

**CFP BOARD**

**FREQUENTLY  
ASKED QUESTIONS**

**CODE OF ETHICS AND  
STANDARDS OF CONDUCT**

EFFECTIVE OCTOBER 1, 2019

# INDEX TO FAQs

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# 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*"). CFP Board may provide answers to additional FAQs on a periodic basis.

## A. DUTIES OWED TO CLIENTS

### A.1 FIDUCIARY DUTY

**Question A.1.1: 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 A.1.1:** 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 A.1.2: What does CFP Board's fiduciary duty require? (Standard A.1.)**

**Answer A.1.2:** 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 A.1.3: 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 A.1.3:** 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.

**Question A.1.4: Does the Fiduciary Duty in the *Code and Standards* apply to a one-time recommendation (either a brokerage or insurance recommendation)?**

**Answer A.1.4:** Yes. When a CFP® professional provides Financial Advice to a Client, the CFP® professional is required to act as a fiduciary regardless of whether the advice is one time or ongoing. A CFP® professional who provides a one-time recommendation and has no ongoing duty to monitor or provide other Financial Advice concerning the recommendation does not have an ongoing Fiduciary Duty with respect to that recommendation. A CFP® professional who provides ongoing Financial Advice is subject to an ongoing Fiduciary Duty. The Fiduciary Duty in the *Code and Standards* provides that a CFP® professional must act as a fiduciary, and therefore, act in the best interests of the Client, at all times when providing Financial Advice to a Client. Financial Advice includes, among other things, 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 action with respect to the value of or advisability of investing in, purchasing, holding, gifting, or selling assets.

**A.5 DISCLOSE AND MANAGE CONFLICTS OF INTEREST**

**Question A.5.1: 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 A.5.1:** 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.

## **A.10 PROVIDE INFORMATION TO A CLIENT**

### **Question A.10.1: What are a CFP® professional's disclosure requirements under the new Code and Standards?**

**Answer A.10.1:** A CFP® professional has a Duty to Provide Information to a Client. Whether the information may be provided orally or must be provided in writing depends upon whether the Financial Advice that the CFP® professional is providing requires Financial Planning.

There are eight categories of information that a CFP® professional is required to provide to a Client when providing Financial Advice. There is an additional category of information that a CFP® professional must provide to a Client when providing or required to provide Financial Planning in accordance with the *Practice Standards*. (Standard A.10.) The requirement to provide information to a Client set forth in CFP Board's *Code and Standards* is in addition to any requirements that apply under applicable law, rule, or regulation and the CFP® Professional's Firm's policies and procedures.

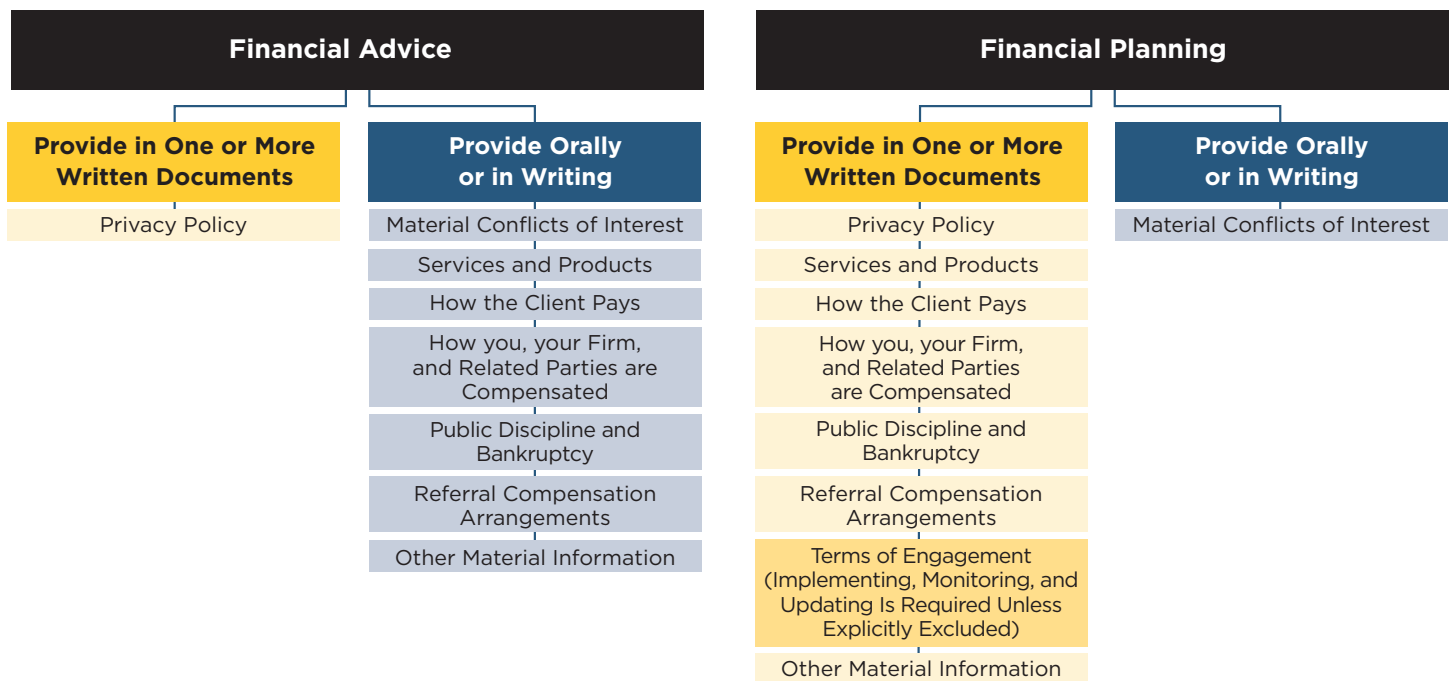
**When Providing Financial Advice:** When providing Financial Advice, a CFP® professional is required to provide the following information to the Client:

