financial Planning is required to provide Financial Planning. The rebuttable presumption would serve two purposes. First, Financial Planning is beneficial to the public, and the presumption would promote Financial Planning. Second, a CFP® professional is in the best position to explain why Financial Planning was not required in a particular circumstance.

Several commenters objected to the rebuttable presumption on the ground that Clients should be able to choose what services they want to obtain from a CFP® professional, and since CFP® professionals offer other services in addition to Financial Planning, it would be inappropriate to assume that Financial Planning is required in all Engagements. While CFP Board does not agree that the rebuttable presumption would limit Client choice, CFP Board has removed the rebuttable presumption from the revised proposal. In its place, the revised proposal provides that when CFP Board alleges that a CFP® professional was required to provide Financial Planning, the CFP® professional must demonstrate that he or she was not required to comply with the Practice Standards. This standard thus functions as an evidentiary presumption that arises solely in the enforcement arena.

**6. No Client Agreement to Engage for Financial Planning.** If a CFP® professional otherwise must comply with the Practice Standards, but the Client does not agree to engage the CFP® professional to provide Financial Planning, the CFP® professional must:

- a. Not enter into the Engagement;
- b. Limit the Scope of the Engagement to services that do not require application of the Practice Standards, and describe to the Client the services the Client requests that the CFP® professional will not be performing;
- c. Inform the Client how Financial Planning would benefit the Client and how the decision not to engage the CFP® professional to provide Financial Planning may limit the CFP® professional's Financial Advice, and provide the requested services without complying with the Practice Standards; or
- d. Terminate the Engagement.

### **No Client Agreement to Engage for Financial Planning**

The initial proposal included a new standard that applies when a CFP® professional is required to comply with the Practice Standards, but the Client does not agree to engage the CFP® professional to provide Financial Planning. A CFP® professional is not required to provide Financial Planning for free. Therefore, CFP Board considered whether, in that circumstance, to prohibit a CFP® professional from providing Financial Advice to the Client (in which case the Client either may receive no Financial Advice, or receive Financial Advice from someone who has not satisfied CFP Board's standards for competence and ethics), or allow the CFP® professional to provide Financial Advice to the Client, subject to certain requirements. CFP Board determined that the latter choice better serves the public interest. Thus, the standard required a CFP® professional to inform the Client how the decision not to engage for Financial Planning may constrain the CFP® professional's Financial Advice, and then would either:

- (a) Limit the Scope of the Engagement to services that do not require application of the Practice Standards, and describe to the Client the services the Client has requested that the CFP® professional will not be performing;
- (b) Not enter into, or terminate the Engagement; or
- (c) Provide the requested services subject to the constraint that occurs from not providing Financial Planning.

Some commenters stated that CFP Board should not require a CFP® professional to inform the Client how the decision not to receive Financial Planning may constrain the Financial Advice, because that may have a negative effect on the Client relationship. This led to two substantive changes. The revised proposal (1) requires a CFP® professional to inform the Client of both the benefits of Financial Planning and the consequences of not receiving Financial Planning (the potential limits on the CFP® professional's Financial Advice), but (2) only when the CFP® professional is providing the requested services without Financial Planning, as that is where the effect of not providing Financial Planning is most acute. The revised proposal also makes other technical revisions.

Under the revised proposal, assume that a Client seeks Financial Advice on topics 1, 2, and 3, and that the Financial Advice would require Financial Planning. If the Client refuses to engage the CFP® professional for Financial Planning, the CFP® professional has four options:

- (a) The CFP® professional may elect not to enter into the Engagement.
- (b) The CFP® professional may limit the Scope of the Engagement to Financial Advice topic 1 if that would not require Financial Planning, and inform the Client that the CFP® professional will not be providing Financial Advice on topics 2 and 3.
- (c) The CFP® professional may inform the Client how Financial Planning would benefit the Client and how the decision not to engage the CFP® professional to provide Financial Planning may limit the CFP® professional's Financial Advice, and provide Financial Advice on topics 1, 2, and 3 without complying with the Practice Standards.
- (d) Assuming there is an Engagement, the CFP® professional also may elect to terminate the Engagement.

### C. PRACTICE STANDARDS FOR THE FINANCIAL PLANNING PROCESS

In complying with the Practice Standards, a CFP® professional must act prudently in documenting information, as the facts and circumstances require, taking into account the significance of the information, the need to preserve the information in writing, the obligation to act in the Client's best interest, and the CFP® Professional's Firm's policies and procedures.

#### 1. Understanding the Client's Personal and Financial Circumstances

- a. **Obtaining Qualitative and Quantitative Information.** A CFP® professional must describe to the Client the qualitative and quantitative information concerning the Client's personal and financial circumstances needed to fulfill the Scope of the Engagement and collaborate with the Client to obtain the information.
  - i. Examples of qualitative or subjective information include the Client's health, life expectancy, family circumstances, values, attitudes, expectations, earnings potential, risk tolerance, goals, needs, priorities, and current course of action.

