

CERTIFIED FINANCIAL PLANNER
BOARD OF STANDARDS, INC.

CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITY



CERTIFIED FINANCIAL PLANNER™



The certification marks above are owned by Certified Financial Planner Board of Standards Inc. and are awarded to individuals who successfully complete CFP Board's initial and ongoing certification requirements.

Terminology in this Booklet

“Client” denotes a person, persons, or entity who engages a practitioner and for whom professional services are rendered. For purposes of this definition, a practitioner is engaged when an individual, based upon the relevant facts and circumstances, reasonably relies upon information or service provided by that practitioner. Where the services of the practitioner are provided to an entity (corporation, trust, partnership, estate, etc.), the client is the entity acting through its legally authorized representative.

“CFP Board designee” denotes current certificants, candidates for certification, and individuals that have any entitlement, direct or indirect, to the CFP certification marks.

“Commission” denotes the compensation received by an agent or broker when the same is calculated as a percentage on the amount of his or her sales or purchase transactions.

“Compensation” is any economic benefit a CFP Board designee or related party receives from performing his or her professional activities.

“Conflict(s) of interest” exists when a CFP Board designee’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” denotes a method of compensation in which compensation is received solely from a client with neither the personal financial planning practitioner nor any related party receiving compensation which is contingent upon the purchase or sale of any financial product. A “related party” for this purpose shall mean an individual or entity from whom any direct or indirect economic benefit is derived by the personal financial planning practitioner as a result of implementing a recommendation made by the personal financial planning practitioner.

A **“financial planning engagement”** exists when a client, based on the relevant facts and circumstances, reasonably relies upon information or services provided by a CFP Board designee using the financial planning process.

“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.

“Personal financial planning process” or **“financial planning process”** denotes the process which typically includes, but is not limited to, these six elements: establishing and defining the client-planner relationship, gathering client data including goals, analyzing and evaluating the client’s financial status, developing and presenting financial planning recommendations and/or alternatives, implementing the financial planning recommendations and monitoring the financial planning 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), investment planning (including portfolio design, i.e., asset allocation and portfolio management), income tax planning, education planning, risk management, retirement planning and estate planning.

“Personal financial planning professional” or **“financial planning professional”** denotes a person who is capable and qualified to offer objective, integrated and comprehensive financial advice to or for the benefit of individuals to help them achieve their financial objectives. A financial planning professional must have the ability to provide financial planning services to clients, using the financial planning process covering the basic financial planning subjects.

“Personal financial planning practitioner” or **“financial planning practitioner”** denotes a person who is capable and qualified to offer objective, integrated and comprehensive financial advice to or for the benefit of clients to help them achieve their financial objectives and who engages in financial planning using the financial planning process in working with clients.

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PREAMBLE AND APPLICABILITY

The *Code of Ethics and Professional Responsibility (Code of Ethics)* has been adopted by Certified Financial Planner Board of Standards Inc. (CFP Board) to provide principles and rules to all persons whom it has recognized and certified to use the CFP®, CERTIFIED FINANCIAL PLANNER™ and  certification marks (collectively “the marks”). CFP Board determines who is certified and thus authorized to use the marks. Implicit in the acceptance of this authorization is an obligation not only to comply with the mandates and requirements of all applicable laws and regulations but also to take responsibility to act in an ethical and professionally responsible manner in all professional services and activities.

For purposes of this *Code of Ethics*, a person recognized and certified by CFP Board to use the marks is called a CFP Board designee. This *Code of Ethics* applies to CFP Board designees actively involved in the practice of personal financial planning, in other areas of financial services, in industry, in related professions, in government, in education or in any other professional activity in which the marks are used in the performance of professional responsibilities. This *Code of Ethics* also applies to candidates for the CFP® certification who are registered as such with CFP Board. For purposes of this *Code of Ethics*, the term CFP Board designee shall be deemed to include current certificants, candidates and individuals who have been certified in the past and retain the right to reinstate their CFP certification without passing the current CFP® Certification Examination.

COMPOSITION AND SCOPE

The *Code of Ethics* consists of two parts: Part I – Principles and Part II – Rules. The Principles are statements expressing in general terms the ethical and professional ideals that CFP Board designees are expected to display in their professional activities. As such, the Principles are aspirational in character but are intended to provide a source of guidance for CFP Board designees. The comments following each Principle further explain the meaning of the Principle. The Rules in Part II provide practical guidelines derived from the tenets embodied in the Principles. As such, the Rules describe the standards of ethical and professionally responsible conduct expected of CFP Board designees in particular situations. This *Code of Ethics* does not undertake to define standards of professional conduct of CFP Board designees for purposes of civil liability.

Due to the nature of a CFP Board designee’s particular field of endeavor, certain Rules may not be applicable to that CFP Board designee’s activities. For example, a CFP Board designee who is engaged solely in the sale of securities as a registered representative is not subject to the written disclosure requirements of Rule 402 (applicable to CFP Board designees engaged in personal financial planning) although he or she may have disclosure responsibilities under Rule 401. A CFP Board designee is obligated to determine what responsibilities he or she has in each professional relationship including, for example, duties that arise in particular circumstances from a position of trust or confidence that a CFP Board designee may have. The CFP Board designee is obligated to meet those responsibilities.

The *Code of Ethics* is structured so that the presentation of the Rules parallels the presentation of the Principles. For example, the Rules which relate to Principle 1 – Integrity are numbered in the 100 to 199 series, while those Rules relating to Principle 2 – Objectivity are numbered in the 200 to 299 series.

