

CFP BOARD

**FREQUENTLY
ASKED QUESTIONS**

**CODE OF ETHICS AND
STANDARDS OF CONDUCT**

EFFECTIVE OCTOBER 1, 2019

FREQUENTLY ASKED QUESTIONS

CFP Board provides answers to the following Frequently Asked Questions (FAQs) concerning CFP Board's *Code of Ethics and Standards of Conduct* (the "Code and Standards"), which takes effect October 1, 2019. CFP Board may provide answers to additional FAQs on a periodic basis.

WHY REVISE THE STANDARDS OF PROFESSIONAL CONDUCT (THE "STANDARDS")?

Question 1: Why did CFP Board revise its Standards?

Answer 1: CFP Board periodically updates the *Standards* to keep current with changes in the field of financial planning; to advance the profession; to maintain the value, integrity and relevance of the CFP® certification; and to address new products, services, and technologies that effect the profession. CFP Board last updated its *Standards* in 2007. The updates that become effective on October 1, 2019, include the introduction of the duty to act as a fiduciary at all times when providing Financial Advice to a Client. These revisions are consistent with, and central to, the purpose and mission of CFP Board.

Question 2: What process did CFP Board follow in revising its Standards?

Answer 2: In December 2015, CFP Board formed a Commission on Standards to review and recommend 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*. Commission members included CFP® professionals and others in the financial services industry who operated under diverse business models, as well as prominent regulatory experts, a consumer advocate, and a representative of the public. CFP Board gathered input from a wide variety of stakeholders by hosting 17 public forums in cities located across the country, and by hosting meetings with the Financial Planning Association, the National Association of Personal Financial Advisors, the Securities Industry and Financial Markets Association, the Financial Services Institute, and CFP Board's Business Model Council (which is comprised of firm representatives from a wide range of business models). CFP Board also issued two drafts of the *Code and Standards* for public comment, and considered more than 1,500 written comments and hundreds of oral comments from CFP® professionals, firms, regulators, trade associations, consumer groups, and a broad array of additional stakeholders. After following this deliberative, inclusive, and transparent process, CFP Board adopted the *Code and Standards* in March 2018 and announced that it would become effective on October 1, 2019.

Question 3: How has CFP Board changed the organizational structure of the Code and Standards?

Answer 3: To make the *Standards of Professional Conduct* more user-friendly, the new *Code and Standards* consolidates the *Terminology, Code of Ethics and Professional Responsibility, Rules of Conduct, and Financial Planning Practice Standards*. In the *Standards of Professional Conduct*, each section had its own numbering and organizational system, the *Rules of Conduct* and the *Practice Standards* had overlapping provisions, and the Code of Ethics contained language explaining its principles. By consolidating these sections, CFP Board eliminated redundancy, developed a unified structure, and presented content in a more efficient and effective manner. Set forth below is a summary of the organizational structure of the new *Code and Standards*.

The new *Code and Standards* begins with a four-sentence Preamble that succinctly captures its purpose and effect. A concise Code of Ethics then identifies principles that guide the behavior of CFP® professionals. CFP Board elaborates on those principles in its *Standards of Conduct*, which is divided into the following six sections:

- A. Duties Owed to Clients
- B. Financial Planning and Application of the Practice Standards for the Financial Planning Process
- C. Practice Standards for the Financial Planning Process
- D. Duties Owed to Firms and Subordinates
- E. Duties Owed to CFP Board
- F. Prohibition on Circumvention

Section A of the *Code and Standards* delineates the following 15 duties that a CFP® professional owes to a Client:

- A.1 Fiduciary Duty
- A.2 Integrity
- A.3 Competence
- A.4 Diligence
- A.5 Disclose and Manage Conflicts of Interest
- A.6 Sound and Objective Professional Judgment
- A.7 Professionalism
- A.8 Comply with the Law
- A.9 Confidentiality and Privacy
- A.10 Provide Information to a Client
- A.11 Duties When Communicating with a Client
- A.12 Duties When Representing Compensation Method
- A.13 Duties When Recommending, Engaging, and Working with Additional Persons
- A.14 Duties When Selecting, Using, and Recommending Technology
- A.15 Refrain from Borrowing or Lending Money and Commingling Financial Assets

Section B of the *Code and Standards* addresses *Financial Planning and Application of the Practice Standards for the Financial Planning Process*. This section sets forth CFP Board's revised definition of Financial Planning, the standard for when the *Practice Standards* apply, and the circumstance in which a CFP® professional must demonstrate that compliance with the *Practice Standards* was not required. This section also includes a standard that applies when a CFP® professional otherwise must comply with the *Practice Standards*, but the Client does not agree to engage the CFP® professional for Financial Planning.

Section C contains CFP Board's *Practice Standards for the Financial Planning Process*, which have been revised to include seven steps:

1. Understanding the Client's Personal and Financial Circumstances
2. Identifying and Selecting Goals
3. Analyzing the Client's Current Course of Action and Potential Alternative Course(s) of Action
4. Developing the Financial Planning Recommendation(s)
5. Presenting the Financial Planning Recommendation(s)
6. Implementing the Financial Planning Recommendation(s)
7. Monitoring Progress and Updating

Section D of the *Code and Standards* sets forth the three Duties Owed to Firms and Subordinates:

1. Use Reasonable Care When Supervising
2. Comply with Lawful Objectives of CFP® Professional's Firm
3. Provide Notice of Public Discipline

Among other changes in this section, the third standard includes a newly expanded requirement to advise the CFP® Professional's Firm, in writing, of any public discipline imposed by CFP Board.

