Code of Ethics and Professional Responsibility Program

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INTRODUCTION

Financial planning professionals with the CFP® certification represent a standard of excellence in personal financial planning. Prospective clients continue to seek out professional financial planners who have made an investment in their careers by attaining the CFP® certification, and rightly so—CFP® certificants have studied financial planning concepts and applications, have met CFP Board experience requirements, and have taken a rigorous exam. In addition, they abide by ethical principles, rules of conduct, and practice standards; and stay up-to-date regarding financial planning through CFP Board continuing education requirements. Currently, CFP Board requires each CFP Board designee to have a minimum of two hours of professional ethics in each two-year reporting cycle. This course is designed to meet continuing education requirements by reviewing The Standards of Professional Conduct established by CFP Board.

CFP Board

Certified Financial Planner Board of Standards, Inc. (CFP Board) was founded in 1985 and is an independent professional regulatory organization that owns the certification marks CFP®, CERTIFIED FINANCIAL PLANNER™, and CFP® (with flame logo). CFP Board regulates financial planners through its certification marks by allowing only those individuals who meet its initial and ongoing requirements to use the CFP® marks.

CFP Board’s Board of Directors (Board) is responsible for CFP Board’s success and its governance. The Board is comprised of individuals with diverse backgrounds that reflect CFP Board’s mission and diverse stakeholder interests, with a majority of Board members required to hold CFP® certification.

Four committees carry out duties and responsibilities as specified by the Board of Directors. They are:

- the Council on Education, which has an advisory role with regard to the myriad of education-related components of the CFP® certification process;
- the Council on Examinations, which works to ensure that the questions included in each CFP® Certification Examination test in a rigorous and meaningful way all of the financial planning subject areas needed to practice as a competent financial planner;
- the Disciplinary and Ethics Commission, which holds the imposing responsibility of holding disciplinary hearings and sitting in judgment of CFP® certificants whose behavior has allegedly strayed from the ethical standards of CFP Board’s Standards of Professional Conduct; and
- the Public Policy Council, which supports the organization’s advocacy efforts.

History of Ethics

CFP Board’s predecessor organization, the International Board of Standards and Practices for Certified Financial Planners (IBCFP) introduced the first Code of Ethics in 1985. The introduction of the first Disciplinary Rules and Procedures were introduced, and other revisions made, in 1988. In 1993, the Principles and Rules of the Code of Ethics were established. The Board of Practice Standards began work on the Practice Standards in 1995, and the standards were first published in 1999. The Practice Standards were finalized in 2002, and in 2003 the 400 series in the Rules was revised. Revisions of the Code of Ethics, Rules of Conduct and Practice Standards began in 2005 and took effect on July 1, 2008. They are now known part of the CFP Board’s Standards of Professional Conduct, which is the subject of this course.
The Standards of Professional Conduct (“The Standards”)

CFP Board’s *Standards of Professional Conduct* provides principles, rules and standards to all persons whom the Board has certified to use the CFP® marks. The CFP® marks refer to CFP®, CFP (with the flame logo) ®, and CERTIFIED FINANCIAL PLANNER™. All CFP® certificants and Professionals Eligible for Reinstatement (PERs) are subject to CFP Board’s *Standards of Professional Conduct*.

Through *The Standards*, CFP Board upholds the professional standards necessary for proficiency in the financial planning profession. It identifies the ethical principles that CFP® certificants and PERs must maintain in its *Code of Ethics and Professional Responsibility* (*Code of Ethics*). Through its *Rules of Conduct*, CFP Board establishes required professional norms that protect the public and promote professional competency. Not all CFP® certificants and PERs engage in all activities addressed in the *Rules of Conduct*; therefore, only Rules applicable to the activities in which these individuals engage. Note that it is the CFP® certificant or PER that is responsible to ascertain what responsibilities pertain to him.

CFP Board’s *Financial Planning Practice Standards (Practice Standards)* describe the best practices expected of certificants engaged in financial planning. The *Practice Standards* also refer to those sections of the *Rules of Conduct* that provide ethical guidance. Through its *Disciplinary Rules and Procedures (Disciplinary Rules)*, CFP Board enforces its *Rules of Conduct* and establishes a process for applying the *Principles of the Code of Ethics* to the professional activities in which a planner engages.

This course will meet the following learning objectives.

1. Define and discuss a financial planning engagement, material elements of financial planning, and the financial planning process.
2. Analyze specific fact patterns to determine if a financial planning relationship exists.
3. Differentiate between the standards of care set forth in Rules 1.4 and 4.5 of the Rules of Conduct, and apply each standard of care to specific factual situations.
5. Identify the information that must be disclosed to the client in writing by a CFP® professional who is engaged in a financial planning relationship or providing material elements of financial planning.
6. Define the required information that must be disclosed to clients and prospective clients, when that information must be disclosed, and apply each disclosure requirement to specific factual situations. (This includes but is not limited to the compensation and conflict-of-interest disclosure requirements set forth in Rule 2.2 of the Rules of Conduct and Practice Standards 100-1, 400-3, and 500-1.)
2016 CFP Learning Objectives

CFP Board requires that designees have a minimum of two hours of professional ethics continuing education in each two-year reporting cycle. Students must be able to achieve six specific learning objectives set forth by CFP Board to successfully completion of the course.

Learning Objective 1

Define and discuss a financial planning engagement, material elements of financial planning, and the financial planning process.

Terminology

Before studying these materials, CFP® professionals should be familiar with the language used throughout the text. This terminology is used when interpreting or enforcing CFP Board’s Code of Ethics, Rules of Conduct, Practice Standards and Disciplinary Rules.

- “CFP Board” denotes the Certified Financial Planner Board of Standards, Inc.
- “Candidate for CFP® certification” denotes a person who has applied to CFP Board to take the CFP® Certification Examination, but who has not yet met all of CFP Board’s certification requirements.
- “Certificant” denotes individuals who are currently certified by CFP Board.
- “Certificant’s Employer” denotes any person or entity that employs a certificant or registrant to provide services to a third party on behalf of the employer, including certificants and PERs who are retained as independent contractors or agents.
- “Client” denotes a person, persons, or entity who engages a certificant and for whom professional services are rendered. Where the services of the certificant are provided to an entity (corporation, trust, partnership, estate, etc.), the client is the entity acting through its legally authorized representative.
“Commission” denotes the compensation generated from a transaction involving a product or service and received by an agent or broker, usually calculated as a percent-age on the amount of his or her sales or purchase transactions. This includes 12(b)1 fees, trailing commissions, surrender charges and contingent deferred sales charges.

“Compensation” is any non-trivial economic benefit, whether monetary or non-monetary, that a certificant or related party receives or is entitled to receive for providing professional activities.

A “conflict of interest” exists when a certificant’s financial, business, property and/or personal interests, relationships or circumstances reasonably may impair his/her ability to offer objective advice, recommendations or services.

“Fee-only.” A certificant may describe his or her practice as “fee-only” if, and only if, all of the certificant’s compensation from all of his or her client work comes exclusively from the clients in the form of fixed, flat, hourly, percentage or performance-based fees.

“Fiduciary.” One who acts in utmost good faith, in a manner he or she reasonably believes to be in the best interest of the client.

A “financial planning engagement” exists when a certificant performs any type of mutually agreed upon financial planning service for a client.

A “financial planning practitioner” is a person who engages in financial planning using the financial planning process in working with clients.

“Personal financial planning” or “financial planning” denotes the process of determining whether and how an individual can meet life goals through the proper management of financial resources. Financial planning integrates the financial planning process with the financial planning subject areas. In determining whether the certificant is providing financial planning or material elements of the financial planning process, issues that may be considered include but are not limited to:

- The client’s understanding and intent in engaging the certificant.
- The degree to which multiple financial planning subject areas are involved.
- The comprehensiveness of data gathering.
- The breadth and depth of recommendations.

Financial planning may occur even if the elements are not provided to a client simultaneously, are delivered over a period of time, or are delivered as distinct subject areas. It is not necessary to provide a written financial plan to engage in financial planning.

“Personal financial planning process” or “financial planning process” denotes the process which typically includes, but is not limited to, some or all of these six elements:

- Establishing and defining the client-planner relationship,
- Gathering client data including goals,
- Analyzing and evaluating the client’s current financial status,
- Developing and presenting recommendations and/or alternatives,
- Implementing the recommendations, and
- Monitoring the recommendations.

“Personal financial planning subject areas” or “financial planning subject areas” denotes the basic subject fields covered in the financial planning process which typically include, but are not limited to:

- Financial statement preparation and analysis (including cash flow analysis/planning and
budgeting)
   o Insurance planning and risk management
   o Employee benefits planning
   o Investment planning
   o Income tax planning
   o Retirement planning
   o Estate planning

• “Professional Eligible for Reinstatement” (PER) denotes an individual who is not currently certified but has been certified by CFP Board in the past and has an entitlement, direct or indirect, to use the CFP® marks. This includes individuals who have relinquished their certification and who are eligible for reinstatement without being required to pass the current CFP® Certification Examination. The Standards of Professional Conduct apply to PERs when the conduct at issue occurred at a time when the PER was certified; CFP Board has jurisdiction to investigate such conduct.

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Learning Objective 2

Analyze specific fact patterns to determine if a financial planning relationship exists.

CFP Board realizes certificants are involved in a many types of professional activities. Not all Rules of Conduct apply to all types of activity. A number of The Standards of Professional Conduct’s ethical obligations apply only when a CFP® certificant is engaged in a financial planning relationship or material elements of the financial planning process (see a list of these elements under Learning Objective 1). This is illustrated in Learning Objective 3 which requires such certificants to exercise the duty of care of a fiduciary to their clients. CFP Board Rules of Conduct must be followed by any person allowed to use the CFP® marks, regardless of his nature of employment, title, role, or compensation structure.

Whether a financial planning relationship exists or the material elements of financial planning are present is not always clear. Some considerations that may assist in determining if this is the case include, but are not limited to:

- The client’s—not the certificant’s—expectations, understanding and intent by engaging the certificant. A certificant’s messaging to clients should not create a confusion regarding whether the certificant is providing financial planning services;
- The depth at which multiple financial planning subject areas are addressed;
- The comprehensiveness of the data gathering; and
- The breadth and depth of recommendations.

These factors should then be weighed and considered, with the client’s understanding and intent taking precedence. Below are client scenarios that will help with an understanding of when a financial planning relationship exists.

Financial Planning Relationship Scenario 1

Sam contacts Justin, a CFP® professional and licensed attorney, to request his assistance in creating a will. The following year, Sam and Justin meet to make a change to Sam’s will. That same year, Justin is the agent for Sam’s purchase of a universal life insurance policy. Sam purchased this coverage so his spouse, Katlyn, could continue her lifestyle in the event of Sam’s death. Two years later, Sam asks Justin to help him create an education savings plan for his young son. Several years later, Sam requests a retirement plan analysis from Justin to see if he is contributing enough to his 401(k) plan to retire comfortably in 20 years. Based on this information, does a financial planning relationship between Sam and Justin exist?

Review the factors regarding financial planning relationships:

- **Sam’s understanding and intent in engaging Justin.** Initially, Justin may not have provided financial planning services, however, Sam’s request for additional services indicate that he had the expectation and understanding that Justin would provide planning services in more subject areas.
- **The degree to which multiple financial planning subject areas are involved.** In this case, more subject matter was added to the work Sam requested of Justin, to the point where several subject areas were involved.
• **The comprehensiveness of the data provided.** At the outset, the data gathering was not comprehensive; it can be assumed that Sam provided just the information needed for Justin to facilitate the creation of Sam’s will. However, as time went on, Sam had to provide more information to Justin so that he could provide additional services, including cash flow and retirement planning analyses.

• **The breadth and depth of the recommendations.** Initially, Sam requested that Justin assist him with a stock purchase, but as time passed, Justin’s recommendations likely had an impact on Sam’s financial status.

Weighing and considering all factors, this was not a financial planning relationship at the outset, but as more services were being requested of Justin, it became one. Sam began to expect Justin to provide financial planning services, multiple financial planning subjects became involved, more comprehensive information was necessary, and Justin was asked to provide analyses that involved a broader range of subjects in more depth. Here, a financial planning relationship was established even though Justin’s services were provided over a period of time and each was delivered as a distinct subject area.

**Financial Planning Relationship Scenario 2**

Abby, on the advice of her brother-in-law, James, contacts Ben, a CFP® professional licensed to sell life insurance, to purchase a term life insurance policy. Ben meets with Abby to discuss her life insurance needs. After the conversation, Ben recommends a 10-year term life insurance policy and helps Abby purchase a policy with a $150,000 death benefit. Several years later, Ben assists Abby with the conversion of this policy to a permanent life insurance policy. Does a financial planning relationship exist between Abby and Ben?

**Review the factors regarding financial planning relationships:**

• **Abby’s understanding and intent in engaging Ben.** Abby’s understanding is that Ben will only assist her with the purchase of the life insurance policy. She has no other expectations.

• **The degree to which multiple financial planning subject areas are involved.** In this case, only one subject area, risk management, was involved.

• **The comprehensiveness of the data Ben gathered.** Ben likely gathered only the information needed to secure the life insurance policy for Abby.

• **The breadth and depth of the recommendations.** Ben’s only recommendation was related to the type of life insurance that met Abby’s needs and the breadth and depth of this recommendation was narrow.

Weighing and considering all factors, this is not a financial planning relationship. Abby expected Ben to serve as her life insurance agent, only one subject area was involved, the data gathered was specific to the insurance purchase, and Ben made one recommendation in response to Abby’s need for life insurance coverage.

**FINANCIAL PLANNING**

**Question 1-2:** Will CFP Board consider an engagement to be financial planning solely because the CFP® professional used the six-step process?
No, CFP Board recognizes that the six steps are not unique to the financial planning process and may occur in connection with other activities such as brokerage, investment advisory and/or insurance products or services. Examples include gathering client information as part of a suitability analysis, making recommendations of various brokerage, investment advisory or insurance products or services, and implementing such recommendations.

**Question 1-3: Does CFP Board require CFP® professionals to address a certain number of subject areas for the engagement to be considered financial planning?**

No, CFP Board does not identify a minimum number of subject areas for an engagement to be considered financial planning. While it is more likely for financial planning to exist when multiple subject areas are involved, in some circumstances a financial planning engagement may exist even when a single subject area is involved. For example, a financial planning engagement may exist when a client requests a comprehensive retirement plan or requires a complex estate plan. In determining whether a financial planning engagement exists, CFP Board considers the circumstances involved and, in particular, the following factors:

- The client’s understanding and intent in engaging the CFP® professional
- The degree to which multiple financial planning subject areas are involved
- The comprehensiveness of data gathering
- The breadth and depth of recommendation

**Question 1-4: Does CFP Board require CFP® professionals to address particular subject areas in order for the engagement to be considered financial planning?**

No, CFP Board does not require CFP® professionals to address particular subject areas with each client. It is important to note that while some may consider financial planning as consisting essentially of investment planning, retirement planning or estate planning, these “financial planning subject areas” may or may not be part of the financial planning process as it is applied to a specific client’s situation. When attempting to determine if an engagement is financial planning, one should focus on the degree of integration between the financial planning process and the subject areas. Greater degrees of integration are more likely to be considered financial planning than lesser degrees of integration. In determining whether a financial planning engagement exists, CFP Board considers the circumstances involved and, in particular, the following factors:

- The client’s understanding and intent in engaging the CFP® professional
- The degree to which multiple financial planning subject areas are involved
- The comprehensiveness of data gathering
- The breadth and depth of recommendations

**Question 1-5: Does CFP Board require CFP® professionals to complete all six steps for an engagement to be considered financial planning?**

No, it is not necessary for each of the six steps to be followed in order for a financial planning engagement to exist. For example, some clients may ask a CFP® professional to provide financial planning recommendations and then work with another financial services provider to implement those recommendations. Other clients may ask a CFP® professional to assist them with the implementation of
specific investments or strategies, or to review only one aspect of the client’s financial situation, such as estate issues or insurance needs. While these examples do not include all six steps, they may nevertheless constitute financial planning engagements.

When determining whether a financial planning engagement exists, the entirety of a client relationship should be examined. If the services to be provided are limited in scope, that client relationship may not be a financial planning engagement. When the services provided to an individual client become financial planning or material elements of financial planning, however, the client relationship becomes a financial planning engagement. Once a CFP® professional enters into a financial planning engagement with a client, CFP Board will take into consideration the history of the relationship between the CFP® professional and the client when determining whether future services provided to that client are also financial planning.

