

CFP BOARD

CASE STUDIES
APPLYING THE
CODE OF ETHICS
AND STANDARDS
OF CONDUCT

Updated November 2019 with 10 New Case Studies (Case Studies 13-22)

PURPOSE AND TABLE OF CONTENTS

CFP Board developed these case studies to provide practical guidance to CFP® professionals and their firms on the new *Code of Ethics and Standards of Conduct*, which becomes effective on October 1, 2019. Each case study presents a hypothetical factual circumstance and then asks a question about a CFP® professional's duty in that circumstance under the *Code and Standards*. The case study presents the response options, identifies the best response, and then discusses the rationale for why that response is the best and why the other response options are not the best. CFP Board intends for these and other case studies to guide CFP® professionals in their application of the *Code and Standards* to their own practice. CFP Board encourages all CFP® professionals to read the *Code and Standards* prior to its effective date.

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CASE STUDY 1: THE FIDUCIARY DUTY APPLIES TO A ROLLOVER RECOMMENDATION

Sarah, a CFP® professional, is engaged by Betty, who is retiring soon, to provide Financial Advice. Betty has most of her retirement funds invested in her employer's 401(k) plan. Sarah does not obtain any information about the 401(k) plan because she assumes that there are more investment options available in an individual retirement account ("IRA") than in Betty's 401(k) plan. Based on this, Sarah believes Betty's portfolio would be better off in an IRA. Sarah properly discloses her Material Conflicts of Interest to Betty. Sarah then recommends that Betty take a distribution from her 401(k) plan and roll the assets into an IRA, which Sarah would manage. Sarah intends to analyze and recommend an investment strategy for the IRA after the funds have been distributed to the IRA.

QUESTION:

Did Sarah satisfy her Fiduciary Duty?

RESPONSE OPTIONS:

- A. Sarah satisfied her Fiduciary Duty in recommending the distribution and rollover.
- B. Sarah did not satisfy her Fiduciary Duty in recommending the distribution and rollover.

Best Response: Response B is the best response. This case involves the Fiduciary Duty (Standard A.1.) and the definitions of Client and Financial Advice (Glossary).

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 Client is any person to whom a CFP® professional provides or agrees to provide Professional Services pursuant to an Engagement. Financial Advice includes communications that, based on their content, context, and presentation, would reasonably be viewed as a recommendation to take or refrain from taking a particular course of action with respect to the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets. The Fiduciary Duty includes a Duty of Loyalty, a Duty of Care, and a Duty to Follow Client Instructions.

This case study focuses on the Duty of Care, which 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.

In this case, Sarah has an Engagement with Betty, and has recommended that Betty take a distribution from her 401(k) plan and roll the assets into an IRA. Therefore, Sarah has provided Financial Advice to a Client and is subject to the Fiduciary Duty, including the Duty of Care.

To satisfy the Duty of Care, Sarah should act in light of Betty's goals, risk tolerance, objectives, and financial and personal circumstances. Sarah should compare the features of the 401(k) plan and the potential IRA when making her recommendation to Betty. Sarah should apply the factors that a prudent CFP® professional would determine are relevant, including the relative features and options of the 401(k) plan compared to a rollover IRA, and determine which choice is best for Betty given her goals, risk tolerance, objectives, and financial and personal circumstances. FINRA has identified a non-exhaustive list of factors that are relevant to this analysis, such as the fees and expenses, investment options, services, availability of penalty-free withdrawals, protection from creditors and legal judgments, required minimum distributions, and issues related to investments in employer stock.

Sarah did not act with the care, skill, prudence and diligence that the Duty of Care requires because she recommended the distribution and rollover without analyzing how the features and options of the 401(k) plan compare to the potential IRA. Sarah also should have consulted her firm's policies and procedures, which may specifically address potential rollovers of 401(k) plan assets.

Response A is not the best response because Sarah did not satisfy her Fiduciary Duty (more particularly, her Duty of Care) in recommending the distribution and rollover.

Relevant Standards and Definitions: Fiduciary Duty (Standard A.1.); definitions of Client and Financial Advice (Glossary).

CASE STUDY 2: THE DUTY TO DISCLOSE MATERIAL CONFLICTS OF INTEREST WHEN MAKING A ROLLOVER RECOMMENDATION

Bruce, a CFP® professional, is a representative of XYZ Advisors, Inc., a registered investment adviser. XYZ does not permit its investment adviser representatives to charge a fee for managing assets in a 401(k) plan. Bruce is engaged by Heather, who is retiring, to provide Financial Planning. After obtaining information about and understanding Heather's personal and financial circumstances, Bruce helps Heather develop a goal of having adequate income during her retirement. Bruce analyzes Heather's existing account in the 401(k) plan and the plan's investment options, fees and expenses, services, and other features. Bruce concludes that the management fees Heather will pay if she rolls over the assets into an individual retirement account ("IRA") will be higher than if she leaves the assets in her account in the 401(k) plan. Nevertheless, based on his review of Heather's circumstances and analysis of the relevant factors, Bruce determines that such a rollover is in Heather's best interest. Bruce presents that recommendation to Heather and tells Heather that he would receive an ongoing fee for managing the assets in the IRA. Bruce does not tell Heather that she would not have to pay Bruce a fee if she continues to invest her assets in the account in the 401(k) plan, as he would not be advising on those assets.

QUESTION:

With respect to Bruce's Duty to Disclose Conflicts of Interest, which of the following is the best response?

RESPONSE OPTIONS:

- A. Bruce has no Material Conflict of Interest because Heather understands that Bruce will be paid for his services.
- B. Bruce satisfied his disclosure obligation when he disclosed his fee for managing the IRA.
- C. Bruce did not fully disclose to Heather the Material Conflict of Interest that his recommendation presented.
- D. Since Bruce sincerely believed that his recommendation was in Heather's best interest, he was excused from making full disclosure to Heather.

Best Response: Response C is the best response. This case involves the Duty to Disclose Conflicts of Interest (Standard A.5.a.) and the definitions of Conflict of Interest and Material (Glossary).

A CFP® professional must make full disclosure of all Material Conflicts of Interest with the CFP® professional's Client that could affect the professional relationship. A CFP® professional must provide the Client with sufficiently specific facts so that a reasonable Client would be able to understand the CFP® professional's Material Conflicts of Interest and the business practices that give rise to the conflicts, and give informed consent to such conflicts or reject them. One way that a Conflict of Interest occurs is when a CFP® professional's interests (including the interests of the CFP® Professional's Firm) are adverse to the CFP® professional's duties to a Client. Information is Material when a reasonable Client or prospective Client would consider the information important in making a decision. A CFP® professional must make full disclosure and obtain the informed consent of the Client before providing any Financial Advice regarding which the CFP® professional has a Material Conflict of Interest.

In this case, Bruce has a Material Conflict of Interest that could affect his professional relationship with Heather because of how he is compensated for his services. To provide sufficiently specific facts for Heather to understand this Material Conflict of Interest, Bruce must explain to Heather that he will receive an ongoing fee for managing Heather's assets only if she accepts the recommendation and the assets are invested in an IRA; Bruce will receive no compensation if Heather keeps the assets in the account in the 401(k) plan because he will not be providing Financial Advice on those assets. A reasonable Client, like Heather, would consider that information important in making a decision whether to follow or reject Bruce's Financial Advice. Because Bruce did not fully disclose that information to Heather, he did not satisfy his Duty to Disclose Material Conflicts of Interest.

Response A is not the best response because Bruce has a Material Conflict of Interest.

Response B is not the best response because the Duty to Disclose Conflicts of Interest requires Bruce to do more than disclose that he would receive a fee for managing the assets in the IRA. Bruce also is required to explain to Heather that he will receive a fee only if she accepts his recommendation.

Response D is not the best response because a sincere belief by a CFP® professional that he or she is acting in the Client's best interests is insufficient to excuse a failure to make full disclosure of a Material Conflict of Interest.

While the Duty to Disclose Conflicts of Interest does not require disclosure of Material Conflicts of Interest in writing, evidence of oral disclosure of a conflict will be given such weight as CFP Board in its judgment deems appropriate. As a best practice, CFP Board recommends that a CFP® professional disclose the Conflict of Interest in writing before or when providing the Financial Advice.

Relevant Standards and Definitions: Disclose and Manage Conflicts of Interest (Standard A.5); definitions of Conflict of Interest and Material (Glossary).

CASE STUDY 3: THE FIDUCIARY DUTY APPLIES TO AN OPINION ABOUT A FINANCIAL ASSET

Allison is a CFP® professional who is a registered representative of a broker-dealer. Allison has provided brokerage services to her Client, Mateo, several times over the past three years. Typically, Mateo wants to purchase a specific stock and asks Allison for her opinion before purchasing the stock. Mateo recently asked Allison what she “thought” about Mateo buying a specific stock he intended to purchase. Allison told Mateo that she has looked into the company and that she likes the stock and believes it is undervalued. Mateo then directed Allison to purchase the stock.

QUESTION:

Does Allison have a Fiduciary Duty?

RESPONSE OPTIONS:

- A. Allison does not have a Fiduciary Duty because Mateo identified the specific stock at issue.
- B. Allison has a Fiduciary Duty because she provided Financial Advice when she communicated with Mateo regarding the advisability of purchasing the stock.
- C. Allison does not have a Fiduciary Duty because Mateo ultimately directed Allison to buy the stock after Allison communicated with Mateo regarding the advisability of the purchase.
- D. Allison has a Fiduciary Duty because she effected the stock transaction for Mateo.

Best Response: Response B is the best response. This case study involves the Fiduciary Duty (Standard A.1.) and the definitions of Client, Financial Advice, and Financial Assets (Glossary).

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 Client is any person to whom the CFP® professional provides or agrees to provide Professional Services pursuant to an Engagement. Financial Advice includes 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, among other things, the value of or the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets. Financial Assets include securities, insurance products, real estate, bank instruments, commodities contracts, derivative contracts, collectibles, or other financial products.

Mateo asked Allison about a specific stock before making a decision whether to purchase the stock. The content, context, and presentation of this communication makes clear that Mateo was asking for Allison’s recommendation with respect to the advisability of purchasing the stock. When Allison responded to Mateo’s question by saying that she likes the stock and that the stock is undervalued, she made a communication that reasonably would be viewed as a recommendation that Mateo purchase the stock. A stock is an equity security, which is a Financial Asset. Mateo is a Client because Allison provided Financial Advice and related services to Mateo pursuant to an Engagement. Therefore, because Allison made a recommendation to a Client about a Financial Asset, she has provided Financial Advice. Since a Fiduciary Duty arises when a CFP® professional provides Financial Advice to a Client, Allison has a Fiduciary Duty, and was required to act as a fiduciary, and therefore, in Mateo’s best interests, when providing the Financial Advice.

Response A is not the best response. Allison has a Fiduciary Duty because she provided Financial Advice to Mateo, her Client. A CFP® professional who provides Financial Advice to a Client concerning a specific Financial Asset has a Fiduciary Duty even if it was the Client who asked for information about that Financial Asset.

Response C is not the best response because Allison’s obligation to satisfy the Fiduciary Duty does not depend upon whether Mateo directed the transaction. Allison must act as a fiduciary when providing Financial Advice. Allison provided Financial Advice to Mateo because Mateo is a Client and Allison made a recommendation to Mateo about a Financial Asset.

Response D is not the best response. Allison has a Fiduciary Duty because she provided Mateo with Financial Advice. Under other circumstances (such as a Client-directed purchase), a CFP® professional may purchase a stock for a Client without providing Financial Advice. In that case, the CFP® professional does not have a Fiduciary Duty.

Relevant Standards and Definitions: Fiduciary Duty (Standard A.1.); definitions of Client, Financial Advice, and Financial Assets (Glossary).

CASE STUDY 4: THE DUTY TO DISCLOSE MATERIAL CONFLICTS OF INTEREST WHEN RESPONDING TO A CLIENT'S INVESTMENT INQUIRY

Emma, a CFP® professional, receives a call from her Client, David, who is approaching retirement age. David asks Emma whether he should invest in a real estate investment trust (REIT) to fund his retirement income. To invest in the REIT, David would need to liquidate a portion of the assets held in his investment account, which Emma manages, and purchase the REIT through another account. Emma conducts her analysis and concludes that investing in the REIT is a bad idea because, among other reasons, the account she is managing likely will achieve better returns than an investment in the REIT. Emma analyzes David's investment time horizon and concludes that the commission she would receive on the purchase of a REIT investment would be less than the management fee she would earn if the assets remained in David's investment account. The account that would hold the REIT would not pay Emma a management fee.