Section E sets forth the Duties Owed to CFP Board. This section preserves the current prohibition against engaging in conduct that reflects adversely on a CFP® professional's integrity or fitness, upon the CFP® marks, or upon the profession. CFP Board identifies five types of conduct that CFP Board's Disciplinary and Ethics Commission (DEC) has determined violate this standard. This section then delineates 14 reportable events for which a CFP® professional must provide written notice to CFP Board within 30 calendar days. Section E also requires a CFP® professional to provide CFP Board with a narrative statement describing the reportable matter.

CFP Board's list of reportable events is similar to, but not the same as, the events that must be reported to the SEC and FINRA. Finally, a CFP® professional is required to cooperate with CFP Board and to comply with the *Terms and Conditions of Certification and Trademark License*.

Section F contains a Prohibition on Circumvention, which provides that a CFP® professional may not do indirectly, or through or by another person, any act or thing that the *Code and Standards* prohibits the CFP® professional from doing directly.

The *Code and Standards* concludes with a Glossary, which contains definitions of fourteen terms that appear in multiple sections of the document.

CFP Board has developed a Side-by-Side comparison document that compares the *Standards of Professional Conduct*, which applies through September 30, 2019, to the *Code and Standards*, which applies beginning on October 1, 2019.

FIDUCIARY DUTY

Question 4: The *Financial Planning Practice Standards* that apply through September 30, 2019 requires a CFP® professional to act as a fiduciary when providing Financial Planning or material elements of Financial Planning. The new *Code and Standards* requires a CFP® professional to act as a fiduciary when providing Financial Advice to a Client. What is the difference between Financial Planning and Financial Advice? (Standards A.1., B.4., and C., and Glossary.)

Answer 4: Financial Advice has a much broader scope than Financial Planning. The new *Code and Standards* states that a CFP® professional provides Financial Planning “through” Financial Advice. While Financial Planning requires Financial Advice, not all Financial Advice requires Financial Planning.

The new *Code and Standards* sets forth separate definitions for Financial Advice and Financial Planning. The Glossary defines Financial Advice as:

- A. A communication that, based on its content, context, and presentation, would reasonably be viewed as a recommendation 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, gifting, 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 person would not view as Financial Advice, does not constitute Financial Advice.

The new *Code and Standards* defines Financial Planning in the Glossary as follows:

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.

The new *Code and Standards* also identifies factors (See Standard B.4.) that CFP Board will weigh in determining whether a CFP® professional providing Financial Advice is required to provide Financial Planning, and thus is required to comply with the *Practice Standards*. These integration factors are discussed in another FAQ. Where application of those factors to a particular situation leads to the conclusion that Financial Planning is not required, the new *Code and Standards* does not require a CFP® professional to comply with the *Practice Standards*. (See Standard C.) In that circumstance, the CFP® professional remains obligated to act as a fiduciary when providing Financial Advice to a Client. (See Standard A.1.) As noted above, since Financial Planning requires Financial Advice, a CFP® professional also must act as a fiduciary at all times when providing Financial Planning to a Client.

Question 5: What does CFP Board's fiduciary duty require? (Standard A.1.)

Answer 5: The new *Code and Standards* sets forth an objective standard requiring a CFP® professional providing Financial Advice to act in the best interests of the Client. In order to act in the best interests of the Client, a CFP® professional must fulfill a Duty of Loyalty, a Duty of Care, and a Duty to Follow Client Instructions. Standard A.1 of the new *Code and Standards* defines each of these duties using language that was drawn from the common law of fiduciaries.

The Duty of Loyalty requires a CFP® professional to:

- i. Place the interests of the Client above the interests of the CFP® professional and the CFP® Professional's Firm;
- ii. 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 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 interests of the Client and place the Client's interests above the CFP® professional's.

Disclosure of Material Conflicts of Interest by itself is not sufficient to fulfill the Duty of Loyalty.

The Duty of Care requires a CFP® professional 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 a CFP® professional to comply with all objectives, policies, restrictions, and other terms of the Engagement and all reasonable and lawful directions of the Client.

Question 6: A CFP® professional must act as a fiduciary when providing Financial Advice to a Client. Will a CFP® professional have a fiduciary duty when she:

- 1) Makes a passing statement about a financial issue to someone she just met at a cocktail party; or**
- 2) Provides general advice to a relative who asks her for her general opinion, for example, about a particular company or about the benefits of opening a 529 college savings plan for a newborn child?**

(Standard A.1. and Glossary.)

Answer 6: No. The new *Code and Standards* requires a CFP® professional to act as a fiduciary when providing "Financial Advice to a Client." (See Standard A.1.) The Glossary defines a "Client" as any person to whom the CFP® professional "provides or agrees to provide Professional Services pursuant to an Engagement." An "Engagement" is an "oral or written agreement, arrangement or understanding." Therefore, unless there is an agreement, arrangement or understanding that the CFP® professional will be providing professional services, the person receiving the information is not a "Client," and the CFP® professional does not have a fiduciary duty to that person.