**Question 1-6: Will CFP Board consider future engagements to be financial planning because the CFP® professional provided financial planning to the same client(s)?**

Yes, when the services provided to an individual client involve financial planning or material elements of financial planning, the client relationship becomes a financial planning engagement. All future services to that client are likely to be considered by CFP Board to be part of that financial planning engagement until such time as the financial planning engagement is terminated. The CFP® professional should note that in circumstances where a financial planning engagement with a particular client is terminated under the terms of a contract with the CFP® professional’s firm, followed by an ongoing professional relationship between the client and the CFP® professional, the financial planning engagement with the CFP® professional may continue. If the financial planning engagement continues, so does the CFP® professional’s fiduciary obligation to the client. [See Questions 1-8, 1-9, 1-10 and 9-1]

**Question 1-7: Will CFP Board consider an engagement to be financial planning solely based on the compensation model used by the CFP® professional?**

No, CFP Board does not use compensation model as a determining factor when identifying whether a financial planning relationship exists. CFP Board does not advocate any particular business model or compensation arrangement. Regardless of a CFP® professional’s compensation arrangement or business model, the Standards require a CFP® professional to obtain any licenses or registrations required by Federal or State authorities for the specific activities in which that individual is engaged. [See Rule 4.3] The Standards also require disclosure of material information about a CFP® professional’s business model and the compensation arrangement related to the client engagement. [See Rules 1.2 and 2.2]

**Question 1-8: What types of activities are considered “material elements of financial planning”?**

CFP Board’s Disciplinary and Ethics Commission provides the following guidelines to help CFP® professionals determine when their activities are considered financial planning or material elements of financial planning.

The primary factors on which CFP Board relies for determining whether "material elements" exist are:

- The client’s understanding and intent in engaging the CFP® professional
• The degree to which multiple financial planning subject areas are involved
• The comprehensiveness of data gathering
• The breadth and depth of recommendations

Activities that CFP Board would likely consider to be material elements of financial planning include:

• Conducting detailed data-gathering regarding multiple aspects of a client’s financial situation
• Analyzing a client’s data and making recommendations across multiple financial planning subject areas
• Providing investment advisory services as defined by the applicable State or Federal regulators

Activities that CFP Board would not likely consider to be material elements of financial planning include:

• Opening an account or completing an application
• Fact-finding to meet regulatory requirements for suitability such as the "Know Your Customer" rules
• Solely providing brokerage and/or insurance products or services
• Engaging in activity solely related to the sale of a specific product
• Acting as a mortgage broker without providing any other financial services
• Completing tax returns without providing any other financial services
• Teaching a financial class or continuing education program

The above are examples and should not be considered an all-inclusive list.

These guidelines are designed to be helpful to CFP® professionals in reviewing their activities and determining whether they are providing material elements of financial planning. CFP Board’s Disciplinary and Ethics Commission also relies on these guidelines when reviewing allegations of misconduct by CFP® professionals.

**Question 1-9: How can CFP® professionals determine when a specific service or activity rises to the level of financial planning?**

Under CFP Board’s definition of “financial planning,” as found in the Standards, CFP® professionals are able to determine when they are providing services using the material elements of financial planning by considering, among other things, the degree to which multiple financial planning subject areas are involved. While it is more likely for financial planning to exist when multiple subject areas are involved, in some circumstances a financial planning engagement may exist even when a single subject area is involved.

CFP® professionals should consider whether the client’s understanding and intent in engaging the CFP® professional would give the client reason to believe the services provided are financial planning. CFP® professionals should also consider the comprehensiveness of their data gathering with a client and the breadth and depth of their recommendations to a client.

When determining whether a financial planning engagement exists, the entirety of a client relationship should be examined. These questions may guide that determination:
• Is the CFP® professional involving the steps of the financial planning process in the services provided?
• How many financial planning subject areas are involved to meet the client's goals?
• With respect to the services provided, what did the CFP® professional communicate to the client?

Financial planning often does not occur in neat boxes but is a process that progresses and evolves over the course of a financial planner’s relationship with a client. For example, answering a question of a specific nature – such as “How much money do I need to set aside each month to send my two-year-old to Notre Dame in sixteen years?” – would probably not be considered financial planning. However, answering a broader question that involves multiple aspects of a client’s situation – such as “How much do I need to save so I’ll have a secure retirement?” – would likely rise to the level of financial planning because of the expansiveness of the financial considerations involved.

**Question 1-10: What should I do if I am unsure whether a specific service or activity rises to the level of financial planning?**

The question of whether a client relationship involves financial planning is one that CFP Board determines on a case-by case basis. CFP Board encourages CFP® professionals who are unsure if a particular service or client relationship rises to the level of financial planning to embrace CFP Board’s fiduciary standard and provide services in ways they believe are in the best interest of the client.

It is intentional that the terminology section of CFP Board’s Standards does not define “material elements of financial planning.” In financial planning relationships, products, services, solutions and strategies represent a means to an end – meeting life goals through proper management of financial resources.

It would be impossible to provide guidelines for every possible situation related to financial planning, but CFP Board wants to assist CFP® professionals in complying with the Standards. To submit a particular situation for CFP Board to consider, or to submit questions about specific aspects of the Standards and their application to specific situations, please submit your question to standards@CFP®Board.org.

**Question 1-11: What distinctions do the Standards make between financial planning services and other services that don’t rise to the level of financial planning?**

The Standards apply to all CFP® professionals, but certain sections of the Rules of Conduct set forth additional requirements for CFP® professionals who provide financial planning services to clients. When a CFP® professional provides financial planning or material elements of financial planning, the Standards require:

• A heightened duty of care to the client;
• Additional disclosures to the client or prospective client, including some that must be made in writing; and
• A written agreement governing the financial planning services.

The individual Rules related only to client engagements that rise to the level of financial planning or material elements of financial planning are as follows:
• **Rule 1.4** sets the baseline duty of care CFP® professionals owe at all times to clients: "**place the interest of the client ahead of his or her own.**" That same rule sets forth a heightened duty of care for CFP® professionals who provide to clients financial planning or material elements of financial planning: "**the duty of care of a fiduciary as defined by CFP Board.**" CFP Board’s definition of fiduciary is: "One who acts in utmost good faith, in a manner he or she reasonably believes to be in the best interest of the client."

• **Rule 1.2** describes information that must be disclosed by a CFP® professional to clients and prospective clients if the services to be provided include financial planning or material elements of financial planning.

• **Rule 2.2** identifies information that must be disclosed by a CFP® professional to all clients and prospective clients, regardless of whether the services to be provided rise to the level of financial planning. When the services do rise to the level of financial planning or material elements of financial planning, section (e) of Rule 2.2 requires that the disclosures be made in writing.

• **Rule 1.3** requires that if services to be provided include financial planning or material elements of financial planning, the professional (or the professional’s employer) shall enter into a written agreement with the client governing the financial planning services.

**Question 1-12: Does conducting a needs analysis or suitability review reach the level of financial planning or material elements of financial planning?**

There are a wide variety of activities that are labeled “**needs analysis,**” and some of those activities may reach the level of financial planning or material elements of financial planning. If a “**needs analysis**” is focused on gathering detailed information about multiple aspects of a client’s financial situation and analyzing that information in light of the client’s stated future goals, or if the analysis is used to make wide-ranging recommendations, that “**needs analysis**” is considered financial planning.

In contrast, if a **“needs analysis”** is focused on a limited component of the client’s financial situation, and does not involve other services related to financial planning, that analysis may not rise to the level of financial planning. For instance, if a client hires a CFP® professional solely to purchase life insurance, the CFP® professional will by necessity obtain information about the client sufficient to ensure that any policies recommended meet the client’s needs. If the “needs analysis” is focused solely on factors related to the client’s life insurance needs, that analysis may not rise to the level of financial planning.

A standard suitability review conducted in association with a transaction – a review that takes into consideration such basic elements as the client’s age, net worth and risk tolerance – does not typically reach the level of financial planning or material elements of financial planning.

The facts and circumstances of each situation are a key factor in CFP Board’s determination of whether a CFP® professional has engaged in financial planning or material elements of financial planning.

**Question 1-13: How many elements of the financial planning process can a CFP® professional provide without having those activities constitute “material elements of financial planning”?**

A CFP® professional who integrates the financial planning process with two or more subject areas will, in most cases, be providing financial planning or material elements of financial planning.
Under the definition of “financial planning,” the Standards provide guidance CFP® professionals may use to determine whether they are providing financial planning. The factors are:

- The client’s understanding and intent in engaging the CFP® professional
- The degree to which multiple financial planning subject areas are involved
- The comprehensiveness of data gathering
- The breadth and depth of recommendations

The criteria above focus on the integration of the six steps with two or more financial planning subject areas.

As illustrated in Questions 1-2, a broker who is a CFP® professional and employs all six steps of the financial planning process to recommend a brokerage transaction only would probably not be considered to be providing financial planning services in view of the fact that a single subject area is involved. However, a CFP® professional could inadvertently provide financial planning services by acting in a way that the client reasonably believes that the CFP® professional is providing financial planning. [See Questions 1-3, 1-4, and 1-8] To avoid such situations, the Standards require a CFP® professional to mutually agree upon the services to be provided with each client. [See Rule 1.1] Although a CFP® professional who is providing services other than financial planning is not required to describe the scope of the engagement in writing, it is recommended as a best practice to do so.

Questions 1-2 provides an example of an activity that may be considered to involve material elements of financial planning: conducting detailed data-gathering regarding multiple aspects of a client’s financial situation. This activity may rise to the level of material elements of financial planning if the CFP® professional’s activities include one or more of the following:

- Employing multiple financial planning subject areas to analyze a client’s financial situation
- Gathering information about a client’s entire financial situation, including goals
- Recommending a broad financial plan requiring a depth of technical knowledge to execute the plan
- Mutually defining the scope of the engagement with a client where the client understands and intends to engage the CFP® professional in financial planning

Given the in-depth process used in this example, CFP Board would likely consider the CFP® professional in the above-mentioned activity to be providing financial planning or material elements of financial planning.

**Question 1-14: How many financial planning subject areas can a CFP® professional address with a client without reaching the level of “material elements of financial planning?”**

Applying the financial planning process to a single subject area is not likely to be considered financial planning or material elements of financial planning. CFP® professionals who integrate the financial planning process and two or more subject areas may be providing financial planning or material elements of financial planning.

Under the definition of “financial planning,” the Standards note that one of the factors CFP Board considers in determining whether a financial planning relationship exists is the degree to which multiple
financial planning subject areas are involved.

When a CFP® professional’s recommendations involve multiple subject areas and the CFP® professional integrates those subject areas with the steps of the financial planning process, the CFP® professional may be providing material elements of financial planning. It does not matter if these recommendations occur during one meeting with the client, or over several meetings over a period of time.

It is unacceptable for a CFP® professional to employ one product, service module, or subject area at a time in an attempt to avoid having the client relationship be considered financial planning or material elements of financial planning. [See Questions 1-3 and 1-4]

**Question 1-15: In situations where a CFP® professional implements financial planning recommendations prepared by a third party, will the CFP® professional’s implementation activities be considered financial planning or material elements of financial planning?**

The facts and circumstances of each situation are a key factor in CFP Board’s determination of whether the CFP® professional has engaged in financial planning or material elements of financial planning. The most significant factor that CFP Board will consider in determining whether activities such as implementation rise to the level of financial planning is the client’s understanding and intent in engaging the CFP® professional. If a CFP® professional implements recommendations made by a third party, the degree of specificity in the recommendations is another factor that CFP Board will consider in determining whether the implementation activities constitute financial planning.

If the recommendations are less specific and require the CFP® professional to provide wider-ranging recommendations as part of the implementation process, the CFP® professional’s implementation activities may rise to the level of financial planning. This would be the case if, for example, a client’s tax advisor recommends additional tax-deferred savings and the CFP® professional assists the client to determine the type of deferred savings, the amount to be saved, an investment approach and specific investment vehicles. By contrast, if the client limits the engagement with the CFP® professional to implementation activities only, the engagement may not rise to the level of financial planning. This would be the case if, for example, the recommendations set out an investment strategy with specific amounts allocated to specific asset classes and the CFP® professional’s actions are limited to executing transactions based on the recommendations identified in the financial plan.

To reduce the possibility of misunderstanding between a CFP® professional and his/her client, CFP Board recommends that all CFP® professionals carefully describe to their clients the services to be provided, particularly where the scope of the engagement is limited. Documenting the scope of the engagement in an agreement or other document can help prevent misunderstanding.

CFP Board encourages CFP® professionals who are unsure whether a particular service or client relationship rises to the level of financial planning to embrace CFP Board’s fiduciary standard and provide services in ways they believe are in the best interest of the client.

**Question 1-16: Is a CFP® professional who provides financial planning services more likely to be disciplined by CFP Board than a CFP® professional who does not provide financial planning services?**
No. The Standards apply to all CFP® professionals, regardless of the type of services a professional provides to clients, and only four of the 30 Rules in the Rules of Conduct are limited in scope to professionals who provide financial planning services. The Standards do require CFP® professionals who provide financial planning services to provide specific written documentation to a client and to provide services with the duty of a fiduciary, as defined by CFP Board, but the Standards do not state that violations of Rules limited in scope to financial planning services merit harsher discipline than violations of Rules that relate to services other than financial planning.

CFP Board’s Disciplinary Rules and Procedures provide CFP® professionals with a fair and expeditious disciplinary process whenever CFP Board discovers information about a professional’s potentially unethical conduct. As part of the process, CFP Board provides a fair and objective investigation into each allegation and determines the merits of the allegations based on the evidence provided. The Disciplinary and Ethics Commission (Commission) issues discipline only when the evidence in a specific case substantiates a finding that the Standards have been violated.

The events and context of a situation will affect each of the decisions the Commission makes for a particular case. The Commission considers the severity of a violation and any aggravating or mitigating factors when determining what type of discipline should be issued, not whether the violation relates to a Rule limited in scope to financial planning services.

Understanding the Definition of Financial Planning and Material Elements of Financial Planning

Sometimes CFP® professionals provide service to clients in a single subject area such as an estate planning engagement that does not involve financial planning or material elements of financial planning.

An attorney is helping a business owner plan for the tax impact of his death. The analysis predicts that there could be substantial costs and that the business would need to be sold to meet the tax obligations. The attorney recommends the purchase of a $3.5 million dollar life insurance policy owned in an irrevocable life insurance trust (ILIT.)

In this estate planning situation a business owner meets with his attorney to determine the approximate cost of estate taxes at his death and the impact that would have on his business and his heirs. The attorney is not a CFP® certificant.

After a thorough analysis the attorney determines that estate taxes could result in substantial costs and the possible dissolution of the business. The attorney and business owner discuss several alternate methods to reduce or eliminate the estate tax impact. However, it appears likely that the business owner’s estate will still face substantial taxes. The attorney recommends that the business owner purchase a life insurance policy to provide cash at death to pay the tax. To make sure that the policy proceeds do not exacerbate the problem, the attorney suggests that the business owner establish an irrevocable life insurance trust to own the policy.

A CFP has worked with the attorney on several cases in the last two years. She appreciates his referral and meets with the business owner to design an appropriate life insurance policy for purchase by the ILIT. The attorney gave Liz a copy of the estate plan but she has the business owner complete her fact-finder as well. She figures out the kind of policy and which insurer would suit the business owner’s
needs.

The business owner agrees and the attorney agrees to draft the trust.

**Is Liz providing financial planning?**

“Personal financial planning” or “financial planning” denotes the process of determining whether and how an individual can meet life goals through the proper management of financial resources. Financial planning integrates the financial planning process with the financial planning subject areas.” – Terminology, CFP Board’s Standards of Professional Conduct

- The attorney provides the planning.
- The attorney designed the solution and made the recommendation.
- Liz provides support to implement a suitable insurance solution.
- Liz is involved as an agent in the sale of the policy.

Before working with the business owner, Liz needed to determine whether or not she would be providing financial planning or material elements of financial planning to the business owner. She knows that providing financial planning or material elements of financial planning requires her to meet the standards of care described in CFP Board’s Standards of Professional Conduct. These include establishing a written agreement, providing written disclosures of compensation and conflicts of interest and acting as a fiduciary.

Liz reviewed the definition of financial planning on the Terminology page of the Standards. She is not responsible for development of an overall estate plan or for looking at other aspects of the business owner’s situation. She will be working in only one financial planning subject area to help the business owner select the right coverage to fund the ILIT.