COMPLIANCE

CFP Board requires adherence to this *Code of Ethics* by all CFP Board designees. Compliance with the *Code of Ethics*, individually and by the profession as a whole, depends on each CFP Board designee’s knowledge of and voluntary compliance with the Principles and applicable Rules, on the influence of fellow professionals and public opinion, and on disciplinary proceedings, when necessary, involving CFP Board designees who fail to comply with the applicable provisions of the *Code of Ethics*.

PART I – PRINCIPLES

These *Code of Ethics*' Principles express the profession's recognition of its responsibilities to the public, to clients, to colleagues and to employers. They apply to all CFP Board designees and provide guidance to them in the performance of their professional services.

Principle 1 – Integrity

A CFP Board designee shall offer and provide professional services with integrity.

As discussed in "Composition and Scope," CFP Board designees may be placed by clients in positions of trust and confidence. The ultimate source of such public trust is the CFP Board designee's personal integrity. In deciding what is right and just, a CFP Board designee should rely on his or her integrity as the appropriate touchstone. Integrity demands honesty and candor which must not be subordinated to personal gain and advantage. Within the characteristic of integrity, allowance can be made for innocent error and legitimate difference of opinion; but integrity cannot co-exist with deceit or subordination of one's principles. Integrity requires a CFP Board designee to observe not only the letter but also the spirit of this *Code of Ethics*.

Principle 2 – Objectivity

A CFP Board designee shall be objective in providing professional services to clients.

Objectivity requires intellectual honesty and impartiality. It is an essential quality for any professional. Regardless of the particular service rendered or the capacity in which a CFP Board designee functions, a CFP Board designee should protect the integrity of his or her work, maintain objectivity, and avoid subordination of his or her judgment that would be in violation of this *Code of Ethics*.

Principle 3 – Competence

A CFP Board designee shall provide services to clients competently and maintain the necessary knowledge and skill to continue to do so in those areas in which the CFP Board designee is engaged.

One is competent only when he or she has attained and maintained an adequate level of knowledge and skill, and applies that knowledge effectively in providing services to clients. Competence also includes the wisdom to recognize the limitations of that knowledge and when consultation or client referral is appropriate. A CFP Board designee, by virtue of having earned the CFP® certification, is deemed to be qualified to practice financial planning. However, in addition to assimilating the common body of knowledge required and acquiring the necessary experience for certification, a CFP Board designee shall make a continuing commitment to learning and professional improvement.

Principle 4 – Fairness

A CFP Board designee shall perform professional services in a manner that is fair and reasonable to clients, principals, partners and employers, and shall disclose conflict(s) of interest in providing such services.

Fairness requires impartiality, intellectual honesty and disclosure of conflict(s) of interest. It involves a subordination of one's own feelings, prejudices and desires so as to achieve a proper balance of conflicting interests. Fairness is treating others in the same fashion that you would want to be treated and is an essential trait of any professional.

Principle 5 – Confidentiality

A CFP Board designee shall not disclose any confidential client information without the specific consent of the client unless in response to proper legal process, to defend against charges of wrongdoing by the CFP Board designee or in connection with a civil dispute between the CFP Board designee and client.

A client, by seeking the services of a CFP Board designee, may be interested in creating a relationship of personal trust and confidence with the CFP Board designee. This type of relationship can only be built upon the understanding that information supplied to the CFP Board designee will be confidential. In order to provide the contemplated services effectively and to protect the client's privacy, the CFP Board designee shall safeguard the confidentiality of such information.

Principle 6 – Professionalism

A CFP Board designee's conduct in all matters shall reflect credit upon the profession.

Because of the importance of the professional services rendered by CFP Board designees, there are attendant responsibilities to behave with dignity and courtesy to all those who use those services, fellow professionals, and those in related professions. A CFP Board designee also has an obligation to cooperate with fellow CFP Board designees to enhance and maintain the profession's public image and to work jointly with other CFP Board designees to improve the quality of services. It is only through the combined efforts of all CFP Board designees, in cooperation with other professionals, that this vision can be realized.

Principle 7 – Diligence

A CFP Board designee shall act diligently in providing professional services.

Diligence is the provision of services in a reasonably prompt and thorough manner. Diligence also includes proper planning for, and supervision of, the rendering of professional services.

PART II – RULES

As stated in Part I – Principles, the Principles apply to all CFP Board designees. However, due to the nature of a CFP Board designee’s particular field of endeavor, certain Rules may not be applicable to that CFP Board designee’s activities. The universe of activities engaged in by a CFP Board designee is indeed diverse and a particular CFP Board designee may be performing all, some or none of the typical services provided by financial planning professionals. As a result, in considering the following Rules, a CFP Board designee must first recognize what specific services he or she is rendering and then determine whether or not a specific Rule is applicable to those services. To assist the CFP Board designee in making these determinations, the *Standards of Professional Conduct* includes a series of definitions of terminology (see page 2) used throughout the *Code of Ethics*. Based upon these definitions, a CFP Board designee should be able to determine which services he or she provides and, therefore, which Rules are applicable to those services.

Rules that Relate to the Principle of Integrity

Rule 101

A CFP Board designee shall not solicit clients through false or misleading communications or advertisements:

- (a) *Misleading Advertising:* A CFP Board designee shall not make a false or misleading communication about the size, scope or areas of competence of the CFP Board designee’s practice or of any organization with which the CFP Board designee is associated; and
- (b) *Promotional Activities:* In promotional activities, a CFP Board designee shall not make materially false or misleading communications to the public or create unjustified expectations regarding matters relating to financial planning or the professional activities and competence of the CFP Board designee. The term “promotional activities” includes, but is not limited to, speeches, interviews, books and/or printed publications, seminars, radio and television shows, and video cassettes; and
- (c) *Representation of Authority:* A CFP Board designee shall not give the impression that a CFP Board designee is representing the views of CFP Board or any other group unless the CFP Board designee has been authorized to do so. Personal opinions shall be clearly identified as such.