In addition, the Glossary defines "Financial Advice" as "a communication that, based on its content, context, and presentation, would reasonably be viewed as a recommendation that the Client take or refrain from taking a particular course of action." In the scenarios outlined in this question, it would be unreasonable for the CFP® professional, the cocktail party guest, or the relative to assume that they have established a client relationship, or that the information was a purposefully directed recommendation to take a specific action.

Furthermore, the definition of Financial Advice indicates that the "more individually tailored the communication" is to the information recipient, the "more likely the communication will be viewed as Financial Advice." A CFP® professional's general opinions about a particular company or the benefits of opening a 529 college savings plan would not be viewed as being tailored to the specific needs of that particular information recipient, and thus, would not constitute Financial Advice.

Finally, CFP Board applies an objective standard, not a subjective standard, to determine whether a particular communication constitutes Financial Advice. Therefore, in determining whether a CFP® professional has a fiduciary duty, CFP Board will consider whether "a reasonable CFP® professional" would conclude that the communication constituted Financial Advice, and will not defer to the opinion of either that particular information recipient or the CFP® professional who made that communication.

FINANCIAL PLANNING

Question 7: How does CFP Board define Financial Planning? (Standard B.1. and Glossary.)

Answer 7: In the new *Code and Standards*, CFP Board incorporates a shorter Financial Planning definition that is more user-friendly, without sacrificing clarity. The revised Financial Planning definition, which is set forth in both the Glossary and Standard B.1 of the new *Standards of Conduct*, consists of 30 carefully chosen words:

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.

To best understand this new definition, it is helpful to consider each element in succession:

- “Financial Planning is a collaborative process”: CFP Board is committed to the fundamental principle that Financial Planning is a “process,” not a document or product. The *Practice Standards* provide the roadmap. (See Standard C.) Collaboration between the CFP® professional and the Client, and potentially others, is critical to the process.
- “That helps maximize a Client's potential”: The goal of Financial Planning is to help maximize the Client's potential. In developing the definition, CFP Board carefully considered a long list of alternatives to “maximize,” including achieve, advance, enhance, foster, further, improve, increase, optimize, realize, and support. CFP Board determined that “maximize” is the word that best fits the definition because the goal of a CFP® professional providing Financial Planning is to make the most out of the Client's potential. Maximize is qualified by “helps” and modifies the Client's “potential,” but does not guarantee any specific financial performance.
- “For meeting life goals”: The purpose of Financial Planning is to develop and meet goals. The goal is to obtain what the Client wants in life. Financial goals are one means to that end, not the end itself. Therefore, defining the goals as “financial goals” would be too narrow.
- “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. The process requires integration of relevant elements of the Client's personal and/or financial circumstances. A financial planner examines a Client's circumstances and evaluates how one element of the Client's life may affect other elements. Relevant elements of a Client's 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.

Question 8: Will a CFP® professional who has collected the information required under the Financial Industry Regulatory Authority's (“FINRA”) Know Your Customer Rule be deemed to have engaged in Financial Planning? (Standard B.4.)

Answer 8: No. FINRA's Know Your Customer Rule calls for collecting certain types of information about a Client. Financial Planning is more than the collection of information. CFP Board's new integration factors, which are set forth in Standard B.4 of the new *Standards of Conduct*, set forth the circumstances in which a CFP® professional must provide Financial Planning.

Question 9: The new *Code and Standards* contains Practice Standards that provide for seven steps in the Financial Planning process. Why and how have the Practice Standards changed? (Standard C.)

Answer 9: The revised *Practice Standards* – which are set forth in Standard C of the new *Code and Standards* – increases the number of steps in the Financial Planning process from six to seven. The new *Code and Standards* provides a comprehensive update to the *Practice Standards* that reflects the delivery of Financial Planning and provides detailed requirements for the Financial Planning process. This FAQ highlights the following three structural changes, which also are set forth in the chart provided below:

1. CFP Board removed from the *Practice Standards* what had been the first step in the process – “Defining the Scope of the Engagement.” That standard now is a “Duty to Provide Information to a Client” that is addressed in Standard A.10. CFP Board made that change so that the *Practice Standards* would now solely address the delivery of Financial Planning.

2. The revised *Practice Standards* divide and re-order what had been Step 2 of the Financial Planning process into Steps 1 and 2 of the revised version: “Understanding the Client’s Personal and Financial Circumstances” and “Identifying and Selecting Goals.” The new *Code and Standards* thus now requires a CFP® professional to work with the Client to obtain information and analyze the Client’s personal and financial circumstances before mutually defining the Client’s goals, and not after, as the current *Practice Standards* require. This change recognizes that for a CFP® professional to collaborate effectively with the Client to identify and then select goals, a CFP® professional first must understand the Client’s circumstances.
3. The new *Code and Standards* divides and reorganizes into three steps what previously had been Steps 3 and 4 under the existing *Practice Standards*. This process now requires a CFP® professional to “Analyze the Client’s Current Course of Action and Potential Alternative Course(s) of Action” (Step 3), “Develop the Financial Planning Recommendation(s)” (Step 4), and “Present the Financial Planning Recommendation(s)” (Step 5).