**Is Liz providing material elements of financial planning?**

_In determining whether the certificant is providing financial planning or material elements of financial planning, factors that may be considered include but are not limited to:_

- **The client’s understanding and intent in engaging the certificant.**

  – Terminology, CFP Board’s Standards of Professional Conduct

  - The business owner asks Liz to implement actions suggested by his attorney.
  - The business owner expects Liz to assist him in the purchase of life insurance by the ILIT.
  - The business owner does not expect to start the entire planning process over with Liz
  - The attorney does not expect Liz to “second guess” his recommendations.

Liz understands that performing material elements of financial planning if determined by CFP Board would require the same standards as financial planning so she reviews the four factors that CFP Board lists on the terminology page to guide practitioners in determining if they must meet the requirements.

The first is the client’s understanding and intent in hiring the certificant. Liz is comfortable that her client
understands that Liz’s job is to find a suitable policy to fund the ILIT. She isn’t going to prepare an estate analysis. Neither the business owner nor the attorney expect her to do so.

In determining whether the certificant is providing financial planning or material elements of financial planning, factors that may be considered include but are not limited to:

- **The degree to which multiple financial planning subject areas are involved.**

  – Terminology, CFP Board’s Standards of Professional Conduct

  - Liz only works on the risk management aspects of the case
  - Liz uses her knowledge of insurance products to design a policy for the business owner
  - Liz assists the ILIT to purchase a policy on the business owner’s life that would preserve the business for the heirs
  - Liz does not work with the business owner on any other business or personal financial matters

Liz is restricting her activities with this client to the funding of the ILIT. Although the business owner has substantial assets and Liz would welcome an opportunity to provide additional services to him, she recognizes the trust and confidence placed in her by the attorney and acts professionally to fulfill the task assigned to her as a member of the team.

She is hopeful that by doing this task well, her client will seek out her other services in the future.

In determining whether the certificant is providing financial planning or material elements of financial planning, factors that may be considered include but are not limited to:

- **The comprehensiveness of data-gathering**

  – Terminology, CFP Board’s Standards of Professional Conduct

  - Liz gathers data necessary to design an appropriate insurance solution. While this is substantial, it is required by the complexity of the case and the amount of coverage requested.
  - Liz obtains only the data needed by the insurer to complete the application by the ILIT.
  - Liz does not collect any superfluous data.

Liz did provide a lengthy fact finder to the business owner, she had pre-filled as much as she could based on the attorney’s draft of the estate plan that she reviewed. She did this to have the client verify the accuracy of the data as well as to gather additional data that would be required by the insurance underwriters. However, she avoids gathering any data that is not needed for the task at hand.

In determining whether the certificant is providing financial planning or material elements of financial planning, factors that may be considered include but are not limited to:

- **The breadth and depth of the recommendations**

  – Terminology, CFP Board’s Standards of Professional Conduct
• Liz makes recommendations about insurance options available to the ILIT.
• Liz provides the business owner with the information he needs to make an informed and knowledgeable decision about the kind of insurance, the cost of insurance and the benefits.

Another area that CFP Board may use to assess whether material elements of financial planning are involved is the breadth and depth of the recommendations.

Liz uses the data and her expertise in life insurance for business owners to prepare several alternatives for her client’s consideration. However she doesn’t stray into other areas or make broad generalizations that might lead the business owner to believe that she thinks other actions must be taken.

While her recommendations in the life insurance area are very detailed and specific – especially so due to the complexity of the case – Liz is confident that her recommendations are in keeping with the task that she and the client agreed to at the outset. So while there is depth – they are not so broad as to lead the client to believe that Liz has moved beyond estate planning.

Conclusion

• By helping the business owner implement his attorney’s recommendations, Liz is not providing financial planning nor material elements of financial planning.
• She places her client’s interests ahead of her own but is not required to act as a fiduciary as defined by CFP Board in Rule 1.4.
• She does not need to meet the financial planning requirements of Rules 1.2, 1.3 or 2.2

Liz is not providing financial planning or material elements of financial planning in Scenario SS 1. She does have to place the business owner’s interest ahead of her own. She does have to use reasonable and prudent professional judgment to recommend a suitable insurance recommendation. She is not required to provide written disclosures or to ask the client to enter into a written agreement. She is not required to act as a fiduciary as defined by CFP Board. However, Liz always tries her best to recommend what is in the client's best interest in every case. She thinks it is the right thing to do. It is the reason the attorney felt comfortable recommending Liz to his client in the first place. It is the standard of care that Liz wants to receive, too.

Understanding the Definition of Financial Planning and Material Elements of Financial Planning

Sometimes CFP® professionals provide service as a resource to help clients in a single subject area. The following scenario describes an employee benefits situation that does not involve financial planning or material elements of financial planning.

Background

Jim Hollis, CFP is a retirement plans expert working for a major provider of 401(k) plans. He is helping a business owner look at alternatives for his current money purchase pension plan. Jim was introduced to the business owner by the business owner’s financial adviser.

In this retirement planning situation, a business owner meets with a certificant, Jim Hollis, to discuss the
replacement of an existing retirement plan for the employees of the business.

The business has grown significantly over the past three years and the owner is concerned that the current benefits could become increasingly unaffordable with further growth. A financial adviser working with the business owner brought Jim in to explain the process of terminating a money purchase pension plan and establishing a new 401(k) plan that the financial adviser suggests as an attractive solution to the business owner’s dilemma.

The business owner agrees to meet with Jim and the adviser to learn more about changing qualified plans.

Jim used census data provided by the business owner and the financial adviser to illustrate several hypothetical implementation alternatives. He drafted a PowerPoint presentation that he and the financial adviser will co-present to the business owner and the firm’s business manager.

Is Jim providing financial planning?

“Personal financial planning” or “financial planning” denotes the process of determining whether and how an individual can meet life goals through the proper management of financial resources. Financial planning integrates the financial planning process with the financial planning subject areas.” — Terminology, CFP Board’s Standards of Professional Conduct

- Jim does not design a new retirement plan
- The financial adviser designed the solution and made the recommendation
- Jim provides support to illustrate the mechanics of implementing the solution
- Jim uses his expertise and resources to assist the adviser in winning the case.

Before working with the business owner, Jim wanted to determine whether or not he would be providing financial planning or material elements of financial planning to the business owner. He knows that providing financial planning or material elements of financial planning requires that he meet the standards of care described in CFP Board’s Standards of Professional Conduct. These include establishing a written agreement, providing written disclosures of compensation and conflicts of interest and acting as a fiduciary.

Jim starts with a review of the definition of financial planning on the Terminology page of the Standards. He knows that he is using a six-step process and that employee benefit planning is one of the subject areas included by CFP Board. In this instance he views himself as a resource expert who is focused on a very particular business decision.

In determining whether the certificant is providing financial planning or material elements of financial planning, factors that may be considered include but are not limited to:

- The client’s understanding and intent in engaging the certificant.

— Terminology, CFP Board’s Standards of Professional Conduct

- The business owner asked his financial adviser to help find a lower cost qualified plan
The business owner understands that Jim is an employee of a plan sponsor
The business owner does not expect Jim to provide an evaluation independent of the financial adviser.

Jim understands that performing material elements of financial planning would require the same standards as financial planning so he reviews the four factors that CFP Board lists on the terminology page to guide practitioners in determining if they must meet the same standards as required when providing financial planning.

The first factor is the client’s understanding and intent in hiring the certificant. Jim described himself as a resource provided to the financial adviser by the plan sponsor. His task was to illustrate the process and costs of transitioning from the existing money purchase pension plan to a new 401(k) plan with the plan sponsor. Both the business owner and the financial adviser view Jim as an outside expert.

In determining whether the certificant is providing financial planning or material elements of financial planning, factors that may be considered include but are not limited to:

- The degree to which multiple financial planning subject areas are involved.

  – Terminology, CFP Board’s Standards of Professional Conduct

  - Jim provides support to illustrate the mechanics of implementing the situation
  - Jim uses his knowledge to help the business owner understand the steps involved in changing plans
  - Jim does not work with the business owner on any other business or personal financial matters

The second factor is the degree to which multiple financial planning subject areas are involved. Jim is restricting his activities to helping this business owner understand how qualified plans can be changed from one form to another, the costs involved and the best process to follow when making the change. He limits his activities to employee benefit planning alone.

Jim is hopeful that by doing this task well, the financial adviser will close the case and the business will move existing assets and new contributions to his employer. This will benefit the financial adviser and possibly lead to further opportunities with other businesses that are advised by the financial adviser.

In determining whether the certificant is providing financial planning or material elements of financial planning, factors that may be considered include but are not limited to:

- The comprehensiveness of data-gathering

  – Terminology, CFP Board’s Standards of Professional Conduct

  - Jim gathers data necessary to estimate the costs of transitioning a plan. This is substantial due to the complexity of the case.
  - Jim spends considerable effort to gain an understanding of the business owner’s goals.

The third factor deals with the comprehensiveness of data-gathering.
Jim received a lengthy fact finder prepared by the financial adviser and the business owner in order to develop a thorough understanding of the business owner’s financial situation currently and into the future. They have in-depth discussions about the business owner’s feelings about his existing qualified plan and the future growth of the business. This is information that Jim must have to prepare an appropriate illustration that is accurate and aligns with the business’ needs.

Jim thinks that the client and the financial adviser would both say that he truly knows and understands what is important to them but that he did not ask for information that was not relevant to the task at hand.

In determining whether the certificant is providing financial planning or material elements of financial planning, factors that may be considered include but are not limited to:

- **The breadth and depth of the recommendations**

Terminology, CFP Board’s Standards of Professional Conduct

- Jim does not make recommendations about other business planning strategies.
- Jim provides the business owner with the information he needs to make an informed and knowledgeable decision.

Finally, the next factor CFP Board considers is the breadth and depth of the recommendations.

Jim uses the data and his expertise in retirement plan design for business owners to illustrate the transition process form one type of plan to another. His recommendations are quite specific and detailed as is required when considering a decision that effects all of the businesses employees. However, the recommendations remain focused solely on the issue of possible qualified plan termination and subsequent transition to a new 401(k) plan.

**Conclusion**

- By helping the financial adviser show the business owner how to implement his financial advisor’s recommendations, Jim is not providing financial planning or material elements of financial planning.
- Jim must place his client’s interests ahead of his own but is not required to act as a fiduciary as defined by CFP Board in Rule 1.4.
- He does not need to meet the financial planning requirements of Rules 1.2, 1.3 or 2.2

Jim is not providing financial planning or material elements of financial planning in Scenario SS 3. He must place the business owner’s interest ahead of his own AND he must also place the financial adviser’s interest ahead of his own, too. He must use reasonable and prudent professional judgment but is not required to provide written disclosures or to ask the business owner to enter into a written agreement. Jim is not required to act as a fiduciary as defined by CFP Board.
Learning Objective 3

Differentiate between the standards of care set forth in Rules 1.4 and 4.5 of the Rules of Conduct, and apply each standard of care to specific factual situations.

Is This Financial Planning?

CFP® certificants providing financial planning or the material elements of the financial planning process to a client owe the client the duty of care of a fiduciary. A fiduciary is “someone who acts in utmost good faith, in a manner he or she believes to be in the best interest of the client.”

What is “best” for the client depends on each client’s individual situation; however, under Rule 1.4, the certificant must always place the client’s interests ahead of the certificant’s own. The relationship between the certificant and a client impacts the level of fiduciary responsibility required.

Although the fiduciary standard applies specifically when a CFP® professional is providing financial planning services to a client, a high duty of care applies to all CFP® professionals in any type of client relationship because Rule 1.4 states that a CFP® professional must at all times place the interest of the client ahead of his or her own.

CFP Board’s ethical standards have always emphasized the importance of professional judgment. The importance of a CFP® professional’s judgment is highlighted in the definition of “fiduciary” in the Standards: “One who acts in utmost good faith, in a manner he or she reasonably believes to be in the best interest of the client.” CFP Board expects CFP® professionals to provide only financial planning recommendations (services and/or products) that they reasonably believe to be the best possible options available to their clients.

CFP Board acknowledges that it is impossible to review all possible options to select the best. There can be nearly infinite options when one brings together an individual’s situation and goals with the ever-increasing range of choices available to the financial services industry. For a CFP® professional who works in a setting where business or regulatory requirements limit the services or investments that can be made available to clients (captive agents, for example), CFP Board expects any financial planning services provided to be the best services and recommendations available, given the CFP® professional’s reasonable professional judgment and the limitations placed on the CFP® professional by those business or regulatory requirements. In such situations, the CFP® professional would be expected to disclose the limitations to the client, including any contractual or agency relationships that have potential to affect the client and any terms under which proprietary products may be offered.

For the CFP® professional who is engaged in financial planning or materials elements of financial planning, Practice Standards 400-2 explains that “the recommendations developed by the practitioner may differ from those of other practitioners or advisers, yet each may reasonably meet the client’s goals, needs and priorities.” Additionally, Practice Standards 500-2 explains that “products and services selected by the practitioner may differ from those of other practitioners or advisers [and] more than one product or service may exist that can reasonably meet the client’s goals, needs and priorities.”

Question 2-1: Why doesn’t CFP Board just say that all CFP® professionals are fiduciaries?
The Standards require that all CFP® professionals who provide financial planning services will be held to the duty of care of a fiduciary, as defined by CFP Board. Since some CFP® professionals are not involved in providing financial planning services to clients, it would be inappropriate to hold these individuals to a duty of care that may not apply to their professional activities. While CFP Board’s fiduciary standard is reserved for financial planning services, the Standards nevertheless require a high duty of care for all CFP® professionals in any type of client relationship: "A CFP® professional shall at all times place the interest of the client ahead of his or her own." [See Rule 1.4]

Question 2-2: How can a CFP® professional be certain that a recommendation is the “best” for a client, given the enormous variety of financial strategies and products available? Does CFP Board expect CFP® professionals to investigate every conceivable option that might be available to a particular client?

CFP Board’s ethical standards have always emphasized the importance of professional judgment. The importance of a CFP® professional’s judgment is highlighted in the definition of “fiduciary” in the Standards: “One who acts in utmost good faith, in a manner he or she reasonably believes to be in the best interest of the client.” CFP Board expects CFP® professionals to provide only financial planning recommendations (services and/or products) that they reasonably believe to be the best possible options available to their clients.

CFP Board acknowledges that it is impossible to review all possible options to select the best. There can be nearly infinite options when one brings together an individual’s situation and goals with the ever-increasing range of choices available to the financial services industry. For a CFP® professional who works in a setting where business or regulatory requirements limit the services or investments that can be made available to clients (captive agents, for example), CFP Board expects any financial planning services provided to be the best services and recommendations available, given the CFP® professional’s reasonable professional judgment and the limitations placed on the CFP® professional by those business or regulatory requirements. In such situations, the CFP® professional would be expected to disclose the limitations to the client, including any contractual or agency relationships that have potential to affect the client and any terms under which proprietary products may be offered.

For the CFP® professional who is engaged in financial planning or materials elements of financial planning, Practice Standards 400-2 explains that “the recommendations developed by the practitioner may differ from those of other practitioners or advisers, yet each may reasonably meet the client’s goals, needs and priorities.” Additionally, Practice Standards 500-2 explains that “products and services selected by the practitioner may differ from those of other practitioners or advisers [and more than one product or service may exist that can reasonably meet the client’s goals, needs and priorities.”

Question 2-3: Is it possible for a CFP® professional to be subject to two different standards of care at the same time under CFP Board Rules of Conduct?

No. Rule 1.4 establishes the standard of care required by CFP® professionals. The rule establishes a baseline standard that requires that all CFP® professionals place the interest of the client ahead of their own at all times. When providing financial planning or material elements of financial planning, the CFP® professional’s duty of care rises to that of a fiduciary, as defined by CFP Board. A CFP® professional’s fiduciary status supersedes the baseline standard of care. [See Rule 1.4]
The current regulatory structure of the financial services industry in the U.S. assigns regulatory oversight to various bodies based on the type of product or service involved, rather than on the type of client relationship within which those products or services are provided. With the differences in the standards imposed by various regulatory bodies, CFP Board requires CFP® professionals to understand how particular regulators or certifying bodies apply standards of care pertinent to the client relationship. Failure to comply with regulatory requirements could subject a CFP® professional to discipline by CFP Board under Rule 4.3.

**Practical Applications of the Fiduciary Standard of Care**

- Placing the client’s interest first
- Acting in utmost good faith
- Reasonableness
- Acting in the best interest of the client
- Standards of care

“A certificant shall at all times place the interest of the client ahead of his or her own. When the certificant provides financial planning or material elements of financial planning, the certificant owes to the client the duty of care of a fiduciary as defined by CFP Board.” – Rule 1.4 of CFP Board’s *Rules of Conduct*

**Two standards of care:**

- **Baseline standard** - when providing other than financial planning
- **Fiduciary standard** - only when providing financial planning

**What does it mean to place the client’s interest first?**

**Scenario 1**

Mary Miller, CFP meets with Joe and Jane butler to discuss 529 plans for their child, Henry, who is 4 years old. This is their first child and they know very little about education funding. Henry’s grandfather promised to make a substantial contribution if a 529 plan was available. Mary describes the 529 plan offered by her broker dealer – and an advisor-directed plan sponsored by a neighboring state. She recommends that Joe and Jane look into the self-directed plan sponsored by their resident state before making any decisions.