### PRACTICE STANDARDS FOR THE FINANCIAL PLANNING PROCESS

CFP Board developed Practice Standards approximately fifteen years ago to establish norms for the delivery of Financial Planning, advance professionalism in Financial Planning, and enhance the value of the Financial Planning process. Since that time, the Practice Standards have gained widespread acceptance in the Financial Planning profession, with the result that the Practice Standards no longer need some of the accompanying material, including the introductory sections that appear before the Practice Standards and the supplementary sections that appear after each Practice Standard.

The initial proposal made other important refinements to the structure of the Practice Standards. The revised Practice Standards set forth more detail to provide greater clarity for the Financial Planning process. CFP Board also moved the Scope of the Engagement standard that originally served as the first step in the Financial Planning process to elsewhere in the Code and Standards, with the result that the Financial Planning process solely addresses the delivery of Financial Planning services. The initial proposal also required a CFP® professional to mutually define the Client's goals after obtaining information and assessing the Client's personal and financial circumstances, and not before, as the

- ii. Examples of quantitative or objective information include the Client's age, dependents, other professional advisors, income, expenses, cash flow, savings, assets, liabilities, available resources, liquidity, taxes, employee benefits, government benefits, insurance coverage, estate plans, education and retirement accounts and benefits, and capacity for risk.
- b. **Analyzing Information.** A CFP® professional must analyze the qualitative and quantitative information to assess the Client's personal and financial circumstances.
- c. **Addressing Incomplete Information.** If unable to obtain information necessary to fulfill the Scope of the Engagement, the CFP® professional must either limit the Scope of the Engagement to those services the CFP® professional is able to provide or terminate the Engagement.

Practice Standards currently require. This revised ordering recognizes that a CFP® professional must understand the Client's circumstances to collaborate effectively with the Client to identify and then select goals. CFP Board also separated developing recommendations and presenting recommendations into distinct steps, to more clearly reflect their differences and the importance of each to the Financial Planning process.

A commenter stated that the revised Practice Standards are too complex, legalistic, and detailed. CFP Board disagrees with that opinion. CFP Board believes that the initial proposal set forth Practice Standards that are specific, comprehensive, and reflect the modern practice of Financial Planning. In a survey of CFP® professionals, 83% of those who responded agreed that the revised Practice Standards set forth in the initial proposal effectively capture the Financial Planning process.

**Documentation Requirement:** The initial proposal added a principles-based documentation standard as a new duty to Clients that would require CFP® professionals to act prudently in documenting information as the facts and circumstances require. Many commenters expressed strong support for the documentation standard, while others stated that the standard would be problematic under certain business models, and might conflict with a firm's policies and procedures. The documentation standard benefits consumers, but CFP Board also appreciates the practical challenges that the standard may present in certain circumstances. Therefore, in the revised proposal, the documentation standard applies only when a CFP® professional is required to provide Financial Planning, and expressly takes into account the CFP® Professional's Firm's policies and procedures.

At the beginning of this standard, the revised proposal states that a CFP® professional who is required to comply with the Practice Standards must act prudently in documenting information, as the facts and circumstances require, taking into account the significance of the information, the need to preserve the information in writing, the obligation to act in the Client's best interest, and the CFP® Professional's Firm's policies and procedures. FPA forwarded questions from its members about this standard. In response, CFP Board notes that this is an objective, principles-based standard, the application of which depends on the facts and circumstances. CFP Board elected not to provide specific standards for how a CFP® professional must document the information, or where a CFP® professional must maintain the information, because a CFP® professional may have several options available.

### Understanding the Client's Personal and Financial Circumstances

The first step in the Financial Planning process under the initial proposal is to understand the Client's personal and financial circumstances. A CFP® professional satisfies this standard by obtaining qualitative and quantitative information, analyzing the information, and addressing any incomplete information. The initial proposal presented broadly written examples of qualitative and quantitative information that a CFP® professional must collaborate with the Client to obtain that captures the myriad circumstances that might arise. Not all would apply to each Client, which is why the initial proposal described them as examples, not requirements. Most comments supported this standard. CFP Board solicited and received a substantial number of comments on the examples of qualitative and quantitative information, and the revised proposal reflects a number of technical edits resulting from that feedback. The revised proposal also reflects that the qualitative information may be categorized as subjective, and the quantitative information may be categorized as objective. Finally, CFP Board reorganized the examples to reflect the order in which they are likely to arise.