1. A description of the services and products to be provided;
2. How the Client pays for the products and services, and a description of the additional types of costs that the Client may incur, including product management fees, surrender charges, and sales loads;
3. How the CFP® professional, the CFP® Professional's Firm, and any Related Party are compensated for providing the products and services;
4. The existence of any public discipline or bankruptcy, and 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;
5. Full disclosure of all Material Conflicts of Interest with the CFP® professional's Client that could affect the professional relationship (a CFP® professional also must obtain the Client's informed consent and 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);
6. Written notice of policies regarding the protection, handling, and sharing of a client's non-public personal information (Privacy Policies);
7. 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 engaging or recommending the selection or retention of additional persons to provide financial or Professional Services for a Client; and
8. 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.

**When Providing Financial Planning:** When providing or required to provide Financial Planning in accordance with the *Practice Standards*, in addition to the information described above, a CFP® professional must provide to the Client the terms of the Engagement between the Client and the CFP® professional or the CFP® Professional's Firm. The terms of the Engagement include the Scope of Engagement and any limitations, the period(s) during which the services will be provided, and the Client's responsibilities. (Note that a CFP® professional is responsible for implementing, monitoring, and updating the Financial Planning recommendation(s) unless specifically excluded from the Scope of Engagement.)



**Orally or in Writing?** The chart set forth below summarizes the categories of information that a CFP® professional must provide a Client, and whether a CFP® professional must provide the information orally or in writing:



A CFP® professional must document that the information has been provided to the Client. CFP Board does not require any particular form of documentation. For example, a CFP® professional may document the information in a CRM or by maintaining a copy of an email sent to the Client. A CFP® professional also has an ongoing obligation to provide the Client with any information that is a Material change or update. Material changes and updates to public disciplinary history or bankruptcy information must be disclosed to the Client within 90 days, together with the location(s) of any relevant webpages. (Standard A.10.c.)

**Question A.10.2: Does a CFP® professional investment adviser representative satisfy the Duty to Provide Information to a Client (Standard A.10.) when the CFP® professional provides a Client with the U.S. Securities and Exchange Commission’s Form ADV Brochure and Brochure Supplement?**

**Answer A.10.2:** Maybe. A CFP® professional investment adviser representative who provides a Form ADV Brochure and Brochure Supplement that contains only the information that the Brochures require would not fully satisfy the Duty to Provide Information to a Client. However, a CFP® professional investment adviser representative may satisfy the Duty to Provide Information to a Client by providing a Client a Form ADV Brochure and Brochure Supplement (including Form CRS) that contains all the information that the standard requires.