Rule 102

In the course of professional activities, a CFP Board designee shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.

Rule 103

A CFP Board designee has the following responsibilities regarding funds and/or other property of clients:

- (a) In exercising custody of, or discretionary authority over, client funds or other property, a CFP Board designee shall act only in accordance with the authority set forth in the governing legal instrument (e.g., special power of attorney, trust, letters testamentary, etc.); and
- (b) A CFP Board designee shall identify and keep complete records of all funds or other property of a client in the custody, or under the discretionary authority, of the CFP

- Board designee; and
- (c) Upon receiving funds or other property of a client, a CFP Board designee shall promptly or as otherwise permitted by law or provided by agreement with the client, deliver to the client or third party any funds or other property which the client or third party is entitled to receive and, upon request by the client, render a full accounting regarding such funds or other property; and
 - (d) A CFP Board designee shall not commingle client funds or other property with a CFP Board designee's personal funds and/or other property or the funds and/or other property of a CFP Board designee's firm. Commingling one or more clients' funds or other property together is permitted, subject to compliance with applicable legal requirements and provided accurate records are maintained for each client's funds or other property; and
 - (e) A CFP Board designee who takes custody of all or any part of a client's assets for investment purposes, shall do so with the care required of a fiduciary.

Rules that Relate to the Principle of Objectivity

Rule 201

A CFP Board designee shall exercise reasonable and prudent professional judgment in providing professional services.

Rule 202

A financial planning practitioner shall act in the interest of the client.

Rules that Relate to the Principle of Competence

Rule 301

A CFP Board designee shall keep informed of developments in the field of financial planning and participate in continuing education throughout the CFP Board designee's professional career in order to improve professional competence in all areas in which the CFP Board designee is engaged. As a distinct part of this requirement, a CFP Board designee shall satisfy all minimum continuing education requirements established for CFP Board designees by CFP Board.

Rule 302

A CFP Board designee shall offer advice only in those areas in which the CFP Board designee has competence. In areas where the CFP Board designee is not professionally competent, the CFP Board designee shall seek the counsel of qualified individuals and/or refer clients to such parties.

Rules that Relate to the Principle of Fairness

Rule 401

In rendering professional services, a CFP Board designee shall disclose to the client:

- (a) Material information relevant to the professional relationship, including, conflict(s) of interest, the CFP Board designee's business affiliation, address, telephone number, credentials, qualifications, licenses, compensation structure and any agency relationships, and the scope of the CFP Board designee's authority in that capacity; and

- (b) The information required by all laws applicable to the relationship in a manner complying with such laws.

Rule 402

A CFP Board designee in a financial planning engagement shall make timely written disclosure of all material information relative to the professional relationship. In all circumstances and prior to the engagement, a CFP Board designee shall, in writing:

- (a) Disclose conflict(s) of interest and sources of compensation; and
(b) Inform the client or prospective client of his/her right to ask at any time for information about the compensation of the CFP Board designee.

As a guideline, a CFP Board designee who provides a client or prospective client with the following written disclosures, using Form ADV, a CFP Board Disclosure Form or an equivalent document, will be considered to be in compliance with this Rule:

- The basic philosophy of the CFP Board designee (or firm) in working with clients. This includes the philosophy, theory and/or principles of financial planning which will be utilized by the CFP Board designee; and
- Résumés of principals and employees of a firm who are expected to provide financial planning services to the client and a description of those services. Such disclosures shall include educational background, professional/employment history, professional designations and licenses held; and
- A statement that in reasonable detail discloses (as applicable) conflict(s) of interest and source(s) of, and any contingencies or other aspects material to, the CFP Board designee's compensation; and
- A statement describing material agency or employment relationships a CFP Board designee (or firm) has with third parties and the nature of compensation resulting from such relationships; and
- A statement informing the client or prospective client of his/her right to ask at any time for information about the compensation of the CFP Board designee.

Rule 403

Upon request by a client or prospective client, the CFP Board designee in a financial planning engagement shall communicate in reasonable detail the requested compensation information related to the financial planning engagement, including compensation derived from implementation. The disclosure may express compensation as an approximate dollar amount or percentage or as a range of dollar amounts or percentages. The disclosure shall be made at a time and to the extent that the requested compensation information can be reasonably ascertained. Any estimates shall be clearly identified as such and based on reasonable assumptions. If a CFP Board designee becomes aware that a compensation disclosure provided pursuant to this rule has become significantly inaccurate, he/she shall provide the client with corrected information in a timely manner.

Rule 404

The disclosures required of a CFP Board designee in a financial planning engagement described under Rule 402 shall be offered at least annually for current clients, and provided if requested.

Rule 405

A CFP Board designee's compensation shall be fair and reasonable.

Rule 406

A CFP Board designee who is an employee shall perform professional services with dedication to the lawful objectives of the employer and in accordance with this *Code of Ethics*.

Rule 407

A CFP Board designee shall:

- (a) Advise his/her employer of outside affiliations which reasonably may compromise service to an employer;
- (b) Provide timely notice to his/her employer and clients about change of CFP® certification status; and
- (c) Provide timely notice to clients, unless precluded by contractual obligations, about change of employment.

Rule 408

A CFP Board designee shall inform his/her employer, partners or co-owners of compensation or other benefit arrangements in connection with his or her services to clients, which are in addition to compensation from the employer, partners or co-owners for such services.

Rule 409

If a CFP Board designee enters into a personal business transaction with a client, separate from regular professional services provided to that client, the transaction shall be on terms which are fair and reasonable to the client and the CFP Board designee shall disclose, in writing, the risks of the transaction, conflict(s) of interest of the CFP Board designee, and other relevant information, if any, necessary to make the transaction fair to the client.