## 2. Identifying and Selecting Goals

- a. **Identifying Potential Goals.** A CFP® professional must discuss with the Client the CFP® professional's assessment of the Client's financial and personal circumstances, and help the Client identify goals, noting the impact that selecting a particular goal may have on other goals. In helping the Client identify goals, the CFP® professional must discuss with the Client, and apply, reasonable assumptions and estimates. These may include life expectancy, inflation rates, tax rates, investment returns, and other Material assumptions and estimates.
- b. **Selecting and Prioritizing Goals.** A CFP® professional must help the Client select and prioritize goals. The CFP® professional must discuss with the Client any goals the Client has selected that the CFP® professional believes are not realistic.

## Identifying and Selecting Goals

The second step in the Financial Planning process is to identify and select goals. This ordering reflects that a CFP® professional is unable to identify and select goals until after the CFP® professional understands the Client's personal and financial circumstances. The standard requires a CFP® professional to discuss with the Client the CFP® professional's assessment of the Client's financial and personal circumstances, and to help the Client identify goals, including by discussing and applying reasonable assumptions and estimates. A commenter stated that the language requiring a CFP® professional to discuss with the Client the impact that selecting a particular goal may have on other goals is premature because it depends on the recommendations used to achieve the goals. CFP Board disagrees. A CFP® professional has sufficient information to discuss the subject with the Client at this time. Other commenters identified additional assumptions for inclusion in the standard. CFP Board did not add to the list of assumptions and estimates, however, because it believes the existing list to be sufficiently comprehensive. A commenter suggested requiring the goals to be listed in the engagement. CFP Board but does not agree that the Scope of Engagement requires that level of specificity. The revised proposal makes technical edits to reflect that the requirement is to identify potential goals, and to both select and prioritize goals.

### 3. Analyzing the Client's Current Course of Action and Potential Alternative Course(s) of Action

- a. **Analyzing Current Course of Action.** A CFP® professional must analyze the Client's current course of action, including the material advantages and disadvantages of the current course and whether the current course maximizes the potential for meeting the Client's goals.
- b. **Analyzing Potential Alternative Courses of Action.** Where appropriate, a CFP® professional must consider and analyze one or more potential alternative courses of action, including their material advantages and disadvantages, whether they help maximize the potential for meeting the Client's goals, and how they integrate the relevant elements of the Client's personal and financial circumstances.

### 4. Developing the Financial Planning Recommendation(s)

From the potential courses of action, a CFP® professional must select one or more recommendations designed to maximize the potential for meeting the Client's goals. The recommendation may be to continue the Client's current course of action. For each recommendation selected, the CFP® professional must consider the following information:

- a. The assumptions and estimates used to develop the recommendation;
- b. The basis for making the recommendation, including how the recommendation is designed to maximize the potential to meet the Client's goals, the anticipated material effects of the recommendation on the Client's financial and personal circumstances, and how the recommendation integrates relevant elements of the Client's personal and financial circumstances;
- c. The timing and priority of the recommendation; and
- d. Whether the recommendation is independent or must be implemented with another recommendation.

### Analyzing the Client's Current Course of Action and Potential Alternative Course(s) of Action

The next step is to analyze the Client's current course of action and potential recommendations. The proposed requirement to analyze the current course of action is new, and reflects the possibility that no adjustments are necessary. A CFP® professional would be required to determine whether the current course maximizes the potential for meeting the Client's goals, and where appropriate, analyze one or more potential recommendations against the same standard. The few comments on this standard were favorable. In response to a comment that the standard for analyzing potential recommendations in step 3 of the process is similar to the standard for developing recommendations in step 4 of the process, the revised proposal refers to "alternative courses of action" in the third step instead of "recommendations." An alternative course of action does not become a recommendation until the CFP® professional selects it as the recommendation in step 4 of the process.

### Developing the Financial Planning Recommendation(s)

A CFP® professional then develops the financial planning recommendation(s) by selecting, from among the potential alternative courses of action, one or more recommendations designed to maximize the potential for meeting the Client's goals. For each recommendation, the CFP® professional must consider the assumptions and estimates, the basis for making the recommendation (including specific factors set forth in the standard), the timing and priority of the recommendation, and whether the recommendation is independent or must be implemented with one or more other recommendations. CFP Board received positive comments on this standard. Some commenters suggested that CFP Board retain a 6-step Financial Planning process by combining the development and presentation of the recommendation, as set forth in the current Standards. CFP Board disagrees. The focus should be on identifying the appropriate steps in the process, not on retaining a specific number of steps. CFP Board believes that developing and presenting the recommendation are sufficiently distinct steps. Indeed, the person who develops the recommendation may not be the person who presents the recommendation to the Client.

## 5. Presenting the Financial Planning Recommendation(s)

A CFP® professional must present to the Client the selected recommendations and the information that was required to be considered when developing the recommendation(s).