**Question A.10.3: Will a CFP® professional providing investment advisory services satisfy the Updating Information component of the Duty to Provide Information to a Client, set forth in Standard A.10. of the Code and Standards, when the CFP® Professional’s Firm follows the SEC’s rules for providing and updating the Brochure Supplement?**

**Answer A.10.3:** Maybe. A CFP® professional investment adviser representative who provides a Form ADV Brochure and Brochure Supplement that contains only the information that the Brochures require would not fully satisfy the Updating Information component of the Duty to Provide Information to a Client. However, a CFP® professional will satisfy the Duty to Provide Information to a Client by delivering to a Client a Brochure (and/or Brochure Supplement) that contains all the required information listed in Standard A.10. To satisfy the Updating Information requirement, a CFP® professional must provide to the Client any information that is a Material change or update to the information that the Code and Standards requires a CFP® professional to provide to the Client. Between annual updating amendments to Form ADV, the SEC requires disclosure of Material changes to such information to Clients even if those changes do not trigger delivery of an interim amendment.

However, Material changes and updates to public disciplinary history or bankruptcy information, which a CFP® professional must provide to the Client under the *Code and Standards*, but which Form ADV does not require to be disclosed, must be provided within ninety (90) days of the public discipline or bankruptcy, together with the location(s) of relevant webpages.

**Question A.10.4: What information must CFP® professionals provide to existing and new clients now that the new *Code and Standards* became effective on October 1, 2019?**

**Answer A.10.4:** A CFP® professional is required to satisfy the Duty to Provide Information to a Client set forth in Standard A.10. of the new *Code of Ethics and Standards of Conduct*. As part of the transition to the new *Code and Standards*, CFP Board is taking into consideration the fact that CFP® professionals already have provided information to existing Clients that is similar to the information that is required under the new *Code and Standards*. Therefore, a CFP® professional will not be required to make new disclosures to current Clients to the extent the CFP® professional has made all required disclosures under the previous *Standards of Professional Conduct* and there are no material changes or updates to the information required to be provided to the Clients. However, material changes and updates to disciplinary history or bankruptcy information must be disclosed to existing Clients within 90 days, together with the location(s) of the relevant webpages. With respect to new clients, the CFP® professional must provide the information identified in Standard A.10. of the new *Code and Standards* prior to or at the time of the Engagement.

**Question A.10.5: The *Code and Standards* requires a CFP® professional to provide information to a Client, prior to or at the time of the Engagement, as set forth in Standard A.10. May a CFP® professional provide that information by email and by posting the information on the CFP® Professional’s Firm’s website?**

**Answer A.10.5:** Maybe. Where the Client has indicated a preference for a particular form of delivery, the CFP professional must provide the information using the form of delivery the Client has requested. Where the client has not indicated a preference and if the Client has an email address that the CFP® Professional uses to communicate with the Client, then the CFP® professional may deliver the information to the Client using that email address. However, a Client must explicitly consent to the email delivery of personal financial data. A CFP® professional also should review the CFP® Professional’s Firm’s policies and procedures, which may address the delivery of information to a Client by email.

If the CFP® professional communicates with the Client by email, then a CFP® professional may satisfy the delivery requirement by electronically delivering to a Client an email that contains a location to the webpage link or URL to the information that has been posted on a website. The email must describe the information the Client may obtain by clicking on the link.

On the other hand, simply posting the information on a website, without taking these additional steps to direct the client to the information, would not satisfy the requirement that information be “provided to” a Client.

A CFP® professional who uses email delivery also must have reason to believe that information was successfully delivered to the Client.

The Duty to Provide Information to a Client requires a CFP® professional to document that the information was provided to the Client. For example, a CFP® professional may document the information in a CRM or by maintaining a copy of an email sent to the Client.

**Question A.10.6.: The Paycheck Protection Program (“PPP”) established by the U.S. Small Business Administration (“SBA”) allows eligible individuals and small businesses to obtain loans that can be used during the Covid-19 crisis. A PPP loan is eligible for forgiveness, provided the terms of the loan forgiveness are satisfied. If a CFP® professional or an entity over which the CFP® professional is a Control Person obtains a PPP loan and the loan or part of the loan is forgiven, will the CFP® professional be required to notify Clients about the loan or loan forgiveness under the *Code and Standards*?**

**Answer A.10.6:** CFP Board’s Duty to Provide Information to a Client is set forth in Standard A.10. of the *Code and Standards*. Standard A.10.a. requires CFP® professionals to provide certain information to a Client, prior to or at the time of the Engagement, when providing or agreeing to provide Financial Advice, and to document that the information has been provided to the Client. Among the information required to be provided pursuant to Standard A.10.a. is any “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.” See Standard A.10.a.viii.



