

CFP BOARD

CFP BOARD'S CODE OF ETHICS AND STANDARDS OF CONDUCT:

IMPLICATIONS FOR “FEE-ONLY” CFP® PROFESSIONALS

Since announcing that the revised *Code of Ethics and Standards of Conduct* will become effective on October 1, 2019, CFP Board has been developing guidance resources for CFP® professionals and the firms in which they work. CFP Board formed a Standards Resource Commission, scheduled 25 public forums, and met with CFP® professionals, financial services firms, and other organizations to identify topics that are most important to members of the profession. In response to CFP Board’s outreach, the National Association of Personal Financial Advisors (NAPFA) asked CFP Board to address an issue that is important to its members: What should CFP® professionals who provide fiduciary Financial Advice to Clients on a “Fee-Only” basis know about the *Code and Standards*?

CFP Board’s adoption of the *Code and Standards* is a milestone event in the history of CFP Board and the financial planning profession. When the *Code and Standards* becomes effective, all CFP® professionals will be committed to acting as a fiduciary when providing Financial Advice to their Clients. All CFP® professionals should know what the Fiduciary Duty requires. There are other standards — some of which are discussed below — that also will be important to Fee-Only CFP® professionals.

THE FIDUCIARY DUTY

The *Code and Standards* is a convenient source for an articulation of the fiduciary obligation. The Fiduciary Duty is an objective standard that requires a CFP® professional providing Financial Advice to a Client to fulfill the Duty of Loyalty, the Duty of Care, and the Duty to Follow Client Instructions. The *Code and Standards* provides explanations of each of these duties that is drawn from the common law of fiduciaries, in particular as it has been developed under interpretations of the Investment Adviser’s Act of 1940.

CFP Board’s definition of Financial Advice captures the circumstances in which the Fiduciary Duty will arise. This may be broader than what the law otherwise requires.

AM I PROVIDING FINANCIAL ADVICE?

WHAT IS FINANCIAL ADVICE?

- 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 development or implementation of a Financial Plan;
 - The value of or the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets;
 - Investment policies or strategies, portfolio composition, the management of Financial Assets, or other financial matters; or
 - The selection and retention of other persons to provide financial or Professional Services to the Client; or
- The exercise of discretionary authority over the Financial Assets of a Client.

WHAT IS NOT FINANCIAL ADVICE?

- A communication that, based on its content, context, and presentation, would not reasonably be viewed as a recommendation;
- Responses to directed orders; and
- The following, if a reasonable CFP® professional would not view it as Financial Advice:
 - Marketing Materials;
 - General Financial Education; and
 - General Financial Communications.



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.



CONFLICTS OF INTEREST

CFP Board's *Code and Standards* requires a CFP® professional to make full disclosure of all Material Conflicts of Interest with the CFP® professional's Client that could affect the professional relationship and obtain the consent of the Client before providing any Financial Advice regarding which the CFP® professional has a Material Conflict of Interest. A CFP® professional also must adopt and follow business practices reasonably designed to prevent Material Conflicts of Interest from compromising the CFP® professional's ability to act in the Client's best interests.

CFP® professionals customarily receive compensation for their services. Therefore, there is no business model or compensation method that eliminates Conflicts of Interest. CFP® professionals who provide Financial Advice to Clients on a Fee-Only basis must disclose and manage their Material Conflicts of Interest. There are some circumstances where the conflicts are particularly acute. For example:

- When a CFP® professional is compensated based on a percentage of assets under management and is considering whether to recommend that the Client: (1) contribute to investments not managed by the CFP® professional, and (2) use investments to pay debt. In each circumstance, the interests of the CFP® professional and the Client are adverse because the Financial Advice may reduce the value of assets under management, and thus, the fee that the CFP® professional earns for providing Financial Advice
- When a CFP® professional is providing Financial Planning for an hourly fee and is determining the number of hours to charge for services provided. In this circumstance, the interests of the CFP® professional and the Client are adverse because the more hours a CFP® professional bills, the more compensation the Client must pay to the CFP® professional. Therefore, the CFP® professional needs to exercise due care in determining the amount of time necessary to complete the work and charge the Client only for the time spent providing Professional Services.

