CFP BOARD OF STANDARDS

CFP BOARD

CONFLICTS OF INTEREST FAQs

1. WHAT IS THE DUTY TO DISCLOSE AND MANAGE CONFLICTS OF INTEREST?

CFP Board's *Code of Ethics and Standards of Conduct* has a Fiduciary Duty (Standard A.1) that requires a CFP® professional to fulfill the Duty of Care, the Duty of Loyalty and the Duty to Follow Client Instructions. At the heart of the Duty of Loyalty is the obligation to "Avoid Conflicts of Interest, or fully disclose Material Conflicts of Interest to the Client, obtain the Client's informed consent and properly manage the conflict."

Standard A.5 of the *Code and Standards* provides that, when providing Financial Advice, a CFP® professional must make full disclosure of all Material Conflicts of Interest with the CFP® professional's Client that could affect the professional relationship. This obligation requires the CFP® professional to provide the Client with sufficiently specific facts so that a reasonable Client would be able to understand the CFP® professional's Material Conflicts of Interest and the business practices that give rise to the conflicts, and give informed consent to such conflicts or reject them. A sincere belief by a CFP® professional with a Material Conflict of Interest that he or she is acting in the best interests of the Client is insufficient to excuse failure to make full disclosure.

- **i** A CFP® professional must make full disclosure and obtain the consent of the Client before providing any Financial Advice regarding which the CFP® professional has a Material Conflict of Interest.
- **ii** In determining whether the disclosure about a Material Conflict of Interest provided to the Client was sufficient to infer that a Client has consented to a Material Conflict of Interest, CFP Board will evaluate whether a reasonable Client receiving the disclosure would have understood the conflict and how it could affect the advice the Client will receive from the CFP® professional. The greater the potential harm the conflict presents to the Client, and the more significantly a business practice that gives rise to the conflict departs from commonly accepted practices among CFP® professionals, the less likely it is that CFP Board will infer informed consent absent clear evidence of informed consent. Ambiguity in the disclosure provided to the Client will be interpreted in favor of the Client.
- **iii** Evidence of oral disclosure of a conflict will be given such weight as CFP Board in its judgment deems appropriate. Written consent to a conflict is not required.

Full disclosure → Obtain client's informed consent → Manage the conflict

A CFP® professional also must manage conflicts by adopting and following business practices reasonably designed to prevent Material Conflicts of Interest from compromising the CFP® professional's ability to act in the Client's best interests.

This guide provides a series of questions and answers to help a CFP® professional uphold the Duty to Disclose and Manage Conflicts of Interest set forth in the *Code of Ethics and Standards* of Conduct. CFP Board has published two other guidance resources that address this subject in greater depth. CFP Board's *Guide to Managing Material Conflicts of Interest* is designed to help a CFP® professional adopt an appropriate process for managing conflicts. CFP Board's *case study collection* is a practical guidance resource that applies the Duty to Disclose and Manage Conflicts of Interest to specific factual circumstances.

2. WHAT IS A CONFLICT OF INTEREST?

The *Code and Standards* Glossary defines Conflict of Interest as:

1. When a CFP® professional's interests (including the interests of the CFP® Professional's Firm) are adverse to the CFP® professional's duties to a Client, or
2. When a CFP® professional has duties to one Client that are adverse to another Client.

Conflicts of Interest create incentives to recommend products, services or account types that provide more revenue or other benefits for a CFP® professional or a CFP® Professional's Firm, or to give preference to one Client over another. A Conflict of Interest exists regardless of whether the CFP® professional acts on the incentive.

3. WHEN DOES A CONFLICT OF INTEREST BECOME MATERIAL?

A Conflict of Interest becomes "Material" when a "reasonable Client or prospective Client would consider the information" about the conflict to be "important in making a decision" about the engagement with the CFP® professional, such as whether to retain (or continue to retain) a CFP® professional or whether to implement a recommendation. If a reasonable Client or prospective Client would not consider the conflict information important in making a decision, then a CFP® professional is not required to disclose the Conflict.