With respect to investment adviser firms and their reporting obligations regarding PPP loans under the Investment Advisers Act of 1940, the staff of the U.S. Securities and Exchange (“SEC”) stated:

As a fiduciary under federal law, you must make full and fair disclosure to your clients of *all material facts relating to the advisory relationship*. If the circumstances leading you to seek a PPP loan or other type of financial assistance constitute material facts relating to your advisory relationship with clients, it is the staff’s view that your firm should provide disclosure of, for example, the nature, amounts and effects of such assistance. If, for instance, you require such assistance to pay the salaries of your employees who are primarily responsible for performing advisory functions for your clients, it is the staff’s view that you would need to disclose this fact. In addition, if your firm is experiencing conditions that are reasonably likely to impair its ability to meet contractual commitments to its clients, you may be required to disclose this financial condition in response to Item 18 (Financial Information) of Part 2A of Form ADV (brochure), or as part of Part 2A, Appendix 1 of Form ADV (wrap fee program brochure).

See Question II.4., (Posted April 27, 2020), SEC, Division of Investment Management Coronavirus (COVID-19) Response FAQs, available at [t sec.gov/investment/covid-19-response-faq](https://www.sec.gov/investment/covid-19-response-faq) (emphasis added).

Whether a CFP® professional is required to provide information about a PPP loan or loan forgiveness to Clients under the *Code and Standards* depends on the facts and circumstances. If information about a PPP loan or loan forgiveness would be Material to a Client’s decision to engage or continue to engage the CFP® professional or the CFP® Professional’s Firm, it must be provided to the Client, prior to or at the time of the Engagement, pursuant to Standard A.10.a.viii.

CFP Board also reminds CFP® professionals that proceeds of PPP loans should only be used for the limited purposes enumerated by the SBA.

## **A.12 DUTIES WHEN REPRESENTING COMPENSATION METHOD**

### **Question A.12.1: What is a CFP® professional’s duty under the new *Code and Standards* when representing compensation method? (Standard A.12.)**

**Answer A.12.1:** 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 A.12.2: How does CFP Board define Fee-only? (Standard A.12.a.)**

**Answer A.12.2:** 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 A.12.3: How does CFP Board address “Fee-Based” in the *Code and Standards*? (Standard A.12.a.)**

**Answer A.12.3:** 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 A.12.4: Who does CFP Board consider to be a Related Party? (Standard A.12.c.)**

**Answer A.12.4:** 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 A.12.5: What is Sales-Related Compensation? (Standard A.12.b.)**

**Answer A.12.5:** 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 A.12.6: When does the Safe Harbor for Related Party compensation apply and what does it require? (Standard A.12.e.)**

**Answer A.12.6:** 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 A.12.7: How does the *Code and Standards* address misrepresentation of compensation method by a CFP® Professional’s Firm? (Standard A.12.f.)**

**Answer A.12.7:** 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.

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

### **Question A.13.1: What does the *Code and Standards* require of a CFP® professional who recommends the selection of additional persons to provide financial or Professional Services for a Client?**

**Answer A.13.1:** The Fiduciary Duty in the *Code and Standards* provides that at all times when providing Financial Advice to a Client, a CFP® professional must act as a fiduciary, and therefore, act in the best interests of the Client. A recommendation that a Client select and retain another financial or Professional Services provider for a Client, such as an accountant or attorney, is Financial Advice. To fulfill that Fiduciary Duty, the Duties When Recommending, Engaging, and Working with Additional persons, set forth in Standard A.13.a.i. of the *Code and Standards*, requires a CFP® professional to have a reasonable basis for the recommendation based on the person's reputation, experience, and qualifications.