QUESTION:

What should Emma do?

RESPONSE OPTIONS:

- A. Explain to David that, in her professional judgment, he should not invest in the REIT.
- B. Fully disclose to David her Material Conflict of Interest, obtain informed consent to the conflict, and provide David with her advice.
- C. Explain to David that she must decline to provide David the advice he is seeking. Emma has a Material Conflict of Interest because she will earn more compensation if David keeps the assets in the investment account than if David invests in the REIT, and Emma cannot provide disinterested Financial Advice.

Best Response: B is the best response. This case involves the Duty to Disclose Conflicts of Interest (Standard A.5.a.) and the definitions of Conflict of Interest and Material (Glossary).

A CFP® professional must make full disclosure of all Material Conflicts of Interest with the CFP® professional's Client that could affect the professional relationship. The Duty to Disclose Conflicts of Interest requires the CFP® professional to provide the Client with sufficiently specific facts so that a reasonable Client would be able to understand the CFP® professional's Material Conflicts of Interest and the business practices that give rise to the conflicts, and to either give informed consent to such conflicts or reject them. One way in which a Conflict of Interest occurs is when a CFP® professional's interests (including the interests of the CFP® Professional's Firm) are adverse to the CFP® professional's duties to a Client. Information is Material when a reasonable Client or prospective Client would consider the information important in making a decision. A CFP® professional must make full disclosure and obtain the consent of the Client before providing any Financial Advice regarding which the CFP® professional has a Material Conflict of Interest.

In this case, Emma has a Material Conflict of Interest because she will earn more compensation if David accepts her recommendation. The fee that Emma would receive if she continued to manage David's investment account will be greater than the commission she would receive if he purchased the REIT. Emma must make full disclosure to David of the compensation conflict before or when making the recommendation and obtain David's informed consent to the conflict.

While the Duty to Disclose Conflicts does not require written disclosure, evidence of oral disclosure of a conflict will be given such weight as CFP Board in its judgment deems appropriate. As a best practice, CFP Board recommends that a CFP® professional disclose the Conflict of Interest in writing before or when providing the Financial Advice.

Response C is not the best response because the Fiduciary Duty that Emma, as a CFP® professional, has when providing Financial Advice does not require her to decline to provide the Financial Advice because she has a conflict. Emma may provide full disclosure of the Material Conflict of Interest, obtain David's consent, and properly manage the Material Conflict of Interest by adopting and following business practices reasonably designed to prevent the Material Conflict of Interest from compromising her ability to act in David's best interests.

Response A is not the best response because it does not address Emma's Material Conflict of Interest.

Relevant Standards and Definitions: Disclose and Manage Conflicts of Interest (Standard A.5.); definitions of Conflict of Interest and Material (Glossary).

CAST STUDY 5: THE DUTY TO DISCLOSE MATERIAL CONFLICTS OF INTEREST WHEN RECOMMENDING A PRODUCT ISSUED BY AN AFFILIATE

Olivia, a CFP® professional, identifies three single premium annuities that will best meet the needs of her Client, Michael. One of the three annuities Olivia identified is issued by a life insurance company (DEF Mutual, Inc.) that is affiliated with Olivia's firm (DEF Advisers, Inc.). While Olivia will receive the same compensation if Michael purchases any of the three annuities, her firm and her firm's affiliate will receive an additional economic benefit if Michael purchases the DEF Mutual annuity.

QUESTION:

How should Olivia proceed?

RESPONSE OPTIONS:

- A. Olivia should disclose to Michael that one of the insurance companies is affiliated with her firm and that if Michael purchases an annuity from that insurance company, Olivia's firm and an affiliate of Olivia's firm will receive an additional economic benefit on that transaction.
- B. Olivia should assume that, because the insurance company and Olivia's firm have the same name, Michael recognizes that they are affiliated and that Olivia's firm or the affiliate will receive an additional economic benefit, with the result that no further disclosure is required.
- C. Olivia should avoid recommending annuity contracts that are issued by the affiliated company.

Best Response: Response A is the best response. This case involves the Duty to Disclose and Manage Conflicts of Interest (Standard A.5.) and the definitions of Conflict of Interest and Material (Glossary).

A CFP® professional must make full disclosure of all Material Conflicts of Interest with the CFP® professional's Client that could affect the professional relationship. The Duty to Disclose a Conflict of Interest requires the CFP® professional to provide the Client with sufficiently specific facts so that a reasonable Client would be able to understand the CFP® professional's Material Conflicts of Interest and the business practices that give rise to the conflicts, and either give informed consent to such conflicts or reject them. One way in which a Conflict of Interest occurs is when a CFP® professional's interests (including the interests of the CFP® Professional's Firm) are adverse to the CFP® professional's duties to a Client. Information is Material when a reasonable Client or prospective Client would consider the information important in making a decision.

In this case, the affiliation between Olivia's firm and the insurance company that issued the annuity, and the fact that Olivia's firm and an affiliate of Olivia's firm will receive an additional economic benefit if Michael purchases an annuity from that insurance company, are Material Conflicts of Interest. As a result, Olivia must make full disclosure of the potential additional economic benefit that will result if Michael purchases the annuity from the affiliate and obtain Michael's informed consent to the Material Conflict of Interest before or when recommending the annuity issued by the affiliate.

Response B is not the best response because it is not reasonable to assume that Michael understands the conflict solely from the fact that the names of the firm and the affiliate are similar.

Response C is not the best response because if DEF Advisers' affiliation with DEF Mutual, and the additional economic benefit, are fully disclosed and informed consent is obtained, Olivia may manage the conflict through business practices reasonably designed to prevent the Material Conflict of Interest from compromising her ability to act in the Client's best interests. Here, for example, Olivia has analyzed the annuities that are available to Michael, and she may recommend the annuity issued by DEF Mutual if she concludes that the annuity is in Michael's best interests.

Relevant Standards and Definitions: Disclose and Manage Conflicts of Interest (Standard A.5.); definitions of Conflict of Interest and Material (Glossary).

CASE STUDY 6: THE DUTY TO FOLLOW A CLIENT'S INSTRUCTION TO USE A SPECIFIC FIRM FOR EXECUTION

Urwa is a CFP® professional who provides asset management services to several Clients. Urwa manages assets in accordance with a standard investment management agreement that she tailors to meet each Client's investment needs. The agreement gives Urwa discretionary authority to buy or sell securities and to select broker-dealers to execute transactions. Urwa's firm charges each Client an advisory fee based on the average value of assets held in the account each quarter.

Urwa receives a call from one of her Clients, Joe, who is a novice investor. Joe tells Urwa that he wants to help advance his sister Susan's career, and he asks Urwa to begin using Susan's firm to execute trades for his non-qualified investment account. Urwa investigates and has concerns that Susan's firm may not provide Joe with best execution because the cost of execution using Susan's firm is higher than other firms where Urwa typically executes trades, and Urwa does not identify an off-setting benefit from using Susan's firm that would justify the higher fee.

QUESTION:

How should Urwa proceed?

RESPONSE OPTIONS:

- A. Tell Joe that she cannot use Susan's firm to execute trades because it would violate Urwa's Fiduciary Duty to Joe, which requires Urwa to seek the best execution of Joe's transactions.
- B. Agree to Joe's reasonable and lawful direction, which Urwa has an obligation to follow.
- C. Inform Joe that using Susan's firm to execute transactions may increase transaction costs or otherwise not be advantageous, and thus adversely affect Joe's investment returns. However, if after receiving this information Joe still wants to make the change, Urwa should begin to direct transactions for his account to Susan's firm.

Best Response: Response C is the best response. This case involves the Fiduciary Duty (Standard A.1.), including the Duty of Care and the Duty to Follow Client Instructions, and the definition of Financial Advice (Glossary).

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. Financial Advice includes the exercise of discretionary authority over the Financial Assets of a Client. The Fiduciary Duty includes a Duty of Loyalty, a Duty of Care, and a Duty to Follow Client Instructions. 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.

In this case, Urwa's Engagement with Joe gives Urwa discretionary authority over Joe's Financial Assets. Therefore, Urwa is providing Financial Advice to a Client and must satisfy the Fiduciary Duty. To satisfy the Duty of Care, Urwa must seek best execution of Joe's account transactions. Urwa has learned that if she uses Susan's firm, she may not be able to obtain best execution for his transactions. However, Urwa also must satisfy the Duty to Follow Client Instructions. Joe has instructed Urwa to use Susan's firm for execution because he wants to advance Susan's career.

Urwa should review her firm's policies and procedures concerning execution services to determine, for example, whether she is authorized to execute the transaction with Susan's firm. If there are no firm policies that prevent Urwa from using Susan's firm to execute the transaction, then Urwa should inform Joe that if she uses Susan's firm, he may not receive best execution, which could affect Joe's return on the account or otherwise not be advantageous. If, after being informed of these consequences, Joe still wants Urwa to use Susan's firm for execution, then Urwa should do so.

Response A is not the best response because Joe's instruction to execute trades through his sister's firm reflects his view that using a family member to execute transactions is in his best interests as he understands them. In other words, Joe may be willing to forgo some return on his account to help his sister's career. However, Urwa is required to inform Joe of the consequences of that instruction.

Response B is not the best response because, under these circumstances, Urwa's Fiduciary Duty obliges her to inform Joe of the consequences of his instruction, unless Urwa reasonably believes that Joe already knows those consequences. Since Joe is a novice investor, he likely does not have such an understanding. For that reason, Urwa should explain the issues and consequences so that Joe may make an informed decision. If, after this discussion, Joe still wants to use his sister's firm to execute the transactions, then Urwa is obligated to do so. If the basis for Joe's instruction changes, as would be the case if Urwa learns that Susan has left the firm, then Urwa's Duty of Care would require her to inform Joe of the change in facts and ask Joe to reconsider his instruction.

Relevant Standards and Definitions: Fiduciary Duty (Standard A.1.); definition of Financial Advice (Glossary).

CASE STUDY 7: THE DUTY TO COMMUNICATE TEAM MEMBER RESPONSIBILITIES

Darnell, a CFP® professional, and Robert, a relationship manager who is not a CFP® professional, work as members of a team at ABC Financial Services Company. A Client has engaged ABC to provide Financial Advice. Darnell and Robert will be working together to formulate and deliver the Financial Advice. ABC does not have policies that identify the respective roles and responsibilities of the various team members.

QUESTION:

As a member of a team, what is Darnell required to do when providing Professional Services to a Client?

RESPONSE OPTIONS:

- A. Darnell's only responsibility is to follow the Financial Advice Engagement, because the Scope of Engagement is the only source of a CFP® professional's responsibilities.
- B. Darnell must communicate with Robert about how the responsibilities will be allocated between them and determine the scope of services that each person will provide to the Client.
- C. Darnell should tell Robert that as the relationship manager, Robert should modify the Financial Advice recommendations if he believes that the Client may want to pursue another course of action.

Best Response: Response B is the best response. This case study involves the Fiduciary Duty (Standard A.1.).

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. The Fiduciary Duty includes the Duty of Loyalty, the Duty of Care, and the Duty to Follow Client Instructions. To fulfill the Duty of Care, a CFP® professional must act with the care, skill, prudence, and diligence that a prudent professional would exercise in light of the Client's goals, risk tolerance, objectives, and financial and personal circumstances.

When a CFP® professional is working as part of a team to provide Financial Advice to a Client, the Duty of Care requires the CFP® professional to communicate with the other members of the team about the scope of their respective services and the allocation of responsibility between them. This might be satisfied by a firm policy or protocol that identifies their respective responsibilities with respect to the services to be provided. In this case, Darnell, Robert, and any other members of the ABC team who may provide services to the Client will need to decide who will perform each of the services the Engagement requires. The duty that arises in this case is analogous to the Duty When Working With Additional Persons, set forth in (Standard A.13.b.i.) that applies to persons outside the firm who are providing Professional Services to the Client.

Response A is not the best response because a CFP® professional's responsibilities extend beyond those that are set forth in the Scope of the Engagement. A CFP® professional also must comply with the requirements set forth in the *Code and Standards*.

Response C is not the best response because the decision to modify a recommendation should not be based upon a "belief" that a Client "may want" to pursue another course of action. Mere speculation is not a proper basis for modifying a recommendation.

Relevant Standards and Definitions: Fiduciary Duty (Standard A.1.).