Rules that Relate to the Principle of Confidentiality**Rule 501**

A CFP Board designee shall not reveal — or use for his or her own benefit — without the client's consent, any personally identifiable information relating to the client relationship or the affairs of the client, except and to the extent disclosure or use is reasonably necessary:

- (a) To establish an advisory or brokerage account, to effect a transaction for the client, or as otherwise impliedly authorized in order to carry out the client engagement; or
- (b) To comply with legal requirements or legal process; or
- (c) To defend the CFP Board designee against charges of wrongdoing; or
- (d) In connection with a civil dispute between the CFP Board designee and the client.

For purposes of this rule, the proscribed use of client information is improper whether or not it actually causes harm to the client.

Rule 502

A CFP Board designee shall maintain the same standards of confidentiality to employers as to clients.

Rule 503

A CFP Board designee doing business as a partner or principal of a financial services firm owes the CFP Board designee's partners or co-owners a responsibility to act in good faith. This includes, but is not limited to, adherence to reasonable expectations of confidentiality both while in business together and thereafter.

Rules that Relate to the Principle of Professionalism**Rule 601**

A CFP Board designee shall use the marks in compliance with the rules and regulations of CFP Board, as established and amended from time to time.

Rule 602

A CFP Board designee shall show respect for other financial planning professionals, and related occupational groups, by engaging in fair and honorable competitive practices. Collegiality among CFP Board designees shall not, however, impede enforcement of this *Code of Ethics*.

Rule 603

A CFP Board designee who has knowledge, which is not required to be kept confidential under this *Code of Ethics*, that another CFP Board designee has committed a violation of this *Code of Ethics* which raises substantial questions as to the designee's honesty, trustworthiness or fitness as a CFP Board designee in other respects, shall promptly inform CFP Board. This rule does not require disclosure of information or reporting based on knowledge gained as a consultant or expert witness in anticipation of, or related to, litigation or other dispute resolution mechanisms. For purposes of this rule, knowledge means no substantial doubt.

Rule 604

A CFP Board designee who has knowledge, which is not required under this *Code of Ethics* to be kept confidential, and which raises a substantial question of unprofessional, fraudulent or illegal conduct by a CFP Board designee or other financial professional, shall promptly inform the appropriate regulatory and/or professional disciplinary body. This rule does not require disclosure or reporting of information gained as a consultant or expert witness in anticipation of, or related to, litigation or other dispute resolution mechanisms. For purposes of this Rule, knowledge means no substantial doubt.

Rule 605

A CFP Board designee who has reason to suspect illegal conduct within the CFP Board designee's organization shall make timely disclosure of the available evidence to the CFP Board designee's immediate supervisor and/or partners or co-owners. If the CFP Board designee is convinced that illegal conduct exists within the CFP Board designee's organization, and that appropriate measures are not taken to remedy the situation, the CFP Board designee shall, where appropriate, alert the appropriate regulatory authorities, including CFP Board, in a timely manner.

Rule 606

In all professional activities a CFP Board designee shall perform services in accordance with:

- (a) Applicable laws, rules and regulations of governmental agencies and other applicable authorities; and
- (b) Applicable rules, regulations and other established policies of CFP Board.

Rule 607

A CFP Board designee shall not engage in any conduct which reflects adversely on his or her integrity or fitness as a CFP Board designee, upon the marks, or upon the profession.

Rule 608

The Investment Advisers Act of 1940 requires registration of investment advisers with the U.S. Securities and Exchange Commission and similar state statutes may require registration with state securities agencies. CFP Board designees shall disclose to clients their firms' status as registered investment advisers. Under present standards of acceptable business conduct, it is proper to use registered investment adviser if the CFP Board designee is registered individually. If the CFP Board designee is registered through his or her firm, then the CFP Board designee is not a registered investment adviser but a person associated with an investment adviser. The firm is the registered investment adviser. Moreover, RIA or R.I.A. following a CFP Board designee's name in advertising, letterhead stationery, and business cards may be misleading and is not permitted either by this *Code of Ethics* or by SEC regulations.

Rule 609

A CFP Board designee shall not practice any other profession or offer to provide such services unless the CFP Board designee is qualified to practice in those fields and is licensed as required by state law.

Rule 610

A CFP Board designee shall return the client's original records in a timely manner after their return has been requested by a client.

Rule 611

A CFP Board designee shall not bring or threaten to bring a disciplinary proceeding under this *Code of Ethics*, or report or threaten to report information to CFP Board pursuant to Rules 603 and/or 604, or make or threaten to make use of this *Code of Ethics* for no substantial purpose other than to harass, maliciously injure, embarrass and/or unfairly burden another CFP Board designee.

Rule 612

A CFP Board designee shall comply with all applicable renewal requirements established by CFP Board including, but not limited to, payment of the biennial CFP Board designee fee as well as signing and returning the Terms and Conditions of Certification in connection with the certification renewal process.

Rules that Relate to the Principle of Diligence**Rule 701**

A CFP Board designee shall provide services diligently.

Rule 702

A financial planning practitioner shall enter into an engagement only after securing sufficient information to satisfy the CFP Board designee that:

- (a) The relationship is warranted by the individual's needs and objectives; and
- (b) The CFP Board designee has the ability to either provide requisite competent services or to involve other professionals who can provide such services.

Rule 703

A financial planning practitioner shall make and/or implement only recommendations which are suitable for the client.

Rule 704

Consistent with the nature and scope of the engagement, a CFP Board designee shall make a reasonable investigation regarding the financial products recommended to clients. Such an investigation may be made by the CFP Board designee or by others provided the CFP Board designee acts reasonably in relying upon such investigation.

Rule 705

A CFP Board designee shall properly supervise subordinates with regard to their delivery of financial planning services, and shall not accept or condone conduct in violation of this *Code of Ethics*.