4. WHY IS IT IMPORTANT TO FULLY DISCLOSE MATERIAL CONFLICTS OF INTEREST, RECEIVE THE INFORMED CONSENT OF THE CLIENT AND MANAGE MATERIAL CONFLICTS OF INTEREST?

The *Code and Standards* provides that a CFP® professional must either (a) avoid Conflicts of Interest, or (b) fully disclose Material Conflicts of Interest to the Client, obtain the Client's informed consent and properly manage the conflict. In other words, CFP Board does not require a CFP® professional to avoid conflicts. To the contrary, CFP Board recognizes that conflicts of interest are present in all business models. In some circumstances, a CFP® professional cannot avoid some conflicts, such as conflicts that operate at the firm level, and the conflict arising from a Client paying a CFP® professional, regardless of the compensation method. Therefore, CFP Board developed the three requirements, set forth below, that a CFP® professional must satisfy when operating under a conflict. CFP Board adopted each of these three requirements for important reasons.

Full Disclosure. First, CFP Board requires a CFP® professional to fully disclose a Material Conflict of Interest so that the Client is aware of and may determine whether to accept the conflict. The *Code and Standards* provides that a CFP® professional must provide the Client "with sufficiently specific facts so that a reasonable Client would be able to understand the CFP® professional's Material Conflicts of Interest and the business practices that give rise to the conflicts and give informed consent to such conflicts or reject them." In other words, a CFP® professional must provide the Client with information that enables the Client to understand a conflict and how it could affect the advice the Client will receive from the CFP® professional. Without the transparency that this requirement provides, a Client would not have sufficient information to make an informed decision about whether to continue with (or modify the scope of) the engagement.

Informed Consent. Second, CFP Board requires a CFP® professional to obtain the Client's informed consent because without that consent, the Client has not agreed to accept the Material Conflict of Interest. The Client may disapprove of the conflict and either end or modify the scope of the engagement or reject the Financial Advice. The Client also may accept the conflict even though there is an interest that might incline the CFP® professional to make a recommendation because it benefits the CFP® professional or the CFP® Professional's Firm. This requirement is important because ultimately the choice is the Client's to make.

Proper Management. Third, a CFP® professional must properly manage the conflict because a CFP® professional acting under a Conflict of Interest continues to have a duty to act in the best interests of the Client and place the Client's interests above the CFP® professional's interests or the interests of the CFP® Professional's Firm. In other words, a CFP® professional's disclosure of a Material Conflict of Interest to a Client does not eliminate the Duty of Loyalty or the Duty of Care, and does not authorize the CFP® professional to place their interests above the Client's. A CFP® professional may not act, consciously or unconsciously, on a conflict to the detriment of the Client's best interests. A Material Conflict of Interest may be so great that it cannot be reasonably managed and therefore must be avoided.

5. WHAT ARE COMMON CONFLICTS OF INTEREST?

Material Conflicts of Interest exist in all business models. Some conflicts are inherent to the business model and how a CFP® professional is compensated. The chart below lists examples of certain conflicts that arise based on common business models. There are other conflicts that exist that are not included in this chart.

Business Model	Common Incentives That Create Conflicts
Assets Under Management Fee	• Increasing or maintaining assets under management (instead of, for example, paying off debt, beginning decumulation or using funds for other purposes). • Recommending that assets be transferred to an account that the CFP® professional manages if the assets are held elsewhere. • Collecting an ongoing fee with less management of an account than appropriate given the circumstances of the Client, particularly when trading costs are included with the fee. This is sometimes referred to as "reverse churning."
Sales-based Compensation, such as up-front commissions, ongoing commissions (*e.g.*, trails or distribution fees), loads, mark-ups/ mark-downs and other transaction fees	• Recommending a Financial Asset, or an asset allocation, that will result in higher compensation for the CFP® professional or the CFP® Professional's Firm rather than a reasonably available alternative appropriate for the Client that results in lower compensation for the CFP® professional. • Excessive trading (recommending investment transactions more often than appropriate to generate more commissions). This is sometimes referred to as "churning."
Non-recurring Flat Fee for Service (*e.g*, one fee for a financial plan)	• Providing more service than a Client needs to justify a fee or overcharging for the services provided.
Subscription or Periodic Flat Fee for Service (*e.g.*, ongoing financial planning advice)	• Providing more service than a Client needs to justify a fee or overcharging for the services provided.
Hourly Fee	• Generating more hours of work than appropriate for meeting the Client's needs.