The chart below compares the existing and revised *Practice Standards*:

Existing Practice Standards	Revised Practice Standards
1. Establishing and Defining the Relationship with the Client <ul style="list-style-type: none"> • Defining the Scope of the Engagement 	[Moved to section A.10 of the <i>Standards of Conduct</i> (the Duty to “Provide Information to a Client”)]
2. Gathering Client Data <ul style="list-style-type: none"> • Determining a Client’s Personal and Financial Goals, Needs and Priorities • Obtaining Quantitative Information and Documents 	1. Understanding the Client’s Personal and Financial Circumstances <ul style="list-style-type: none"> • Obtaining Qualitative and Quantitative Information • Analyzing Information • Addressing Incomplete Information
	2. Identifying and Selecting Goals <ul style="list-style-type: none"> • Identifying Potential Goals • Selecting and Prioritizing Goals
3. Analyzing and Evaluating the Client’s Financial Status <ul style="list-style-type: none"> • Analyzing and Evaluating the Client’s Information 	3. Analyzing the Client’s Current Course of Action and Potential Alternative Course(s) of Action <ul style="list-style-type: none"> • Analyzing Current Course of Action • Analyzing Potential Alternative Courses of Action
4. Developing and Presenting Financial Planning Recommendations <ul style="list-style-type: none"> • Identifying and Evaluating Financial Planning Alternative(s) 	
4. Developing and Presenting Financial Planning Recommendations <ul style="list-style-type: none"> • Developing the Financial Planning Recommendation(s) 	4. Developing the Financial Planning Recommendation(s)
4. Developing and Presenting Financial Planning Recommendations <ul style="list-style-type: none"> • Presenting the Financial Planning Recommendation(s) 	5. Presenting the Financial Planning Recommendation(s)
5. Implementing the Financial Planning Recommendation(s) <ul style="list-style-type: none"> • Agreeing on Implementation Responsibilities • Selecting Products and Services for Implementation 	6. Implementing the Financial Planning Recommendation(s) <ul style="list-style-type: none"> • Addressing Implementation Responsibilities • Identifying, Analyzing, and Selecting Actions, Products and Services • Recommending Actions, Products, and Services for Implementation • Selecting and Implementing Actions, Products, or Services
6. Monitoring <ul style="list-style-type: none"> • Defining Monitoring Responsibilities 	7. Monitoring Progress and Updating <ul style="list-style-type: none"> • Monitoring and Updating Responsibilities • Monitoring the Client’s Progress • Obtaining Current Qualitative and Quantitative Information • Updating Goals, Recommendations, or Implementation Decisions

Question 10: When must a CFP® professional comply with the *Practice Standards* for the Financial Planning Process? (Standard B.3.)

Answer 10: The *Standards of Professional Conduct* that will remain in effect through September 30, 2019 requires a CFP® professional to comply with the Financial Planning process when providing Financial Planning or material elements of Financial Planning. The new *Code and Standards* eliminates the concept of “material elements of Financial Planning.” Instead, the new *Code and Standards* specifies – in Standard B.3 – three circumstances in which a CFP® professional must comply with the *Practice Standards*:

1. **When the CFP® professional agrees to provide or provides Financial Planning.** This occurs when a CFP® professional and a Client explicitly agree that the CFP® professional will provide, or the CFP® professional actually provides, Financial Planning. An example of this is when a CFP® professional has provided to the Client, in writing, the terms of the Engagement for Financial Planning as required by Standard A.10.b.ii.
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 interests.** This occurs when a CFP® professional provides Financial Advice to a Client, but there is no explicit agreement or understanding between the CFP® professional and Client to provide Financial Planning. Rather, the nature of the Financial Advice requires the CFP® professional to provide Financial Planning to meet his or her fiduciary obligations. While this circumstance is similar to the historical concept of “material elements of financial planning” this standard examines the potential effect of the Financial Advice on the Client rather than the types of services the CFP® professional provides to the Client. Another FAQ discusses the factors that CFP Board will examine to determine whether integration is required.
3. **When the Client has a reasonable basis to believe the CFP® professional will provide or has provided Financial Planning.** While the current *Practice Standards* examine the Client’s subjective understanding and intent in engaging the CFP® professional as one relevant factor in determining whether Financial Planning is required, the new *Code and Standards* provides an objective standard that, if satisfied, is sufficient to require Financial Planning. Whether the CFP® professional has held out to the Client that he or she provides Financial Planning is one of the relevant factors to be considered in assessing whether the Client’s belief is reasonable.

Question 11: What factors will determine whether a CFP® professional is required to provide Financial Planning when providing Financial Advice to a Client, as required under Standard B.3.a.ii? (Standard B.4.)