CASE STUDY 8: THE FIDUCIARY DUTY TO OBTAIN FACTUAL INFORMATION WHEN WORKING ON A TEAM

Trinh, a CFP® professional, works in her firm's home office, developing Financial Planning recommendations based upon the information that other individuals within her firm collect from Clients. Trinh is developing recommendations for Steven's Clients, Cindy and Terry. Steven obtains from Cindy and Terry their responses to the firm's Financial Planning questionnaire and some documents that Steven requested. Steven sends the documents and questionnaire responses to Trinh and asks Trinh to provide her Financial Planning recommendation(s). Trinh reviews the information and notices that Cindy and Terry have two investment accounts at another firm that constitute a significant portion of their net worth. However, the account statements are two years old and thus are outdated. Trinh's firm does not have policies and procedures for handling this situation.

QUESTION:

What should Trinh do?

RESPONSE OPTIONS:

- A. Use the asset values from the statement Steven obtained from his Clients to develop the Financial Planning recommendation(s).
- B. Inform a supervisor that Steven failed to explain to his Clients how to properly fill out the questionnaire and gather documents.
- C. Inform Steven that the statements he obtained are outdated and ask him to obtain current information about the two accounts.
- D. Use the asset values from the statements and tell Steven to disclose to the Client that the Financial Planning recommendation(s) are based upon the information that the Client provided.

Best Response: Response C is the best response. This case study involves the Fiduciary Duty (Standard A.1.) and Step 1 of the Financial Planning Process: Understanding the Client's Personal and Financial Circumstances, Obtaining Qualitative and Quantitative Information (Standard C.1.a.).

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. The Fiduciary Duty includes the Duty of Care, which 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. When providing Financial Planning, a CFP® professional also is required to follow the Practice Standards for the Financial Planning Process. The first step in the process is Understanding the Client's Personal and Financial Circumstances, which includes Obtaining Qualitative and Quantitative Information. A CFP® professional must describe to the Client the qualitative and quantitative information concerning the Client's personal and financial circumstances needed to fulfill the Scope of Engagement and collaborate with the Client to obtain the information.

In this instance, Trinh is developing Financial Planning recommendation(s) based upon the information that other individuals in the firm have obtained from the Clients. Therefore, Trinh's ability to fulfill the Scope of Engagement, and to act in the Client's best interests in accordance with her Fiduciary Duty, depends on the work of her colleagues. When a CFP® professional is working with other individuals within a firm as part of a team that is providing services to a Client, the Fiduciary Duty requires the CFP® professional to take reasonable steps to ensure that the Client is receiving Financial Planning that is in the Client's best interests.

In this instance, the CFP® professional first should determine whether the CFP® Professional's Firm has policies and procedures that apply to the situation. In the absence of such policies and procedures, a CFP® professional should inform the other individual within the firm who is providing services to the Client that the CFP® professional believes that updated financial information may be needed for the CFP® professional to provide Financial Advice that is in the Client's best interest and explain the basis for the CFP® professional's belief. The CFP® professional should discuss with the other individual how the services may be provided in the best interests of the Client.

Here, Trinh's firm does not have policies and procedures for handling this situation. Therefore, Trinh should communicate with Steven to resolve the situation. Trinh should explain to Steven that she does not believe she can develop the Financial Planning recommendation(s) until she has reasonably current information about the two accounts, and recommend that Steven obtain more current information. She also should give Steven the opportunity to explain why it would be reasonable to use outdated statements for the services. If updated information cannot be obtained, and the Client reasonably has directed the firm to proceed with the services based on the information provided, then Trinh may proceed to do so.

Response A is not the best response because the information is outdated and the firm may be able to obtain current information. It is unclear from the fact pattern whether Trinh may provide the recommendation(s) without obtaining current information. If the information is of a type that is currently available, and this information is necessary to provide the Financial Planning recommendation(s) in accordance with the Fiduciary Duty, then Trinh must obtain reasonably current information to do so, unless the Client reasonably has instructed the firm to proceed with the information provided.

Response B is not the best response because Trinh does not know whether Steven's instructions to the Clients were improper, Trinh may ask Steven to obtain the information from the Clients or another service provider, and it is premature for Trinh to involve a supervisor.

Response D is not the best response because disclosure does not eliminate Trinh's Fiduciary Duty. To act in the best interests of the Client, Trinh must act with the care, skill, prudence, and diligence a prudent CFP® professional would exercise in these circumstances. That requires obtaining reasonably current asset values before developing the Financial Planning recommendation(s) or determining whether the existing information may be used. If Trinh is able to provide the Financial Planning recommendation(s) in accordance with the Fiduciary Duty without obtaining reasonably current values for the two accounts, then before or when providing the recommendation(s), Trinh should inform Steven that she is relying upon the information that has been provided and that the lack of current information about the value of the two accounts may limit the Financial Planning Recommendation(s).

Relevant Standards and Definitions: Fiduciary Duty (Standard A.1.); Step 1 of the Financial Planning Process: Understanding the Client's Personal and Financial Circumstances, Obtaining Qualitative and Quantitative Information (Standard C.1.a.).

CASE STUDY 9: FINANCIAL ADVICE THAT REQUIRES FINANCIAL PLANNING

Bob is 50 years old. He is divorced with no children and rents his home. His only significant assets are \$300,000 invested in a bank savings account and \$200,000 that has accumulated in his firm's 401(k) plan. He asks Gina, a CFP® professional, to manage the assets currently held in his bank savings account, manage his cash flow, and plan for his retirement. Bob also tells Gina that he wants to focus on his long-term financial outlook. They agree that Gina will develop recommendations for the assets currently invested in the bank savings account, make cash flow recommendations, and develop long-term planning scenarios that include retirement projections. Gina and Bob enter into an investment advisory agreement so that Gina can manage the assets currently invested in Bob's bank savings account.

QUESTION 1:

Is Gina providing Financial Advice that requires Financial Planning?

RESPONSE OPTIONS:

- A. Yes, Gina is providing Financial Advice that Requires Financial Planning.
- B. No, Gina is not providing Financial Advice that Requires Financial Planning.

Best Response: Response A is the best response. Gina is providing Financial Advice that Requires Financial Planning. This case study involves the Application of the Practice Standards (Standard B.3.) and the Integration Factors (Standard B.4.). A CFP® professional must comply with the Practice Standards for the Financial Planning Process, and therefore, provide Financial Planning, when:

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

In this case, there are insufficient facts to conclude that the written Engagement contains language requiring Gina to provide Financial Planning, or that Bob has a reasonable basis to believe that Gina will provide Financial Planning. Therefore, whether Gina must comply with the Practice Standards for Financial Planning Process depends on whether Gina's Financial Advice requires integration of relevant elements of Bob's personal and/or financial circumstances.

CFP Board has established the following Integration Factors that CFP Board will weigh in determining whether a CFP® professional has agreed to provide or provided Financial Advice that Requires Financial Planning:

- 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.

CFP Board would weigh the Integration Factors in this case as follows:

- Gina is addressing Bob's need for or desire to develop goals, manage assets and liabilities, manage cash flow, achieve financial security, preserve or increase wealth, and prepare for retirement. Therefore, Gina's Financial Advice may affect several relevant elements of Bob's personal and financial circumstances.
- Gina will be managing the funds currently invested in Bob's bank savings account, which has a higher value than any of Bob's other assets. Therefore, Gina's advice will affect a significant portion and amount of Bob's assets.
- Bob has asked Gina to focus on his long-term financial outlook, and to prepare long-term planning scenarios. Therefore, Gina's Financial Advice likely will affect Bob's personal and financial circumstances for a long time.
- Gina will recommend that Bob reallocate the assets currently held in the bank savings account, thereby altering the risk return profile of his holdings and exposing Bob to increased risk.
- Based upon the facts provided, it is unclear what barriers to modifying the actions taken to implement the Financial Advice may exist.

Based upon a weighing of the Integration Factors, Gina will be providing Bob with Financial Advice that Requires Financial Planning. Gina's Financial Advice (a) will affect a significant portion of Bob's Financial Assets, (b) will affect Bob's personal and financial circumstances for a long time, and (c) may affect several relevant elements of Bob's personal and financial circumstances. Because Gina is providing Bob with Financial Advice that Requires Financial Planning, she must follow the Practice Standards for the Financial Planning Process. In addition, since Gina is required to provide Financial Planning to Bob, some of the information that she may have provided to Bob orally when providing Financial Advice now must be delivered to Bob in writing.

The *Code and Standards* does not require an explicit agreement to provide Financial Planning for Financial Planning to be required. Where, as here, a CFP® professional provides or agrees to provide Financial Advice that requires integration of relevant elements of the Client's personal and/or financial circumstances to act in the Client's best interests, the CFP® professional is required to provide Financial Planning.

QUESTION 2:

Is Gina required to comply with the Practice Standards for the Financial Planning Process if Bob does not agree to engage her for Financial Planning?

RESPONSE OPTIONS:

- A. Yes, Gina is required to comply with the Practice Standards for the Financial Planning Process.
- B. No, Gina is not required to comply with the Practice Standards for the Financial Planning Process.

Best Response: Response B is the best response. If a CFP® professional otherwise must comply with the Practice Standards, but the Client does not agree to engage the CFP® professional to provide Financial Planning, the CFP® Professional must either:

- a. Not enter into the Engagement;
- b. 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;
- c. 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
- d. Terminate the Engagement.

If Bob decides that he does not want to engage Gina for Financial Planning, Gina may provide Bob with the requested Financial Advice after informing Bob how Financial Planning would benefit him and how the decision not to engage her to provide Financial Planning may limit her Financial Advice.

Relevant Standards and Definitions: Application of Practice Standards (Standard B.3.); Integration Factors (Standard B.4.); No Client Agreement to Engage for Financial Planning (Standard B.6.).

CASE STUDY 10: WHEN A CLIENT HAS A REASONABLE BASIS TO BELIEVE A CFP® PROFESSIONAL WILL PROVIDE FINANCIAL PLANNING

Kimani, a CFP® professional, distributes a flyer inviting prospects to attend a Financial Planning Seminar. At the event, Kimani places a sign at the entrance that states: “What Financial Planning Can Do For You.” Daniel, a prospect, attends the event. At an in-person meeting the following week, Daniel tells Kimani that he wants to be a Financial Planning Client, with a specific focus on retirement planning. Kimani asks Daniel to complete an investment risk profile questionnaire. Kimani does not clearly inform Daniel that she would not be providing Financial Planning. Kimani reviews Daniel’s answers and, rather than providing Financial Planning, Kimani solely makes an investment recommendation.

QUESTION:

Is Kimani required to comply with the Practice Standards for the Financial Planning Process, and therefore, provide Financial Planning?

RESPONSE OPTIONS:

- A. Kimani is not required to comply with the Practice Standards for the Financial Planning Process because Kimani only provided investment planning to Daniel.
- B. Kimani is required to comply with the Practice Standards for the Financial Planning Process because Kimani provided Financial Advice to Daniel when she conducted investment planning.
- C. Kimani is required to comply with the Practice Standards for the Financial Planning Process because Daniel has a reasonable basis to believe that Kimani will provide or has provided Financial Planning.
- D. Kimani is not required to comply with the Practice Standards for the Financial Planning Process because Kimani only engaged in a brokerage transaction.

Best Response: Response C is the best response. This case study involves the Application of Practice Standards (Standard B.3.). A CFP® professional must comply with the Practice Standards for the Financial Planning Process, and therefore, provide Financial Planning, when:

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

Although Daniel’s Engagement does not specify that Kimani will provide Financial Planning, Daniel has a reasonable basis to believe that Kimani will provide or has provided Financial Planning: Kimani invited Daniel to a Financial Planning seminar; Daniel told Kimani that he wanted Financial Planning; Kimani advised Daniel how to invest; and Kimani did not clearly inform Daniel that she would not be providing Financial Planning. Under other facts or circumstances, the application of the Practice Standards for the Financial Planning Process may produce a different result. In addition, since Kimani is required to provide Financial Planning to Daniel, some of the information that she may have provided to Daniel orally when providing Financial Advice now must be delivered to Daniel in writing.

Response A is not the best response because Daniel had a reasonable basis to believe that Kimani would be providing Financial Planning, and thus Kimani was required to provide Financial Planning. Where Financial Planning is required, the Practice Standards for the Financial Planning Process apply even if the CFP® professional does not actually provide Financial Planning.