## 6. Implementing the Financial Planning Recommendation(s)

- a. **Addressing Implementation Responsibilities.** A CFP® professional must establish with the Client whether the CFP® professional has implementation responsibilities. When the CFP® professional has implementation responsibilities, the CFP® professional must communicate to the Client the recommendation(s) being implemented and the responsibilities of the CFP® professional, the Client, and any third-party with respect to implementation.
- b. **Identifying, Analyzing, and Selecting Actions, Products and Services.** A CFP® professional who has implementation responsibilities must identify and analyze actions, products, and services designed to implement the recommendations. The CFP® professional must consider the basis for each selection, which must include:
  - i. How the action, product, or service is designed to implement the CFP® professional's recommendation; and
  - ii. The advantages and disadvantages of the action, product, or service relative to reasonably available alternatives.

## Presenting the Financial Planning Recommendation(s)

The next step requires the CFP® professional to present the recommendation to the Client and discuss with the Client the information that was required to be considered when developing the recommendation. Several commenters urged CFP Board to require CFP® professionals to deliver a written financial plan or identify the required elements of a financial plan. CFP Board disagrees. Not all plans must be in writing, nor must they all have the same elements. The better course is for CFP® professionals to exercise professional judgment in determining how best to present financial plans to Clients. Another commenter suggested that the standard allow a CFP® professional to present the information to the Client without requiring a CFP® professional to “discuss” the information with the Client. CFP Board agrees. While a discussion may be appropriate, it is not required in all circumstances.

## Implementing the Financial Planning Recommendation(s)

The sixth step sets forth the requirements when implementing the Financial Planning recommendation(s), including (a) addressing implementation responsibilities, (b) identifying, analyzing, and selecting actions, products and services, (c) recommending actions, products and services for implementation, and (d) selecting and implementing actions.

Some commenters said that the implementation standard is too detailed, lengthy, and restrictive. CFP Board disagrees with that opinion. Implementation is a critical step of the Financial Planning process, and the initial proposal provides important requirements for CFP® professionals who provide implementation services. CFP Board did make two changes in response to comments. The revised proposal states that a CFP® Professional must establish with the Client the implementation responsibilities, rather than requiring a CFP® professional to discuss them with the Client as set forth in the initial proposal. In addition, the revised proposal moves language regarding implementation responsibilities to the Scope of Engagement standard set forth in the Duty to Provide Information to a Client the standard. (As set forth above, that language states that a CFP® professional is responsible for implementation unless implementation is specifically excluded from the Scope of Engagement.)



- c. **Recommending Actions, Products, and Services for Implementation.** A CFP® professional who has implementation responsibilities must recommend one or more actions, products and services to the Client. The CFP® professional must discuss with the Client the basis for selecting an action, product, or service, the timing and priority of implementing the action, product, or service, and describe any Conflicts of Interest concerning the action, product, or service.
- d. **Selecting and Implementing Actions, Products, or Services.** A CFP® professional who has implementation responsibilities must help the Client select and implement the actions, products, or services. The CFP® professional must discuss with the Client any Client selection that deviates from the actions, products, and services the CFP® professional recommended.

## 7. Monitoring Progress and Updating

- a. **Monitoring and Updating Responsibilities.** A CFP® professional must establish with the Client whether the CFP® professional has monitoring and updating responsibilities. When the CFP® professional has responsibilities for monitoring and updating, the CFP® professional must communicate to the Client:
- i. Which actions, products, and services are and are not subject to the CFP® professional's monitoring responsibility;
  - ii. How and when the CFP® professional will monitor the actions, products, and services;
  - iii. The Client's responsibility to inform the CFP® professional of any Material changes to the Client's qualitative and quantitative information;
  - iv. The CFP® professional's responsibility to update the financial planning recommendations; and
  - v. How and when the CFP® professional will update the financial planning recommendations.

## Monitoring Progress and Updating

The Monitoring Progress and Updating standard set forth in the initial proposal is almost entirely new. This standard requires CFP® professionals to (a) address monitoring and updating responsibilities (including by communicating very specific information to the Client concerning the scope of the respective responsibilities), (b) monitor the Client's progress, (c) obtain current qualitative and quantitative information, and (d) update goals, recommendations, or implementation decisions.

Most comments on the standard were positive. The revised proposal reflects several changes that are similar to those made in the implementation standard. It states that a CFP® professional must "establish" with a Client the monitoring and updating responsibilities, not "discuss" them with the Client as set forth in the initial proposal. The revised proposal makes clear that several of the standard's requirements apply only when the CFP® professional has monitoring or updating responsibilities. Finally, the revised proposal moves to the Scope of Engagement standard set forth in the Duty to Provide Information to a Client the standard providing that a CFP® professional is responsible for monitoring and updating unless specifically excluded from the Scope of Engagement.