A CFP® professional may obtain such a reasonable basis through appropriate due diligence to support the recommendation. The necessary amount of research and analysis will depend upon the facts and circumstances. A CFP® professional's reliance upon a personal relationship with the other financial or Professional Services provider, by itself, ordinarily would be insufficient justification for the recommendation. Some of the information that a CFP® professional may consider reviewing when conducting due diligence includes information about the individual that is contained in FINRA's BrokerCheck, the Investment Adviser Public Disclosure database, CFP.net/verify, CPAverify.org, and a Google search result. A CFP® professional also may rely upon the CFP® Professional's Firm's recommendation if the CFP® professional has a reasonable basis to believe that the firm developed the recommendation after conducting appropriate due diligence.

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

### **B.1 FINANCIAL PLANNING DEFINITION**

#### **Question B1.1: How does CFP Board define Financial Planning? (Standard B.1. and Glossary.)**

**Answer B.1.1:** 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.

### **B.3 APPLICATION OF PRACTICE STANDARDS**

#### **Question B.3.1: When must a CFP® professional comply with the *Practice Standards* for the Financial Planning Process? (Standard B.3.)**

**Answer B.3.1:** 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 B.3.2: How does a CFP® professional determine whether the Financial Advice the CFP® professional has agreed to provide or provided to a Client is “Financial Advice that Requires Financial Planning” (i.e., 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)?**

**Answer B.3.2:** There are three circumstances when a CFP® professional must provide Financial Planning, and therefore must comply with the *Practice Standards* for the Seven-Step Financial Planning Process (Standard B.3.):

- 1) The CFP® professional agrees to provide or provides Financial Planning;
- 2) 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 (“Financial Advice that Requires Financial Planning”); or
- 3) The Client has a reasonable basis to believe the CFP® professional will provide or has provided Financial Planning.

**The Integration Factors:** This FAQ focuses on the second of these three circumstances: whether the CFP® professional has provided Financial Advice that Requires Financial Planning. CFP Board has established five specific “Integration Factors” that CFP Board will weigh in making that determination:

- a. The number of relevant elements of the Client’s personal and financial circumstances that the Financial Advice may affect;
- 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.

**Additional Duties When Financial Planning is Required:** If, based on the Integration Factors, the CFP® professional is providing Financial Advice that requires Financial Planning, then the CFP® professional must comply with the *Practice Standards* for the Seven-Step Financial Planning Process. As set forth in Standard C., the *Practice Standards* for the Financial Planning Process are as follows:

**Step 1:** Understanding the Client's Personal and Financial Circumstances

**Step 2:** Identifying and Selecting Goals

**Step 3:** Analyzing the Client's Current Course of Action and Potential Alternative Course(s) of Action

**Step 4:** Developing the Financial Planning Recommendation(s)

**Step 5:** Presenting the Financial Planning Recommendation(s)

**Step 6:** Implementing the Financial Planning Recommendation(s)

**Step 7:** Monitoring Progress and Updating

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 interests, and the CFP® Professional's Firm's policies and procedures.

If a CFP® professional is required to provide Financial Planning, then under the Duty to Provide Information to a Client (Standard A.10.), most of the information that the CFP® professional may have provided to the Client orally (or in writing) when providing Financial Advice now must be delivered to the Client in writing, in one or more written documents. In addition, the CFP® professional also must provide to the Client, in writing, 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. The CFP® professional also is responsible for Implementing the Financial Planning Recommendations (Step 6 of the Financial Planning Process) and Monitoring Progress and Updating (Step 7 of the Financial Planning Process) unless specifically excluded from the Scope of the Engagement.

## **B.4 INTEGRATION FACTORS**

**Question B.4.1: 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 B.4.1:** 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 B.4.2: 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 B.4.2:** 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 B.4.3: 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 B.4.3:** 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.

**B.6 NO CLIENT AGREEMENT TO ENGAGE FOR FINANCIAL PLANNING**

**Question B.6.1: 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 B.6.1:** 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.