Response B is not the best response. The reason that the Practice Standards for the Financial Planning Process apply is not because Kimani provided Financial Advice to Daniel when she conducted investment planning. Not all Financial Advice requires Financial Planning, and the facts here are insufficient to determine whether Kimani has provided Financial Advice that requires Financial Planning. The reason that the Practice Standards for the Financial Planning Process apply is because based on the facts, Daniel has a reasonable basis to believe that Kimani will provide or has provided Financial Planning.

Response D is not the best response. The standard for determining whether the Practice Standards for the Financial Planning Process apply is not whether the Client engaged in a brokerage transaction. Where there is no explicit agreement regarding Financial Planning, the Practice Standards for the Financial Planning Process apply if the Client has a reasonable basis to believe the CFP® professional will provide Financial Planning, or if the CFP® professional provides or agrees to provide Financial Advice that Requires Financial Planning.

Relevant Standards and Definitions: Application of Practice Standards (Standard B.3.).

CASE STUDY 11: THE FIDUCIARY DUTY DOES NOT APPLY WHEN PROVIDING GENERAL FINANCIAL EDUCATIONAL MATERIALS CONCERNING EDUCATION PLANNING

Imani is expecting her first child and wants to know more about 529 savings plans. Imani decides to share her news with Jeff, the CFP® professional whom she had previously engaged solely to provide investment management. During a 30-minute meeting, Jeff provides an overview of how 529 savings plans work, addresses some of Imani's general questions about 529 savings plans, and provides a document titled "529 Plans and Other College Savings Options." Imani thanks Jeff for his time and says she will follow up with him in the next few weeks.

QUESTION:

Did Jeff provide Financial Advice when he met with Imani and gave her the 529 savings plan document?

RESPONSE OPTIONS:

- A. Yes, because he made a recommendation.
- B. No, because Imani did not pay Jeff for the communication.
- C. No, because Jeff provided Imani only general financial education materials.
- D. Yes, because a 529 savings plan is an important part of the education planning process.

Best Response: Response C is the best response. This case study involves the definition of Financial Advice (Glossary).

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

Here, a reasonable CFP® professional would conclude that when Jeff provided Imani with an overview of how 529 savings plans work, addressed her general questions about 529 savings plans, and provided an educational document on 529 savings plans, Jeff was providing general financial education and not Financial Advice.

Response B is not the best response because whether Jeff provided Financial Advice does not depend upon whether he receives compensation.

Responses A and D are not the best responses because a reasonable CFP® professional would not view Jeff's communications, which were general in nature and not individually tailored to Imani, as Financial Advice. While a 529 savings plan is an important part of the education planning process, that fact does not turn Jeff's communications to Imani into Financial Advice.

Relevant Standards and Definitions: Definition of Financial Advice (Glossary).

CASE STUDY 12: THE FIDUCIARY DUTY DOES NOT APPLY WHEN PROVIDING GENERAL FINANCIAL EDUCATIONAL MATERIALS CONCERNING RETIREMENT PLANNING

Kevin, a prospect, met Priya, a CFP® professional, at a community event. Kevin mentioned to Priya that he was planning to retire next year. Priya asked Kevin if she may send him a document her firm prepared that provides an overview of issues to consider when engaging in retirement planning. Kevin agreed. Priya sends Kevin an article titled “What will my savings cover in retirement?” Priya sends this same article to all her Clients and prospects who are within five years of their intended retirement.

QUESTION:

In this instance, does Priya have a Fiduciary Duty?

RESPONSE OPTIONS:

- A. Priya does not have a Fiduciary Duty because she provided only general financial education materials.
- B. Priya has a Fiduciary Duty because she provided Financial Advice when she sent Kevin information regarding retirement planning.
- C. Priya has a Fiduciary Duty even though Kevin is a prospect, not a Client to whom Priya is delivering Financial Advice.
- D. Priya has a Fiduciary Duty because the article includes a section that describes comprehensive Financial Planning.

Best Response: Response A is the best response. This case study involves the Fiduciary Duty (Standard A.1.), the Duty of Integrity (Standard A.2.), and the definitions of Client, Engagement, and Financial Advice (Glossary). 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 Client is any person to whom the CFP® professional provides or agrees to provide Professional Services, including Financial Advice, pursuant to an Engagement. An Engagement is an oral or written agreement, arrangement, or understanding. Financial Advice includes 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, among other things, the value of or the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets.

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

In this case, Kevin has not entered into an Engagement with Priya. Therefore, Kevin is not a Client and Priya does not have a Fiduciary Duty to Kevin. In addition, the article that Priya delivered to Kevin, and other prospects, describes comprehensive Financial Planning and provides an overview of issues to consider when engaging in retirement planning. The article provides financial information that is generally applicable and reasonably would be viewed as general financial education materials. Therefore, Priya has not provided Financial Advice by sending the article to Kevin. However, to satisfy the Duty of Integrity, which applies whenever a CFP® professional is performing Professional Services, the material that Priya sent to Kevin, like all communications, must not be untrue or omit a material fact that is necessary to make the statements made not misleading.

Response C is not the best response because Kevin is not a Client and Priya has not provided Financial Advice. Kevin is not a Client because there was no agreement, arrangement, or understanding for Priya to provide Professional Services to Kevin, and thus, there was no Engagement.

Responses B and D are not the best responses because an article that merely describes Financial Planning and presents an overview of issues to consider when engaging in retirement planning contains general financial education material, which does not constitute Financial Advice.

Relevant Standards and Definitions: Fiduciary Duty (Standard A.1.); Duty of Integrity (Standard A.2.); definitions of Client, Engagement, and Financial Advice (Glossary).

CASE STUDY 13: DUTIES WHEN RECOMMENDING ADDITIONAL PERSONS TO PROVIDE FINANCIAL OR PROFESSIONAL SERVICES TO A CLIENT

Marie is a CFP® professional who works for a financial services firm. She is the relationship manager for Clients Seth and Jennifer, who intend to retire in ten years and are looking for a financial advisor who lives locally and is able to help them address their wealth management needs. More specifically, the Clients seek a financial advisor to provide customized, active portfolio management. Marie's firm does not have a financial advisor who lives locally and is available to help them.

Several local registered investment advisors (RIAs) custody their assets with Marie's firm. The firm established requirements that an RIA must meet for the firm to recommend Clients to the RIA. The requirements set reasonable standards for the reputation, experience, and qualifications of the RIA firm and its investment adviser representatives. Marie's firm recently developed a list of RIA firms that meet the requirements after interviewing RIA firms and evaluating the reputation (including disciplinary history), experience, and qualifications of the firms and their investment adviser representatives. Marie receives a fee for each recommendation that she makes to a Client of a firm-approved RIA. In this instance, Marie arranges for Seth and Jennifer to meet with a local investment adviser representative of the firm-approved RIA who she determines will be the best fit for the Clients given the desire for customized, active portfolio management.

QUESTION:

What is Marie required to do when recommending to the Clients the RIA firm's investment adviser representative?

RESPONSE OPTIONS:

- A. Marie is not required to take any action because the Clients are not paying her firm a referral fee.
- B. Marie may rely on her firm's vetting process for approving the RIA firm, and must disclose to the Client, at the time of the recommendation, the compensation that she, her firm, and any Related Party will receive for the recommendation if the Clients retain the local RIA.
- C. Marie is required to independently investigate at least three local RIA firms on the firm-approved list to determine the best fit for the Clients.
- D. Marie must enter into a written Engagement with the Clients before recommending an RIA firm.

Best Response: Response B is the best response. This case study involves the Duties When Recommending, Engaging, and Working with Additional Persons (Standard A.13.a.).

When recommending the retention of additional persons to provide financial or Professional Services for a Client, a CFP® professional must: (1) have a reasonable basis for the recommendation based on the person's reputation, experience, and qualifications; and (2) disclose to the Client, at the time of the recommendation, any arrangement by which someone who is not the Client will compensate or provide some other material economic benefit to the CFP® professional, the CFP® Professional's Firm, or a Related Party for the recommendation.

A CFP® professional may rely on the CFP® Professional's Firm's list of approved firms if the CFP® professional understands the process the CFP® Professional's Firm used to develop the list and determines that it is reasonably designed and implemented. If a CFP® professional becomes aware of other information that makes the recommendation unreasonable, then the CFP® professional must refrain from making the recommendation.

In this instance, Marie has recommended to the Clients an investment adviser representative of a local RIA firm. Marie has a reasonable basis to make the recommendation because the RIA was on her firm's approved list of RIA referral firms, and she has a reasonable basis to believe that her firm engaged in a diligent process of selecting the RIA firms after conducting an investigation and evaluating the reputation (including disciplinary history), experience, and qualifications of the firm and its professionals against the firm's reasonable standards. Since the RIA firm will pay Marie's firm a referral fee, when Marie recommends the RIA firm to the Clients, she must disclose to the Clients the compensation arrangement that her firm has with the RIA firm.

A is not the best response because a CFP® professional has a duty when recommending an additional person to provide Professional Services for a Client that includes disclosing to the Client any arrangement by which the RIA firm will compensate Marie, Marie's firm, or a Related Party for the recommendation.

C is not the best response because Marie has a reasonable basis for relying on her firm's approved list of RIA referral firms. In selecting RIA firms for the approved list, Marie's firm developed and applied reasonable standards for the reputation (including disciplinary history), experience, and qualifications of the RIA firm and its investment adviser representatives.

D is not the best response because Marie may make the recommendation without entering into a written Engagement with the Clients.

Relevant Standards and Definitions: Duties When Recommending, Engaging, and Working with Additional Persons (Standard A.13.a.).

CASE STUDY 14: THE DUTY TO DISCLOSE AND MANAGE MATERIAL CONFLICTS OF INTEREST INVOLVING PROPRIETARY PRODUCTS

Frank, a CFP® professional, has a Client, Margaret, a single parent of two young children who is in her early 30s and works full time. Margaret became Frank's Client after they met while serving together on the Board of Trustees at the school their children attend. Margaret tells Frank that she needs life insurance to protect her children and that she wants advice on how to save for retirement and her children's college education. Frank agrees to provide Financial Advice on these issues.

Frank is an insurance agent for Old Jersey Life who only is licensed to sell life insurance and fixed annuity products. Under his agent agreement with Old Jersey, Frank is required only to offer Old Jersey products. Old Jersey offers a variety of life insurance products, including term and permanent life insurance. Permanent life insurance accumulates cash value over time that the policy owner may use to fund a lifetime death benefit or for other purposes, such as supplemental retirement income. Term insurance provides a death benefit only for a defined period. Premiums usually are higher for permanent life insurance than for term insurance.

Frank receives commissions and certain employment benefits from Old Jersey. Frank earns commissions from selling insurance products that are based on a percentage of the premium that the Client pays. Frank receives a commission that is a higher percentage of the premium that the Client pays for some Old Jersey products than other Old Jersey products. Frank conducts a careful analysis of the Client's needs and the available Old Jersey products and recommends a product that is in Margaret's best interests. Assume that Frank fulfilled his Duty of Care and Duty of Loyalty in making his recommendation.

QUESTION 1:

Which of the following are not *Material Conflicts of Interest* under the *Code and Standards*?

RESPONSE OPTIONS:

- A. Frank's contract with Old Jersey requires Frank exclusively to offer Old Jersey products to his Clients.
- B. Frank and Margaret met while serving on the Board of Trustees of their children's school.
- C. Frank receives compensation only for providing Financial Advice on the sale of insurance products.
- D. The premiums of permanent life insurance are higher than the premiums for term insurance, which means that Frank receives more compensation when he sells a Client permanent life insurance than when he sells a Client term life insurance.

Best Response: Response B. This question involves the Duty to Disclose and Manage Conflicts of Interest (Standard A.5.), and the definitions of Conflict of Interest and Material (Glossary).

When providing Financial Advice, a CFP® professional must make full disclosure of all Material Conflicts of Interest with the CFP® professional's Client that could affect the professional relationship. A Conflict of Interest occurs when a CFP® professional's interests (including the interests of the CFP® Professional's Firm) are adverse to the CFP® professional's duties to a Client. A Conflict of Interest is Material when a reasonable Client or prospective Client would consider the information important in making a decision.

As described in the fact pattern, Response B is not a Conflict of Interest. The fact that Frank met Margaret while serving on the Board of Trustees at the school does not make Frank's interests adverse to his duties to Margaret.

Response A is a Material Conflict of Interest. Frank has a financial incentive to sell Old Jersey products to Margaret. The Old Jersey products may be more expensive than other products available in the marketplace. Frank's interests are adverse to Margaret's interest in obtaining objective Financial Advice and paying less for the products that she purchases. The Conflict of Interest is Material because a reasonable Client would consider important in deciding whether to accept Frank's recommendation the fact that Frank may offer only Old Jersey products.