- b. **Monitoring the Client's Progress.** A CFP® professional who has monitoring responsibility must analyze, at appropriate intervals, the progress toward achieving the Client's goals. The CFP® professional must review with the Client the results of the CFP® professional's analysis.
- c. **Obtaining Current Qualitative and Quantitative Information.** A CFP® professional who has monitoring responsibility must collaborate with the Client in an attempt to obtain current qualitative and quantitative information concerning the Client's personal and financial circumstances.
- d. **Updating Goals, Recommendations, or Implementation Decisions.** Where a CFP® professional has updating responsibility, and circumstances warrant changes to the Client's goals, recommendations, or selections of actions, products or services, the CFP® professional must update as appropriate in accordance with these Practice Standards.

## D. DUTIES OWED TO FIRMS AND SUBORDINATES

### 1. Use Reasonable Care When Supervising

A CFP® professional must exercise reasonable care when supervising persons acting under the CFP® professional's direction, including employees and other persons over whom the CFP® professional has responsibility, with a view toward preventing violations of applicable laws, rules, regulations, and these Standards.

### 2. Comply with Lawful Objectives of CFP® Professional's Firm

A CFP® professional:

- a. Will be subject to discipline by CFP Board for violating policies and procedures of the CFP® Professional's Firm that do not conflict with these Standards.
- b. Will not be subject to discipline by CFP Board for violating policies and procedures of the CFP® Professional's Firm that conflict with these Standards.

### 3. Provide Notice of Public Discipline

A CFP® professional must promptly advise the CFP® Professional's Firm, in writing, of any public discipline imposed by CFP Board.

## DUTIES OWED TO FIRMS AND SUBORDINATES

The initial proposal set forth duties CFP® professionals owe to their employer or principal. Consistent with language used elsewhere in the Standards, the revised proposal instead refers to the CFP® Professional's Firm.

### Use Reasonable Care When Supervising

The initial proposal included an updated standard governing a CFP® professional's supervisory responsibility that accounts for the myriad ways in which supervisory responsibilities may arise. CFP Board received no comments on this standard and retained the initial proposed language in the revised proposal.

### Comply with Lawful Objectives of CFP Professional's Firm

CFP Board's current Standards require CFP® professionals to comply with the firm's policies and procedures. The initial proposal retained that standard and addressed the situation where a firm policy violates CFP Board's Standards. The proposal makes clear that a CFP® professional will not be subject to discipline for failing to comply with a firm policy in that circumstance. A commenter suggested that the standard should limit potential violations to those circumstances where the firm policies "agree" with CFP Board's Standards. However, in many circumstances, the firm's standard addresses conduct that is not directly addressed in the Standards. While that comment did not result in a change, in the revised proposal, CFP Board divided the standard into two subsection for clarity.

### Provide Notice of Public Discipline

The initial proposal also retains the requirement to notify the CFP® Professional's Firm of CFP Board discipline. While the current Standards limit that obligation to suspensions and revocations, the initial proposal extends the requirement to all public discipline, and requires prompt notification. CFP Board did not receive any comments on this standard, and retained the initial proposed language in the revised proposal.

## E. DUTIES OWED TO CFP BOARD

1. **Definitions.** The following definitions apply:

- a. **Felony.** A felony offense, or for jurisdictions that do not differentiate between a felony and a misdemeanor, an offense punishable by a sentence of at least one-year imprisonment or a fine of at least \$1,000.
- b. **Relevant Misdemeanor.** A criminal offense, that is not a Felony, for conduct involving fraud, theft, misrepresentation, other dishonest conduct, crimes of moral turpitude, violence, or a second (or more) alcohol and/or drug-related offense.
- c. **Regulatory Investigation.** An investigation initiated by a federal, state, local, or foreign governmental agency, self-regulatory organization, or other regulatory authority. A Regulatory Investigation does not include preliminary or routine regulatory inquiries or requests for information, deficiency letters, “blue sheet” requests or other trading questionnaires, or examinations.
- d. **Regulatory Action.** An action or proceeding initiated by a federal, state, or foreign governmental agency, self-regulatory organization, or other regulatory authority.
- e. **Civil Action.** A lawsuit, arbitration, or mediation.
- f. **Finding.** A finding includes an adverse final action and a consent decree in which the finding is neither admitted nor denied, but does not include a deficiency letter, examination report, memorandum of understanding, or similar informal resolution of a matter.
- g. **Minor Rule Violation.** A violation of a self-regulatory organization rule designated as a minor rule violation under a plan approved by the U.S. Securities and Exchange Commission. A rule violation may be designated as “minor” under a plan if the sanction imposed consists of a fine of \$2,500 or less, and if the sanctioned person does not contest the fine.

## DUTIES OWED TO CFP BOARD

Rule 6.5 of the current Rules of Conduct states that a CFP® professional “shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificant, upon the CFP® marks, or upon the profession.” Over time, CFP Board’s Disciplinary and Ethics Commission has identified conduct that violates this standard, such as a personal bankruptcy. The initial proposal retained Rule 6.5’s principles-based standard and identified specific conduct that violates the standard. The initial proposal also required CFP® professionals to report conduct that violates the standard within thirty days, provide a narrative statement about the reported matter, cooperate with CFP Board, and comply with the Terms and Conditions of Certification and License.