Did Mary, a CFP certificant, place Joe and Jane’s interest ahead of hers?

**Considerations**

- Mary discussed her firm’s product
- Mary recommended that the clients explore another 529 product, which Mary does not sell

If a broker doesn’t sell a product they are not expected to know all about it, and may only suggest that the clients look into it on their own
Scenario 2

Bill Bofty, CFP presented a series of recommendations to his client, Frank Cicero, for implementation on the 21st day of the month. Frank wanted to review the recommendations and delay any decisions until after his return from a business trip in two weeks. Bill faces a commission deadline at the end of the month. If business is not submitted within the next week, he will not be paid for 45 days. Bill will not be able to make his mortgage payment without the commissions from the sale and lose eligibility for a firm bonus if the business is not submitted until after the first of the month. He continues to attempt to close the sale for two hours until in exasperation the clients sign the required paperwork.

Did Bill, a CFP certificant, place Frank’s interest ahead of his? No!

Considerations

- Bill felt personal pressure to make this sale
- Frank wanted to hold off on making decision

CFP Board’s Definition of Fiduciary

“Fiduciary: One who acts in utmost good faith, in a manner he or she reasonably believes to be in the best interest of the client.”

What do the following phrases mean?

- Act in utmost good faith
- In a manner he or she reasonably believes
- To be in the best interest of the client

CFP put his own interest ahead of the client. The actual product being used was not necessarily bad, it was the way in which the client was being handled that makes it inappropriate. A normal amount of salesmanship is OK, but not to this extreme.

In this scenario the baseline standard applies and there was no fiduciary responsibility since they were not involved financial planning requiring utmost good faith

Only looking at one product at a time and one type of investment

Acting in utmost good faith

Scenario 3

Jennifer Jones, CFP, works with schoolteachers in another community. She developed a short-term fact finder that helps her identify client needs quickly and efficiently. She creates individual action plans tailored to the unique needs of each household. Since the district does not match the 403(b) contribution and depending on the teacher’s tax bracket, she may recommend Roth IRA contributions
rather than the TSA. Jennifer earns a higher commission on the Roth IRA than the on the TSA. She also encourages teachers to take advantage of the inexpensive group insurance available to the district.

Did Jennifer, a CFP certificant, act in utmost good faith and, as a result, satisfy this aspect of the fiduciary standard of care?

Considerations

- Tailored plan to unique needs
- Roth IRA as possible alternative to TSA
- Talked up benefits of group insurance
- Disclosed higher compensation on Roth IRA

Scenario 4

Ray McGuire, CFP markets extensively to public school teachers in the large city in which he lives. To compensate for the relatively low income and asset levels of this market, he has developed a standardized approach. He prepares a short-form financial analysis with boiler-plate recommendations to save and invest. The result for virtually all of his schoolteacher clients is that she uses the same plan and products for all of his clients including a 403(b) in a variable annuity for retirement, a variable universal life insurance policy for protection, and a contractual periodic savings plan for cash reserves.

Did Ray, a CFP certificant, act in utmost good faith and, as a result, satisfy this aspect of the fiduciary standard of care?

Considerations

- Minimal financial analysis
- Boiler-plate recommendations
- Very expensive products

Since he is doing Financial Planning he is violating his Fiduciary duty, and has no written agreement in place

CFP has disclosure forms for both FP and non-FP situations

Scenario 5

Louise Morrison, CFP is primarily an exclusive insurance agent with XYZ Insurance Co. She also recommends proprietary mutual funds. She uses the identical investment recommendations with all of her clients. She identified 6 funds within the fund family that she feels are consistent performers with average expenses and enough diversification to meet every client’s needs. She knows these funds inside and out and can easily describe the features and benefits to current and potential customers.

Did Louise, a CFP certificant, act in a reasonable manner and thereby satisfy this aspect of the fiduciary standard of care?
Considerations

- Makes same recommendations to all clients
- Single fund family

2 or more subject areas are always Financial Planning and needs to be in writing

**Acting in the best interest of the client**

**Scenario 6**

Martha Mattingly, a 62-year-old woman comes to Aaron Blaze, CFP with grave concerns about the losses she has experienced in her IRA in the recent market turmoil. After spending extensive time with Martha about her risk tolerance and long term goals and considering many different investment products, Aaron recommends that the IRA be invested in aggressive growth mutual funds, ETFs and bonds. He also reviews Martha’s insurance policies and determines that they are adequate.

Did Aaron, a CFP certificant, act in Martha’s best interest and thereby satisfy this aspect of the fiduciary standard of care?

**Considerations**

- Did Aaron sufficiently diversify Martha’s portfolio?
- Were the investment recommendations appropriate?
- Multiple subject areas, so must be in writing
- The ADB does not completely satisfy disclosure rules
- Separate forms need to be used for disclosure

**Scenario 7**

Robert Dankin, CFP works as an agent for an insurance company. He maintains a broad practice offering long-term care coverage, life insurance, disability insurance, estate planning, and investment planning to his customers. Robert uses proprietary company software designed to help clients assess their total financial picture, identify weaknesses and illustrate proposed solutions. He does not charge a fee for this analysis. His compensation is contingent on products implemented by the customer through the agent.

Which of CFP Board’s two standards of care applies to Scenario 7 – the baseline or fiduciary standard?

**Considerations:**

Robert, a CFP certificant is providing financial planning services to his clients?
The agent must act with fiduciary standard of care

**Resources**

General Inquiries / Requests
Sample disclosure forms, FAQs, Webinars, and more

- www.cfp.net/aboutus/standards.asp

**Baseline Standard:** “A certificant shall at all times place the interest of the client ahead of his or her own.” – Applies only when other than financial planning services are provided.

**Fiduciary Standard:** “One who acts in utmost good faith, in a manner that he or she reasonably believes to be in the best interest of the client.” – applies only when financial planning services are provided.

CFP Board does not mandate that all CFP certificants are fiduciaries. Some CFP certificants may be engaged in a wide range of business activities unrelated to financial planning, and CFP Board is not likely to impose a fiduciary standard in such situations. The agreement between the CFP certificant and the client regarding the services to be provided is a factor in helping CFP Board and all parties determine whether financial planning services are provided.

- CFP Board’s fiduciary standard is reserved for financial planning services.
- CFP Board does require a high duty of care for all CFP certificants in any type of client relationship: “A certificant shall at all times place the interest of the client ahead of his or her own.”
- CFP Board doesn’t use the same definitions used by Federal and State regulators and courts for important terms such as “financial planning” and “fiduciary”.
- CFP Board reviewed and considered existing definitions of important terms used by other bodies, including those set out by federal and state regulators, but those terms are not consistent and change from time to time. The definitions also tend to address financial planning only peripherally.
- CFP Board felt it important to establish definitions appropriate for CFP certificates in a simple, clear manner that would be understood easily by CFP certificants and the clients they serve.

The term “Fiduciary” as defined in CFP Board’s Standards Includes the elements commonly attributed to fiduciary duty including:

- Putting the client’s interests first when providing financial planning
- Acting with utmost good faith
- Prohibiting misleading communication
- Providing full and fair disclosure of all material facts, including conflicts of interest.

The fiduciary standard of care, which requires a CFP certificant to act in utmost good faith in a manner the certificant reasonably believes to be in the best interest of the client, applies when the certificant prepares a financial plan for a client.

The fiduciary standard of care does not apply when the certificant advises a client solely on the portfolio distribution of the client’s 401(k) plan.
The fiduciary standard of care applies when the certificant and client have a financial planning relationship, even if there is no written agreement between the certificant and client.
Learning Objective 4

Apply each Practice Standard set forth in the Financial Planning Practice Standards to a hypothetical financial planning engagement.

CFP® professionals need to understand how the Practice Standards should be applied to the six steps of the financial planning process. The Practice Standards are applied to various financial planning fs in Chapter 4, Financial Planning Practice Standards.

CFP Board requires a written agreement for all financial planning relationships.

The fiduciary standard of care does not apply when a CFP certificant recommends a life insurance policy to a client who previously purchased only a homeowner’s policy from the CFP certificant.

How to Apply the Fiduciary Standard to a Financial Planning Practice

- When does the fiduciary standard of care apply?
- When are you holding yourself out as a financial planner?
- How can you define your scope of engagement to best protect yourself?
- If a CFP® professional presents a financial plan to a client and the client elects not to follow the recommendations in the plan, does the CFP® professional owe the client a fiduciary duty of care?
- How is financial planning different from brokerage services? Investment advice? Insurance?
- How do the Financial Planning Practice Standards relate to the six step financial planning process?
- What kinds of conduct in a financial planning relationship have led to violations of CFP Board's Rules of Conduct and/or non-compliance with the Practice Standards?

Code of Ethics and Professional Responsibility

- Form the basis of CFP Board’s Rules of Conduct and Financial Planning Practice Standards
- Reflect the professional standards that CFP professionals strive to adhere to
- Include seven core principles

7 Core Principles

- **Integrity** – Honesty, Candor, and living up to a Position of Trust
- **Objectivity** – Impartiality in all matters of judgment
- **Competence** – Seek and grow Knowledge; recognize limitation to knowledge and seek Consultation
- **Fairness** – In addition to impartiality, Disclosure of all Conflicts of Interest
- **Confidentiality** - Ensure protection of Client Information
- **Professionalism** – Courtesy, Dignity and a Focus on the Reputation of the Profession
- **Diligence** - Prompt and Thorough services
Rules of Conduct

- Establish the high standards expected of CFP professionals and describe the level of professionalism required of CFP professionals.
- Violations of the Rules of Conduct may lead to discipline.

Standards of Care

- All Services
  - A CFP Professional shall at all times place the interest of the client ahead of his or her own.
- Financial Planning Services
  - When a CFP professional provides financial planning or material elements of financial planning, the CFP professional owes to the client the duty of care of a fiduciary as defined by the CFP Board.
  - Fiduciary is defined by the CFP Board as a person who acts in utmost good faith and in a manner he or she reasonably believes to be in the best interest of the client.

The Financial Planning Practice Standards

- Apply to CFP professionals engaged in financial planning.
- Each Practice Standard is directly related to one of the six steps of the Financial Planning Process
- CFP Professionals are required to practice in a way that’s consistent with the Practice Standards
- CFP Board’s Disciplinary and Ethics Commission and Appeals Committee use the Practice Standards to determine if the Rules of Conduct have been violated.

Financial Planning Process – 6 Steps

- Establishing and defining the client-planner relationship
- Gathering client data including goals
- Analyzing and evaluating the client’s financial status
- Developing and presenting recommendations and/or alternatives
- Implementing the recommendations, and
- Monitoring the recommendations

Step 1 of the Financial Planning Process:

100-1: Defining the Scope of the Engagement

The financial planning professional must mutually define the scope of the engagement before any financial planning service is provided.

Limiting the Scope of Engagement

- What does “limiting the scope” mean?
- Who limits the scope?
• What can a CFP professional do to avoid confusion or ambiguity about the services to be provided?

How to Mutually Define the Scope of Engagement

• CFP Professional’s obligations prior to entering into a written agreement.
• CFP professional’s obligations at the time of written agreement.

Obligations Prior to Written Agreement (Rules 1.2 and 2.2)

• Explain how you work with clients;
• Disclose material conflicts;
• Disclose the terms under which you offer proprietary products; and
• Disclose your compensation agreement.

Obligations at Time of Written Agreement (Rule 1.3)

• Identify the parties to the agreement;
• Specify each party’s responsibilities;
• Identify the duration of the engagement;
• Be clear about any limitations on scope;
• Be clear about how and when the agreement will terminate; and
• Provide a copy of the Form ADV if applicable.

Case Study #1 – Facts

CFP professional enters into an agreement with a client and agrees to develop and present a financial plan for $3,000. CFP professional completes a draft of the financial plan but fails to deliver it after learning that Client is engaged to be married. CFP professional says the plan was based on projections for Client while single and is now invalid. CFP professional initially refuses but eventually returns the $3,000 fee paid by client for the planning services 11 months after Client requested a refund.

Case Study #1 – Issues

• Did the CFP professional fail to define the scope of the engagement with the client?
• Should the financial planning agreement have specified a date for delivery of the financial plan?
• Should the agreement have stated what was required in exchange for the $3,000 fee?
• Could the CFP professional have provided Client a financial plan where the scope was restricted to her? (Practice Standards 100-1)

Step 2 of the Financial Planning Process:

200-1: Determining a Client’s Personal and Financial Goals, Needs and Priorities

The financial planning professional and Client shall mutually define Client’s personal and financial goals, needs and priorities that are relevant to the scope of the engagement before any recommendation is
Obligations in Determining a Client’s Goals

- Explore Client’s values, attitudes, expectations and time horizons;
- Determine how these will affect Client’s goals, needs and priorities;
- Determine the priority of the goals and objectives given Client’s values, attitudes, expectations and time horizons; and
- Assist Client in recognizing unrealistic goals.

200-2: Obtaining Quantitative Information and Documents

The financial planning professional shall obtain sufficient quantitative information and documents about Client relevant to the scope of the engagement before any recommendation is made and/or implemented.

Obligations in Obtaining Quantitative Information and Documents

- Identify the relevant information and documents;
- Communicate reliance on completely and accuracy of the information; and
- If unable to obtain sufficient quantitative information and documentation to form a basis for recommendations, the CFP professional must either:
  o Inform Client of the deficiency and limit the scope of the engagement to those matter for which sufficient information is available (Rule 3.3); or
  o Terminate the engagement

Case Study #2 – Facts

CFP professional obtained a summary of Client’s assets and liabilities, time horizon and monthly income needs. CFP professional completed a financial plan without verifying the information provided by Client.

Case Study #2 – Issues

- Did CFP professional obtain sufficient information to prepare a financial plan?
- Did CFP professional err in not verifying the information using source documents?

Case Study #2 – Commission’s Rationale

- CFP professional violated the Practice Standards because he did not:
  o Obtain sufficient information to prepare a financial plan;
  o Disclose to Client that he did not have sufficient information to prepare a plan; or
  o Terminate the relationship.
- CFP professional prepared the plan with insufficient information and the Commission issue a private censure.

Holding Out
CFP Board considers several factors in determining whether a CFP professional is providing financial planning services, including:
- The client’s reasonable understanding and intent in engaging the CFP professional.
  - Relevant factors include types and content of communications
  - Summary letters or emails to the client are a best practice in coming to a mutual understanding
- The degree to which multiple financial planning subject areas are involved.
- The comprehensiveness of the data gathering
- The breadth and depth of recommendations.

When is it Financial Planning?
- May occur even if some of the six steps of the financial planning process are not followed.
- May occur over a period of time
- May be delivered as distinct subject areas.
- May exist even in the absence of a written financial plan.

Step 3 of the Financial Planning Process:
300-1: Analyzing and Evaluating the Client’s Financial Status
A financial planning professional shall analyze the information to gain an understanding of Client’s financial situation and then evaluate to what extent Client’s goals, needs and priorities can be met by Client’s resources and current course of action.

Personal and Economic Assumptions
A CFP Professional must document and disclose both personal and economic assumptions when analyzing Client’s situation:
- Personal assumptions include retirement age, life expectancy, health care costs, income needs, risk factors, time horizon and special needs.
- Economic assumptions include inflation rates, tax rates and investment returns.

Outcomes of Analysis and Evaluation
- Assessment by the CFP professional whether Client will reach stated objectives by continuing current activities.
- Determination of strengths and weaknesses of Client’s financial situation and current course of action.
- The identification of other issues that need to be addressed.
- May be necessary to amend the scope of engagement and/or to obtain additional information.

Case Study #3
Facts: CFP professional met with a Ms. King, whose husband has recently died. Ms. King indicated that her only need was monthly income. CFP professional recommended that Ms. King purchase 2 whole life
policies to replace the bond component of her portfolio. Because the recommendations were designed to act as a fixed income replacement, CFP professional did not prepare a needs analysis or a cash flow.

**Issue:** Should CFP professional have prepared a needs analysis and a cash flow prior to making whole life recommendations?