Response C is a Material Conflict of Interest. Frank has an interest in selling insurance products to Margaret, as opposed to other types of investment products, because he receives compensation only for selling insurance. This creates a Conflict of Interest because Frank's interest in receiving compensation is adverse to his duty to provide Margaret with objective Financial Advice about whether she needs insurance, and if so, how much. The Conflict of Interest is Material because a reasonable Client or prospective Client would consider it important to know, in deciding whether to accept Frank's

recommendation about which products to purchase, how and when Frank is compensated when he provides Financial Advice regarding the products Margaret that should purchase. Margaret is particularly likely to consider the information Material because the Financial Advice concerns her retirement and her children's college education, and thus may affect her personal and financial circumstances for a long time.

Responses D and E are Material Conflicts of Interest. Frank's interest in receiving greater compensation (for selling permanent life insurance and for selling certain types of policies) is adverse to his duty to provide Margaret with objective Financial Advice. These Conflicts of Interest are Material because a reasonable Client or prospective Client would find the information important in making a decision about whether to accept Frank's recommendations.

QUESTION 2:

What must Frank do to address these Material Conflicts of Interest?

RESPONSE OPTIONS:

- A. Frank must disclose his Material Conflicts of Interest to Margaret, obtain her informed consent, and manage the conflicts in Margaret's best interests.
- B. Frank must obtain Margaret's informed consent to any Material Conflicts of Interest in writing.

Best Response: Response A. This question involves the Duty to Disclose and Manage Conflicts of Interest (Standard A.5.).

When providing Financial Advice to a Client, a CFP® professional must make full disclosure of all Material Conflicts of Interest with the Client that could affect the professional relationship, obtain the Client's informed consent, and manage the conflict in the Client's best interests.

In making the disclosure, the CFP® professional must provide the Client with 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 of Interest or reject them. Ambiguity in the disclosure provided to the Client will be interpreted in favor of the Client. The Duty to Disclose and Manage Conflicts of Interest does not require a CFP® professional to disclose Conflicts of Interest in writing, but CFP Board recommends written disclosure as a best practice. Evidence of oral disclosure of a conflict will be given such weight as CFP Board in its judgment deems appropriate.

A CFP® professional also must obtain the Client's informed consent. Written consent to a conflict is not required. 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, a CFP® professional should consider whether a reasonable Client receiving the disclosure would have understood the Conflict of Interest and how it could affect the advice the Client will receive from the CFP® professional.

A CFP® professional also must manage Material Conflicts of Interest by adopting and following 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.

In this case, one way that Frank may make full disclosure of all Material Conflicts of Interest that could affect the professional relationship would be by providing Margaret with the following information:

- That his agent agreement with Old Jersey requires him exclusively to offer Old Jersey products, even if other products available in the marketplace might have a lower cost or have features that would make them a better fit for Margaret's circumstances.
- That he only is authorized to sell insurance products and that he receives compensation only on the sale of insurance products, and that this provides him with a financial incentive to recommend insurance products even if other types of products that he is not permitted to sell might be a better fit for Margaret's circumstances.
- That there is a difference between permanent and term life insurance, and explain that difference. That Margaret will pay higher premiums for permanent life insurance and that Frank will receive more compensation for the sale of permanent life insurance, and that this provides Frank with an incentive to sell permanent life insurance.
- That Frank expects to earn more compensation over the term of certain insurance products than others, and the types of products that will pay him more compensation. That this provides him with a financial incentive to recommend those insurance products over others where he will earn a lower aggregate amount of compensation.

For Frank to sell Margaret the policy, Margaret also must provide her informed consent to the Material Conflicts of Interest. Margaret's informed consent may be inferred if Frank's disclosures are sufficiently specific.

Frank also must manage the Material Conflicts of Interest by adopting and following business practices that are reasonably designed to prevent the Material Conflicts of Interest from compromising his ability to act in Margaret's best interest.

B is not the best response because a CFP® professional is not required to obtain the Client's informed consent in writing. Obtaining the Client's informed consent in writing is a best practice, but informed consent may be inferred if the disclosures are sufficiently specific.

QUESTION 3:

Which of the following is the best statement with respect to Frank's management of the Material Conflicts of Interest?

RESPONSE OPTIONS:

- A. Frank is required to eliminate Material Conflicts of Interest from his planning process.
- B. Frank satisfies his duty when he discloses his Material Conflicts of Interest to Clients and they provide their informed consent.
- C. In addition to disclosing Material Conflicts of Interest and obtaining the Client's informed consent, Frank must adopt and follow business practices reasonably designed to prevent Material Conflicts of Interest from compromising his ability to act in the Client's best interests.

Best Response: Response C is the best response. This question involves the Duty to Disclose and Manage Conflicts of Interest (Standard A.5.).

A CFP® professional has a duty to adopt and follow business practices reasonably designed to prevent Material Conflicts of Interest from compromising the CFP® professional's ability to act in the Client's best interests.

Here Frank has Material Conflicts of Interest because he may sell only proprietary products, he receives compensation only for the sale of certain products, and he receives more compensation for selling some products than others. Frank must take steps to ensure that his recommendation is based on the Client's goals, risk tolerance, objectives, and financial and personal circumstances, and not his potential compensation. As a best practice, Frank should consider documenting the basis for making the recommendation.

Response A is not the best response because the *Code and Standards* does not require a CFP® professional to eliminate all Material Conflicts of Interest.

Response B is not the best response because disclosing Material Conflicts of Interest and obtaining the Client's informed consent is not all that the *Code and Standards* requires when a CFP® professional is providing Financial Advice and has a Material Conflict of Interest. A CFP® professional also must properly manage the conflict.

Relevant Standards and Definitions: Duty to Disclose and Manage Conflicts of Interest (Standard A.5.); Definitions of Conflict of Interest and Material (Glossary).

CASE STUDY 15: DETERMINING WHETHER FINANCIAL PLANNING IS REQUIRED WHEN AN ENGAGEMENT EXPANDS OVER TIME

Pedro, a CFP® professional, has a new client, Napoleon, who is 28 years old. Napoleon is engaged to be married and has a two-year old child from a previous marriage. At their first meeting, Napoleon informs Pedro that he recently received a \$20 million inheritance. Napoleon asks Pedro for advice on how to invest his inheritance. Napoleon and Pedro's firm enter into an Engagement to provide investment management for the inheritance funds. Pedro's firm sends Napoleon a document stating that "the only time an Advisor is providing Financial Planning is if the engagement explicitly provides for Financial Planning."

Over time, Pedro and Napoleon's professional relationship expands, with Pedro providing "modular" Financial Advice over successive meetings:

- Prior to his wedding, Napoleon tells Pedro that he wants to purchase a home for his family. He also wants to know if he has enough money to quit his job and live off his inheritance for the rest of his life. Pedro determines, based on Napoleon's net worth, cash flow, retirement projections, and risk tolerance, that a moderate growth portfolio likely will provide Napoleon with a comfortable lifestyle and a new home. Pedro tells Napoleon that he can quit his job and advises Napoleon to continue his employer-sponsored health insurance coverage. Pedro also helps Napoleon determine how much he should spend on his new home.
- Two months after he is married, Napoleon and Pedro discuss Napoleon's need for new health insurance coverage. Pedro compares several private health insurance policies with those from the insurance marketplace, and recommends Napoleon purchase a private policy. Pedro incorporates this new expense into the cash flow analysis.
- Four months later, Napoleon tells Pedro that he would like to begin saving for his son's college. Pedro presents an education funding analysis for Napoleon's son and recommends that Napoleon front-load a 529 savings plan with a \$75,000 one-time contribution. Pedro factors this expense into Napoleon's cash flow analysis.
- Sometime later, Napoleon tells Pedro he is concerned that his ex-wife and other family members may try to make a claim on his inheritance. Pedro prepares an estate planning analysis and recommends that Napoleon create Wills, Trusts, Powers of Attorney, and Health Care Directives. Pedro provides the names of three experienced, qualified, and reputable attorneys who are available to help Pedro implement the recommendation.
- At their most recent meeting, Napoleon discusses his desire to provide for his child and second wife. Pedro recommends the gifting of certain assets to an Irrevocable Trust, changing beneficiary designations, and annual gifting strategies that would benefit Napoleon's mother and his two-year old son. Pedro includes the annual gifting expense in the cash flow analysis.

QUESTION:

Is Pedro providing Financial Advice that Requires Financial Planning?

RESPONSE OPTIONS:

- A. Yes, because Pedro's Financial Advice requires integration of relevant elements of Napoleon's personal and/or financial circumstances.
- B. No, because Pedro did not create a comprehensive financial plan, but instead delivered modular Financial Advice over the course of several meetings.
- C. No, because Pedro did not specifically state that he was performing Financial Planning.
- D. No, because Pedro's firm's disclosure document states that "the only time an Advisor is providing Financial Planning is if the Advisor and client explicitly agree to the engagement."

Best Response: A is the best response. Pedro is providing Financial Advice that requires Financial Planning. This case study involves the Application of the Practice Standards for the Seven-Step Financial Planning Process (Standard B.3.) ("Practice Standards"), the Integration Factors (Standard B.4.), and the Duty to Provide Information to a Client (Standard A.10.).

A CFP® professional must comply with the Practice Standards, and therefore, provide Financial Planning, when:

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

Pedro's firm does not have an explicit agreement for Pedro to provide Financial Planning to Napoleon. Pedro also has not discussed Financial Planning with Napoleon, and Napoleon has no reasonable basis to believe that Pedro will be providing Financial Planning. Therefore, the issue is whether Pedro's Financial Advice requires integration of relevant elements of Napoleon's personal and/or financial circumstances in order to act in Napoleon's best interests, such that Pedro is required to provide Financial Planning to Napoleon. CFP Board has established the following 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.

CFP Board would weigh the Integration Factors in this case as follows:

- Pedro is addressing Napoleon's need for or desire to develop goals, manage assets and liabilities, manage cash flow, identify and manage the financial effect of health considerations, provide for educational needs, preserve or increase wealth, prepare for retirement, and address estate and legacy matters. Therefore, Pedro's Financial Advice may affect several relevant elements of Napoleon's personal and financial circumstances, which weighs in favor of a finding that Financial Planning is required.
- Pedro will be managing Napoleon's \$20 million inheritance, which is a significant portion of Napoleon's Financial Assets and a significant amount of Financial Assets. Therefore, this factor weighs in favor of a finding that Financial Planning is required.
- Napoleon has asked Pedro to focus on his long-term financial outlook, and to prepare long-term planning scenarios. Therefore, Pedro's Financial Advice likely will affect Napoleon's personal and financial circumstances for a long time, which weighs in favor of a finding that Financial Planning is required.
- It is not clear how Pedro's analysis, including the assumptions he uses and the recommendations he makes, will impact Napoleon's overall risk exposure. Therefore, this factor does not weigh for or against a finding that Financial Planning is required.
- Pedro is recommending a large deposit in a 529 savings plan (\$75,000). If Napoleon needs to access the money in the 529 savings plan for something other than qualified education expenses, he may have to pay taxes and a penalty. In addition, Pedro is recommending that Napoleon gift assets to an Irrevocable Trust, as well as to Napoleon's mother and son. These facts weigh in favor of a finding that Financial Planning is required because, if implemented, these recommendations would be difficult to modify.

Based upon a weighing of the Integration Factors, Pedro will be providing Napoleon with Financial Advice that Requires Financial Planning. Most significantly, Pedro's Financial Advice (a) will affect most of Napoleon's Financial Assets; (b) may affect several relevant elements of Napoleon's personal and financial circumstances; (c) will affect Napoleon's personal and financial circumstances for a long time; and (d) may be difficult to modify, if implemented.

Where, as here, a CFP® professional provides or agrees to provide Financial Advice that requires integration of relevant elements of the Client's personal and/or financial circumstances to act in the Client's best interests, then the CFP® professional has additional duties to the Client, unless the Client does not want to engage the CFP® professional to provide Financial Planning.

If the Client does not agree to engage the CFP® professional to provide Financial Planning, then the CFP® professional must either:

- a. Not enter into the Engagement;
- b. 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;
- c. 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
- d. Terminate the Engagement.

In this case, Pedro's and Napoleon's professional relationship has expanded over time and is not limited to the provision of investment advice. There is no indication that Napoleon does not want to engage Pedro to provide Financial Planning. Therefore, Pedro is required to provide Financial Planning to Napoleon.