The initial proposal made a significant change to CFP Board’s bankruptcy procedures. Prior to July 2012, all CFP® professionals who sought and received bankruptcy protection were required to go through CFP Board’s disciplinary process. Beginning in July 2012, pursuant to the Bankruptcy Disclosure Procedures, when CFP Board learned about a CFP® professional’s first bankruptcy, CFP Board began disclosing the bankruptcy to the public through a note on CFP Board’s website and in a press release. While this did not result in discipline, the effect is similar to a public letter of admonition. The Commission on Standards recognized that in certain limited circumstances, a bankruptcy does not demonstrate a CFP® professional’s inability to manage his or her finances. Therefore, the initial proposal restored the prior framework by having the Disciplinary and Ethics Commission handle bankruptcy matters on a case-by-case basis.

CFP Board received several comments on the proposed reporting standard. A commenter suggested that CFP Board conform its reporting requirements to those set forth in the Form U4 - Uniform Application for Securities Industry Registration or Transfer (“Form U4”). CFP Board agrees in part. The revised proposal modifies the reporting requirement to more closely match the adverse conduct identified in the standard, and to more closely conform to the Form U4’s reporting requirement without fully adopting its comprehensiveness and complexity. Other commenters said that the reporting requirement is burdensome. CFP Board disagrees, as the reporting requirement generally tracks the adverse conduct that would violate the standard. Finally, commenters also had mixed views about the new bankruptcy standard, with some in favor and some opposed. CFP Board has elected to retain the approach to bankruptcy set forth in the initial proposal.

2. **Refrain from Adverse Conduct.** A CFP® professional may not engage in conduct that reflects adversely on his or her integrity or fitness as a CFP® professional, upon the CFP® marks, or upon the profession. Such conduct includes, but is not limited to, conduct that results in:
- a. A Felony or Relevant Misdemeanor conviction, or admission into a program that defers or withholds the entry of a judgment of conviction for a Felony or Relevant Misdemeanor;
  - b. A Finding in a Regulatory Action or a Civil Action that the CFP® professional engaged in fraud, theft, misrepresentation, or other dishonest conduct;
  - c. A personal bankruptcy or business bankruptcy filing or adjudication where the CFP® professional was a Control Person of the business, unless the CFP® professional can rebut the presumption that the bankruptcy demonstrates an inability to manage responsibly the CFP® professional's or the business's financial affairs;
  - d. The assessment of a federal tax lien on property owned by the CFP® professional, unless the CFP® professional can rebut the presumption that the federal tax lien demonstrates an inability to manage the CFP® professional's financial affairs responsibly; or
  - e. A non-federal tax lien, judgment lien, or civil judgment that has not been satisfied within a reasonable amount of time.
3. **Reporting.** A CFP® professional must provide written notice to CFP Board within 30 calendar days after the CFP® professional, or an entity over which the CFP® professional was a Control Person, has:
- a. Been charged with, convicted of, or admitted into a program that defers or withholds the entry of a judgment or conviction for, a Felony or Relevant Misdemeanor;
  - b. Been named as a subject of, or whose conduct is mentioned adversely in, a Regulatory Investigation or Regulatory Action alleging failure to comply with the laws, rules, or regulations governing Professional Services;
  - c. Had conduct mentioned adversely in a Finding in a Regulatory Action involving failure to comply with the laws, rules, or regulations governing Professional Services,

- other than a Regulatory Action involving a Minor Rule Violation in a Regulatory Action brought by a self-regulatory organization;
- d. Had conduct mentioned adversely in a Civil Action alleging failure to comply with the laws, rules, or regulations governing Professional Services;
  - e. Become aware of an adverse arbitration award or civil judgment, or a settlement agreement, in a Civil Action alleging failure to comply with the laws, rules, or regulations governing Professional Services, where the conduct of the CFP® professional, or an entity over which the CFP® professional was a Control Person, was mentioned adversely, other than a settlement for an amount less than \$15,000;
  - f. Had conduct mentioned adversely in a Civil Action alleging fraud, theft, misrepresentation, or other dishonest conduct;
  - g. Been the subject of a Finding of fraud, theft, misrepresentation, or other dishonest conduct in a Regulatory Action or Civil Action;
  - h. Become aware of an adverse arbitration award or civil judgment, or a settlement agreement in a Civil Action alleging fraud, theft, misrepresentation, or other dishonest conduct, where the conduct of the CFP® professional, or an entity over which the CFP® professional was a Control Person, was mentioned adversely;
  - i. Had a professional license, certification, or membership suspended, revoked, or materially restricted because of a violation of rules or standards of conduct;
  - j. Been terminated for cause from employment or permitted to resign in lieu of termination when the cause of the termination or resignation involved allegations of dishonesty, unethical conduct, or compliance failures;
  - k. Been named as the subject of, or been identified as the broker/adviser of record in, any written, customer-initiated complaint that alleged the CFP® professional was involved in:
    - i. Forgery, theft, misappropriation, or conversion of Financial Assets;
    - ii. Sales practice violations and contained a claim for compensation of \$5,000 or more; or
    - iii. Sales practice violations and settled for an amount of \$15,000 or more.