**Commission’s Rationale:** Yes, CFP professional was obligated to adequately assess the insurance needs of Ms. King as well as her ability to pay the necessary premiums. (300-1) Giving significant weight to the violation of *Practice Standard* 300-1, the Commission issued a 3-year suspension.

**Step 4 of the Financial Planning Process:**

- Identifying and evaluating financial planning alternative(s);
- Developing the financial planning recommendation(s); and
- Presenting the financial planning recommendation(s)

**400-1: Identifying and Evaluating Financial Planning Alternative(s)**

The financial planning professional shall consider sufficient and relevant alternatives to Client’s current course of action in an effort to reasonably meet Client’s goals, needs and priorities.

**400-2: Developing the Financial Planning Recommendation(s)**

The financial planning professional shall develop the recommendations(s) based on the selected alternative(s) and the current course of action in an effort to reasonably meet Client’s goals, needs and priorities.

**400-3: Presenting the Financial Planning Recommendation(s)**

The financial planning professional shall communicate the recommendation(s) in a manner and to an extent reasonably necessary to assist Client in making an informed decision.

**Obligations of Developing and Presenting Recommendation(s)**

- Identify and document alternatives;
- Evaluate alternatives and ensure they meet Client’s goals; and
- Communicate recommendations and describe how it will impact Client’s ability to meet goals and priorities.

**Case Study #4**

**Facts:** CFP professional prepared a financial plan for Mr. and Mrs. Carter, which left their funds illiquid. The Carters previously had issues with liquidity. CFP professional did not present the Carters with any alternative plans that would allow for their funds to remain liquid.

**Issue:** Should CFP professional have considered multiple alternatives? Should CFP professional have
provided a written explanation of how the recommendations were designed to meet Client’s goals?

**Commission’s Rationale:** CFP professional was obligated to identify and evaluate multiple alternatives and discuss how these alternatives were designed to meet Client’s goals (400-1, 2, 3)

Giving significant weight to violations of *Practice Standards* 400-1, 2, and 3, the Commission issued a 3-month suspension.

**Step 5 of the Financial Planning Process:**

- Agreeing on implementation responsibilities; and
- Selecting products and services for implementation.

**500-1: Agreeing on Implementation Responsibilities**

The financial planning professional and Client mutually agree on the implementation responsibilities consistent with the scope of the engagement.

**500-2: Selecting Products and Services for Implementation**

The financial planning professional shall select appropriate products and services that are consistent with Client’s goals, needs and priorities.

**Case Study #5**

**Facts:** CFP professional determined that 70-year-old husband and wife required liquidity and significant cash flow. CFP professional recommended that the client purchase 4 annuities with two-thirds of their investable assets.

**Commission’s rationale:** The Commission noted that the 10% withdrawal options featured by some of the annuities were insufficient to meet the Clients’ liquidity needs and Respondent failed to take into account the income tax implications of withdrawals of annuities. (500-2, Rules 1.4 and 4.5)

**Step 6 of the Financial Planning Process:**

**600-1: Define Monitoring Requirements**

The financial planning professional and Client shall mutually define monitoring responsibilities.

**Case Study #6**

**Facts:** CFP professional agrees to prepare, implement, and monitor a financial plan for Client CFP professional undertakers a review of Client’s financial plan every two years. Despite significant withdrawals made outside those contemplated in the plan, CFP professional continues to recommend that Client maintain the current asset allocation and liquidity.
Issue: Should CFP professional have re-engaged in the financial planning process and reviewed his recommendations?

Commission’s Rationale: CFP professional was obligated to re-evaluate his recommendations given Client’s Withdrawal activity. The original recommendations were no longer appropriate for Client. (600-1)

Based on the violation of 600-1, the Commission issued a 3-month suspension.
Learning Objective 5

Identify the information that must be disclosed to the client in writing by a CFP® professional who is engaged in a financial planning relationship or providing material elements of financial planning.

CFP Board requires a written agreement by the CFP® certificant or his employer if a certificant provides financial planning or material elements of the financial planning process to a client. Required elements of this written agreement include:

- the parties to the agreement;
- the date and duration of the agreement;
- how and on what terms each party can end the agreement; and
- the services to be provided under the agreement.

The agreement may be represented by one or more written documents. Written documentation used for compliance with state or federal law or the rules of an applicable self-regulatory organization satisfies the requirement if the documentation incorporates the required information. An example of such documentation is Form ADV.

CFP Board does not advocate any particular business model or form of compensation. CFP® professionals provide services under various regulatory environments and consequently, may be required to comply with federal and/or state laws, as well as the rules of a self-regulatory organization. The regulatory environment in which a CFP® professional operates governs how the CFP® professional and his/her employer receives compensation and how that compensation must be disclosed to a client. CFP Board’s Standards do not allow a CFP® professional to avoid the regulatory requirements imposed by federal and/or state authorities, or a self-regulatory organization.

CFP® professionals must provide an accurate and understandable description of the compensation arrangements, including information related to costs and compensation to the CFP® professional and/or the CFP® professional’s employer. This disclosure requirement allows the client to make an informed decision. The Standards do not require disclosure of specific dollar amounts or percentages of compensation to a client unless the client specifically asks for this information. If the client asks a CFP® professional the amount he/she will earn from a specific transaction or service, the CFP® professional must provide this information, to the extent it can be determined. [See Rule 2.2] If the cost to the client is not known until a series of decisions or actions occur, a CFP® professional must make that information available to the client as it is determined.

Rule 2.2a.ii requires disclosure of expenses the client will incur, including firm or adviser expenses passed on to the client as an additional charge. Examples that must be disclosed include, but are not limited to the following, when applicable:

- 12b-1 fees;
- Cash bonuses or other incentives received from the firm or issuer for selling specific financial or insurance products;
- Trailing commissions for selling financial or insurance products;
• Compensation received from wrap-fee programs;
• Trading fees, if passed on to the client;
• Ticket charges, if passed on to the client;
• Administrative or management fees on mutual funds or variable annuities as outlined in the prospectus; and
• Solicitation fees.

If the cost to the client is not known until a series of decisions or actions occurs, the Standards do not require the CFP® professional to provide disclosure until that information is determined.

Rule 2.2 sets forth the disclosures required of all CFP® professionals when dealing with clients and prospective clients. These disclosures include the following general areas:

• Any compensation that may be related to the client engagement;
• Any conflicts of interest that may affect the client engagement;
• Any relevant information about the CFP® professional or the CFP® professional’s employer; and
• Contact information for the CFP® professional and, if applicable, the CFP® professional’s employer.

The Standards also acknowledge that disclosure is not always a one-time event. As a client engagement evolves over time, perhaps with added or re-structured services, ongoing disclosure is also important.

Rule 2.2 makes that clear in its concluding statement: “The CFP® professional shall timely disclose to the client any material changes to the above information.” Rather than follow a periodic annual or semi-annual schedule for repeated disclosures, this provision of Rule 2.2 requires that disclosures be made on an ongoing basis, allowing a client to make informed decisions based on the most current information.

Rules 1.2 and 2.2 of the Standards address the timing, content and manner in which disclosures must be made by a CFP® professional to a client or prospective client. If the CFP® professional does not offer financial planning or material elements of financial planning, the following must be disclosed verbally:

• Contact information for the CFP® professional, and the firm with which the CFP® professional is associated;
• Any information about the CFP® professional or the firm with which the CFP® professional is associated that could materially affect the client’s decision to engage the CFP® professional;
• The CFP® professional’s and client’s obligations and responsibilities;
• The compensation that the CFP® professional, the CFP® professional’s firm, and/or any third party may earn;
• How costs of products and services are determined;
• Whether and how the CFP® professional may benefit from the client’s decision;
• If the CFP® professional offers proprietary products and the terms under which such products may be offered; and
• Other likely conflicts of interest.

Written disclosure is not required; however, it is a recommended practice that CFP® professionals provide disclosures in writing.
CFP® professionals should note that Rule 4.3 of the Standards requires compliance with applicable regulatory requirements governing professional services provided to the client.

**Compensation**

**Compensation Disclosures**

The Rules of Conduct require CFP® professionals to disclose to clients and prospective clients certain information concerning the CFP® Professional’s compensation. In the terminology section set forth on page 4 of the Standards of Professional Conduct, CFP Board defines “compensation” as “any non-trivial economic benefit, whether monetary or non-monetary, that a certificant or related party receives or is entitled to receive for providing professional activities.” Therefore, in addition to informing a client or prospective client of the compensation that the CFP® professional receives or is entitled to receive for providing professional activities, a CFP® professional is required to disclose the compensation that a related party, such as the CFP® professional's employer, receives or is entitled to receive for providing professional activities. This includes:

- Compensation that the CFP® professional receives or is entitled to receive from a client or prospective client for providing professional activities;
- Compensation that related parties, such as the CFP® professional’s employer, receives or is entitled to receive from a client, prospective client, or other source for providing professional activities; and
- Compensation the CFP® professional receives or is entitled to receive from related parties, such as the CFP® professional’s employer or other sources, for providing professional activities.

As set forth in the “compensation” definition, compensation includes “any non-trivial economic benefit, whether monetary or non-monetary.” As a general rule, CFP Board considers as non-trivial any consideration received in exchange for providing professional activities. That includes, for example, consideration received for a recommendation provided by the CFP® professional or a related party.

In addition, compensation includes non-trivial economic benefits that a certificant or related party “receives or is entitled to receive.” Thus, a CFP® professional is required to disclose all compensation that may result from the provision of professional activities. This includes, for example, first year commissions, renewal commissions in subsequent years, 12b-1 fees, and compensation that may result from a client referral agreement.

**Commission**

In the Standards of Professional Conduct, CFP Board defines “Commission” as “compensation generated from a transaction involving a product or service and received by an agent or broker, usually calculated as a percentage on the amount of his or her sales or purchase transactions. This includes 12b-1 fees, trailing commissions, surrender charges and contingent deferred sales charges.” If the CFP® professional or a related party receives or is entitled to receive commissions for providing professional activities, the CFP® professional must disclose that he/she receives commissions as part of his/her compensation. For example, if the CFP® professional works for a registered investment adviser that is under common ownership with a broker-dealer, CFP Board considers the broker-dealer to be a related party. Therefore, any CFP® professional working for an organization that has a broker-dealer
subsidiary or affiliate must include “commission” as part of his/her compensation disclosure.

**Fee-only**

The “fee-only” definition set forth in the Standards of Professional Conduct provides that a CFP® professional “may describe his or her practice as ‘fee-only’ if and only if, all of the certificant’s compensation from all of his or her client work comes exclusively from the clients in the form of fixed, flat, hourly, percentage or performance-based fees.” When read in conjunction with the definition of compensation, the “fee-only” description applies when the CFP® professional and any related parties receive, or are entitled to receive, only fees for providing professional activities. For example, a CFP® professional may work for an investment advisor that charges only fees for the CFP® professional’s professional activities. However, if a related party receives commissions, the definition of “fee-only” is not satisfied, and the CFP® professional may not describe his or her compensation as “fee-only.”

**Commission and Fee**

If a CFP® professional and any related party receives or is entitled to receive both commissions and fees for providing professional activities, the CFP® professional must disclose his or her compensation as “Commission and Fee.”

**Salary**

CFP Board does not define “salary” in the Standards of Professional Conduct. A CFP® professional is required to describe his/her compensation in a manner that allows clients and prospective clients to understand how they will pay the CFP® professional and any related party. Except in very limited circumstances, salary does not provide an accurate and understandable description of the compensation arrangement being offered by a CFP® professional because it does not describe how the client will pay the CFP® professional and any related party. Therefore, CFP Board will remove “Salary” from its “Find a CFP® Professional” search engine, effective Friday, August 16, 2013.

**Conclusion:**

In determining how to make compensation disclosures, a CFP® professional must consider compensation to the CFP® professional and any related party. The CFP® professional also must include as compensation any non-trivial economic benefit that the CFP® professional or any related party “receives or is entitled to receive.”

CFP Board does not audit CFP® professionals to verify the accuracy of their compensation disclosures. However, in the event that CFP Board is notified that a CFP® professional has made an inaccurate compensation disclosure, CFP Board will initiate an investigation of the CFP® professional’s compensation disclosures.

CFP Board understands that employers of CFP® professionals who provide services other than financial planning may require CFP® professionals to have their clients sign a document or disclaimer stating that the CFP® professional is not providing financial planning services. Regardless of any document or disclaimer signed by a client, CFP Board reserves the right to make an independent determination of whether the CFP® professional’s services rise to the level of financial planning based on CFP Board’s
Rules of Conduct. If CFP Board determines that the CFP® professional provided financial planning and the terms required under Rule 1.3 were omitted or a written agreement was not provided, CFP Board may enforce Rule 1.3 against the CFP® professional. Similarly, Rules 1.2 and 2.2 may be enforced if CFP Board determines that the CFP® professional provided financial planning without the written disclosures required by the Rules of Conduct.

CONFLICTS OF INTEREST BETWEEN CFP® PROFESSIONALS AND CLIENTS

Background

In their day-to-day business, it is not uncommon for CFP® professionals to face decisions about whether a particular action or circumstance constitutes a conflict of interest. In response to recent increases in the number of conflict of interest cases reviewed by CFP Board, CFP Board presents this Advisory Opinion to provide guidance to CFP® professionals concerning conflicts of interest in order to help CFP® professionals address conflicts of interest in compliance with CFP Board’s Standards of Professional Conduct (“Standards”).

Issue: Conflicts of Interests Between CFP® Professionals and Clients

- What constitutes a conflict of interest under CFP Board’s definition of conflicts of interest?
- How and when should a CFP® professional disclose a conflict of interest to a client or prospective client?

Rules

CFP Board defines “conflict of interest” in the Terminology section of the Standards, which states that a conflict of interest exists when a CFP® professional’s financial, business, property and/or personal interests, relationships or circumstances reasonably may impair his/her ability to offer objective advice, recommendations or services. Several Rules of Conduct are related to this definition:

- Rule 1.4 requires that a CFP® professional shall at all times place the interest of the client ahead of his or her own. When the CFP® professional provides financial planning or material elements of financial planning, the CFP® professional owes to the client the duty of care of a fiduciary as defined by CFP Board.
- Rule 2.2(b) requires a CFP® professional to disclose to a prospective client or client a general summary of likely conflicts of interest between the client and the CFP® professional, the CFP® professional’s employer or any affiliates or third parties, including, but not limited to, information about any familial, contractual or agency relationship of the CFP® professional or the CFP® professional’s employer that has a potential to materially affect the relationship. Further, Rule 2.2 also imposes an ongoing obligation to disclose any conflicts of interest that arise during the course of the CFP® professional-client relationship.
- Rule 4.1 requires a CFP® professional to treat prospective clients and clients fairly and provide professional services with integrity and objectivity.

DISCLOSURE & WRITTEN AGREEMENT – FINANCIAL PLANNING
Question 3-1: What disclosures do the Standards require for client engagements that do involve financial planning or material elements of financial planning?

CFP® professionals involved in client engagements that do involve financial planning or material elements of financial planning must make all of the disclosures listed in Rule 2.2, and they must also make those disclosures in writing. [See Questions 3-2, 3-3, 3-4, 3-6 and 3-7] The written disclosures need not be a single newly-created document; the written disclosures may be made through multiple documents or through existing disclosure documents, such as Form ADV, that are used to make disclosures in compliance with state or federal laws, or the rules or requirements of any applicable self-regulatory organization.

Rule 1.2 outlines additional disclosure obligations to clients or prospective clients for engagements that include financial planning or material elements of financial planning, including the following general areas:

- The obligations and responsibilities of each party
- Any compensation that may be related to the client agreement
- The terms under which proprietary products may be offered
- Any factors that determine costs
- The terms under which other entities will be used to meet any services outlined in the agreement.

Rule 1.2 also notes that if the information above is disclosed in writing, the CFP® professional must encourage the client or prospective client to review the information and offer to answer any questions that the client or prospective client may have.

Question 3-2: When, what and how does CFP Board require disclosure to clients and prospective clients when providing financial planning?

Rules 1.2 and 2.2 of the Standards address the timing, content and manner in which disclosures must be made by a CFP® professional to a client or prospective client. If the CFP® professional offers financial planning or material elements of financial planning, the following must be disclosed either orally or in writing prior to entering into a written agreement with a client:

- Contact information for the CFP® professional, and the firm with which the CFP® professional is associated;
- Any information about the CFP® professional or the firm with which the CFP® professional is associated that could materially affect the client’s decision to engage the CFP® professional;
- The CFP® professional’s and client’s obligations and responsibilities under the agreement;
- The compensation that the CFP® professional, the CFP® professional’s firm, and/or any third party may earn under the agreement;
- How costs of products and services are determined;
- Whether and how the CFP® professional may benefit from the client’s decision;
- If the CFP® professional offers proprietary products and the terms under which such products may be offered;
- Other likely conflicts of interest; and
- Whether the CFP® professional may use other entities to fulfill the obligations of the agreement.
CFP® professionals should note that Rule 4.3 of the Standards requires compliance with applicable regulatory requirements governing professional services provided to the client.