When Pedro's Financial Advice expands to the point that the Financial Advice requires Financial Planning, Pedro has additional duties to Napoleon. Pedro is required to provide Financial Planning and to comply with the Practice Standards. In addition, under the Duty to Provide Information to a Client, most of the information that Pedro may have provided to Napoleon orally (or in writing) when providing Financial Advice now must be delivered to Napoleon in writing, in one or more written documents. This includes the following information, which must be provided prior to or at the time of Engagement:

- A description of the services and products to be provided;
- How the Client pays for the products and services, and a description of the additional types of costs that the Client may incur;
- How the CFP® professional, the CFP® Professional's Firm's, and any Related Party are compensated for providing the products and services;
- The existence of any public discipline and bankruptcy, and the locations of the webpages of certain public websites that sets forth the CFP® professionals' public disciplinary history or any personal or business bankruptcy when the CFP® professional was a Control Person;
- Full disclosure of all Material Conflicts of Interest with the CFP® professional's Client that could affect the professional relationship, including sufficiently specific facts so that a reasonable Client would be able to understand the CFP professional's Material Conflicts of Interest and the business practices that give rise to the conflicts, and give informed consent to such conflicts or reject them;
- A written notice at the time of the Engagement identifying policies regarding the protection, handling, and sharing of a client's non-public personal information that were adopted and implemented by the CFP® professional's Firm, and thereafter not less than annually except under certain enumerated circumstances.
- 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
- Any other information about the CFP® professional or the CFP® Professionals' Firm that is Material to a Client's decision to engage or continue to engage the CFP® professional or the CFP® Professional's Firm.

Pedro also must provide to Napoleon the terms of the Engagement, including the Scope of Engagement and any limitations, the periods during which the services will be provided, and Napoleon's responsibilities. Pedro is responsible for implementing, monitoring, and updating the Financial Planning recommendation(s) unless specifically excluded from the Scope of Engagement.

Response B is not the best response because Pedro is not required to provide one document called a "financial plan" to be required to provide Financial Planning. Pedro provides Financial Advice to Napoleon in modules, with the breadth of the Financial Advice expanding over time. The scope of the Financial Advice is such that Pedro is required to integrate relevant elements of Napoleon's personal and/or financial circumstances in order to act in Napoleon's best interests. Therefore, Pedro is providing Financial Advice that requires Financial Planning.

Responses C and D are not the best responses because they offer reasons that do not determine whether Pedro must provide Financial Planning. Instead, that determination depends on whether Pedro's Financial Advice requires integration of relevant elements of Napoleon's personal and/or financial circumstances. A CFP® professional who does not explicitly state that he or she is providing Financial Planning still may be required to provide Financial Planning and comply with the duties that apply when Financial Planning is required.

Relevant Standards and Definitions: Application of Practice Standards (Standard B.3.); Integration Factors (Standard B.4.); Duty to Provide Information to a Client (Standard A.10.).

CASE STUDY 16: WHEN FINANCIAL ADVICE DOES NOT REQUIRE FINANCIAL PLANNING

Juan, a CFP® professional, receives a call from prospective clients Cristabella and Miguel. They are expecting their first child and want to begin to save for the child's education. Juan sends Cristabella and Miguel a questionnaire, which they complete and return to Juan, requesting personal information such as their names, ages, net worth, income, and risk profile. Juan schedules a meeting to better understand their personal and financial circumstances. After the meeting, Juan uses his education funding calculator to prepare an education funding analysis applying a balanced risk tolerance that is consistent with Cristabella and Miguel's answers on the questionnaire. Juan agrees to examine in-state and out-of-state college costs and determine the monthly amount they would need to save to fund the education goal for either an in-state or out-of-state educational institution.

QUESTION 1:

Is Juan required to provide Financial Planning to Cristabella and Miguel?

RESPONSE OPTIONS:

- A. Yes, Juan is required to provide Financial Planning to Cristabella and Miguel.
- B. No, Juan is not required to provide Financial Planning to Cristabella and Miguel.

Best Response: Response B is the best response. This question involves the Application of the Practice Standards for the Seven-Step Financial Planning Process (Standard B.3.) ("Practice Standards"), the Integration Factors (Standard B.4.), and the Duty to Provide Information to a Client (Standard A.10.).

A CFP® professional must comply with the Practice Standards, and therefore, provide Financial Planning, when:

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

In this circumstance, there is no explicit agreement for Juan to provide Financial Planning to Cristabella and Miguel. In addition, Cristabella and Miguel do not have a reasonable basis to believe Juan will provide or has provided Financial Planning. Therefore, the issue is whether Juan's Financial Advice requires integration of relevant elements of Cristabella and Miguel's personal and/or financial circumstances in order to act in Cristabella and Miguel's best interests, such that Juan is required to provide Financial Planning to Cristabella and Miguel. CFP Board has established the following "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.

In this circumstance, Cristabella and Miguel have requested education planning. CFP Board would weigh the Integration Factors as follows:

- Juan's Financial Advice will not affect many relevant elements of Cristabella's and Miguel's personal and financial circumstances. Cristabella and Miguel have not asked Juan to help them manage assets and liabilities, identify and manage risks, preserve or increase wealth, prepare for retirement, or address other long-term goals. Moreover, the Financial Advice that Juan provided was limited. Juan was able to provide Financial Advice using an education funding calculator that enabled him to determine the amount of money Cristabella and Miguel would need to save each month to fund their education goal. This factor weighs against a finding that Financial Planning is required.

- The portion and amount of Cristabella and Miguel's Financial Assets that may be affected by Juan's Financial Advice is limited, given that Juan only would be providing Finance Advice on a saving strategy for the account (such as a 529 savings plan) that they will use to meet their education goal. Therefore, this factor also weighs against a finding that Financial Planning is required.
- Cristabella's and Miguel's personal and financial circumstances may be affected for a lengthy period of time, given that the education goal will span a 22-year time frame (i.e., 18 years of saving prior to college plus 4 years of spending during college). This weighs in favor of a finding that Financial Planning is required.
- The effect on Cristabella and Miguel's overall exposure to risk should be limited since they will be adding money on a monthly basis in a balanced portfolio. This factor weighs against a finding that Financial Planning is required.
- The barriers to modifying the actions taken to implement Financial Advice to fund a 529 plan weigh in favor of a finding that Financial Planning is required because there are barriers to taking funds out of a 529 savings plan. If Cristabella and Miguel need to access the money in the 529 savings plan for something other than for qualified education expenses, then they may have to pay taxes and a penalty.

Based upon a weighing of the Integration Factors, Juan is not providing Cristabella and Miguel with Financial Advice that requires Financial Planning. Therefore, Juan is not responsible for providing Financial Planning, complying with the Practice Standards, or providing the additional information that the Duty to Provide Information to a Client requires a CFP® professional to provide to a Client when providing or required to provide Financial Planning. Nevertheless, Juan is required to comply with the Fiduciary Duty that applies when providing Financial Advice to a Client as well as the Duties that apply at all times, such as the Duties of Integrity, Competence, and Diligence.

QUESTION 2:

Would Juan be required to provide Financial Planning to Cristabella and Miguel if they requested Financial Advice with respect to both education and retirement savings?

RESPONSE OPTIONS:

- A. Yes, Juan may be required to provide Financial Planning to Cristabella and Miguel.
- B. No, Juan will not be required to provide Financial Planning to Cristabella and Miguel.

Best Response: Response A is the best response. This question involves the same standards that applied to Question 1.

In this circumstance, Juan may be required to provide Financial Planning if Cristabella and Miguel request additional Financial Advice beyond the education analysis that they already requested.

CFP Board would weigh the Integration Factors in this case as follows:

- Juan is addressing several additional relevant elements of Miguel and Cristabella's personal and financial circumstances, including their need for or desire to manage cash flow in order to provide for retirement needs, insurance needs, and educational needs, which weighs in favor of a finding that Financial Planning is required.
- The Financial Advice will affect most, if not all, of Miguel's and Cristabella's Financial Assets, which also weighs in favor of a finding that Financial Planning is required.
- Since Juan will be providing Cristabella and Miguel with retirement projections for their life expectancy, an insurance need analysis to life expectancy, and a 22-year education analysis, the Financial Advice may affect Cristabella's and Miguel's personal and financial circumstances for a long time. This weighs in favor of a finding that Financial Planning is required.
- Cristabella's and Miguel's overall exposure to risk may increase because Juan will be reviewing all of their Financial Assets, including their 401k plans and insurance policies, and may recommend changes to their retirement contributions, asset allocation, and insurance coverage. This also weighs in favor of a finding that Financial Planning is required.
- The barriers to modifying the actions taken to implement the Financial Advice also may increase. Juan may recommend changes to life insurance coverage that may be difficult to modify if Cristabella and Miguel's health changes or as they age. In addition, Juan may provide Financial Advice regarding a Roth IRA conversion, the purchase of a deferred annuity, and maximizing 401k plan contributions. Each of these actions may be difficult to modify in the future, and thus would weigh in favor of a finding that Financial Planning is required.

Based upon a weighing of the Integration Factors, Juan would be providing Miguel and Cristabella with Financial Advice that requires Financial Planning. Most significantly, Juan's Financial Advice likely will: (a) affect several relevant elements of Cristabella's and Miguel's personal and financial circumstances; (b) affect Cristabella's and Miguel's personal and financial circumstances for a long time; and (c) be difficult to modify, if implemented. Therefore, Juan would be required to provide Financial Planning to Cristabella and Miguel.

Because Juan is required to provide Financial Planning, Juan has additional duties to Cristabella and Miguel. Juan is required to comply with the Practice Standards. In addition, under the Duty to Provide Information to a Client, most of the information that Juan may have provided to Miguel and Cristabella orally (or in writing) when providing Financial Advice now must be delivered to them in writing, in one or more written documents. This includes the following information, which must be provided prior to or at the time of Engagement:

- A description of the services and products to be provided;
- How the Client pays for the products and services, and a description of the additional types of costs that the Client may incur;
- How the CFP® professional, the CFP® Professional's Firm's, and any Related Party are compensated for providing the products and services;
- The existence of any public discipline and bankruptcy, and the locations of the webpages of certain public websites that sets for the CFP® professionals' public disciplinary history or any personal or business bankruptcy when the CFP® professional was a Control Person;
- Full disclosure of all Material Conflicts of Interest with the CFP® professional's Client that could affect the professional relationship, including sufficiently specific facts so that a reasonable Client would be able to understand the CFP professional's Material Conflicts of Interest and the business practices that give rise to the conflicts, and give informed consent to such conflicts or reject them;
- A written notice at the time of the Engagement identifying policies regarding the protection, handling, and sharing of a client's non-public personal information that were adopted and implemented by the CFP® professional's Firm, and thereafter not less than annually except under certain enumerated circumstances.
- 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
- Any other information about the CFP® professional or the CFP® Professionals' Firm that is Material to a Client's decision to engage or continue to engage the CFP® professional or the CFP® Professional's Firm.

Juan also must provide to Cristabella and Miguel the terms of the Engagement, including the Scope of Engagement and any limitations, the periods during which the services will be provided, and Cristabella and Miguel's responsibilities. Juan is responsible for implementing, monitoring, and updating the Financial Planning recommendation(s) unless specifically excluded from the Scope of Engagement.

QUESTION 3:

If Juan determines that it is in Cristabella and Miguel's best interests to deliver Financial Planning to Cristabella and Miguel, but Cristabella and Miguel confirm that they do not want Financial Planning, is Juan still required to comply with the Practice Standards?

RESPONSE OPTIONS:

- A. Yes, Juan is required to comply with the Practice Standards if Cristabella and Miguel do not want Financial Planning.
- B. No, Juan is not required to comply with the Practice Standards if Cristabella and Miguel do not want Financial Planning.

Best Response: Response B is the best response. This question involves the standard "No Client Agreement to Engage for Financial Planning" (Standard B.6.).

If a CFP® professional otherwise must comply with the Practice Standards, but the Client does not agree to engage the CFP® professional to provide Financial Planning, then the CFP® professional must either:

- a. Not enter into the Engagement;
- b. 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;
- c. 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
- d. Terminate the Engagement.

In this circumstance, Juan is not required to comply with the Practice Standards. Although Juan believes it is in Cristabella's and Miguel's best interests to engage in Financial Planning, Cristabella and Miguel decide they only want Financial Advice on education funding and retirement savings. Therefore, Juan and the Clients agree that Juan will provide them only educational and retirement planning, after Juan informs Cristabella and Miguel how Financial Planning would benefit them and how the decision to not engage him to provide Financial Planning may limit his Financial Advice.