- l. Filed for or been the subject of a personal bankruptcy or business bankruptcy where the CFP® professional was a Control Person;
  - m. Received notice of a federal tax lien on property owned by the CFP® professional; or
  - n. Failed to satisfy a non-federal tax lien, judgment lien, or civil judgment within one year of its date of entry, unless payment arrangements have been agreed upon by all parties.
4. **Provide Narrative Statement.** The written notice must include a narrative statement that accurately and completely describes the Material facts and the outcome or status of the reportable matter.
5. **Cooperation.** A CFP® professional may not make false or misleading representations to CFP Board or obstruct CFP Board in the performance of its duties. A CFP® professional must cooperate fully with CFP Board's requests, investigations, disciplinary proceedings, and disciplinary decisions. Cooperation includes providing to CFP Board all requested information and documents that are in the CFP® professional's possession, custody, or control. A CFP® professional must use best efforts to obtain requested documents, not already provided to CFP Board, from those entities or persons whom the CFP® professional controls, including the CFP® professional's attorney. If the requested information and documents are not provided, the CFP® professional must explain the efforts undertaken to obtain them, and why those efforts were unsuccessful.
6. **Compliance with Terms and Conditions of Certification and License.** A CFP® professional must comply with the Terms and Conditions of Certification and License.

#### F. PROHIBITION ON CIRCUMVENTION

A CFP® professional may not do indirectly, or through or by another person, any act or thing that the Code and Standards prohibit the CFP® professional from doing directly.

#### PROHIBITION ON CIRCUMVENTION

The revised proposal adds language stating that "A CFP® professional may not do indirectly, or through or by another person, any act or thing that the Code and Standards prohibit the CFP® professional from doing directly." The standard tracks the prohibition set forth in Section 208(d) of the Advisers Act ("It shall be unlawful for any person indirectly, or through or by any other person, to do any act or thing which it would be unlawful for such person to do directly under the provisions of this subchapter or any rule or regulation thereunder."). This approach also is consistent with how CFP Board has interpreted the current Standards.

**GLOSSARY**

**CFP® Professional's Firm(s):** Any entity on behalf of which a CFP® professional provides Professional Services to a Client, and that has the authority to exercise control over the CFP® professional's activities, including the CFP® professional's employer, broker-dealer, registered investment adviser,

**Client:** Any person, including a natural person, business organization, or legal entity, to whom the CFP® professional provides or agrees to provide Professional Services pursuant to an Engagement.

**Conflict of Interest:** (a) When a CFP® professional's interests (including the interests of the CFP® Professional's Firm) are adverse to the CFP® professional's duties to a Client, or (b) When a CFP® professional has duties to one Client that may be adverse to another Client.

**Control:** The power, directly or indirectly, to direct the management or policies of the entity at the relevant time, through ownership, by contract, or otherwise.

**Control Person:** A person who has Control.

**Engagement:** An oral or written agreement, arrangement, or understanding.

**GLOSSARY**

Some of the defined terms are discussed either above or below.

**CFP Professional's Firm:** The initial proposal defined a CFP® Professional's Firm as "[a]ny entity on behalf of which a CFP® professional provides Professional Services to a Client." A commenter requested greater specificity, including with respect to insurance company appointments. The revised proposal makes clear that the entity must have the authority to exercise control over the CFP® professional's activities, and identifies the employer, broker-dealer, registered investment adviser, insurance company, and insurance agency as entities that meet the definition.

No commentary for this definition.

No commentary for this definition.

No commentary for this definition.

No commentary for this definition.

**Engagement:** The initial proposal defined Engagement as a "written or oral agreement, arrangement, or understanding." NAPFA suggested that CFP Board add language to indicate that both parties must share the understanding. The revised proposal retains the language from the original proposal, which is based on language set forth in federal regulations.



**Family:** Grandparent, parent, stepparent, father-in-law/mother-in-law, uncle/aunt, spouse, former spouse, spousal equivalent, domestic partner, brother/sister, stepsibling, brother-in-law/sister-in-law, cousin, son/daughter, stepchild, son-in-law/daughter-in-law, nephew/niece, grandchild, and any other person whom the CFP® professional supports, directly or indirectly, to a material extent.