Answer 11: CFP Board will weigh the following five factors, which are set forth in Standard B.4.:

1. The number of relevant elements of the Client’s personal and financial circumstances that the Financial Advice may affect. This factor requires a CFP® professional to review the Financial Advice the CFP® professional will provide to the Client and determine how many of the Client’s needs or wants the Financial Advice may affect. Financial Advice concerning one relevant element of the Client’s personal and financial circumstances may (or may not) be sufficient to require Financial Planning.
2. The portion and amount of the Client’s Financial Assets that the Financial Advice may affect. This factor requires a CFP® professional to review the Financial Advice the CFP® professional will provide to the Client and determine the portion and amount of the Client’s Financial Assets the Financial Advice may affect. This factor focuses on both the portion and amount of Financial Assets. The effect on Financial Assets is just one factor that CFP Board would weigh in conjunction with others.
3. The length of time the Client’s personal and financial circumstances may be affected by the Financial Advice. This factor requires the CFP® professional to assess the length of time the Financial Advice may affect the Client’s personal and financial circumstances.
4. The effect on the Client’s overall exposure to risk if the Client implements the Financial Advice. Relevant risks include investment risk, interest rate risk, and inflation risk.
5. The barriers to modifying the actions taken to implement the Financial Advice. This factor requires the CFP® professional to assess how difficult it would be for the Client to unwind or modify the action taken to implement the Financial Advice.

Question 12: Does CFP® Board require a CFP® professional to address a certain number of “relevant elements” of a Client’s personal and financial circumstances for the Engagement to be considered Financial Planning? (Standard B.4.)

Answer 12: No. CFP Board does not identify a minimum number of “relevant elements” for an Engagement to be considered Financial Planning. While it is more likely that Financial Planning is required when several of the relevant elements of the Client’s personal and financial circumstances are involved, in some cases a Financial Planning Engagement may exist even when only one of the “relevant elements” is involved. The “relevant elements” are identified in Standard B.2 of the new *Code and Standards*. CFP Board has developed a five-factor test for determining whether Financial Planning is required, which is set forth in Standard B.4 of the new *Code and Standards* and is addressed in another FAQ.

Question 13: Does CFP® Board require a CFP® professional to complete all seven steps of the Financial Planning process? (Standards A.10 and C.)

Answer 13: A CFP® professional who is providing Financial Planning must complete the first five steps of the Financial Planning process that are set forth in Standard C. It is not necessary, however, for a CFP® professional to complete the last two steps of the Financial Planning process if those steps are specifically excluded from the Scope of Engagement. For example, some Clients may engage a CFP® professional to complete the first five steps of the Financial Planning process and then work with another financial services provider to implement or monitor those recommendations. However, Standard A.10 provides that a CFP® professional is responsible for implementing, monitoring, and updating the Financial Planning Recommendation(s) unless specifically excluded from the Scope of Engagement

Question 14: What is required of a CFP® professional when the Client does not agree to engage the CFP® professional to provide Financial Planning even though the Financial Advice that the Client has requested would require the CFP® professional to comply with the *Practice Standards*? (Standard B.6.)

Answer 14: CFP Board recognizes that a Client who does not want to engage a CFP® professional for Financial Planning should be able to engage the CFP® professional to provide more limited services and the Client should not be required to work with a non-CFP® professional. Therefore, when a CFP® professional otherwise would be required to comply with the *Practice Standards*, but the Client does not agree to engage the CFP® professional for Financial Planning, the CFP® professional has four options. As set forth in Standard B.6 of the new *Code and Standards*, the CFP® professional must either:

1. Not enter into the Engagement;
2. Limit the Scope of 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;
3. Provide the requested services after informing 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, in which case the CFP® professional is not required to comply with the *Practice Standards*; or
4. Terminate the Engagement.

Not all options will apply under all circumstances. To illustrate these options, assume that a Client seeks Financial Advice on three topics, and that, under the *Code and Standards*, a CFP® professional otherwise would be required to provide Financial Planning to provide that Financial Advice. Assume further that the Client declines to engage the CFP® professional for Financial Planning.

Under the first option, the CFP® professional may decide not to enter into the Engagement. Under the second option, the CFP® professional may limit the Scope of the Engagement to one topic if that would not require Financial Planning, and inform the Client that the CFP® professional will not be providing Financial Advice on the other two topics.

Under the third option, if the CFP® professional informs the Client how Financial Planning would benefit the Client and how the Client’s decision not to engage the CFP® professional to provide Financial Planning may limit the CFP® professional’s Financial Advice, then the CFP® professional may provide Financial Advice on all three topics without being required to comply with the *Practice Standards*. The CFP® professional continues to be required to act as a fiduciary when providing that Financial Advice.

DISCLOSURES REQUIRED WHEN PROVIDING FINANCIAL ADVICE AND FINANCIAL PLANNING

Question 15: Whenever a CFP® professional is providing Financial Advice to a Client, CFP Board’s Code and Standards requires “full disclosure of all Material Conflicts of Interest.” What does this entail, and in what format does the CFP® professional need to convey that disclosure to the Client? (Standard A.5.)

Answer 15: CFP Board’s Duty to Disclose and Manage Conflicts of Interest, which is set forth in Standard A.5 of the new *Standards of Conduct* requires a CFP® professional to fully disclose all Material Conflicts of Interest that could affect the professional relationship and provide sufficiently specific facts so that a reasonable Client would be able to understand the Material Conflicts of Interest and the business practices that give rise to the conflicts and give informed consent to such conflicts or reject them. As indicated in the Glossary, a “Conflict of Interest” arises when:

1. 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
2. A CFP® professional has duties to one Client that are adverse to another Client.