Consequently, because Juan is not providing Financial Planning to Cristabella and Miguel, Juan is not required to comply with the Practice Standards. Juan also is not required to comply with the additional requirements set forth in the Duty to Provide Information to a Client that apply when a CFP® professional is providing or required to provide Financial Planning in accordance with the Practice Standards, nor is he required to provide the terms of their Engagement in writing. Nevertheless, Juan is required to comply with the Fiduciary Duty that applies when providing Financial Advice to a Client as well as the Duties that apply at all times, such as the Duties of Integrity, Competence, and Diligence.

Relevant Standards and Definitions: Application of Practice Standards (Standard B.3.); Integration Factors (Standard B.4.); No Client Agreement to Engage for Financial Planning (Standard B.6.); Duty to Provide Information to a Client (Standard A.10.).

CASE STUDY 17: THE DELIVERY OF FIRM RESEARCH DOES NOT CONSTITUTE FINANCIAL ADVICE

Meghan is a CFP® professional who is a registered representative of a broker-dealer. Ted, a longtime Client, asks Meghan for information regarding a specific stock he is considering purchasing. Meghan provides Ted a research report on the stock that her firm prepared. The research report states that the stock is undervalued. Meghan tells Ted that she has not analyzed whether the stock is a good investment for him. Ted reviews the research report and then directs Meghan to purchase the stock for him.

QUESTION:

Which of the following best describes Meghan's duty?

RESPONSE OPTIONS:

- A. Meghan does not have a Fiduciary Duty because Ted identified the specific stock at issue.
- B. Meghan does not have a Fiduciary Duty because she did not provide Financial Advice when she communicated with Ted regarding the advisability of purchasing the stock.
- C. Meghan has a Fiduciary Duty because Meghan effected the transaction for Ted.

Best Response: Response B is the best response. This case study involves the Fiduciary Duty (Standard A.1.) and the definitions of Client and Financial Advice (Glossary).

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 Client is any person to whom the CFP® professional provides or agrees to provide Professional Services pursuant to an Engagement. Financial Advice includes 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, among other things, the value of or the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets. 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.

In this circumstance, Ted is Meghan's longtime Client. Meghan responded to Ted's question by providing a research report that her firm prepared. The research report was not individually tailored to Ted's personal and financial circumstances. Meghan also mentioned to Ted that she has not analyzed whether the stock is a good investment for him. The content, context, and presentation makes clear that Meghan did not recommend that Ted purchase the stock. Therefore, Meghan did not provide Financial Advice to Ted. The duty to act as a fiduciary arises when a CFP® professional provides Financial Advice to a Client. Since Meghan did not provide Financial Advice, she was not required to act as a fiduciary.

Response A is not the best response because it does not accurately describe the reason why the Fiduciary Duty does not apply. Meghan is not required to act as a fiduciary because she did not provide or agree to provide Financial Advice to a Client. Whether Meghan must comply with the Fiduciary Duty does not turn on whether Ted requested information regarding the Financial Asset at issue.

Response C is not the best response. Meghan is not required to comply with the Fiduciary Duty because she did not provide or agree to provide Ted with Financial Advice. A CFP® professional may purchase a stock for a Client without providing Financial Advice.

Relevant Standards and Definitions: Fiduciary Duty (Standard A.1.); Definitions of Client and Financial Advice (Glossary).

CASE STUDY 18: A CFP® PROFESSIONAL FIRM'S SALES-RELATED COMPENSATION

Mildred is a CFP® professional employed by Alpha Advisory Services, Inc. (“Alpha”), a registered investment adviser. Mildred tells Thomas, a client of Alpha, that her compensation method is “fee-only.” Thomas asks Mildred for investment recommendations. Mildred gathers the information that she needs, conducts an appropriate analysis, and recommends that Thomas invest in an Alpha-approved family of mutual funds after making the required disclosures. Thomas is pleased with Mildred’s recommendation and directs her to make the investment. The only compensation that Mildred receives is a salary from Alpha. Mildred does not receive any additional compensation when Thomas invests in the mutual fund. Although her firm discloses the information to Clients, Mildred does not realize that Alpha receives revenue sharing payments from the mutual funds she recommends, including the Alpha-approved family of mutual funds in which Thomas has invested.

QUESTION:

Has Mildred complied with the Duties When Representing Compensation Method?

RESPONSE OPTIONS:

- A. Yes. Mildred accurately informed Thomas that she is “fee-only” because her only source of compensation is her salary and she does not receive any additional compensation when Thomas invests in the mutual fund.
- B. No. Mildred may not refer to her compensation method as “fee-only” because her firm, Alpha, receives revenue sharing payments from mutual funds.
- C. Yes. Mildred may refer to her compensation method as “fee-only” because she is not aware that Alpha receives revenue sharing payments from mutual funds, and thus she has no incentive to recommend the mutual funds to Clients.

Best Response: Response B is the best response. This case involves the Duties When Representing Compensation Method (Standard A.12.).

A CFP® professional may not make false or misleading representations regarding the CFP® professional’s or the CFP® Professional’s Firm’s method(s) of compensation. A CFP® professional may represent his or her or the CFP® Professional’s Firm’s compensation method as “fee-only” if:

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

Sales-Related Compensation is defined as more than a *de minimis* economic benefit, including any bonus or portion of compensation, resulting from a Client purchasing or selling Financial Assets, from a Client holding Financial Assets for purposes other than receiving Financial Advice, or from the referral of a Client to any person entity other than the CFP® Professional’s Firm.

Here the revenue sharing payments are Sales Related Compensation because they are more than a *de minimis* economic benefit that results from the Client purchasing an investment in the mutual fund. Mildred may not refer to her compensation method as “fee-only” because her firm will receive Sales-Related Compensation. Mildred’s failure to know that her firm receives Sales-Related Compensation does not excuse her representation that her compensation method is “fee-only.” Whether a CFP® professional may represent his or her compensation as “fee-only” depends on the objective facts, not on his or her subjective beliefs. Mildred is responsible for knowing whether she or her firm receives Sales-Related Compensation, and whether any Related Parties receive Sales-Related Compensation in connection with any Professional Services she or her firm provides to Clients.

Response A is not the best response because Mildred may not represent her compensation method as “fee-only.” While Mildred does not receive any additional compensation when her Clients invest in the mutual funds, her personal compensation is only one factor that she must consider in determining whether she may represent her compensation method as “fee-only.” Mildred also must consider the compensation that her firm and any Related Parties receive. Because her firm receives Sales-Related Compensation in the form of revenue sharing payments, Mildred may not refer to her compensation method as “fee-only.”

Response C is not the best response because Mildred's duty when representing her compensation method depends upon the objective facts, not her subjective understanding of the facts. A CFP® professional who decides to represent his or her compensation method as "fee-only" has a duty to know the objective facts and make truthful and non-misleading representations about those facts.

Relevant Standards and Definitions: Duties When Representing Compensation Method (Standard A.12.)

CASE STUDY 19: THE FIDUCIARY DUTY WHEN A CLIENT EXHIBITS SIGNS OF LACK OF CAPACITY OR UNDUE INFLUENCE

Gillian, a CFP® professional, is an investment adviser representative of MM Advisers, Inc., a small investment advisory firm. Maria, who has a net worth exceeding \$10 million, has been Gillian's Financial Planning Client for approximately 25 years. Maria has one daughter, Nina, who is named as a beneficiary for Maria's investment accounts. While Maria historically has been in good health, she recently has experienced difficulty walking and her vision is declining. Maria's husband passed away 10 years ago, and she now lives by herself. MM Advisers has account opening agreements that request the identity of and contact information for a trusted contact person. The agreements authorize the firm and its advisers to contact the trusted contact person to discuss financial matters about the Client's account, as authorized by the Client in those agreements and in a manner consistent with relevant federal laws and regulations, self-regulatory organization rules, and state and local laws and regulations. In her account opening agreements, Maria designated her friend Wilma as her trusted contact person.

Approximately one year ago, Gillian attended a dinner to celebrate Maria's 75th birthday. Maria introduced Gillian to Mick, her new companion, who is 30 years younger than Maria. Mick is a teacher whose financial resources are much more limited than Maria's. Mick attended Gillian's next Financial Planning review meeting. Mick asked many questions, and Maria authorized Gillian to respond to the questions. At the next Financial Planning review meeting held six months later, Maria attended alone, and asked Gillian an unusually large number of questions about her investments. Maria appeared to be having difficulty understanding her portfolio statements, and evidenced signs of memory lapse. At that meeting, Maria directed Gillian to change the beneficiary designation on her investment accounts from her daughter Nina to Mick. When Gillian asked why she wanted to make the change, Maria explained that she and Mick were in a serious relationship and planned to get married soon. She said that Mick had told her that he would "take care of her" in the future. Gillian gives to Maria the form that MM Advisers requires Clients to execute to effectuate a change in beneficiary.

QUESTION:

Under the circumstances, how should Gillian fulfill her Fiduciary Duty?

RESPONSE OPTIONS:

- A. Refuse to change the beneficiary on Maria's investment accounts.
- B. Explain to Maria the risks involved in changing the beneficiary designation, document the communication, and then promptly contact Wilma, Maria's trusted contact person, to address her concerns.
- C. Promptly call the police, because the facts suggest that Mick is exerting undue influence.
- D. Promptly contact Maria's daughter, Nina, to discuss the matter.
- E. Follow Maria's instructions to change the beneficiary on Maria's investment accounts to Mick.

Best Response: Response B is the best response. This case involves the Fiduciary Duty (Standard A.1.) and the definitions of Client and Financial Advice (Glossary).

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 Client is any person to whom a CFP® professional provides or agrees to provide Professional Services pursuant to an Engagement. Financial Advice includes communications that, based on their content, context, and presentation, would reasonably be viewed as a recommendation to take or refrain from taking a particular course of action with respect to the development or implementation of a financial plan. The Fiduciary Duty includes a Duty of Loyalty, a Duty of Care, and a Duty to Follow Client Instructions. 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.

In this case, Gillian has a Financial Planning Engagement with Maria and is implementing Maria's Financial Plan. Therefore, Gillian is providing Financial Advice to a Client and is subject to the Fiduciary Duty.

Here, Maria has exhibited signs of diminished capacity. A Client who lacks capacity no longer is able to provide a Client instruction. A CFP® professional should be aware of and understand the CFP® Professional's Firm's policies and procedures with respect to a potential lack of capacity or undue influence, as well as any applicable laws, rules, or regulations. A CFP® professional should contact a relevant supervisor or manager to discuss such issues as they arise.

To comply with the Fiduciary Duty, Gillian should talk with Maria about the effect of changing the beneficiary on her accounts and assess whether Maria understands that such a change would mean that Mick, and not her daughter Nina, would receive the investments in her accounts after she passes away. Assuming her firm's policies and procedures allow it, Maria also should promptly contact Wilma, Maria's designated trusted contact person, to address her concerns about Maria's capacity to understand the effect of the change in beneficiary and whether Mick is exercising undue influence over Maria. Gillian also should escalate her concerns to an appropriate manager, and otherwise follow her firm's policies and procedures.

Response A is not the best response because Gillian has a duty to comply with the terms of the Engagement and Maria's reasonable and lawful directions. Gillian does not yet have enough information to determine whether Maria has capacity to provide directions in accordance with the Engagement.

Based on the facts provided, Response C is not the best response because Gillian does not have enough information to suggest that there has been undue influence. However, Gillian should consider relevant laws, rules, and regulations in determining when to contact appropriate governmental authorities.

Response D is not the best response because Nina's status as a beneficiary does not grant Gillian with authority to speak with Nina about Maria's confidential information. Gillian's obligation is to her Client, Maria, and not Maria's daughter.

Response E, which provides for Gillian to follow Maria's instructions, may become an appropriate response, depending on the results of Gillian's discussions with Maria and Wilma and within her firm, her analysis of her firm's policies and procedures, and her continued assessment of Maria's capacity.

As a best practice, a CFP® professional should consider including requests for the identity and contact information for a trusted contact person in account opening agreements or other appropriate documents that will provide authorization to contact a trusted person in appropriate circumstances. A CFP® professional also should be aware of and understand the CFP® Professional's Firm's requirements with respect to these matters, and comply with other relevant federal, self-regulatory organization, and state and local laws, rules, and regulations.