ADVISORY OPINION 2001-1

Loans between CFP Board designees and their clients should be avoided in the client-planner relationship.

Background

The Board of Professional Review (the "BOPR") has generally viewed loans between CFP Board designees and their clients unfavorably and, in the majority of cases, to be a violation of the *Code of Ethics and Professional Responsibility (Code of Ethics)*. Since the *Code of Ethics* does not have a rule that specifically prohibits such transactions, however, the BOPR has addressed the issue under various rules, depending upon the facts and circumstances of the case being examined.

Due to an increase in the number of disciplinary cases that involve the issue of loans between a CFP Board designee and his or her client, the BOPR is issuing this advisory opinion to clarify its position and to serve as a guide to both CFP Board designees and their clients.

Issue

Whether a loan between a CFP Board designee and his or her client(s) violates the *Code of Ethics*.

Analysis

Cases involving a loan between a CFP Board designee and a client involve an investigation of whether that CFP Board designee has violated the *Code of Ethics*. The BOPR has evaluated these cases under a number of rules, including, but not limited to, Rules 201, 202, 401, 402, 606, 607 and 703. To determine which, if any, rules have been violated, the BOPR considers:

- Whether the designee is a financial planning practitioner (as defined by the *Code of Ethics*).
- Whether the client is a family member or a financial institution. The degree to which the CFP Board designee is related to the client is relevant. (The rationale for considering the type of relationship is discussed later in this opinion.)
- Whether the terms and conditions of the loan are fair and reasonable to the client.

While any and/or all of the rules mentioned above, and others, may apply in a particular case, this advisory opinion focuses on two rules which are implicated in the majority of "loan" cases and are, therefore, most frequently cited by the BOPR: Rules 202 and 607.

Rule 202

Rule 202 of the *Code of Ethics* requires financial planning practitioners to act in the best interest of their clients. Accordingly, this rule applies to CFP Board designees who are acting as financial planning practitioners, defined in the *Code of Ethics* as:

"[A] person who is capable and qualified to offer objective, integrated and comprehensive financial advice to or for the benefit of clients to help them achieve their financial objectives and who engages in financial planning using the financial planning process in working with clients."

Borrowing from a Client

In cases involving a loan between a financial planning practitioner and a client, where the client is the lender and the practitioner is the borrower, the BOPR presumes that the practitioner is not acting in the best interest of the client.

BOPR Recognizes Exceptions

There are two exceptions to this presumption:

- (1) When the client is a family member; or
- (2) When the client is a financial institution acting in its normal course of business activity.

The BOPR recognizes that borrowing and/or lending of funds between family members is a common, generally accepted, practice. Likewise, financial institutions are in the business of borrowing and lending funds and, as such, often provide loans to individuals, regardless of whether they are CFP Board designees. In both instances, loans between these groups can fall outside the scope of the planner-client relationship.

In either of the two situations described above, while the BOPR does not presume that the planner's borrowing of funds is a violation of Rule 202, it may still find that the transaction was not in the client's best interests if the financial planning practitioner is unable to establish that:

- The terms and conditions of the loan were clearly and objectively disclosed to the client, taking into consideration the client's level of sophistication;
- The terms and conditions of the transaction were fair and reasonable under the circumstances; and
- The client fully understood (a) the terms and conditions of the transaction and (b) the impact of the transaction on his/her financial situation.

Lending to a Client

In the more rare case where a financial planning practitioner lends funds to a client, the BOPR will presume that the practitioner is not acting in the best interest of the client, as a client who borrows funds from his or her planner is likely to be inhibited from ending the planner-client relationship, regardless of whether the client's financial planning needs are being met. Even if the financial planning practitioner can demonstrate that a particular loan to a client did not inhibit the client from ending the relationship, the transaction will still be presumed to be a violation of Rule 202 if (a) the loan was used as an enticement for the client to make a financial decision, including, but not limited to, purchasing a financial product, or (b) the loan had a below market interest rate and could be considered a form of rebate.

The exception to this presumption is when the client is a family member. Even if the client is a family member, however, the BOPR may still find that the transaction was not in the client's best interest if the financial planning practitioner is unable to establish that (a) the terms and conditions of the loan were clearly and objectively disclosed to the client, taking into consideration the client's level of sophistication, (b) the terms and conditions of the transaction were fair and reasonable under the circumstances, and (c) the client fully understood the terms and conditions of the transaction and the impact the transaction may have on his/her financial situation.

Rule 607

Rule 607 prohibits a CFP Board designee from engaging "in any conduct which reflects adversely on his or her integrity or fitness as a CFP Board designee, upon the marks, or upon the profession."

As defined in the *Code of Ethics*, CFP Board designees include individuals who are currently certified, candidates for certification, and individuals who have any entitlement, either direct or indirect, to use the CFP certification marks. Accordingly, this rule has been interpreted to apply to all CFP Board designees regardless of whether they are practitioners, including candidates for certification, and individuals who have the right to renew their CFP® certification without re-taking CFP Board's CFP® Certification Examination.

Whether the Client is the Borrower or Lender

The BOPR interprets Rule 607 broadly, finding conduct which gives the "appearance of impropriety" to be a violation of the rule. Accordingly, the BOPR has taken the position that most loans between a CFP Board designee and a client give the appearance of impropriety and, therefore, reflect negatively on the integrity of the designee, the CFP marks and the financial planning profession.