A Conflict of Interest becomes “Material” when a “reasonable Client or prospective Client would consider the information” about the conflict to be “important in making a decision” about the engagement with the CFP® professional, such as whether to retain, or continue to retain, a CFP® professional or whether to implement a recommendation.

In determining whether the disclosure about a Material Conflict of Interest provided to the Client was sufficient 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 clear evidence of informed consent. Ambiguity in the disclosure provided to the Client will be interpreted in favor of the Client.

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 Investment Advisers Act of 1940. A CFP® professional may refer to regulatory guidance and case law interpretations to gain a deeper understanding of “informed consent.”

CFP Board recognizes that, in some circumstances, there are logistical challenges to providing written disclosure of Material Conflicts of Interest. Therefore, the standard does not require either the CFP® professional’s disclosure or the Client’s consent to be in writing. However, the standard also makes clear that evidence of oral disclosure of a conflict will be given such weight as CFP Board in its judgment deems appropriate.

In view of the fact-intensive nature of an inquiry into whether a CFP® professional orally disclosed a conflict, and whether a Client provided informed consent, a CFP® professional operating under a Material Conflict of Interest may want to consider, among other things, (a) avoiding business practices that create Material Conflicts of Interest that are difficult to manage, (b) describing all Material Conflicts of Interest to a Client clearly and in a manner that will allow the Client to understand the conflict, and (c) obtaining written consent to those Conflicts of Interest that a reasonable CFP® professional would consider adverse to the Client’s interests.

A CFP® professional acting under a Conflict of Interest continues to have a duty to act in the best interests of the Client and place the Client’s interests above the interests of the CFP® professional.

Disclosure of Material Conflicts of Interest does not eliminate the Duty of Loyalty or the Duty of Care.

Question 16: What is a CFP® professional’s duty under the new *Code and Standards* when representing compensation method? (Standard A.12.)

Answer 16: When a CFP® professional provides Financial Advice, the CFP® professional must inform the client how the CFP® professional, the CFP® Professional’s Firm, and any Related Party are compensated for providing the products and services. A CFP® professional also must not make false or misleading representations regarding the method of compensation of the CFP® professional or the CFP® Professional’s Firm. Standard A.12 of the new *Code and Standards* addresses two specific compensation representations (fee-only and fee-based), defines important terms, provides a safe harbor for related parties, and sets forth a standard that applies to misrepresentations by a CFP® Professional’s Firm.

Question 17: How does CFP Board define Fee-only? (Standard A.12.a.)

Answer 17: The standard with respect to when a CFP® professional may use the term fee-only remains largely the same. The standard defines the term fee-only by exclusion, and identifies individuals and entities whose compensation should be considered in determining whether fee-only is an appropriate compensation representation. A CFP® professional may describe his or her or the CFP® Professional’s Firm’s compensation method as fee-only only where: (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. “Sales-Related Compensation” and “Related Parties” are defined terms that are discussed in other FAQs. CFP Board replaced the term “commissions” with Sales-Related Compensation because there are some fees that, like commissions, provide an incentive for the purchase or sale of Financial Assets (such as 12b-1 fees).

Question 18: How does CFP Board address “Fee-Based” in the *Code and Standards*? (Standard A.12.a.)

Answer 18: The new *Code and Standards* sets a new standard for the use of fee-based – a term that is equivalent to “fee and commission,” but is often confused with fee-only. The standard 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. Moreover, a CFP® professional using fee-based must clearly state either that the CFP® professional earns both fees and commissions, or is not fee-only. This standard also applies to other similar terms that, like fee-based, may be confused with a fee-only compensation method.

Question 19: Who does CFP Board consider to be a Related Party? (Standard A.12.c.)

Answer 19: CFP Board has defined the previously undefined term “Related Party” as including anyone whose receipt of Sales-Related Compensation reasonably would be viewed as directly or indirectly benefiting the CFP® professional or the CFP® Professional’s Firm. CFP Board will presume that family members and controlled business entities are Related Parties, but a CFP® professional may show otherwise. Sales-Related Compensation received by a Related Party only is relevant for purposes of fee-only if the compensation is received “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. For example, if a CFP® professional’s father is a broker who receives Sales-Related Compensation, but there is no connection between the father’s business and the CFP® professional’s business, the father’s Sales-Related Compensation is not being received “in connection with” the CFP® professional’s Professional Services. In this circumstance, the father’s Sales-Related Compensation would not prevent the CFP® professional from having a fee-only compensation method.

CFP Board also has a standard for using the term “fee-based.” A CFP® professional’s duty when using the term “fee-based” is discussed in another FAQ.

Question 20: What is Sales-Related Compensation? (Standard A.12.b.)

Answer 20: Sales-Related Compensation is more than a de minimis economic benefit, including any bonus or portion of compensation, resulting from a Client purchasing or selling Financial Assets. 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 resulting from a Client “holding” Financial Assets for purposes other than receiving Financial Advice. Sales-Related Compensation also includes compensation for the referral of a Client to any person or entity other than the CFP® Professional’s Firm, as the referral constitutes a Professional Service provided to a

Client. The standard sets forth common examples of Sales-Related Compensation, and explicitly excludes five types of compensation from the definition.

