



ETHICS CE

A Practical Application of CFP Board's *Code and Standards*

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Financial Experts Network



Disclaimer



The content of this program is based on CFP Board's *Code of Ethics and Standards of Conduct (Code and Standards)*, which became effective on October 1, 2019.

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Learning Objectives

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By the conclusion of this training, participants will have improved their ability to:



Recognize when a CFP® professional is providing Financial Advice.



Apply the Fiduciary Duty.



Describe when Financial Advice requires Financial Planning and the additional obligations that apply.



Learning Objectives (continued)

CFP BOARD

By the conclusion of this training, participants will have improved their ability to:



Identify duties when using or referring other service providers or technologies.



Describe the process the CFP Board follows to uphold the *Code and Standards*.




Determine what information must be provided to the Client and when to document the exchange of information.



Placeholder for Video



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Why is it important to have a *Code of Ethics* and *Standards of Conduct*?

What happens if CFP® professionals fail to comply with the *Code and Standards*?

Resources on the *Code* and *Standards*

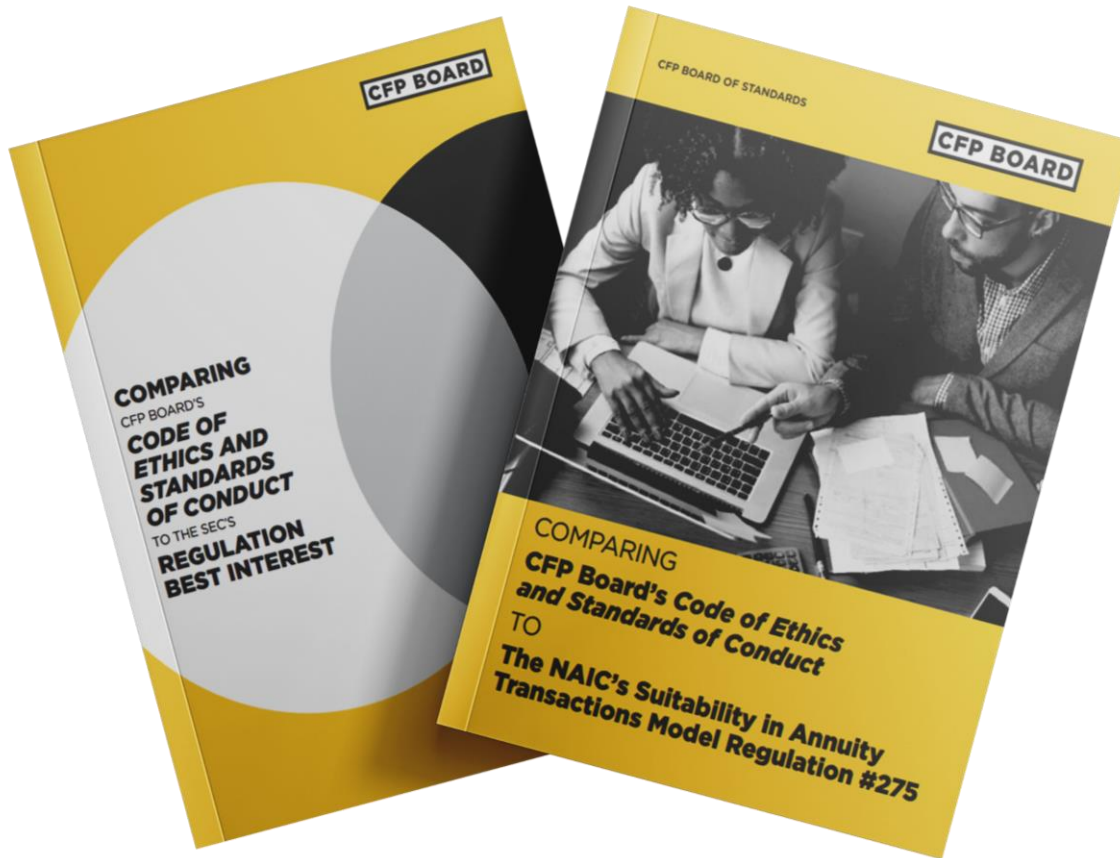
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Where can we find more information if we have questions about ethical conduct for a CFP® professional?