**Financial Advice:**

- A. A communication that, based on its content, context, and presentation, would reasonably be viewed as a suggestion that the Client take or refrain from taking a particular course of action with respect to:
1. The development or implementation of a financial plan;
  2. The value of or the advisability of investing in, purchasing, holding, or selling Financial Assets;
  3. Investment policies or strategies, portfolio composition, the management of Financial Assets, or other financial matters;
  4. The selection and retention of other persons to provide financial or Professional Services to the Client; or
- B. The exercise of discretionary authority over the Financial Assets of a Client.

The determination of whether Financial Advice has been provided is an objective rather than subjective inquiry. The more individually tailored the communication is to the Client, the more likely the communication will be viewed as Financial Advice. The provision of services or the furnishing or making available of marketing materials, general financial education materials, or general financial communications that a reasonable CFP® professional would not view as Financial Advice, does not constitute Financial Advice.

**Family:** The initial proposal distinguished between an immediate family member and a family member, and because of the context in which the terms were used, defined the former but not the latter. The immediate family member definition was set forth in the standard governing borrowing and lending money to Clients, and was intended to be narrow, whereas an undefined reference to family member was set forth in the Related Party definition that contained a rebuttable presumption, and thus was intended to be broad. For simplicity, the revised proposal refers only to a family member, and defines Family in the Glossary. Under the definition, a Family member includes, among others, a former spouse.

**Financial Advice:** The initial proposal set forth a comprehensive definition of Financial Advice that included two components. The first component was a “communication that, based on its content, context, and presentation, would reasonably be viewed as a suggestion that the Client take or refrain from taking a particular course of action with respect to” four categories of subjects. The second component was the “exercise of discretionary authority over the Financial Assets of a Client.” FPA forwarded a comment from a member stating that the definition may suggest that a CFP® professional will provide each category of Financial Advice identified in the definition. CFP Board does not agree. Not all CFP® professionals who provide Financial Advice about the value of investing in real estate, for example, also exercise discretionary authority over a Client’s Financial Assets.

FPA forwarded a comment from a member asking for the first component of the definition to provide greater clarity. However, the first component sets forth a principle that takes into account the content, context, and presentation. The Code and Standards cannot specifically address all of the myriad ways in which CFP® professionals provide Financial Advice.

A commenter noted that the component of the definition includes the development of a financial plan as its first subject, and expressed concern that some may construe this to limit Financial Advice to holistic financial planning. CFP Board disagrees. The other three subjects would independently cover the relevant elements of Financial Planning. However, the revised proposal truncates the language that specifically covers Financial Planning to “the development or implementation of a financial plan.” As Financial Planning is a process and not a document, the definition makes clear that any financial plan constitutes Financial Advice.

**Financial Assets:** Securities, insurance products, real estate, bank instruments, commodities contracts, derivative contracts, collectibles, or other financial products.

**Financial Planning:** A collaborative process that helps maximize a Client's potential for meeting life goals through Financial Advice that integrates relevant elements of the Client's personal and financial circumstances.

**Material:** Information is material when a reasonable Client or prospective Client would consider the information important in making a decision.

**Professional Services:** Financial Advice and related activities and services that are offered or provided, including, but not limited to, Financial Planning, legal, accounting, or business planning services.

FPA forwarded a comment from a member requesting that the first component of the definition not include the selection and retention of other persons to provide financial or Professional Services to the Client. CFP Board disagrees. A "referral" is Financial Advice, and the standards specifically address "referrals" in the standard for Duties When Recommending, Engaging, and Working with Additional Persons. FPA forwarded another member comment asking why the definition of Financial Advice also includes the second component. The definition addresses the exercise of discretion separately because it typically occurs without a communication to the Client.

In excluding marketing materials, general education materials, and general financial communications from the definition of Financial Advice, the revised proposal examines whether those materials reasonably would be viewed as Financial Advice. The initial proposal examined that issue from the perspective of a reasonable person, but the revised proposal uses the lens of a CFP® professional, to enable members of the Disciplinary and Ethics Commission to make that determination.

No commentary for this definition.

No commentary for this definition.

No commentary for this definition.

No commentary for this definition.

**Related Party:** A person or business entity (including a trust) whose receipt of Sales-Related Compensation a reasonable CFP® professional would view as benefiting the CFP® professional or the CFP® Professional's Firm, including, for example, as a result of the CFP® professional's ownership stake in the business entity. There is a rebuttable presumption that a Related Party includes:

- a. **Family Members.** A member of the CFP® professional's Family and any business entity that the Family or members of the Family Control; and
- b. **Business Entities.** A business entity that the CFP® professional or the CFP® Professional's Firm Controls, or that is Controlled by or is under common Control with, the CFP® Professional's Firm.

**Scope of Engagement:** The Professional Services to be provided pursuant to an Engagement.

See commentary above (Duties When Representing Compensation Method).

No commentary for this definition.

# **CFP BOARD**

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