DISCLOSURE OF COMPENSATION METHOD

Fee-Only CFP® professionals likely will be interested in the Duties When Representing Compensation Method standard that is set forth in the *Code and Standards*. While this standard largely is the same as CFP Board's interpretation of the existing standard, the revised standard sets forth the compensation representation requirement in much greater detail and makes a few important updates.

The duty begins with the basic principle that 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. The *Code and Standards* then addresses two specific compensation representations — Fee-Only and Fee-Based. A CFP® professional may describe his or her or the CFP® Professional's Firm's compensation method as Fee-Only only where: (a) the CFP® professional and the CFP® professional's Firm receives no Sales-Related Compensation; and (b) Related Parties receive no Sales-Related Compensation in connection with any Professional Services the CFP® professional or the CFP® Professional's Firm provide to Clients. CFP Board does not prohibit the term "Fee-Based," but instead makes clear that Fee-Based is equivalent to "commission and fee," and sets requirements for using the term.

"Sales-Related Compensation," "Related Party," and "In Connection with any Professional Services" are defined terms that Fee-Only CFP® professionals may want to examine closely. Sales-Related Compensation provides incentives for the purchase or sale of Financial Assets and includes both commissions and other compensation incentives. The *Code and Standards* provides examples of what Sales-Related Compensation includes and does not include. There also is a rebuttable presumption that Family Members and certain business entities are Related Parties.

APPLICATION OF THE PRACTICE STANDARDS FOR THE FINANCIAL PLANNING PROCESS

Fee-Only CFP® professionals should be aware that CFP Board's standard for determining when Financial Planning is required has been updated in the *Code and Standards*. CFP Board has identified three circumstances in which the Financial Planning process set forth in the Practice Standards is required and has updated the factors CFP Board will weigh in determining whether a CFP® professional has agreed to provide or provided Financial Advice that Requires Financial Planning. Below is a decision-making tool CFP Board developed to assist CFP® professionals with applying these new standards:

AM I PROVIDING FINANCIAL PLANNING?

If the answer to any of the following is **YES**, then this is a Financial Planning Engagement, and you must comply with the Practice Standards for the Financial Planning Process. If **NO**, then the engagement for Financial Advice does not require Financial Planning, and you are not required to comply with the Practice Standards for the Financial Planning Process.

Have I agreed to provide or have I provided Financial Planning?

YES NO

Does the Financial Advice I agreed to provide require integration of relevant elements of the Client's personal and/or financial circumstances in order to act in the Client's best interests, taking into account the Integration Factors set forth to the right?

YES NO

Does the Client have a reasonable basis to believe that I will provide or have provided Financial Planning?

YES NO

Integration Factors:

- The number of relevant elements of the Client's personal and financial circumstances that the Financial Advice may affect;
- The portion and amount of the Client's Financial Assets that the Financial Advice may affect;
- The length of time the Client's personal and financial circumstances may be affected by the Financial Advice;
- The effect on the Client's overall exposure to risk if the Client implements the Financial Advice; and
- The barriers to modifying the actions taken to implement the Financial Advice.

The *Code and Standards* also addresses the situation where a CFP® professional is required to comply with the Practice Standards for the Financial Planning Process but the Client does not agree to engage the CFP® professional to provide Financial Planning. Under those circumstances, the *Code and Standards* identifies four options that are available to a CFP® professional:

What do you do if the Client doesn't agree to engage you for Financial Planning? Pick One.

- Not enter into the Engagement; or
- Limit the Scope of Engagement to services that do not require application of the Practice Standards for the Financial Planning Process, and describe to the Client the services the Client requests that the CFP® professional will not be performing; or
- Provide the requested services after informing the Client how Financial Planning will benefit the Client and how the decision not to enter into a Financial Planning engagement may limit the Financial Advice; or
- Terminate the Engagement.