A CFP® professional who has multiple compensation models, such as a dually registered representative or a CFP® professional who offers more than one type of fee structure, has an incentive to recommend a fee structure more profitable to the CFP® professional or the CFP® Professional's Firm.

Some types of Financial Advice have specific conflicts related to that advice. For example, if a client has assets in an employer-provided retirement plan or assets at another firm, then a CFP® professional has an interest in recommending that the Client roll over those assets, as this will result in compensation for the CFP® professional or their firm. In contrast, if the CFP® professional recommends that the Client remain in the employer plan, then that generally would result in no compensation for the CFP® professional or the CFP® Professional's Firm related to those assets.

Additionally, certain Financial Assets (*e.g.*, some mutual funds) might have ongoing operational, administrative or distribution fees that the CFP® Professional's Firm receives, such as sub-transfer agent fees.

PRODUCTION-BASED INCENTIVES. Some firms provide cash and non-cash incentives (*e.g.*, vacations or gifts) that a CFP® professional might receive as a result of the Financial Advice they provide. These incentives include bonuses when Clients open certain types of accounts or purchase certain investments, payout grids, sales contests, and front-end and back-end bonuses. Such arrangements (whether offered by the CFP® Professional's Firm or a third party) create an incentive to recommend a product, account or service to receive the bonus, even if the recommendation is not in the best interests of the Client.

6. WHAT ARE INTERESTS OF MY FIRM THAT CAN CREATE CONFLICTS OF INTEREST FOR A CFP® PROFESSIONAL?

Some firms have affiliated services or arrangements with third parties that create conflicts for the CFP® professional, regardless of any direct benefit to the CFP® professional. Some firms have affiliates with complementary business lines that present an incentive to refer Clients to the affiliate. For example, a CFP® Professional's Firm has an interest in executing Client transactions through an affiliated broker-dealer. Additionally, some firms have "revenue sharing" or referral arrangements with mutual fund companies, custodians and other service providers, where the firm receives a fee or other benefit when Clients purchase those investments or use those services. Even if these arrangements do not directly result in compensation to the CFP® professional, a Conflict of Interest exists.

ADDITIONAL EXAMPLES OF CONFLICTS OF INTEREST:

- Sales commissions on investments and insurance products
- Proprietary products
- Principal trading (i.e., the sale of products from the firm's own account)
- Branch manager compensation that is tied to financial professional compensation
- Branch profitability bonuses
- Recruitment or transition-based bonuses to transfer a book of business from a prior firm
- Provision of expense and marketing support to branches or professionals
- Benefits provided to statutory employees of insurance firms (who may need to sell a certain amount to qualify for employee benefits, such as health care)

7. WHAT ARE CIRCUMSTANCES THAT WOULD MAKE A CFP® PROFESSIONAL'S DUTY TO ONE CLIENT ADVERSE TO ANOTHER CLIENT?

A duty to one Client that is adverse to another Client arises in several circumstances, including the following:

- When representing different members of the same family.
- During the course of a joint engagement of married Clients, such as when one spouse receives an inheritance or the joint engagement ends as a result of divorce.
- When serving both a business partnership and individuals within that partnership.
- When responsible for allocating investment opportunities (*e.g.*, participation in IPOs among multiple Clients).

8. DO I NEED TO RECEIVE EXPLICIT CONSENT TO MY MATERIAL CONFLICTS OF INTEREST FROM MY CLIENTS?

No. Consent does not have to be explicit to be informed. If a reasonable Client receiving the disclosure would have understood the conflict and how it could affect the advice the Client will receive from the CFP® professional, and the Client has not rejected the conflicts, then informed consent often can be inferred. Whether a Client has provided informed consent depends on the facts and circumstances. For example, silence after disclosure may constitute informed consent if the disclosure contains sufficiently specific facts that are understandable to a reasonable Client, but would not constitute informed consent if that is not the case.