BOPR Recognizes Exceptions

The same two exceptions discussed under Rule 202 (i.e., loans between a planner and a family member or loans between a planner and a financial institution) apply under Rule 607 when the planner is the borrower. In cases where the client is the borrower, only the family member exception applies. Even if one of the exceptions applies, the BOPR may still find that the transaction violates Rule 607 if the CFP Board designee fails to establish that:

- The terms and conditions of the loan were clearly and objectively disclosed to the client;
- The terms and conditions of the transaction were fair and reasonable under the circumstances; and
- The client fully understood (a) the terms and conditions of the transaction and (b) the impact of the transaction on his/her financial situation.

Summary

The BOPR urges all CFP Board designees to avoid the practice of borrowing from or lending to clients. This advisory opinion focuses on the two most frequently cited rules (Rules 202 and 607) in cases involving loans between CFP Board designees and their clients. CFP Board designees should remember, however, that the BOPR may find such transactions to be in violation of other rules in the *Code of Ethics*, as well.

ADVISORY OPINION 2003-1

CFP Board designees must avoid possible misrepresentation when using the term “fee-only.”

Background

The Board of Professional Review (“BOPR”) views misrepresentation of compensation arrangements to be a violation of the *Code of Ethics and Professional Responsibility (Code of Ethics)*. The *Code of Ethics* defines the term “fee-only” as denoting “a method of compensation in which compensation is received solely from a client with neither the personal financial planning practitioner nor any related party receiving compensation which is contingent upon the purchase or sale of any financial product.” BOPR Advisory Opinions 97-1 and 97-2 allowed for a designee to use the term “fee-only” to describe the compensation received from a specific client, even if other methods of compensation were used with other clients, and to offer “fee-only” services to a client, even if the designee also received commissions from the same client or other clients for other services. In light of recent regulatory trends regarding the misrepresentation of methods of compensation, media focus on the issue, and the perceptions of the general public, the BOPR has redefined the appropriate use of the term “fee-only.”

The purpose of this Advisory Opinion is to reduce confusion on the part of CFP Board designees, their clients, and the public, and to maintain consistency with other organizations’ use of the term “fee-only.” Thus, the Board of Governors withdrew Advisory Opinions 97-1 and 97-2 in January 2002 and the *Code of Ethics* definition can no longer be considered an accurate reflection of the BOPR’s position on this issue.

Issue

When may a CFP Board designee use the term “fee-only” to describe the designee as an individual, the designee’s practice or the designee’s services?

Analysis

A fee arrangement exists when the CFP Board designee is compensated solely by the client, or another party operating exclusively on behalf of the client, for professional services provided. The BOPR has defined types of compensation arrangements. The following qualify as fees:

- *Hourly, fixed or flat fees;*
- *Percentage fees, which are based on some aspect of the client’s financial profile, such as assets under management or earned income; and*
- *Performance-based fees, which are tied to the profitability of the client’s invested assets.*

There are other compensation arrangements under which a CFP Board designee could be compensated for working with a client. In some of these arrangements, the designee may be paid by a third party for the recommending, referring or selling of a product and/or service. These arrangements, including, but not limited to the following, shall not be interpreted as fees under the *Code of Ethics*:

- *Commission, generated from a product or service. In addition to traditional commissions, this includes, 12(b)1 fees, trailing commissions, surrender charges, and contingent deferred sales charges, even if used to reduce or offset other fees;*

- *Referral compensation*, providing compensation or other economic benefits to the CFP Board designee for recommending, introducing or referring a product or service provided by another person or entity, even if used to reduce or offset other fees.

Use of the Term “Fee-Only”

In order for a CFP Board designee to describe his or her compensation as “fee-only”, all compensation from all clients must be derived solely from fees. Minimal exceptions may be allowed provided the compensation is inconsequential and independent of the purchase of any product or service. Likewise, when using terms including, but not limited to, “fee-only services” and “fee-only firm,” the same requirements apply.

Potential Rule Violations

Cases involving misrepresentation of compensation arrangements or failure to disclose compensation arrangements warrant investigation of whether that CFP Board designee has violated the *Code of Ethics*. The rules implicated in this analysis include, but are not limited to, Rules 101(a) and (b), 102, 201, 202, 401, 402, 606, 607 and 702. The BOPR must consider whether the CFP Board designee is a financial planning practitioner (as defined by the *Code of Ethics*) in determining which, if any, rules have been violated. While any and/or all of the rules mentioned above may apply in a particular case, this advisory opinion focuses on three rules that would most often be implicated in a case involving misrepresentation of and/or failure to disclose compensation arrangements: Rules 101(a) and (b), 401 and 402.

Rule 401

Rule 401 of the *Code of Ethics* requires CFP Board designees to disclose to the client material information relative to the professional relationship, including compensation structure. The BOPR urges that disclosures under Rule 401 be clear, straightforward and unambiguous so as to be easily understood by all parties. In cases involving CFP Board designees who represent themselves as “fee-only” to a client but accept compensation not defined as fees by the BOPR from that relationship or other client relationships, the BOPR presumes that the CFP Board designee has failed to disclose material information relative to the professional relationship.

Rule 402

Rule 402 requires CFP Board designees in a financial planning engagement to make timely written disclosure of all material information relative to the professional relationship, in all circumstances and prior to the relationship, including sources of compensation. Adherence to the provisions of Rule 402 by CFP Board designees in financial planning engagements allows the public to make informed decisions about whether to use the professional services of the CFP Board designee. Rule 402(a) is violated when the CFP Board designee in a financial planning engagement, in the disclosure provided to the client, represents himself or herself as “fee-only” when, in fact, that designee accepts compensation not defined as fees by the BOPR in that relationship or other client relationships.

Rule 101(a) and (b)

Rule 101(a) and (b) prohibit CFP Board designees from soliciting clients through false or misleading advertisements and/or promotional activities. The use of the term “fee-only” must be used carefully and only when the CFP Board designee derives all compensation from all clients solely from fees. The BOPR presumes advertisements and/or promotional activities to

be false or misleading when they contain the term “fee-only” and the CFP Board designee advertising or promoting his or her services accepts compensation not defined as fees from that client relationship or any other client relationships.