The *Code and Standards* also provides an extensive list of circumstances (the "Relevant Elements of the Client's Personal and Financial Circumstances") that a CFP® professional may want to address with a Client, including in a Financial Planning Engagement.

THE PRACTICE STANDARDS FOR THE FINANCIAL PLANNING PROCESS

CFP Board's Practice Standards for the Financial Planning Process have gained widespread acceptance in the Financial Planning profession. The revised Practice Standards provides more detailed requirements for the Financial Planning process and makes other important structural refinements. Most significantly, the *Code and Standards* has expanded the financial planning process from six to seven steps, as follows:

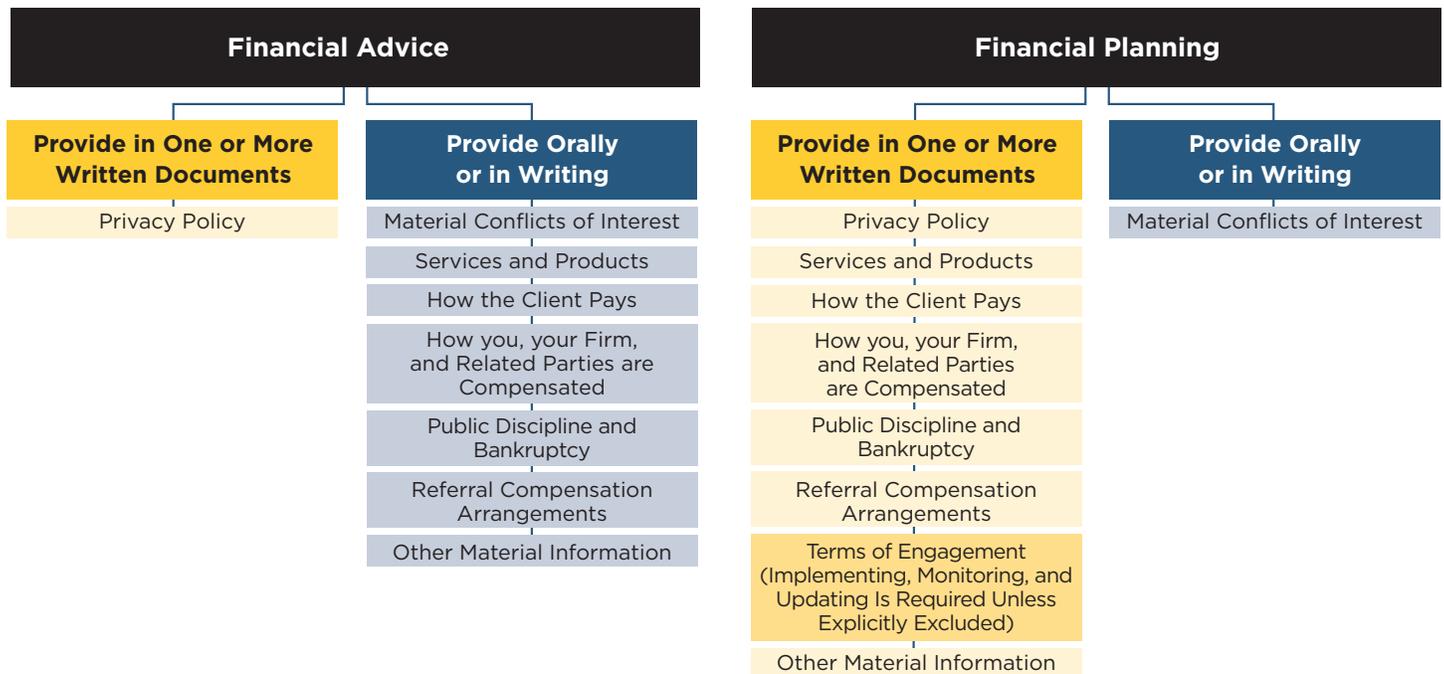


The updated Practice Standards — including each of the seven steps of the Financial Planning Process — provides more detailed requirements for the delivery of Financial Planning. For example, the requirements in the final step of the Financial Planning process — Monitoring Progress and Updating — are almost entirely new. The Practice Standards also contains valuable lists that Fee-Only CFP® professionals may find useful in their practice. For example, in Step 1, “Understanding the Client’s Personal and Financial Circumstances,” there are specific examples of the qualitative and quantitative information that a CFP® professional must collect about a client, if relevant. CFP® professionals may use this standard to create checklists to ensure that they collect all relevant information. The *Code and Standards* also adds a principles-based documentation standard that applies when a CFP® professional is required to provide Financial Planning. The documentation standard requires a CFP® professional to act prudently in documenting information as the facts and circumstances require, and expressly takes into account the policies and procedures of the CFP® Professional’s Firm.

PROVIDE INFORMATION TO A CLIENT

The *Code and Standards* requires a CFP® professional to provide eight categories of information to a Client, some of which may not be required under the existing regulatory structure, and identifies whether the information must be provided orally or in writing.

The *Code and Standards* also identifies when a CFP® professional must disclose Material changes or updates.



OTHER STANDARDS

There are several other standards that warrant mention:

- Confidentiality and Privacy.** The *Code and Standards* includes a Confidentiality and Privacy standard that identifies specific circumstances under which non-public personal information may be disclosed, limits a CFP® professional’s use of the information, and requires a CFP® professional to take reasonable steps (directly or indirectly) to protect the security of the information and to adopt, implement, and provide notice to Clients of policies regarding the protection, handling, and sharing of the information. While CFP Board intends for the standard to be consistent with regulatory requirements that apply to the CFP® Professional’s Firm, CFP Board’s standard precludes a CFP® professional from using non-public personal information for his or her direct or indirect personal benefit, whether or not it causes detriment to the Client, unless the Client consents.