Question 21: When does the Safe Harbor for Related Party compensation apply and what does it require? (Standard A.12.e.)

Answer 21: The new *Code and Standards* includes a Related Party compensation “safe harbor” for a CFP® professional who adopts and implements policies and procedures (including through a CFP® Professional’s Firm) reasonably designed to prevent recommendations that a Client purchase Financial Assets from or through, or refer any Clients to, a Related Party.

Question 22: How does the *Code and Standards* address misrepresentation of compensation method by a CFP® Professional’s Firm? (Standard A.12.f.)

Answer 22: Standard 12.f provides a standard for when the CFP® Professional’s Firm makes compensation representations that are inconsistent with CFP Board’s *Code and Standards*. If the CFP® professional Controls the firm, the CFP® professional must not allow the firm to make a representation of compensation method that would be false or misleading if made by the CFP® professional. For example, when a CFP® professional is the sole owner of a firm that refers to its compensation method as fee-only, but the CFP® professional personally sells insurance and securities in exchange for Sales-Related Compensation, the *Code and Standards* would not permit the CFP® professional to allow the CFP® Professional’s Firm, which the CFP® professional Controls, to use fee-only because the CFP® professional earns Sales-Related Compensation.

If the CFP® professional does not Control the firm, the CFP® professional does not have an obligation to prevent the firm from making a false or misleading misrepresentation of compensation method. Instead, 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. For example, assume a CFP® professional is an employee at a corporation that refers to its compensation method as fee-only even though the CFP® professional and others in the corporation refer commission-earning insurance business to a Related Party. In this instance, the CFP® professional could not use the term fee-only. Therefore, the CFP® professional must inform Clients that his or her compensation method is fee and commission.

Question 23: The new *Code and Standards* requires a CFP® professional to document information when complying with the Practice Standards. What is required? (Standard C.)

Answer 23: The new *Code and Standards* sets forth, in Standard C, which contain the *Practice Standards* for the financial planning process, a principles-based documentation requirement that applies when a CFP® professional provides or is required to provide Financial Advice in accordance with the *Practice Standards*. A CFP® professional may memorialize information in a method of the CFP® professional’s choosing. The CFP® professional is not required to provide the information to the Client.

A CFP® professional must act prudently in documenting and retaining information, as the facts and circumstances require, taking into the account the significance of the information, the need to preserve the information in writing, the obligation to act in the Client’s best interests, and the CFP® Professional’s Firm’s policies and procedures. A CFP® professional may consider documenting the following information in writing, where relevant:

1. The qualitative and quantitative information the CFP® professional obtains from the Client;
2. The Client’s selected goals;
3. The CFP® professional’s analysis of the Client’s current course of action;
4. The CFP® professional’s analysis of potential alternative courses of action;
5. The assumptions and estimates used in developing the recommendations;
6. The recommendations the CFP® professional selects and the rationale for the recommendations;
7. The basis for the selection of actions, products, and services;
8. Actions the Client takes that deviate from the CFP® professional’s recommendations;
9. When engaged for monitoring, the CFP® professional’s analysis of the Client’s progress towards achieving goals; and

10. When engaged for monitoring and updating, which actions, products, and services are and are not subject to the CFP® professional's monitoring responsibility, how and when the CFP® professional will monitor the actions, products, and services, how the CFP® professional will be informed of any material changes in the Client's qualitative and quantitative information, and how and when a CFP® professional who is responsible for updating the Financial Planning recommendations will do so.

Documentation may be retained in, among other places, a client file, a Contact Management System file, a paper file, or a digital vault.

BANKRUPTCY

Question 24: How will CFP Board handle bankruptcies under the new *Code and Standards*? (Standards E.2. and E.3.)

Answer 24: The new *Code and Standards* continues to prohibit a CFP® professional from engaging in conduct that reflects adversely on his or her integrity or fitness as a CFP® professional, upon the CFP® marks, or upon the profession. Standard E.2 provides five examples of such conduct. For example, a personal bankruptcy or business bankruptcy filing or adjudication where the CFP® professional was a Control Person of the business may reflect adversely on the CFP® professional's integrity or fitness 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.

This presents a significant change to CFP Board's procedures. Effective July 2012, CFP Board adopted the Bankruptcy Disclosure Procedures, which provided that CFP Board staff would not investigate, and CFP Board's Disciplinary and Ethics Commission ("DEC") would not adjudicate, a CFP® professional's first bankruptcy. Instead, CFP Board noted the bankruptcy filing on the CFP® professional's public profile on CFP Board's websites and issued a news release identifying the CFP® professional as having filed for bankruptcy. While this did not result in a formal disciplinary action, the effect was similar to a Public Letter of Admonition.