Question 3-3: Does CFP Board expect CFP® professionals to hand deliver disclosure documents, or can the documents be posted or delivered on a CFP® professional’s or the CFP® professional’s employer’s Web site?

Rules 1.2 and 2.2 require CFP® professionals to disclose certain information to clients or prospective clients. The Rules allow for any form of delivery to clients. Under Rule 1.2, if the disclosures are made in writing, the CFP® professional must encourage the prospective client or client to review the information and offer to answer any questions from the client or prospective client. CFP Board believes best practice is to disclose such items upon request; before any agreement is signed; or prior to any transaction where the client is expected to pay for a service or product. Notifying the client or prospective client that the disclosure information can be found on an employer’s Web site probably does not meet the standard of care required under Rule 1.4, which obligates the CFP® professional to place the client’s interest ahead of the CFP® professional’s interest.

Question 3-4: When should a CFP® professional send out disclosure documents to clients?

The Rules of Conduct do not specify a timeframe for sending out disclosure documents. CFP Board believes a CFP® professional’s best practice is to disclose such items when the client requests such information or before any agreement is signed or prior to the execution of any transaction where the client is expected to pay for a service or product. If information previously disclosed to a client changes, Rule 2.2 requires that those changes be disclosed to the client in a timely manner.

CFP Board understands that CFP® professionals may be engaged in providing clients financial services that fall under different regulatory environments. Each regulatory environment may require CFP® professionals and their employers to provide disclosures at different points during a client relationship. CFP Board does not advocate any particular business model or any form of compensation and does not intend to replace the regulatory requirements for disclosing items to clients. CFP® professionals are reminded to adhere to Rule 1.4 when dealing with clients in all capacities.

Question 3-5: In what ways are the disclosures required by the current Standards different from the disclosure requirements in the former Standards?

The current Standards introduce several changes to the disclosure requirements for CFP® professionals:

- **Disclosures Required for Prospective Clients**

  The current Standards expand CFP Board’s disclosure requirements by requiring disclosures to be made to prospective clients as well as existing clients, including material information relevant to the CFP® professional’s relationship such as compensation and conflicts of interest, as well as information about the CFP® professional’s credentials and business affiliations. [See Rules 1.2 and 2.2]

- **Additional Guidance about Disclosing Conflicts and Compensation**

  The current Standards provide additional guidance about the types of conflicts [See Rule 2.2(b)] and the
type of compensation disclosure that must be made to clients and prospective clients, including direct and indirect sources of compensation to the CFP® professional and/or the CFP® professional’s employer. [See Rule 2.2(a)]

- **Ongoing Disclosure Obligation**

While the former Standards required CFP® professionals to tell clients on an annual basis that they can request information about compensation and conflicts of interest, the current Standards provide a more proactive requirement, stating that the CFP® professional shall make timely disclosure updates to the client if previously-disclosed information becomes outdated. [See Rule 2.2]

**Question 3-6: How does a CFP® professional disclose compensation?**

CFP Board does not advocate any particular business model or form of compensation. CFP® professionals provide services under various regulatory environments and consequently, may be required to comply with federal and/or state laws, as well as the rules of a self-regulatory organization. The regulatory environment in which a CFP® professional operates governs how the CFP® professional and his/her employer receives compensation and how that compensation must be disclosed to a client. CFP Board’s Standards do not allow a CFP® professional to avoid the regulatory requirements imposed by federal and/or state authorities, or a self-regulatory organization.

CFP® professionals must provide an accurate and understandable description of the compensation arrangements, including information related to costs and compensation to the CFP® professional and/or the CFP® professional’s employer. This disclosure requirement allows the client to make an informed decision. The Standards do not require disclosure of specific dollar amounts or percentages of compensation to a client unless the client specifically asks for this information. If the client asks a CFP® professional the amount he/she will earn from a specific transaction or service, the CFP® professional must provide this information, to the extent it can be determined. [See Rule 2.2] If the cost to the client is not known until a series of decisions or actions occur, a CFP® professional must make that information available to the client as it is determined.

**Question 3-7: What does CFP Board mean by “costs” and “any other sources of compensation”?**

Rule 2.2a.ii requires disclosure of expenses the client will incur, including firm or adviser expenses passed on to the client as an additional charge. Examples that must be disclosed include but are not limited to the following, when applicable:

- 12b-1 fees;
- Cash bonuses or other incentives received from the firm or issuer for selling specific financial or insurance products;
- Trailing commissions for selling financial or insurance products;
- Compensation received from wrap-fee programs;
- Trading fees, if passed on to the client;
- Ticket charges, if passed on to the client;
- Administrative or management fees on mutual funds or variable annuities as outlined in the prospectus; and
- Solicitation fees.
If the cost to the client is not known until a series of decisions or actions occurs, the Standards do not require the CFP® professional to provide disclosure until that information is determined.

Question 3-8: Is any additional written documentation required by the Standards?

Yes. Rule 1.3 requires that financial planning services be accompanied by a written agreement that identifies:

- The parties to the agreement;
- The date of the agreement and its duration;
- The procedure and terms for terminating the agreement; and
- A description of the services to be provided as part of the agreement.

This written agreement requirement may be satisfied through multiple documents, and it is CFP Board's belief that most CFP® professionals or their employers currently provide clients with written documents that cover the requirements of Rule 1.3.

The written agreement requirement was designed to help ensure that CFP® professionals and their clients define clearly the services involved in a specific business relationship and help reduce disputes based on misunderstandings of those services.

As with the former Standards, the current Standards require that CFP® professionals entering a financial planning engagement make specific written disclosures to the client or prospective client. [See Rules 1.2 and 2.2] The disclosures required to be in writing under the current Standards do not differ significantly from the written disclosures required by the former Standards.

Question 3-9: Will CFP Board provide sample agreements and disclosures that CFP® professionals can use with their clients?

Yes. CFP Board has created sample disclosure forms and a sample agreement form that CFP® professionals may use with their clients.

Form OPS (Other than Financial Planning Services) and Form FPD (Financial Planning Disclosure Document) may help CFP® professionals assemble a document containing the information required to be disclosed under Rules 1.2 and 2.2.

Form FPD is for CFP® professionals who provide financial planning services or material elements of financial planning; Form OPS is for CFP® professionals who provide services that do not rise to the level of financial planning.

Form FPDA (Financial Planning Disclosure Document and Agreement) may help CFP® professionals who provide financial planning services or material elements of financial planning create a document that satisfies the written agreement requirements of Rule 1.3 as well as the disclosure obligations of Rules 1.2 and 2.2.

CFP Board understands that employers of CFP® professionals who provide services other than financial planning may require CFP® professionals to have their clients sign a document or disclaimer stating that
the CFP® professional is not providing financial planning services. Regardless of any document or disclaimer signed by a client, CFP Board reserves the right to make an independent determination of whether the CFP® professional’s services rise to the level of financial planning based on CFP Board’s Rules of Conduct. If CFP Board determines that the CFP® professional provided financial planning and the terms required under Rule 1.3 were omitted or a written agreement was not provided, CFP Board may enforce Rule 1.3 against the CFP® professional. Similarly, Rules 1.2 and 2.2 may be enforced if CFP Board determines that the CFP® professional provided financial planning without the written disclosures required by the Rules of Conduct.

How to Avoid Misleading Compensation Disclosures

The Definition of Compensation

Any non-trivial economic benefit, whether monetary or non-monetary, that a CFP professional or related party receives or is entitled to receive for providing professional activities.

Important Elements of the Compensation Definition

- Key Terms
  - “Related party”
  - “non-trivial economic benefit”
  - “receives or is entitled to receive”

Related-Party Compensation

- A CFP Professional must disclose compensation received or entitled to be received by:
  - A related party from a client; and
  - A CFP professional from a related party.

CFP Professionals Must Disclose Related Party Compensation

- All CFP professionals must disclose:
  - Compensation that the CFP professional receives or is entitled to receive from a client or prospective client for providing professional activities;
  - Compensation that related parties, such as the CFP professional’s employer, receives or is entitled to receive from a client, prospective client, or other source for providing professional activities; and
  - Compensation the CFP professional receives or is entitled to receive from related parties, such as the CFP professional’s employer or any other related party, or other sources for providing professional activities.

Non-Trivial Economic Benefit

- As a general rule, CFP board considers as non-trivial any compensation received in exchange for providing professional activities.
- That includes, for example, consideration received for a recommendation provided by the CFP professional or a related party.
Question #1

A CFP professional earns $500,000 annually. $20,000 of the compensation is generated by commissions from the sale of products. The CFP professional does not have to disclose the commissions as compensation because it is “trivial”.

a) True
B) False

Receives or Entitled to Receive

- A CFP professional must disclose all compensation that he/she receives or is entitled to receive from providing professional activities.
- This includes first year commissions, trail commissions in subsequent years, 12b-1 fees, and compensation that may result from a client referral agreement.

Definition of Commission

Compensation generated from a transaction involving a product or service and received by an agent or broker, usually calculated as a percentage on the amount of his or her sales or purchase transactions. This includes 12b-1 fees, trailing commissions, surrender charges and contingent deferred sales charges.

Inter-relationship Between Compensation & Commission Definitions

- A CFP professional must consider compensation received by related parties, such as an employer.
- For example, if a CFP professional’s employer receives 12b-1 fees, the CFP professional must consider the 12b-1 compensation when disclosing his/her compensation.
- In that circumstance, a CFP professional must disclose that he/she receives commissions.

Definition of “Fee-only”

A CFP professional may describe his or her practice as “fee-only” if, and only if, all of the CFP professional’s compensation from all of his or her client work comes exclusively from the clients in the form of fixed, flat, hourly, percentage, or performance based fees.

Aspects of “Fee-Only”

- All compensation must come “exclusively from the clients”, and not from some other source.
- CFP professionals must consider compensation earned by related parties, such as an employer.
- In sum, a CFP professional must review all types of compensation to determine whether the “fee-only” designation is an appropriate.
- ALL compensation must come in the form of fees.
- A CFP professional who accepts commissions, 12b-1 compensation, or referral compensation is not fee-only.
Commission and Fee

- If a CFP professional and any related party receives or is entitled to receive both commissions and fees for providing professional activities, the CFP professional must disclose his or her compensation as “Commission and Fee”

Question #2

Does a CFP professional who is Commission and Fee have a conflict of interest?

a) Yes

b) No

Question #3

A CFP professional states that his practice is “fee-based” and therefore is “free from the conflicts of interest associated with commissions.” Is this an accurate and understandable description of the CFP professional’s compensation?

a) Yes

b) No
Learning Objective 6

Define the required information that must be disclosed to clients and prospective clients, when that information must be disclosed, and apply each disclosure requirement to specific factual situations. (This includes but is not limited to the compensation and conflict-of-interest disclosure requirements set forth in Rule 2.2 of the Rules of Conduct and Practice Standards 100-1, 400-3, and 500-1.)

Form and Timing of Compensation Disclosures

CFP Board requires CFP® professionals to disclose certain information verbally or in writing before entering into an agreement to provide financial planning services. Among the information that must be disclosed at this stage is information regarding the compensation that any party to the agreement or any legal affiliate to a party under the agreement will or could receive under the agreement. This information includes:

- Compensation the CFP® professional receives or is entitled to receive from a client or prospective client for providing professional activities;
- Compensation that related parties, such as the CFP® professional’s employer, receives or is entitled to receive from a client, prospective client, or other source for providing professional activities; and
- Compensation the CFP® professional receives or is entitled to receive from related parties, such as the CFP® professional’s employer or other sources, for providing professional activities

These disclosures must also cover the factors or terms that determine costs, how decisions benefit the CFP® professional, and the relative benefit to the CFP® professional.

Although this information can be disclosed either in writing or by discussing it with the client, it is wise to always follow up verbal disclosures with written documentation. If the information is presented in writing, the CFP® professional must encourage the client or prospective client to review the information and answer any questions the client or prospective client may have. Simply notifying the client or prospective client that the disclosure information can be found on the employer’s website is probably not sufficient.

If the CFP® professional’s services include financial planning or material elements of financial planning, the CFP® professional must disclose a precise and understandable description of the compensation arrangements being offered to a client or prospective client in writing. This written description of the compensation arrangements must include:

- Information related to costs and compensation to the CFP® professional and/or the CFP® professional’s employer; and
- Terms under which the CFP® professional and/or the CFP® professional’s employer may receive any other sources of compensation, and if so, what the sources of these payments are and on what they are based.

These disclosures should be made upon the client’s request, before any agreement is signed, or prior to any transaction in which the client is expected to pay for a service or product.
The written disclosures may consist of multiple written documents. Written disclosures used by a CFP® professional or CFP® professional’s employer that include the required items and that are used in compliance with state or federal laws or the requirements of any applicable self-regulatory organization can be used to satisfy the disclosure requirement. One example of such a form is the SEC’s Form ADV.

In addition to the required disclosure at the beginning of the client engagement, which provides a general description of how the client will pay for the CFP® professional’s services, the CFP® professional should make an additional disclosure whenever the CFP® professional makes specific recommendations.

A CFP® professional must also make a timely disclosure of any material changes to the information regarding compensation.

CFP Board has created sample disclosure forms CFP® professionals may use with their clients. Form FPD can be used when a CFP® professional provides financial planning services or material elements of financial planning. Form OPS can be used when a CFP® professional provides services that do not rise to the level of financial planning.

**Compensation Case Histories**

Actual case histories illustrating compensation disclosure are presented below.

- **Trustee fees**: A CFP® professional who served as the trustee of a client’s trust was disciplined for not adequately disclosing that he was double and triple billing the client for fees and commissions by hiring fee-based managers and his own advisory service and accounting firm. (Anonymous Case History 16145)

- **Annuity commissions**: A CFP® professional was disciplined for failing to adequately disclose her compensation. When the client asked the CFP® professional the amount of the commission associated with the sale of an annuity, she responded that she “thought” it was $1,000 but did not disclose the amount in writing. (Anonymous Case History 21547)

- **Referral fees**: A CFP® professional was disciplined for referring a client to a colleague to invest in an outside investment and, after the client invested in the outside investment, failing to disclose that he received a referral fee from the colleague. (Anonymous Case History 26226)

**Conflicts of Interest: General Communication/Disclosure Requirements**

CFP Board requires that a CFP® professional who is providing financial planning services to disclose, in writing, to a client or prospective client a summary of likely conflicts of interest between the client and the CFP® professional, CFP® professional’s employer or any affiliates or third parties. Although CFP® professionals who are not providing financial planning services to the client are allowed to disclose conflicts of interest orally, a better practice is to make the disclosures in writing.

A CFP® professional should clearly identify each client he is working with and determine whether the client has any interests that conflict with the CFP® professional or the CFP® professional’s other clients. For example, a CFP® professional who advises the individual owners of a business as well as the business entity itself may find himself in a conflict of interest if the interests of the owners differ from the interests of the business or if the individual owners at some point no longer see eye to eye.
A CFP® professional who is aware of a conflict of interest at the initiation of the relationship should disclose the conflict at that time. Any conflict that arises later must be disclosed promptly. CFP Board considers a disclosure to be prompt if it is made within 30 days of the date the CFP® professional knew or should have known about the conflict, unless notification prior to 30 days was necessary to avoid adverse consequences to the client.

After disclosing a conflict of interest to a client, it is permissible for a CFP® professional to have the client execute a written consent acknowledging the conflict and agreeing to go ahead with the financial planning relationship despite the conflict. In some cases, however, the conflict of interest may be serious enough that the CFP® professional cannot remain objective despite the disclosure and the client’s consent to go forward. In that case, the CFP® professional should terminate the relationship with the client.

his disclosure requirement requires more than merely disclosing actual conflicts of interest—it also requires disclosing any interests of the CFP® professional, the CFP® professional’s employer or any affiliates or third parties that appear to conflict or have the potential to conflict with those of the client. For example, if a CFP® professional entered into a private financial transaction with a client, the CFP® professional’s ability to provide objective advice or services might not actually be impaired, but the conflict should be disclosed because it could potentially impair the CFP® professional’s objectivity.

CFP® professionals should always place their client’s interest ahead of their own and, to this end, should reveal any activities that conflict, or even appear to conflict, with those of the client. If there is any doubt, err on the side of caution; in other words, a CFP® professional should disclose the information regarding the transaction.