Relevant Standards and Definitions: Fiduciary Duty (Standard A.1.); Definitions of Client and Financial Advice (Glossary).

CASE STUDY 20: APPLYING THE FIDUCIARY DUTY TO CLIENT INSTRUCTIONS THAT CONFLICT WITH THE DUTY OF CARE

Holly, a CFP® professional, has an Engagement with Pat to provide Financial Advice addressing long-term investing for retirement and other needs later in life. Pat indicates that he is socially conscious and would be interested in investing in companies that are consistent with his views. Holly tells Pat that there are environmental, social, and corporate governance (“ESG”) mutual funds that are consistent with Pat’s goals. Pat responds that he would like to see what those look like.

Holly collects information about Pat’s goals, risk tolerance, objectives, and financial and personal circumstances. She then develops an appropriate asset allocation and begins reviewing ESG investments that would fill the allocations for the asset classes. As she does that work, Holly discovers that, in two of the asset classes, while ESG funds are available, the ESG funds for those asset classes are not funds that Holly, based on her analysis, believes are the best available options for Pat.

QUESTION:

What should Holly do to fulfill her Fiduciary Duty?

RESPONSE OPTIONS:

- A. Recommend ESG funds for those two asset classes because Pat had indicated that he was interested in ESG funds.
- B. Review her conclusions with Pat, explain the reasons why she would not recommend the funds, and ask Pat whether he would be interested in considering non-ESG investments.
- C. Inform Pat that she cannot proceed with the Engagement because the only ESG funds that are available in the relevant asset classes are ESG funds that she normally would not recommend.

Best Response: Response B is the best response. This case study involves the Fiduciary Duty (Standards A.1.) including the Duty of Care (Standard A.1.b.) and the Duty to Follow Client Instructions (A.1.c.).

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. Under the Duty of Care, a CFP® professional must act with the care, skill, prudence and diligence that a prudent professional would exercise in light of the Client’s goals, risk tolerance, objectives and financial and personal circumstances. Under the Duty to Follow Client Instructions, a CFP® professional must comply with all objectives, policies, restrictions, and other terms of the Engagement and all reasonable and lawful directions of the Client.

When a CFP® professional realizes that the Client’s suggested course of action is not, in the CFP® professional’s judgment, in the Client’s best interests, the CFP® professional must fulfill the Duty of Care and the Duty to Follow Client Instructions by informing the Client of that conclusion, the CFP® professional’s reasons therefore, and the possible consequences of taking the course of action. If the Client specifically directs the CFP® professional to follow instructions that are reasonable and lawful, then the CFP® professional is obligated to follow those instructions. When a CFP® professional cannot identify prudent recommendations due to Client restrictions, the CFP® professional must exercise due care in selecting from among the pool of investments that comply with the Client direction.

In this case, Pat merely has indicated an interest in ESG funds and has not specifically directed Holly to invest exclusively in ESG funds. Holly should review her conclusions with Pat, explain the reasons why she normally would not recommend ESG funds in this circumstance, and ask Pat whether he would prefer to invest in the ESG funds or consider non-ESG investments. If Pat directs that only ESG funds be used for his account, then Holly should follow those instructions and select the ESG funds in these categories that she reasonably believes are the best available options.

Response A is not the best response because an indication of interest is not a clear direction only to recommend ESG funds. Once Holly informs Pat that she could not identify ESG funds in certain categories that satisfy her Duty of Care, and why, Pat may provide clear and explicit instructions.

Response C is not the best response because a CFP® professional must follow a Client’s reasonable and lawful directions, even if those directions might appear to require recommendations that the CFP® professional otherwise would not make. Accordingly, under these facts, a CFP® professional would not be required to resign from the Engagement.

Relevant Standards and Definitions: Fiduciary Duty (Standard A.1.); Duty of Care (Standard A.1.b.); Duty to Follow Client Instructions (A.1.c.).

CASE STUDY 21: DUTIES WHEN RECOMMENDING ANOTHER SERVICE PROVIDER

Maggie, a CFP® professional, provides Financial Advice to her Client, Ryan, a small business owner. Ryan asks Maggie to recommend an accountant to provide tax and accounting services for both Ryan's business and for him personally.

Maggie's Clients work with a variety of accountants, and Maggie has communicated with them about their services. Based upon that personal experience, Maggie develops a list of four certified public accountants (CPAs) she considers recommending. Maggie had a positive experience working with each of these individuals. Maggie talks to Clients about their experiences with those accountants and receives additional feedback about the kinds of services they offer and the quality of their services. Maggie also reviews a publicly available database that contains information about licensed CPAs in the United States to determine if any of the accountants on her list have been disciplined or have other negative information. Based on those conversations and her research, Maggie recommends one of the four accountants on her list to Ryan.

The accountant Maggie recommends to Ryan once recommended a Client to Maggie; however, Maggie and the accountant currently do not have, and never have had, an arrangement by which the accountant would recommend Clients to Maggie or by which Maggie would recommend Clients to the accountant.

QUESTION:

Did Maggie satisfy her duties when recommending the accountant?

RESPONSE OPTIONS:

- A. Maggie did not satisfy her duties when recommending the accountant because her due diligence was inadequate.
- B. Maggie did not satisfy her duties when recommending the accountant because she failed to inform Ryan that she previously received a Client recommendation from the accountant.
- C. Maggie has no duties when recommending other service providers.
- D. Maggie satisfied her duties when recommending the accountant to Ryan.

Best Response: Response D is the best response. This case study involves the Duty of Care (Standard A.1.b.) and the Duties When Recommending, Engaging, and Working With Additional Persons (Standard A.13.).

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. Under the Duty of Care, a CFP® professional must act with the care, skill, prudence and diligence that a prudent professional would exercise in light of the Client's goals, risk tolerance, objectives and financial and personal circumstances. Financial Advice includes 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 the selection and retention of other persons to provide financial or Professional Services to the Client.

When recommending persons to provide Professional Services to a Client, a CFP professional must, in relevant part:

- i. Have a reasonable basis for the recommendation based on the person's reputation, experience, and qualifications; and
- ii. Disclose to the Client, at the time of the recommendation or prior to the Engagement, any arrangement by which someone who is not the Client will compensate or provide other material economic benefit to the CFP professional, the CFP® Professional's Firm, or a Related Party for the recommendation or Engagement.

Here, Maggie's due diligence with respect to the accountant she recommended was adequate to provide her with a reasonable basis for the recommendation, based on the accountant's reputation, experience and qualifications. Maggie had personal experience working with the accountant, she consulted with Clients of the accountant to determine whether they believed that the accountant provided quality services, and she researched the accountant in a publicly-available database maintained by the state's Board of Accountancy.

Response A is not the best response because, based upon the facts provided, Maggie's due diligence provided a reasonable basis for making the recommendation.

Response B is not the best response because there is no obligation to report prior Client recommendations when recommending another service provider. However, if there was an arrangement that provided a financial benefit to Maggie for the recommendation (for example, a mutual-referral agreement), then Maggie would have been required to disclose the arrangement, obtain the Client's informed consent, and properly manage the Conflict of Interest in the Client's best interests. Whether there is an "arrangement for a financial benefit" depends on the factual circumstances. However, the more recommendations that the CFP® professional and the other service provider make to each other, the more likely it is that there is an "arrangement for financial benefit." It is a best practice to disclose recommendations that subjectively may be viewed as being the result of an arrangement. In addition, a CFP® professional should comply with the CFP® Professional's Firm's policies and procedures regarding these matters.

Response C is not the best response because a CFP® professional has duties when recommending other persons to provide Professional Services to a Client.

Relevant Standards and Definitions: Duty of Care (Standard A.1.b.); Duties When Recommending, Engaging, and Working With Additional Persons (Standard A.13.).

CASE STUDY 22: THE FIDUCIARY DUTY AND AN A SHARE CLASS RECOMMENDATION

John, a CFP® professional, works at NestEgg, a broker-dealer. John receives commissions as well as a bonus if he meets his quarterly sales goals. His Client, Emily, recently received a \$75,000 inheritance. She asks John for investment recommendations. After gathering information, John determines that Emily does not need to use the funds for at least 15 years, when she expects to make a down payment on a retirement home. John recommends that Emily invest in a portfolio of mutual funds. John explains to Emily that he recommends only mutual funds that charge a sales load or bear some other type of sales charge, such as a 12b-1 distribution or marketing fee, which compensate him (and his firm) for his services. Emily tells John that she understands she will be paying such a fee in working with him.

John recommends that Emily invest in a mix of equity and bond funds from a family of mutual funds that John believes are the best match for Emily from among those available for him to recommend. Each fund has two different classes of shares that offer Sales-Related Compensation. Each class offers the identical investment experience except for the fees that investors will directly (sales load) or indirectly (12b-1 fees) bear:

- The A share class has a 4% sales load and a 0.25% 12b-1 fee.
- The C share class has no sales load but a 1% 12b-1 fee that will last as long as Emily holds the fund.

John recognizes that he and his firm have Material Conflicts of Interest because the more fees Emily pays (including the sales load and any 12b-1 fees), the greater his and his firm's compensation will be.

Because Emily intends to hold the funds for at least 15 years, the A shares likely would be the lower cost alternative. John determines that the A share class would be the better option. John recommends the A share class to Emily. There are no other professional services that John provides to Emily.

QUESTION:

When John recommended the A share class, did John fulfill his Fiduciary Duty with regard to the consideration of costs?

RESPONSE OPTIONS:

- A. Yes.
- B. No.

Best Response: Response A is the best response. This case involves the Fiduciary Duty (Standard A.1.) and the definition of Financial Advice (Glossary).

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. Financial Advice includes communications that, based on their content, context, and presentation, would reasonably be viewed as a recommendation to take or refrain from taking a particular course of action with respect to the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets.

The Fiduciary Duty includes a Duty of Loyalty, a Duty of Care, and a Duty to Follow Client Instructions. 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 of Loyalty requires a CFP® professional to (a) place the interests of the Client above the interests of the CFP® professional and the CFP® Professional's Firm; (b) 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 (c) act without regard to the financial or other interests of the CFP® professional, the CFP® Professional's Firm, or any individual or entity other than the Client, which means that a CFP® professional acting under a Conflict of Interest continues to have a duty to act in the best interests of the Client and place the Client's interests above the CFP® professional's. 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.

John has an Engagement with Emily. John recommended that Emily invest in particular mutual funds. Therefore, John has provided Financial Advice to a Client and is subject to the Fiduciary Duty with respect to that advice.

John is required to fulfill the Duty of Care. John is making an investment recommendation that will affect Emily's prospective returns and her ability to meet her goals. John should evaluate the effect the different mutual fund share class fee structures would have on Emily's prospective returns. Emily is a longer-term investor. John determines, based on economic analysis, that the aggregate costs of the C class shares will be greater than the A class shares over time. Thus, absent extenuating circumstances, John fulfilled the Duty of Care when he recommended the A class shares to Emily.

John also is required to fulfill the Duty of Loyalty. John and his firm have Material Conflicts of Interest because the amount of compensation that John and his firm will receive depends on which share class Emily selects. To fulfill the Duty of Loyalty, John must disclose to Emily the compensation structure associated with the A class shares and C class shares, the incentives each compensation structure creates for John and his firm, and the costs that Emily will bear. John also must obtain Emily's informed consent to the Material Conflicts of Interest. To manage the Material Conflicts of Interest, John must make the recommendation he determined was in Emily's best interests (to invest in the A class shares) without regard to the compensation he and his firm would receive.

Relevant Standards and Definitions: Fiduciary Duty (Standard A.1.); Definition of Financial Advice (Glossary).

CFP Board is committed to providing resources that will help CFP® professionals understand and comply with the new *Code and Standards*. Initial resources, including FAQs, are available on CFP Board's website ([CFP.net/Code](https://www.cfp.net/code)).

As a CFP® professional, you play an important role in this process. CFP Board has assembled a team of professionals — the Standards Resource Commission — that will be developing additional guidance materials to educate and inform CFP® professionals about the *Code and Standards*. If there are resources that you believe would be valuable to you, your firm, or your clients, please email your suggestions to SRC@CFPBoard.org. The Standards Resource Commission will carefully consider your feedback as it develops future guidance materials. Additional resources will be posted to CFP Board's website at the link above as they become available.



CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

1425 K St NW #800 Washington DC 20005

p 800-487-1497 | f 202-379-2299

mail@CFPBoard.org | [CFP.net](https://www.cfp.net)