Summary

The public regards compensation structure as important information when choosing a financial planning professional. *The Code of Ethics* requires CFP Board designees to act with integrity and fairness toward the public in all activities. The appropriate use of the term “fee-only” in all public discourse provides a key opportunity for CFP Board designees to demonstrate professionalism by avoiding casual use of the term. The BOPR advises CFP Board designees to avoid using the term “fee-only” except when all compensation from all clients is derived solely from fees. CFP Board designees should also avoid the use of other terms designed to induce the public into a distorted belief that the designee receives “fee-only” compensation when in fact the designee receives commissions, referral compensation, or any other form of compensation not defined as fees by the BOPR.

SAMPLE DISCLOSURE FORMS

Following are two sample disclosure forms for use by CFP® certificants in complying with CFP Board's *Code of Ethics and Professional Responsibility (Code of Ethics)* disclosure requirements. The first form (Form FPE) may be used in financial planning engagements. The second form (Form OPS) is for use when providing other professional services.

These forms provide for certain disclosures to clients (or potential clients) as required by CFP Board's *Code of Ethics*, with corresponding Rules in the *Code of Ethics* referenced in parentheses. The client acknowledgments at the end of each disclosure form are not required by CFP Board's *Code of Ethics*, but CFP certificants may wish to use them for their own purposes. Please note in Part II, section E of Form FPE, a CFP certificant shall not hold out as a fee-only financial planning practitioner if the CFP certificant receives commissions or other forms of economic benefit from related parties. (Refer also to Advisory Opinion 2003-1.) Also note that the disclosure of Part II, section B of Form OPS, is not required if the services contemplated by the client relationship have been completed. CFP certificants may use these forms, SEC Form ADV Part II, or a form of their own design or choosing as long as the required *Code of Ethics* disclosures are included in whatever form is used by the CFP certificant.

Compliance with the client disclosure requirements of the *Code of Ethics* is accomplished only when all material information relevant to the professional relationship (which includes everything required, pertinent and appropriate to the given client relationship) has been disclosed to the client or prospective client. Such disclosure should include, if material, (1) information about the financial condition of the CFP certificant and/or his or her firm which is reasonably likely to impair the ability of the CFP certificant to meet contractual commitments to the client and (2) any legal or disciplinary event relative to the CFP certificant that is material to a client's or potential client's evaluation of the CFP certificant's integrity or ability to meet contractual commitments to the client. Mere completion of a suggested disclosure form does not, in and of itself, constitute full compliance with the *Code of Ethics* disclosure requirements.

A blank form of each, in addition to a sample of how the forms might look when they are filled in, is included and may be copied for your use. The forms can also be downloaded as Word documents from CFP Board's Web site at www.CFP.net/certificants.

SAMPLE CFP® CERTIFICANT DISCLOSURE FORM (FORM FPE)

For Use in Financial Planning Engagements

This disclosure form gives information about the CFP® certificant(s) and his/her/their business. This information has not been reviewed, approved or verified by CFP Board or by any governmental or self-regulatory authority. CFP Board does not warrant the specific qualifications of individuals certified to use its marks, nor does it warrant the correctness of advice or opinions provided.

PART I. GENERAL INFORMATION:

(Code reference - Rule 401)

A. Business affiliation:

B. Address:

C. Telephone number:

D. Information required by all laws applicable to the relationship (e.g., if the CFP certificant is a registered investment adviser, the disclosure document required by laws applicable to such registration):

PART II. MATERIAL INFORMATION RELEVANT TO THE PROFESSIONAL RELATIONSHIP

(Written disclosures required to be provided prior to the engagement)

(Code reference - Rule 402)

A. Basic philosophy of the CFP certificant (or firm) in working with clients:

B. Philosophy, theory and/or principles of financial planning which will be utilized:

C. Attached to this disclosure form, or summarized in the space provided below, are résumés of principals and employees of the CFP certificant's firm who are expected to provide financial planning services:

1. Educational background:

2. Professional/employment history:

3. Professional certifications and licenses held:

- D. Description of the financial planning services to be provided by the CFP® certificant:

- E. Conflict(s) of interest and source(s) of compensation:
 1. Conflict(s) of interest:

 2. Source(s) of compensation:

 3. Contingencies or other aspects material to the certificant's compensation:

- F. Agency or employment relationships:
 1. Material agency or employment relationships with third parties:

 2. Compensation resulting from such agency or employment relationships:

CFP® CERTIFICANT DISCLOSURE FORM (FORM FPE) – SAMPLE FILLED-IN FORM

For Use in Financial Planning Engagements

This disclosure form gives information about the CFP® certificant(s) and his/her/their business. This information has not been reviewed, approved or verified by CFP Board or by any governmental or self-regulatory authority. CFP Board does not warrant the specific qualifications of individuals certified to use its marks, nor does it warrant the correctness of advice or opinions provided.

PART I. GENERAL INFORMATION:

(Code reference - Rule 401)

- A. Business affiliation:
- B. Address:
- C. Telephone number:
- D. Information required by all laws applicable to the relationship (e.g., if the CFP certificant is a registered investment adviser, the disclosure document required by laws applicable to such registration):

PART II. MATERIAL INFORMATION RELEVANT TO THE PROFESSIONAL RELATIONSHIP

(Written disclosures required to be provided prior to the engagement)

(Code reference - Rule 402)

- A. Basic philosophy of the CFP certificant (or firm) in working with clients:

Our approach to personal financial planning is to obtain from you significant financial and other information including your attitudes, goals and objectives; to analyze the information obtained in order to develop alternatives for your consideration; to educate you about the implications of selecting a particular alternative; to implement the alternative selected by you; and to periodically update the plan adopted. It is our goal to become your chief financial adviser and to coordinate the efforts of your other advisers in your best interests. We want you to be educated about your own financial affairs and to take an active role in managing them.