## C. PRACTICE STANDARDS FOR THE FINANCIAL PLANNING PROCESS

### Question C.1: 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 C.1:** 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"> <li>• Defining the Scope of the Engagement</li> </ul>	[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"> <li>• Determining a Client’s Personal and Financial Goals, Needs and Priorities</li> <li>• Obtaining Quantitative Information and Documents</li> </ul>	1. Understanding the Client’s Personal and Financial Circumstances <ul style="list-style-type: none"> <li>• Obtaining Qualitative and Quantitative Information</li> <li>• Analyzing Information</li> <li>• Addressing Incomplete Information</li> </ul>
	2. Identifying and Selecting Goals <ul style="list-style-type: none"> <li>• Identifying Potential Goals</li> <li>• Selecting and Prioritizing Goals</li> </ul>
3. Analyzing and Evaluating the Client’s Financial Status <ul style="list-style-type: none"> <li>• Analyzing and Evaluating the Client’s Information</li> </ul>	3. Analyzing the Client’s Current Course of Action and Potential Alternative Course(s) of Action <ul style="list-style-type: none"> <li>• Analyzing Current Course of Action</li> <li>• Analyzing Potential Alternative Courses of Action</li> </ul>
4. Developing and Presenting Financial Planning Recommendations <ul style="list-style-type: none"> <li>• Identifying and Evaluating Financial Planning Alternative(s)</li> </ul>	
4. Developing and Presenting Financial Planning Recommendations <ul style="list-style-type: none"> <li>• Developing the Financial Planning Recommendation(s)</li> </ul>	4. Developing the Financial Planning Recommendation(s)
4. Developing and Presenting Financial Planning Recommendations <ul style="list-style-type: none"> <li>• Presenting the Financial Planning Recommendation(s)</li> </ul>	5. Presenting the Financial Planning Recommendation(s)

Existing Practice Standards	Revised Practice Standards
5. Implementing the Financial Planning Recommendation(s) <ul style="list-style-type: none"> <li>• Agreeing on Implementation Responsibilities</li> <li>• Selecting Products and Services for Implementation</li> </ul>	6. Implementing the Financial Planning Recommendation(s) <ul style="list-style-type: none"> <li>• Addressing Implementation Responsibilities</li> <li>• Identifying, Analyzing, and Selecting Actions, Products and Services</li> <li>• Recommending Actions, Products, and Services for Implementation</li> <li>• Selecting and Implementing Actions, Products, or Services</li> </ul>
6. Monitoring <ul style="list-style-type: none"> <li>• Defining Monitoring Responsibilities</li> </ul>	7. Monitoring Progress and Updating <ul style="list-style-type: none"> <li>• Monitoring and Updating Responsibilities</li> <li>• Monitoring the Client's Progress</li> <li>• Obtaining Current Qualitative and Quantitative Information</li> <li>• Updating Goals, Recommendations, or Implementation Decisions</li> </ul>

**Question C.2: Does CFP Board require a CFP® professional to complete all seven steps of the Financial Planning process? (Standards A.10 and C.)**

**Answer C.2:** 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 C.3: The new Code and Standards requires a CFP® professional to document information when complying with the Practice Standards. What is required? (Standard C.)**

**Answer C.3:** 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 materials 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.

## **E. DUTIES OWED TO CFP BOARD**

### **E.2 REFRAIN FROM ADVERSE CONDUCT**

#### **Question E.2.1: How will CFP Board handle bankruptcies under the new *Code and Standards*? (Standards E.2. and E.3.)**

**Answer E.2.1:** 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.

### **E.3 REPORTING**

#### **Question E.3.1: 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 E.3.1:** 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.

**Question E.3.2: The Paycheck Protection Program (“PPP”) established by the U.S. Small Business Administration (“SBA”) allows eligible individuals and small businesses to obtain loans that can be used during the Covid-19 crisis. A PPP loan is eligible for forgiveness, provided the terms of the loan forgiveness are satisfied. If a CFP® professional or an entity over which the CFP® professional is a Control Person obtains a PPP loan and the loan or part of the loan is forgiven, will the CFP® professional be required to report the loan or loan forgiveness to CFP Board?**

**Answer E.3.2:** CFP Board's Reporting standard, which is set forth in Standard E.3 of the *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 certain conduct that is listed in Standard E.3.

The *Code and Standards* do not specifically require CFP® professionals to report to CFP Board the receipt of a PPP loan or loan forgiveness under the PPP. However, another reportable event, such as a bankruptcy, public discipline, judgment lien, civil judgment, Regulatory Action, or Civil Action could occur in connection with the receipt of a PPP loan or loan forgiveness under the PPP. See Standard E.3. Similarly, receipt of a PPP loan or loan forgiveness itself does not require an affirmative response to any question in CFP Board's current Ethics Declaration.

CFP Board also reminds CFP® professionals that proceeds of PPP loans should only be used for the limited purposes enumerated by the SBA.