Conflict-of-Interest Case Histories

Actual case histories illustrating disclosures of conflicts of interest are presented below.

**Acting in dual roles:** A CFP® professional was disciplined for advising a client to create a trust and then serving as both trustee and investment advisor of the trust without advising the client of the conflict of interest. (Anonymous Case History 16145)

**Financial transactions with client:** A CFP® professional was disciplined for failing to disclose potential conflicts of interest and other risks associated with transactions involving a client. The CFP® professional borrowed money from a client under promissory notes and asked the client to purchase a piece of beachfront property for the CFP® professional’s benefit. The client agreed to purchase the property in his own name, allow the CFP® professional to reimburse him for the mortgage payments, and then transfer ownership of the property to the CFP® professional once the mortgage was paid in full. The CFP® entered into these transactions without disclosing to the client any potential conflicts of interest or risks. (Anonymous Case History 22305)

**Financial transactions with client:** A CFP® professional failed to adequately disclose a conflict of interest when he entered into an oral agreement with his 84-year-old client to lease her property for a rent payment that was below the market price without disclosing, in writing, the risks of the transaction and other relevant information necessary to make the transaction fair to the client. Given the client’s advanced age, the financial planning arrangement, and the apparent conflict of interest, the CFP® professional did not disclose sufficient documentation to the client. (Anonymous Case History 23037)
Recommendation product because of favorable compensation arrangement: A CFP® professional failed to disclose a likely conflict of interest to a client when he recommended a fixed annuity to a client without disclosing that the annuity was an outside business activity the CFP® professional had not disclosed to, or received written approval for, from his firm. There was a violation because the CFP® professional did not disclose to the client that he was being compensated differently and would receive his commission more quickly if the client purchased the recommended product rather than purchasing a product authorized by the CFP® professional’s employer and running the transaction through the firm. The CFP® professional had suffered a financial hardship and completed the outside business transaction with the client so he could be paid promptly rather than waiting to be paid through the firm’s normal compensation channels. (Anonymous Case History 28285)

DISCLOSURE – NON-FINANCIAL PLANNING

Question 4-1: What disclosures do the Standards require for client engagements that do not involve financial planning or material elements of financial planning?

Rule 2.2 sets forth the disclosures required of all CFP® professionals when dealing with clients and prospective clients. These disclosures include the following general areas:

- Any compensation that may be related to the client engagement;
- Any conflicts of interest that may affect the client engagement;
- Any relevant information about the CFP® professional or the CFP® professional’s employer; and
- Contact information for the CFP® professional and, if applicable, the CFP® professional’s employer.

The Standards also acknowledge that disclosure is not always a one-time event. As a client engagement evolves over time, perhaps with added or re-structured services, ongoing disclosure is also important. Rule 2.2 makes that clear in its concluding statement: “The CFP® professional shall timely disclose to the client any material changes to the above information.” Rather than follow a periodic annual or semi-annual schedule for repeated disclosures, this provision of Rule 2.2 requires that disclosures be made on an ongoing basis, allowing a client to make informed decisions based on the most current information.

Question 4-2: When, what and how does CFP Board require disclosure to clients and prospective clients when not providing financial planning?

Rules 1.2 and 2.2 of the Standards address the timing, content and manner in which disclosures must be made by a CFP® professional to a client or prospective client. If the CFP® professional does not offer financial planning or material elements of financial planning, the following must be disclosed orally:

- Contact information for the CFP® professional, and the firm with which the CFP® professional is associated;
- Any information about the CFP® professional or the firm with which the CFP® professional is associated that could materially affect the client’s decision to engage the CFP® professional;
- The CFP® professional’s and client’s obligations and responsibilities;
- The compensation that the CFP® professional, the CFP® professional’s firm, and/or any third party may earn;
• How costs of products and services are determined;
• Whether and how the CFP® professional may benefit from the client’s decision;
• If the CFP® professional offers proprietary products and the terms under which such products may be offered; and
• Other likely conflicts of interest.

Written disclosure is not required; however, it is a recommended practice that CFP® professionals provide disclosures in writing.

CFP® professionals should note that Rule 4.3 of the Standards requires compliance with applicable regulatory requirements governing professional services provided to the client.

**Question 4-3: Does a CFP® professional who is not providing financial planning or using the financial planning process need to provide clients or prospective clients with written disclosure documents?**

No. Rule 2.2 identifies five disclosure items that every CFP® professional must disclose to clients and prospective clients. CFP® professionals, however, are not required to give clients or prospective clients those disclosures in writing unless they are providing financial planning services or material elements of financial planning.

**PRINCIPAL TRADES & PROPRIETARY PRODUCTS**

**Question 5-1: How do the Standards relate to CFP® professionals who provide clients principal-trade transactions?**

CFP Board is neutral as to the type of investment or planning strategies a CFP® professional may use to achieve a client’s objectives and goals, as long as those strategies comply with CFP Board’s Standards and with any applicable federal or state regulatory requirements related to the activities they undertake. [See Rule 5.1] CFP® professionals may engage in principal-trade transactions, provided that the CFP® professional is allowed to make principal-trade transactions under applicable federal and state regulations and that the CFP® professional complies with any additional requirements under CFP Board’s Standards that may or may not be part of the requirements of federal or state regulatory requirements, such as the following:

• Disclose conflicts of interest [See Rule 2.2]
• Assess whether any particular recommendation to purchase or sell financial products is suitable for the client [See Rule 4.5]
• Exercise reasonable and prudent professional judgment [See Rule 4.4]
• Perform professional services with dedication to the lawful objectives of his or her employer and in accordance with the Standards [See Rule 5.1]
• Place the interest of the client ahead of his or her own at all times [See Rule 1.4]

If a CFP® professional implements principal-trade transactions as part of a financial planning engagement or the material elements of financial planning, Rules 1.2, 1.3, 1.4 and 2.2 set out additional requirements for written documentation and require that the CFP® professional provide services with the duty of care of a fiduciary, as defined by CFP Board. [See Question 2-2]
**Question 5-2: Do the Standards apply to CFP® professionals who recommend or sell proprietary financial products?**

Yes, the Standards apply to all CFP® professionals, regardless of the type of investment and planning strategies used to achieve a client’s objectives and goals. All financial product recommendations made by CFP® professionals, including proprietary financial products, must comply with the requirements of the Standards, including the following:

- Assess whether any particular recommendation to purchase or sell financial products is suitable for the client [See Rule 4.5];
- Exercise reasonable and prudent professional judgment [See Rule 4.4];
- Perform professional services with dedication to the lawful objectives of a CFP® professional’s employer and in accordance with the Standards [See Rule 5.1];
- Comply with applicable regulatory requirements governing professional services provided to clients [See Rule 4.3]; and
- Place the interest of the client ahead of his or her own [See Rule 1.4].

When a CFP® professional recommends the purchase of a proprietary financial product, the CFP® professional must comply with the disclosure requirements contained in the Standards, including disclosure of the following information:

- An accurate and understandable description of the compensation arrangements being offered, including:
  - Information related to costs and compensation to the CFP® professional and/or the CFP® professional’s employer; and
  - Terms under which the CFP® professional and/or the CFP® professional’s employer may receive any other sources of compensation, and if so, what the sources of these payments are and on what they are based. [See Rule 2.2(a)]
  - A general summary of likely conflicts of interest, which would include, but not be limited to, the fact that the CFP® professional may recommend the proprietary financial products of his or her employer or principal. [See Rule 2.2(b)]
  - Any information that could reasonably be expected to materially affect the client's decision to engage the CFP® professional that the client might reasonably want to know in establishing the scope and nature of the relationship, including but not limited to information about the CFP® professional's areas of expertise. [See Rule 2.2(c)]
  - Contact information for the CFP® professional and, if applicable, the CFP® professional’s area of expertise. [See Rule 2.2(d)]

If the transaction in a proprietary financial product is part of a financial planning engagement, CFP Board requires the services provided to be the best services and recommendations available, given the CFP® professional’s reasonable professional judgment and any limitations placed on the CFP® professional by any particular business framework or regulatory requirement. In such situations, the CFP® professional must disclose the limitations to the client in writing, including any contractual or agency relationships that have the potential to affect the client and any terms under which proprietary products may be offered. [See Questions 2-2 and 5-1; see also Rule 1.2]

These guidelines apply to all CFP® professionals who are providing financial planning services to a client.
or prospective client. It is of no consequence that the CFP® professional is an employee or an agent of a firm, or whether the firm allows transactions in the firm’s proprietary financial products as one option for clients, or requires its proprietary products to be offered to all clients.

**FIDUCIARY DUTY-FAQ**

**Question 6-1: How do the Standards relate to federal and state statutes, rules, regulations and case law with respect to the obligations of a CFP® professional?**

The Standards require a CFP® professional to be in compliance with applicable regulatory requirements governing professional services provided to the client. [See Rule 4.3] The Standards apply to all CFP® professionals regardless of the licenses, certifications or registrations each holds. Thus, the Standards are only binding upon the CFP® professional and are not intended to alter or define currently existing federal, state or self-regulatory requirements. As such, the Standards clearly provide that CFP Board’s ethical standards “are not designed to be a basis for legal liability to any third party.” [See Introduction to Rules of Conduct and Financial Planning Practice Standards] CFP Board has authority only over the individuals to whom it has granted CFP® certification; CFP Board does not certify broker-dealers, investment advisory firms, mutual fund companies, hedge funds or other entities, and those entities are therefore not required to abide by CFP Board’s *Standards*.

**Question 6-2: Why doesn’t CFP Board use the same definitions used by federal and state regulators and courts for important terms such as “financial planning” and “fiduciary”?**

No single definition of either “financial planning” or “fiduciary” has wide acceptance among either regulators, firms or professionals. CFP Board felt it important to establish definitions appropriate for CFP® professionals in a manner that would be understood by CFP® professionals and the clients they serve. The terminology used in CFP Board’s Standards was crafted to be relevant to the activities of those who hold CFP® certification and to facilitate CFP Board’s enforcement of its Standards.

**Question 6-3: Will the Standards be applied differently for CFP® professionals with different licenses or registrations (such as registered representatives, investment adviser representatives, insurance agents)?**

No. The Standards apply to all CFP® professionals, regardless of the licenses or registrations each holds, and regardless of the specific business or compensation structure each uses.

**HOLDING OUT**

**Question 7-1: Do the Standards apply to those who hold CFP® certification but who do not display the CFP® marks or hold themselves out as financial planners?**

Yes. The current Standards, as did the former Standards, require a baseline duty of care for all client relationships that involve an individual who holds CFP® certification. When CFP Board applies its Standards to an individual who holds CFP® certification, CFP Board’s focus is on the conduct of the CFP® professional, not only the titles used to describe the CFP® professional’s roles or services. A CFP® professional is obligated to abide by CFP Board’s the Standards, irrespective of whether the CFP® marks
appear on the CFP® professional’s business cards or stationery. Removal of the CFP® marks from one’s business cards or stationery does not relieve a CFP® professional of the obligation to follow the Standards.

CFP® professionals have, on occasion, been asked by their companies to remove the CFP® marks from their business cards and promotional materials. Some such requests have been made based on misunderstandings of CFP Board’s Standards and their application. CFP Board encourages CFP® professionals in similar situations to notify CFP Board and to request that their company representatives contact CFP Board.

Analysis

What constitutes a conflict of interest under CFP Board’s definition?

According to CFP Board’s definition, a conflict of interest exists when a CFP® professional’s financial, business, property and/or personal interests, relationships or circumstances reasonably may impair his/her ability to offer objective advice, recommendations or services. There are two key phrases in CFP Board’s definition of a conflict of interest.

The first key phrase is “financial, business, property and/or personal interests, relationships or circumstances.” These terms include not only pecuniary interests, but also familial interests and relationships, the motive to obtain professional or personal advancement or reputational benefits, such as the ability to develop or maintain a relationship with an individual or entity. For example, if the CFP® professional recommends that a client purchase a private placement not because he or she will earn money from the recommendation but because he or she seeks a relationship with the issuer or underwriter of the private placement, that is a conflict of interest.

The second key phrase is “reasonably may impair his/her ability to offer objective advice, recommendations or services.” First, CFP® professionals should carefully consider whether their interests may impair their ability to offer objective advice, recommendations or services. Loyalty and independent judgment are essential elements of a CFP® professional’s relationship with a client. CFP® professionals should clearly identify each client they are working with and determine whether the client may have any interests that conflict with the CFP® professional or the CFP® professional’s other clients. For example, a CFP® professional who advises owners of a business personally and serves as the adviser for the business may have a conflict of interest as the interests of the business may diverge from the interests of an individual owner or the individual owners’ relationship may become adversarial.

The second key phrase does not require that the conflict of interest actually manifest itself. Rather, this definition indicates that a conflict occurs anytime “financial, business, property and/or personal interests, relationships or circumstances reasonably may,” or have the potential to, impair the CFP® professional’s ability to offer objective advice, recommendations or services. For example, if a CFP® professional enters into a transaction to purchase a home from a client, there is a conflict that may impair the CFP® professional’s ability to offer objective advice. The CFP® professional’s ability to offer objective advice, recommendations or services may not actually be impaired, but there is the potential for the conflict of interest to impair the CFP® professional’s ability to offer objective advice, recommendations or services.
When and how should a CFP® professional disclose a conflict of interest to a client?

Rule 2.2 requires a CFP® professional to disclose conflicts of interest to a client. If the conflict is apparent at the initiation of the relationship, the CFP® professional should disclose the conflict at that time. If the conflict arises later in the relationship, the disclosure should be made promptly. Generally, CFP Board will consider a disclosure to be prompt if made within 30 days of the date the CFP® professional knew or should have known about the conflict of interest, unless notification prior to 30 days was necessary to avoid an adverse consequence to a client.

CFP Board’s rules require CFP® professionals providing financial planning services to disclose all conflicts in writing. While CFP® professionals who are not providing financial planning services may make conflict disclosures orally, CFP Board encourages CFP® professional to make all disclosures in writing.

After disclosing the conflict of interest to the client, the CFP® professional may want to consider obtaining written consent from the client in which the client acknowledges the conflict of interest and consents to move forward in the CFP® professional-client relationship despite the conflict of interest. CFP® professionals need to consider, however, that some conflicts of interest may be such that the client is not protected by the disclosure and the CFP® professional will not be able to offer objective advice, recommendations or services. In these instances, the CFP® professional should end the client relationship.

The examination of several case studies will be instructive to the CFP® professional in navigating conflict of interest situations.

Case Study 1: Conflicts of Interest When Dealing with Multiple Clients

Husband and Wife retained a CFP® professional to represent the couple’s combined interests, although the majority of the assets in the couple’s portfolio were brought to the marriage by Husband. The CFP® professional advised the couple to invest the majority of the assets (over a million dollars) in an IRA in Husband’s name only, with the Wife as beneficiary. The CFP® professional also recommended that the residue of the couple’s assets be placed in a joint checking account, to address short and medium term income needs and cash management. Because the couple was happily married at the time, this did not pose an immediate problem. Wife claimed she never knew there was a separation of ownership of the couple’s assets into two separate accounts as the CFP® professional had always corresponded with Husband and Wife regarding both accounts.

Several years later, the couple began experiencing marital difficulties and started divorce proceedings. After divorce proceedings began, Wife wrote a check in an attempt to withdraw almost all of the funds from the joint account. CFP® professional immediately contacted Husband and informed him that Wife was attempting to remove all of the money from the joint account and asked him if was willing to sell securities to cover the check. Husband indicated that he was not, and the CFP® professional directed the bank not to process the check. When Wife inquired as to whether the check had cleared, CFP® professional represented to Wife that the check had cleared. The CFP® professional did not inform Wife that he had contacted Husband and that Husband had refused to sell any securities to allow the check to clear.

The CFP® professional violated Rules 1.4, 4.1 and 4.4 by failing to: 1) communicate with both clients
appropriately regarding conflicts in representing both of them after he became aware of a potential divorce; and 2) appropriately respond to Wife’s inquiries and subsequent check processing by failing to inform her that Husband refused to consent to the sale of investments to cover the check. When the couple’s interests diverged, a conflict of interest developed between Wife and the CFP® professional due to the CFP® professional’s relationship with Husband, which caused the CFP® professional to favor Husband. The CFP® professional should have consulted his compliance department and disclosed the potential conflict with his clients.