- Recommending, Engaging, and Working with Additional Persons.** The *Code and Standards* establishes new duties that apply when a CFP® professional recommends, engages, and/or works with additional persons. These duties may extend beyond what is required under law or regulation. In particular, when working with another provider on behalf of a Client, a CFP® professional must communicate with the other provider about the scope of their respective services and the allocation of responsibility between them, and inform the Client in a timely manner if the CFP® professional has a reasonable belief that the other provider’s services were not performed in accordance with the scope of services to be provided and the allocation of responsibilities.

- **Technology.** CFP® professionals increasingly are using technology to provide services to Clients. The *Code and Standards* recognizes this by establishing three duties that apply when a CFP® professional selects, uses, and/or recommends technology.
- **Bankruptcy.** The *Code and Standards* also makes a significant change to CFP Board's bankruptcy procedures. Since July 2012, CFP Board has been disclosing all bankruptcies to the public through notes on CFP Board's website and in press releases. Under the *Code and Standards*, a CFP® professional who has filed for bankruptcy may seek to demonstrate to CFP Board's Disciplinary and Ethics Commission that the bankruptcy was not the result of an inability to responsibly manage the CFP® professional's financial affairs.
- **Reporting to CFP Board.** The *Code and Standards* expands upon the duty to report potentially problematic conduct to CFP Board. A CFP® professional must report such conduct within 30 days, provide a narrative statement about the reported matter, and cooperate with CFP Board in an investigation. CFP Board's new reporting requirement generally is based upon the reporting requirements set forth in Form U4 (Uniform Application for Securities Industry Registration or Transfer) without fully adopting or mirroring Form U4's disclosure requirements. Certain potentially problematic conduct may not need to be disclosed on Form U4 but will need to be disclosed to CFP Board. Reporting of potentially problematic conduct on Form U4 will not relieve CFP® professionals of their separate obligation to disclose conduct to CFP Board.

CONCLUSION

CFP Board's revised *Code and Standards* includes many standards that are important to CFP® professionals who already are providing fiduciary Financial Advice on a Fee-Only basis. CFP Board encourages each Fee-Only CFP® professional to read the *Code and Standards* for a complete understanding of its terms.



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