A CFP® professional should consider obtaining written consent to Conflicts of Interest in some cases. The *Code and Standards* states: "The greater the potential harm to the client that the conflict presents, and the more significantly the business practice giving rise to the conflict departs from accepted business practices, the less likely it is that informed consent will be inferred without explicit consent."

A CFP® professional describing all Material Conflicts of Interest to a Client must do so clearly and in a manner that will allow the Client to understand the conflict.

CFP Board intends for its "informed consent" standard to be interpreted in a manner that is consistent with interpretations of the Investment Advisers Act of 1940. A CFP® professional may refer to regulatory guidance and case law interpretations to gain a deeper understanding of "informed consent." See, *e.g.*, "*SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Conflicts of Interest*."

9. WHAT IS MY OBLIGATION IF THE CLIENT DOES NOT UNDERSTAND THE CONFLICT, EVEN AFTER FULL DISCLOSURE?

If the CFP® professional becomes aware, or reasonably should have become aware, that a Client does not understand the conflict of interest or is not capable of evaluating it, then the CFP® professional has not obtained informed consent, and the CFP® professional must take steps so that the Client does understand the conflict, avoid the business practice that gives rise to the conflict or not proceed with the engagement.

10. WHAT IS REQUIRED FOR 'FULL DISCLOSURE' OF MATERIAL CONFLICTS OF INTEREST?

A CFP® professional is required to fully disclose all Material Conflicts of Interest that could affect the professional relationship and provide the Client with sufficiently specific facts so that a reasonable Client would be able to understand the CFP® professional's Material Conflicts of Interest and the business practices that give rise to the conflicts, how the conflict could affect the Financial Advice, and give informed consent to such conflicts or reject them.

In determining whether the disclosure about a Material Conflict of Interest provided to the Client was sufficient to infer that a Client has consented to a Material Conflict of Interest:

> CFP Board will evaluate whether a reasonable Client receiving the disclosure would have understood the conflict and how it could affect the advice the Client will receive from the CFP® professional. The greater the potential harm the conflict presents to the Client, and the more significantly a business practice that gives rise to the conflict departs from commonly accepted practices among CFP® professionals, the less likely it is that CFP Board will infer informed consent absent clear evidence of informed consent. Ambiguity in the disclosure provided to the Client will be interpreted in favor of the Client.

Stating that a conflict "may" exist is not sufficiently specific to allow a Client to give informed consent if the conflict currently exists—the CFP® professional must disclose that the conflict does exist.

In addition, "full" disclosure does not necessarily mean long disclosure. Consent would not be inferred if the length of the disclosure would prevent a reasonable Client receiving the disclosure from understanding the conflict and how it could affect the advice the Client will receive from the CFP® professional.

11. I DISCLOSE THE TYPE OF COMPENSATION I RECEIVE (I.E., COMMISSIONS, ASSETS UNDER MANAGEMENT FEE, FLAT FEE, HOURLY FEE). IS THAT SUFFICIENT DISCLOSURE UNDER THE *CODE AND STANDARDS*?

No. To be sufficiently specific to obtain informed consent, the CFP® professional must also explain the incentive that the compensation creates and how it could affect the Financial Advice. For example, a CFP® professional must fully disclose if the CFP® professional or the CFP® Professional's Firm:

- would earn more compensation if the Client makes one investment instead of an alternative investment (such as through commissions or a revenue sharing arrangement); or
- would earn more advising a Client to keep assets in an advised account rather than taking a distribution (such as compensation as a percentage of assets under management).

12. AM I REQUIRED TO DISCLOSE MATERIAL CONFLICTS OF INTEREST IN WRITING?

No. When it adopted the *Code and Standards*, CFP Board recognized that in some business models and in some circumstances, such a requirement may present logistical challenges. Notwithstanding, CFP Board recommends written disclosure. The *Code and Standards* provides that evidence of oral disclosure of a conflict will be given such weight as CFP Board in its judgment deems appropriate.