**Case Study 2: Referral Conflict of Interest**

A CFP® professional owned a dually registered firm with investment advisory and broker-dealer divisions. The CFP® professional, in his capacity as a registered representative, referred clients to the investment advisory division of his firm. The CFP® professional did not disclose to clients that: 1) the divisions were related and that the clients could use investment advisory services from other firms; and 2) the CFP® professional had a conflict of interest in referring clients to the investment advisory division because he stood to obtain additional compensation through the firm’s receipt of investment advisory fees.

The CFP® professional violated Rules 1.4 and 2.2(b). The CFP® professional should have disclosed the conflict of interest due to the related party status of his firm’s investment advisory division and clearly advised clients that they had the opportunity to seek investment advisory services from an unrelated firm.

**Case Study 3: Financial Conflict of Interest**

A CFP® professional served as the president and owner of an investment advisory firm and had primary responsibility for the financial and investment services offered by the firm. The firm held a private offering to raise money for working capital, marketing, expansion of present facilities, and operating expenses. The CFP® professional recommended that clients purchase shares in the private offering. Four clients purchased $2,550,000 worth of shares of the firm, which represented 12.5% of the company.

The CFP® professional violated Rules 1.4 and 2.2(b). The CFP® professional’s sale of interests in his firm constituted a conflict of interest. The conflict arose due to the CFP® professional’s status as the owner of the firm and an investment adviser to the clients who purchased an interest in the firm. The CFP® professional should have made clear disclosures regarding the potential conflict prior to making the sale and encouraged the clients to seek out another adviser with respect to that transaction.

**Conclusion**

CFP® professionals should carefully evaluate the potential for conflicts of interest in each client relationship. If a conflict of interest exists, the CFP® professional should evaluate whether he/she can continue to advise the client without impairing his/her ability to offer objective advice, recommendations or services. In all cases, the CFP® professional must disclose the conflict. If the CFP® professional believes he/she can offer objective advice despite the conflict, the CFP® professional should obtain the client’s informed written consent to the conflict. If, on the other hand, the CFP® professional believes he/she cannot continue to offer objective advice because of the conflict, the CFP® professional should end the client relationship.
TEAM ARRANGEMENTS

Question 8-1: How do the Standards relate to CFP® professionals who provide services as part of a team arrangement?

CFP Board’s application of the Standards to a CFP® professional who functions as a member of a team focuses primarily on the functions performed by the individual. This includes a determination of the contributions the CFP® professional makes to services the team provides to a client. That determination includes evaluating the overall services the team provides to a client as context for the CFP® professional’s contributions.

A team situation involves a number of variables that affect the context in which the CFP® professional contributes to a team’s services to a client. When determining whether a CFP® professional on a team has provided financial planning services, the following factors may be applicable:

- The client’s understanding and intent in engaging the team, the CFP® professional’s contributions to the team and the CFP® professional’s role with the client;
- The degree to which the CFP® professional’s contributions to the team involved multiple financial planning subject areas;
- The comprehensiveness of the data gathering the CFP® professional conducted as part of the team’s services to the client; and
- The breadth and depth of any recommendations the CFP® professional contributed to the team’s services to the client.

TERMINATING THE ENGAGEMENT

Question 9-1: Is it possible for a client of a CFP® professional to terminate the financial planning engagement with the CFP® professional and still receive other services from the CFP® professional?

It depends on whether a CFP® professional is providing the future services and the nature of those services. In general, once a financial planning relationship with a CFP® professional has been established, all future services provided by the CFP® professional to the client are likely to be considered by CFP Board to be part of the financial planning process. It is important for CFP® professionals and clients to work together to develop a mutual understanding of the scope of the engagement. One important factor CFP Board will consider when determining whether activities are material elements of financial planning is the client’s understanding and intent in engaging the CFP® professional. For example, a client can enter into a written agreement with the CFP® professional to limit the financial planning engagement to the first four steps of the financial planning process, i.e., the engagement ends with the CFP® professional’s recommendations. Whether subsequent interactions with the client constitute financial planning will depend on whether such services fall within CFP Board’s definition of financial planning or material elements of financial planning. The facts and circumstances of each situation are factors in CFP Board’s determination of whether the CFP® professional engaged in financial planning or the material elements of financial planning.

FIRM OBLIGATIONS
Question 10-1: Are firms required to ensure that their employees and representatives who hold the CFP® certification adhere to CFP Board’s ethical standards?

No. CFP Board certifies individuals, not firms. As a condition of CFP® certification, CFP® professionals are required to abide by CFP Board’s Standards. While firms themselves are not required to abide by the Standards, many have undertaken efforts to assist the CFP® professionals they employ, or with whom they are affiliated, to comply with their responsibilities as CFP® professionals. The Standards specifically note that a CFP® professional will be considered in compliance with the Standards if the CFP® professional’s employer has completed the required actions on his or her behalf. [See Introduction to the Standards].

LIABILITY

Question 11-1: Do the Standards increase liability for CFP® professionals?

Liability in the financial services business exists regardless of whether one’s services can be considered financial planning. CFP Board believes that compliance with the Standards, including the requirement that financial planning services be provided with the duty of a fiduciary, is a way to reduce liability.

The Standards were developed to be an enforceable set of requirements that CFP Board can apply to those who hold CFP® certification; they are not meant to be used for third party liability. [See Introduction to the Standards] CFP Board nevertheless understands that claimants may attempt to introduce aspects of CFP Board’s Standards in litigation and arbitration proceedings. Just as it would be inappropriate for CFP Board to interpret or enforce rules established by FINRA, the SEC or state regulators, it would be inappropriate for other bodies to interpret or enforce CFP Board’s rules. When CFP Board is made aware of attempts by other bodies to enforce CFP Board’s rules against a CFP® professional, CFP Board can provide the CFP® professional with documentation that explains CFP Board’s jurisdiction over its own rules and affirming that the rules are not meant to create liability to anyone other than CFP Board. Situations like these have occurred in the past with CFP Board’s previous Standards, but CFP Board does not have information showing that any court or arbitration panel has in fact made findings of violations of CFP Board rules.

Consumers seek advice they can trust. They deserve disclosure, competence, professionalism and ethics. Those elements are an integral part of the Standards. CFP Board believes liability is reduced when CFP® professionals and their clients have a clear and mutual understanding of their relationship and the services within that relationship. The Standards include rules designed to enhance that mutual understanding.

CFP Board encourages the public to seek out the services of CFP® professionals from the wide variety of choices they have among financial service providers precisely because CFP® professionals are held to high standards of competence, professionalism and ethics. We are confident that firms and CFP® professionals can and will embrace and develop practices that comply with the Standards. It is the right thing to do for the consumer.

Scenario TOD 1: Understanding CFP Board’s Standards of Professional Conduct: Timing of Disclosures
Many CFP® professionals have questions about the disclosure requirements contained in CFP Board’s Standards of Professional Conduct. Scenario TOD 1 looks at what CFP® professionals should disclose to clients, how to make the disclosures and when.

**How to Identify, Avoid and Manage Conflicts of Interest**

On February 13, 2013, CFP Board held a webinar to introduce CFP Board’s new advisory opinion on Managing Conflicts of Interest, addressing how CERTIFIED FINANCIAL PLANNER™ professionals can best recognize and manage conflicts of interest in their practice, in order to comply with CFP Board’s Standards of Professional Conduct. Presented by Matthew Murphy, CFP®, member of CFP Board’s Disciplinary and Ethics Commission, Rex Staples, CFP Board’s Director of Investigations, and Adam Zajac, CFP Board’s Adjudicatory Counsel, the topics addressed included:

- What constitutes a conflict of interest under CFP Board’s definition of conflicts of interest?
- Which CFP Board Rules of Conduct apply to conflict of interest situations?
- How and when should a CFP® professional disclose a conflict of interest to a client or prospective client?

The webinar used several case studies to illustrate key issues related to these topics, and the presenters also addressed questions from the live audience.

See more at: [http://www.CFP®.net/for-CFP®-professionals/professional-standards-enforcement/compliance-resources/webinars#sthash.VVn8zxli.dpuf](http://www.CFP®.net/for-CFP®-professionals/professional-standards-enforcement/compliance-resources/webinars#sthash.VVn8zxli.dpuf)

**Working in a Team Environment**

This scenario is intended to help you understand how to apply CFP Board’s Standards of Professional Conduct.

Some certificants provide services utilizing a team approach. The degree to which certificants interact with clients varies. Certificants may work directly with clients or they may have no direct contact. Certificants may support other certificants or non-certificants. Scenario TE 1 illustrates a situation where a certificant provides financial planning support to a non-certificant as part of a team. The certificant has no direct client interaction. The non-certificant handles all client-relationship activities.

**Background**

Brandon Newbert, CFP works for Wampatuck Partners as a financial planning specialist. He prepares financial analyses and drafts recommended action plans.

Brandon supports 3 financial consultants, none of whom are CFP professionals.

At Brandon’s firm, the financial consultants manage all client relationships – including financial planning. The financial consultants gather client information on special forms customized to the firm’s software. Brandon uses the data to prepare a draft analysis that he shares with the financial consultant assigned to the client.
Brandon takes direction on plan design from the financial consultant who manages the client relationship. The financial consultant understands the issues the client wants to address and the priority of client goals. Brandon and the financial consultant work together to design the financial plan and they collaborate on recommendations. Final approval of the plan is the responsibility of the financial consultant. Sometimes Brandon must prepare several drafts of a plan before the financial consultant approves the plan for printing and delivery to the client.

### Is Brandon providing financial planning?

"Personal financial planning” or “financial planning" denotes the process of determining whether and how an individual can meet life goals through the proper management of financial resources. Financial planning integrates the financial planning process with the financial planning subject areas.” – Terminology, CFP Board’s Standards of Professional Conduct

- The client asked for a financial plan.
- Wampatuck partners is a Registered Investment Adviser
- The ADV Part II describes the firm’s service as financial planning
- Brandon worked on the final deliverable.

Brandon takes direction on plan design from the financial consultant who manages the client relationship. The financial consultant understands the issues the client wants to address and the priority of client goals. Brandon and the financial consultant work together to design the financial plan and they collaborate on recommendations. Final approval of the plan is the responsibility of the financial consultant. Sometimes Brandon must prepare several drafts of a plan before the financial consultant approves the plan for printing and delivery to the client.

### Is Brandon a fiduciary as defined by the CFP Board?

A Certificant shall at all times place the interest of the client ahead of his or her own. When the certificant provides financial planning or material elements of financial planning, the certificant owes to the client the duty of care of a fiduciary as defined by the CFP Board. – Rule 1.4 CFP Board’s Standards of Professional Conduct

- Brandon never meets with the client
- Brandon cannot control the actions of his colleagues
- Brandon does not have a client relationship with the customer
- Verbal or written disclosures are not required
- Brandon is an employee of Wampatuck Partners.

Since Brandon has no direct client interaction, he does not have a client relationship with this customer. CFP Board cannot hold him accountable for actions beyond his control as a certificant. CFP Board cannot enforce requirements on the firm since CFP Board certifies individuals and not entities. Neither can CFP Board enforce requirements against non-certificants. Likewise, Brandon cannot control the actions of his
firm or the behavior of his colleagues. It is impractical to expect Brandon to make either the written or verbal disclosures that are required by CFP Board of certificants in client relationships.

CFP Board has standards that do affect Brandon as an employee of Wampatuck Partners in the performance of his professional duties.

**What are Brandon’s obligations to his employer?**

A certificant who is an employee/agent shall perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board’s Code of Ethics. – Rule 5.1 CFP Board’s Standards of Professional Conduct

- Brandon must act lawfully
- Brandon is not obligated to do anything illegal for Wampatuck Partners.

There are two rules in CFP Board’s Standards of Professional Conduct governing obligations of certificants to employers. Rule 5.1 requires certificants to perform services with dedication to meet the lawful objectives of their employers. As long as the employer is not asking Brandon to do something that is illegal or prohibited by regulation, he must do everything he can to meet the requirements of his job.

The second rule requires certificants to inform their employers of any change in their CFP® certification status.

**What are Brandon’s obligations to the customer?**

A certificant shall treat prospective clients and clients fairly and provide professional services with integrity and objectivity. – Rule 4.1 CFP Board’s Standards of Professional Conduct

- Brandon does not have a client relationship
- Wampatuck Partners has a client relationship
- Wampatuck Partners employs Brandon to provide services to its client
- Brandon should be fair to Wampatuck Partners’ clients
- Brandon should provide services with integrity and objectivity to meet the spirit of Rule 4.1

CFP Board’s Standards of Professional Conduct contain rules describing obligations to clients. This is the fourth section of the Rules.

Rule 4.1 requires certificants to “treat prospective clients and clients fairly and provide professional services with integrity and objectivity.”

Although a direct client relationship does not exist between Brandon and the customer, there is a client relationship between his firm and the customer. As an employee and a certificant, Brandon should strive to meet the spirit of Rule 4.1 by acting with integrity and objectivity.

Although it would be difficult for CFP Board to enforce any rules in this section without a direct client relationship, Brandon should be guided by the final Rule in the Standards. Rule 6.5 states: “A certificant shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificant,
upon the CFP® marks, or upon the profession.”

A certificant shall offer advice only in those areas in which he or she is competent to do so and shall maintain competence in all areas in which he or she is engaged to provide professional services. Rule 4.2 CFP Board’s Standards of Professional Conduct

- Brandon provides advice in the financial plan he prepares for a client of Wampatuck Partners.
- Brandon should provide advice only in areas where he is competent.

Rule 4.2 does not contain a direct reference to clients but it is contained in Section 4 – Obligations to Prospective Clients and Clients. This rule imposes an obligation that Brandon maintain competence and restrict his advice to areas where he has sufficient knowledge. If Brandon were asked to provide advice outside of his areas of expertise, he would need to inform his employer of this fact.

A certificant shall be in compliance with applicable regulatory requirements governing professional services provided to the client. Rule 4.3 CFP Board’s Standards of Professional Conduct

- Brandon must remain in compliance with all regulatory requirements

Rule 4.3 states: “A certificant shall be in compliance with applicable regulatory requirements governing professional services provided to the client.”

As a member of the team providing service to one of the firm’s clients, Brandon must meet the requirements imposed by all regulators. CFP Board expects certificants to meet their compliance responsibilities to all regulators to maintain good standing with CFP Board.

A certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients. - Rule 4.4 CFP Board’s Standards of Professional Conduct

- Brandon should exercise reasonable and prudent professional judgment to meet the spirit of Rule 4.4

Rule 4.4 does use the word “client” in the text. It reads: “A certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients.”

As stated earlier, although a direct client relationship does not exist between Brandon and the customer, there is a client relationship between his firm and the customer. As an employee and a certificant, Brandon should strive to meet the spirit of Rule 4.4 by exercising reasonable and prudent professional judgment.

Although it would be difficult for CFP Board to enforce this rule without a direct client relationship, Brandon should be guided once again by Rule 6.5 and not engage in conduct which reflects adversely on his integrity or fitness as a certificant, upon the CFP® marks, or upon the profession.”

In addition to the requirements of Rule 1.4, a certificant shall make and/or implement only recommendations that are suitable for the client. - Rule 4.5 CFP Board’s Standards of Professional Conduct
• Brandon should only make suitable recommendations to meet the spirit of Rule 4.5

Rule 4.5 also uses the word “client” in the text. It also contains a reference to Rule 1.4 that outlines the standard of care required when certificants work with clients. It reads: “In addition to the requirements of Rule 1.4, a certificant shall make and/or implement only recommendations that are suitable for the client.”

As stated earlier, although a direct client relationship does not exist between Brandon and the customer, there is a client relationship with the firm. As an employee and a certificant, Brandon should strive to meet the spirit of Rule 4.5 by making only suitable recommendations. As a team member without any direct client contact, Brandon may not be involved in implementing the recommendations. If he were to take on that task he would be subject to this restriction as well.

Once again it would be difficult for CFP Board to enforce this rule without a direct client relationship.

Conclusion

• Brandon is not a fiduciary as defined by the CFP Board and is not required to make either written or verbal disclosures.
• Brandon’s primary obligation is to support the lawful objectives of his employer.
• Brandon has secondary obligations to treat Wampatuck Partner clients with integrity and objectivity.
• Brandon may only make suitable recommendations that meet all regulatory requirements imposed on his firm.
• Working in a team environment requires a CFP® certificant to carefully examine his or her role and the amount of interaction with the client. In Scenario TE1 there is no direct client contact and the financial planning is delivered to the client by non-certificants. In this case, Brandon cannot be held to a fiduciary standard of care as a certificant nor is he required to make written or verbal disclosures.
• Brandon must meet the same compliance standards imposed on his firm by regulators as the firm’s other employees.
• CFP Board urges all certificants to fulfill the spirit of the Principles of the Code of Ethics whenever he or she provides professional services.