## **G. MISCELLANEOUS**

**Question G.1: Why did CFP Board revise its Standards?**

**Answer G.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 G.2: What process did CFP Board follow in revising its Standards?**

**Answer G.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 G.3: How has CFP Board changed the organizational structure of the *Code and Standards*?**

**Answer G.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.

**Question G.4: 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 G.4:** 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 G.5: 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 G.5:** No. The new *Code and Standards* applies to all CFP® professionals equally.



**Question G.6: 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 G.6:** 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*.

**Question G.7: Are firms required to ensure that their employees and representatives who hold the CFP® certification adhere to CFP Board's ethical standards?**

**Answer G.7:** 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*.

**Question G.8: What is the relationship between CFP Board, a CFP® Professional, a CFP® Professional's Firm, and a CFP® Professional's Firm's Clients?**

**Answer G.8:** CFP Board is a 501(c)(3) organization whose 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 issues the CFP® certification to individuals ("CFP® professional") who satisfy CFP Board's certification requirements.

**The Relationship Between CFP Board and a CFP® Professional:** The relationship between CFP Board and each CFP® professional is governed by the *Terms and Conditions of Certification and Trademark License*. In the *Terms and Conditions*, CFP Board certifies a CFP® professional as having satisfied CFP Board's requirements for certification ("Certification"), grants a CFP® professional a Trademark License to use the Certification Marks, and sets forth other provisions that govern the relationship between CFP Board and a CFP® professional, including the requirement that each CFP® professional comply with CFP Board's *Code of Ethics and Standards of Conduct*, which has an effective date of October 1, 2019 and an enforcement date of June 30, 2020. The *Code and Standards* reflects the commitment that a CFP® professional makes to CFP Board. Among other things, the *Code and Standards* includes a Fiduciary Duty that requires a CFP® professional to act as a fiduciary, and therefore, act in the best interests of the Client, at all times when providing Financial Advice to a Client. Therefore, a CFP® professional makes a commitment to CFP Board that, when providing Financial Advice to a Client, the CFP® professional will provide Professional Services that satisfy the Fiduciary Duty.

**The Relationship Between CFP Board and a CFP® Professional's Firm:** CFP® professionals often work at financial services firms. CFP Board does not certify firms; therefore, the *Code and Standards* does not establish requirements for firms. However, CFP Board does expect that a CFP® Professional's Firm will support CFP® certification and will allow a CFP® professional to comply with the *Code and Standards*.

**The Relationship Between CFP Board and a CFP® Professional's Firm's Clients:** A CFP® professional and the CFP® Professional's Firm also have relationships with Clients. As noted above, the *Code and Standards* reflects the commitment that a CFP® professional makes to CFP Board. While a CFP® professional is required to comply with the *Code and Standards*, including the Fiduciary Duty, a CFP® professional and the CFP® Professional's Firm are not required to incorporate the Fiduciary Duty into the Client Engagement or refer to the Fiduciary Duty in Client communications. As was the case with the prior *Standards of Professional Conduct*, the *Code and Standards* is not designed to be a basis for civil liability. Clients of a CFP® professional and other third parties are not intended to be considered third-party beneficiaries of a CFP® professional's agreement with CFP Board to adhere to the *Code and Standards*. CFP Board enforces the *Code and Standards* through a peer-review process set forth in CFP Board's *Procedural Rules* that is credible to the public and fair to those whose conduct CFP Board is evaluating. In the event CFP Board finds a violation of the *Code and Standards* and issues a public sanction, CFP Board will publish the decision in a press release and on CFP Board's website.

**Question G.9: May a CFP® professional who is a registered representative of a broker dealer satisfy CFP Board's Fiduciary Duty?**

**Answer G.9:** Yes. A CFP® professional may satisfy CFP Board's Fiduciary Duty when working in any business model, including when working as a registered representative of a broker dealer and earning Sales-Related Compensation. In those business models where CFP Board's Fiduciary Duty exceeds the legal and regulatory requirements of that business model, a CFP® professional is required to satisfy CFP Board's Fiduciary Duty, and therefore, exceed the applicable legal and regulatory requirements.

**Question G.10: Does the new *Code and Standards* increase civil liability for CFP® professionals?**

**Answer G.10:** 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](mailto:SRC@CFPBoard.org).



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