13. WHEN MUST I DISCLOSE MATERIAL CONFLICTS OF INTEREST AND OBTAIN INFORMED CONSENT?

Under Standard A.10, Duty to Provide Information to a Client, a CFP® professional must make full disclosure sufficient to obtain informed consent of the Client prior to or at the time of the engagement. In other words, the CFP® professional must obtain informed consent before providing any Financial Advice regarding which the CFP® professional has a Material Conflict of Interest.

14. MY CLIENT WANTS TO EXPAND THE SCOPE OF ENGAGEMENT. THIS CHANGES THE NATURE AND EXTENT OF MY CONFLICTS OF INTEREST. HOW DO I HANDLE THIS SITUATION?

Conflict disclosure is an ongoing obligation that should be reevaluated as the relationship with a Client evolves. If Financial Advice presents Conflicts of Interest that were not present during the initial engagement, then the CFP® professional must fully disclose the Conflict and gain informed consent. Additionally, the CFP® professional will need to manage new conflicts as they arise using a prudent process.

Additionally, under Standard A.10, Duty to Provide Information to a Client, a CFP® professional has an ongoing obligation to provide to the Client any information that is a Material change or update to the information required to be provided to the Client, including Material Conflicts of Interest. Accordingly, a CFP® professional must periodically evaluate their business for new or changed conflicts that they must fully disclose to Clients, obtain informed consent and manage. Finally, as relationships with Clients evolve and expand, a CFP® professional should continue to evaluate whether the Financial Advice requires Financial Planning (Standards B.3 and B.4).

15. WHAT IS THE DIFFERENCE BETWEEN 'CONFLICT MITIGATION' AND 'CONFLICT MANAGEMENT'?

From a practical perspective, CFP Board interprets the obligation under the *Code and Standards* to "manage" conflicts similarly to the obligation under SEC Regulation Best Interest and Department of Labor Prohibited Transaction Exemption 2020-02 to "mitigate" conflicts.

16. MY FIRM HAS A CONFLICT MANAGEMENT PROCESS. DOES THIS SATISFY MY OBLIGATION TO HAVE A PROCESS TO PROPERLY MANAGE CONFLICTS?

Not necessarily. A CFP® professional, and not a CFP® Professional's Firm, is responsible under the *Code and Standards* to manage conflicts in a way to ensure they do not inappropriately influence a CFP® professional's recommendations and that the Client's interests come first. In other words, the CFP® professional, and not the CFP® Professional's Firm, is subject to the *Code and Standards* duty to (a) avoid Conflicts of Interest or (b) fully disclose Material Conflicts of Interest to the Client, obtain the Client's informed consent and properly manage the conflict.

Following a firm's conflict management process can help fulfill this obligation. However, if the CFP® professional knows, or reasonably should know, that the measures taken by the firm are insufficient to prevent the conflict from compromising the ability to provide advice in the Client's best interests, then the CFP® professional must implement additional conflicts management practices, limit the Scope of Engagement or decline to provide the Financial Advice.

17. I DO NOT HAVE CONTROL OVER MY FIRM'S COMPENSATION POLICY OR ANY REVENUE SHARING OR REFERRAL AGREEMENTS. HOW IS IT POSSIBLE FOR ME TO MANAGE CONFLICTS?

In instances where a CFP® professional does not control compensation structures or Firm arrangements, a CFP® professional can properly manage conflicts through a process, consistent with the CFP® professional's Duty of Care, that is reasonably designed to result in Financial Advice that is in the Client's best interests despite the Conflicts of Interest. This process generally includes

1. gathering information to understand the Client's personal and financial circumstances;
2. analyzing the Client's current course of action and alternative courses of action; and
3. developing the Financial Advice recommendation, as discussed in CFP Board's *Duty of Care Guide*.

While not required by the *Code and Standards*, the CFP® professional can also request that the firm help develop processes to properly manage Material Conflicts of Interest.