The new *Code and Standards* recognizes that in certain limited circumstances, a bankruptcy does not demonstrate a CFP® professional's inability to manage his or her finances. Therefore, the new *Code and Standards* restores the process that existed prior to July 2012 whereby a CFP® professional had the right to demonstrate to the DEC that the bankruptcy was not the result of an inability to manage responsibly the CFP® professional's financial affairs. In those circumstances where the CFP® professional is able to make that showing, the CFP® professional will not be subject to discipline and CFP Board will not issue a press release announcing the bankruptcy. Regardless of the outcome of the disciplinary proceedings before the DEC, a CFP® professional must provide to the Client the location of all relevant public websites of any authority that sets forth the CFP® professional's personal bankruptcy or business bankruptcy where the CFP® professional was a Control Person of the business. Relevant public websites could include BrokerCheck, CFP Board's website, and the federal court website that contains the bankruptcy information.

As set forth in Standard E.3.I., a CFP® professional is now required to provide written notice to CFP Board within 30 calendar days of filing or being the subject of either a personal bankruptcy or a business bankruptcy where the CFP® professional was a Control Person.

REPORTING TO CFP BOARD

Question 25: The new *Code and Standards*' "Reporting" standard requires a CFP® professional to notify CFP Board in writing within 30 calendar days of certain events. Does this reporting requirement differ from CFP Board's current reporting requirements? (Standard E.3.)

Answer 25: Yes, the new Reporting standard expands the number and types of events that a CFP® professional is required to disclose to CFP Board within 30 calendar days. The *Standards of Professional Conduct* that will remain in effect through September 30, 2019 requires a CFP® professional to notify CFP Board in writing, within 30 calendar days, only when the CFP® professional has been convicted of a crime (other than a minor traffic offense) or has been the subject of a professional disciplinary suspension, bar, or revocation issued by a governmental agency, an industry self-regulatory organization, or a professional association. A CFP® professional also is required, when renewing the CFP® professional's certification every two years, to report a wider range of potentially problematic conduct on the Ethics Profile Questionnaire.

The new Reporting standard, which is set forth in Standard E.3 of the new *Code and Standards*, requires a CFP® professional to provide written notice to CFP Board within 30 calendar days after the CFP® professional or an entity over which the CFP® professional is a Control Person has engaged in the potentially problematic conduct

that is listed in Standard E.3. Potentially problematic conduct includes conduct ranging from being charged with, convicted of, or admitted to a program that defers or withholds the entry of a judgment or conviction for, a Felony or Relevant Misdemeanor to having a professional license, certification, or membership suspended, revoked, or materially restricted because of a violation of laws, rules or standards of conduct.

CFP Board's new reporting requirement generally is based upon the reporting requirements set forth in Form U4 (Uniform Application for Securities Industry Registration or Transfer) without fully adopting or mirroring Form U4's disclosure requirements. In fact, certain potentially problematic conduct may not need to be disclosed on Form U4, but will need to be disclosed to CFP Board. Reporting of potentially problematic conduct on Form U4 will not relieve CFP® professionals of their separate obligation to disclose conduct to CFP Board. The reporting requirement enables CFP Board to receive information in a timely manner and eliminates any confusion about the reporting timeline.

OTHER REGULATIONS

Question 26: How does the new *Code and Standards* relate to federal and state statutes, rules, regulations and case law with respect to the obligations of a CFP® professional?

Answer 26: The new *Code and Standards* requires a CFP® professional to comply with the laws, rules, and regulations governing Professional Services, and prohibits a CFP® professional from intentionally or recklessly participating or assisting in another person's violations of the *Code and Standards* or the laws, rules, or regulations governing Professional Services. (See Standard A.9.) However, CFP® certification represents a commitment to a higher standard. While all practitioners must comply with the law, under certain circumstances, the *Code and Standards* may contain requirements that are in addition to those contained in existing laws or regulations. Therefore, compliance with the law does not always achieve compliance with CFP Board's *Code and Standards*.

Question 27: Will CFP Board apply the new *Code and Standards* differently for CFP® professionals with different licenses, registrations, or roles (such as registered representatives, bankers, investment adviser representatives, and insurance agents)?

Answer 27: No. The new *Code and Standards* applies to all CFP® professionals equally.

HOLDING OUT

Question 28: Does the new *Code and Standards* apply to those who hold CFP® certification but who do not display the CFP® marks or hold themselves out as financial planners?

Answer 28: Yes. A CFP® professional is obligated to abide by CFP Board's new *Code and Standards*, irrespective of whether the CFP® marks appear on the CFP® professional's business cards or stationery. Removal of the CFP® marks from one's business cards or stationery does not relieve a CFP® professional of the obligation to follow the *Code and Standards*.

FIRM OBLIGATIONS

Question 29: Are firms required to ensure that their employees and representatives who hold the CFP® certification adhere to CFP Board's ethical standards?

Answer 29: No. CFP Board certifies individuals, not firms. As a condition of CFP® certification, CFP® professionals are required to abide by CFP Board's new *Code and Standards*.

LIABILITY

Question 30: Does the new *Code and Standards* increase civil liability for CFP® professionals?

Answer 30: CFP Board developed the new *Code and Standards* to be an enforceable set of requirements that CFP Board can apply to those who hold CFP® certification. It is not designed to be a basis for civil liability. Clients of a CFP® professional and other third parties are not intended to be third-party beneficiaries of a CFP® professional's agreement with CFP Board to adhere to the *Code and Standards*.

CFP Board welcomes questions about the new *Code and Standards* and its application to specific situations. To submit a question, please contact CFP Board at SRC@CFPBoard.org.



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