- B. Philosophy, theory and/or principles of financial planning which will be utilized:

Our philosophy of financial planning is to gather adequate reliable information about a client's personal financial situation; to determine the client's goals and objectives, time horizon, and risk tolerance; to analyze all of the foregoing information in an objective manner and to develop recommendations for our clients based upon this thorough analysis and in the interest of rendering disinterested advice. In a personal financial planning engagement, we endeavor to consistently act in the interest of our client and to place his or her interest ahead of our own. Moreover, we believe that a client should be both informed and proactively involved in his or her personal financial affairs. Accordingly, we believe in holding frequent meetings with our clients to educate them about the financial planning process and their own financial situation.

C. Attached to this disclosure form, or summarized in the space provided below, are résumés of principals and employees of the CFP® certificant's firm who are expected to provide financial planning services:

1. Educational background:

John Doe:

*Bachelor of Science degree in accounting from Hofstra University, 1971.
Master of Business Administration degree in Financial Services from Golden Gate University, 1975.*

2. Professional/employment history:

John Doe:

Was employed as a stockbroker for DEF Brokerage for nearly ten years before becoming a partner in Comprehensive Financial Planning Services, Inc., in 1986 (see attached résumé).

3. Professional certifications and licenses held:

John Doe:

*CERTIFIED FINANCIAL PLANNER™ practitioner
NASD Series 7 (General Securities) license - 1974
Life & Health insurance licenses - 1978, State of Arkansas*

D. Description of the financial planning services to be provided by the CFP certificant:

Example 1:

This engagement is limited in scope to retirement planning only. Other types of personal financial planning services will not be performed by us, unless they directly affect your retirement plan, and you give us your express permission prior to performing such additional services.

Example 2:

You have expressed interest in asset management services. These services include:

- Analysis of your current financial condition, goals and objectives, and development of a personal financial plan.*
- Design of an investment portfolio appropriate to your individual circumstances, needs, goals, risk tolerance, investment experience and time horizon.*
- Quarterly written reports on the status of your investment portfolio.*
- Two meetings each year to review and update your objectives and financial status and provide an evaluation of your investment portfolio.*
- Ongoing monitoring of your investment portfolio.*
- Recommendations involving investment repositioning and current opportunities for new investments.*
- Availability of our professional staff to answer questions.*

E. Conflict(s) of interest and source(s) of compensation:

1. Conflict(s) of interest:

Example 1:

John Doe represents Larry Peters, your business partner.

SAMPLE CFP® CERTIFICANT DISCLOSURE FORM (FORM OPS)

For Use When Providing Other Professional Services

This disclosure form gives information about the CFP® certificant(s) and his/her/their business. This information has not been reviewed, approved or verified by CFP Board or by any governmental or self-regulatory authority. CFP Board does not warrant the specific qualifications of individuals certified to use its marks, nor does it warrant the correctness of advice or opinions provided.

PART I. MATERIAL INFORMATION RELEVANT TO THE PROFESSIONAL RELATIONSHIP

(Disclosures required to be provided at the time of entering into a client relationship)
(Code reference - Rule 401)

A. Material information relevant to the professional relationship:

B. Conflict(s) of interest:

C. Information required by all laws applicable to the relationship (e.g., if the CFP certificant is a registered investment adviser, the disclosure document required by laws applicable to such registration):

PART II. SUBSEQUENT DISCLOSURES

(Disclosures required to be provided subsequent to entering into a client relationship)

A. Changes in any of the following information since entering into a client relationship:
(Code reference - Rule 401)

1. Business affiliation:

2. Address:

3. Telephone number:

CFP® CERTIFICANT DISCLOSURE FORM (FORM OPS) – SAMPLE FILLED-IN FORM

For Use When Providing Other Professional Services

This disclosure form gives information about the CFP® certificant(s) and his/her/their business. This information has not been reviewed, approved or verified by CFP Board or by any governmental or self-regulatory authority. CFP Board does not warrant the specific qualifications of individuals certified to use its marks, nor does it warrant the correctness of advice or opinions provided.

PART I. MATERIAL INFORMATION RELEVANT TO THE PROFESSIONAL RELATIONSHIP

(Disclosures required to be provided at the time of entering into a client relationship)
(Code reference - Rule 401)

A. Material information relevant to the professional relationship:

I am a sales representative for ABC Securities and I am licensed to sell general securities through that firm. These products include mutual funds, stocks, bonds and other types of securities.

My compensation is based solely upon the sale of securities. Should you choose to purchase a product through us, I will receive a commission payable by a third party.

B. Conflict(s) of interest:

John Doe owns a partnership interest in ABC Securities.

C. Information required by all laws applicable to the relationship (e.g., if the CFP certificant is a registered investment adviser, the disclosure document required by laws applicable to such registration):

I am required by law to provide you with a copy of the most recent prospectus for any security that I recommend to you. I am required by law to provide you with a copy of the order confirmation for any securities transactions.

PART II. SUBSEQUENT DISCLOSURES

(Disclosures required to be provided subsequent to entering into a client relationship)

A. Changes in any of the following information since entering into a client relationship:
(Code reference - Rule 401)

1. Business affiliation:

2. Address:

3. Telephone number:

4. Credentials:

5. Qualifications:

CERTIFIED FINANCIAL PLANNER

BOARD OF STANDARDS, INC.

1425 K Street, NW, Suite 500, Washington, DC 20005

P: 800-487-1497

F: 202-379-2299

E: mail@CFPBoard.org

W: www.CFP.net



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