CFP Board's Compliance Resource Library

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Over **35 case studies** with real-world scenarios

15 guides including:

- Comparison guides to Reg BI and NAIC Model Regulation
- Managing Conflicts
- Duty of Care
- Financial Planning Process
- Financial Advice Engagement Disclosure



Poll: CFP Board Compliance Resource Library

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Which of these CFP Board resources have you used?

- ☐ Roadmap, a user's guide to the *Code and Standards*
- ☐ FAQs
- ☐ Case studies
- ☐ Checklists and guides
- ☐ Videos and webinars
- ☐ None



LEARNING OBJECTIVE 1


Recognize When a CFP® Professional Is Providing
Financial Advice



Why does it matter if I know
when I'm providing financial
advice?

Duties of a CFP® Professional

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To Clients		To Firms and Subordinates	To CFP Board
At All Times	Integrity Competence Diligence Sound and Objective Professional Judgement Professionalism Comply with the Law Confidentiality and Privacy Duties When Communicating with a Client Duties When Selecting, Using and Recommending Technology Refrain from Borrowing or Lending Money and Commingling Financial Assets	Use Reasonable Care When Supervising Comply with Lawful Objectives of CFP® Professional's Firm Provide Notice of Public Discipline	Refrain from Adverse Conduct Reporting Provide Narrative Statement Cooperation Compliance with Terms and Conditions of Certification and Trademark License
Financial Advice	The Duties That Apply At All Times (see above) Fiduciary Duty Disclose and Manage Conflicts of Interest Provide Information to a Client Duties When Recommending, Engaging and Working with Additional Persons	<p>A CFP® Professional Has Duties That Apply</p> 	
Financial Planning	The Duties That Apply When Providing Financial Advice (see above) The Practice Standards for the Financial Planning Process Information to Client in Writing		

Definition

A communication that, based on its content, context, and presentation, would reasonably be viewed as a recommendation that the Client take or refrain from taking a particular course of action with respect to:

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

Or

The exercise of **discretionary authority** over the Financial Assets of a Client.

Financial Advice

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Definition

Financial Advice is NOT:

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

Scenario: Financial Advice

Kevin, a prospect, met Priya, a CFP® professional, at a retirement planning community event.

He is planning to retire next year and is looking for information.



?

Is Priya providing
Financial Advice?

Priya sends Kevin an article titled “What will my savings cover in retirement?”

Priya sends this same article to all her Clients and prospects who are close to retirement.



?

Is Priya providing
Financial Advice?

WHAT IF?

Kevin scheduled a meeting with Priya. At the meeting, he asked what Priya “thought about” purchasing a particular income-based mutual fund.

Priya says. “I think it is a good mutual fund for retirees. I’d be happy to help you purchase that.”

Knowledge Check – Financial Advice

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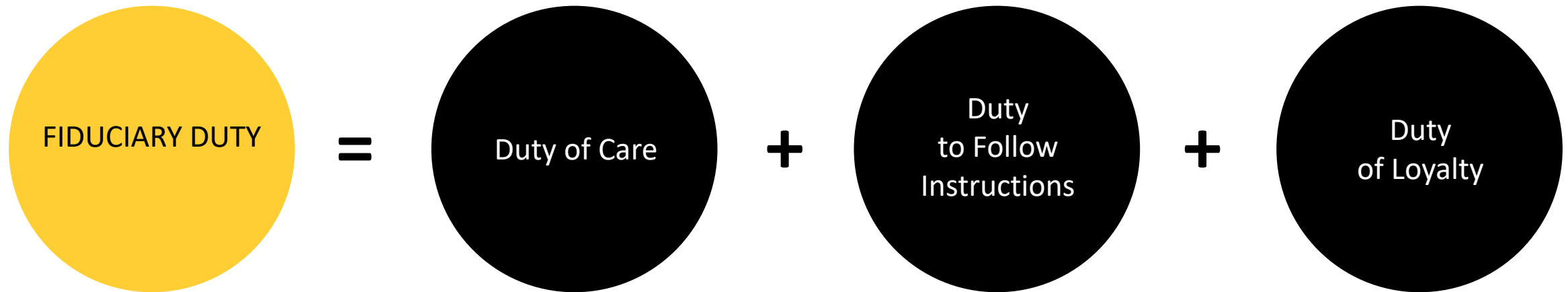
True or False?

- 1 Fulfilling a directed order from a Client to buy a stock is Financial Advice.
- 2 In order for there to be Financial Advice, there must be compensation.
- 3 Providing marketing and general financial education materials is generally not providing Financial Advice.



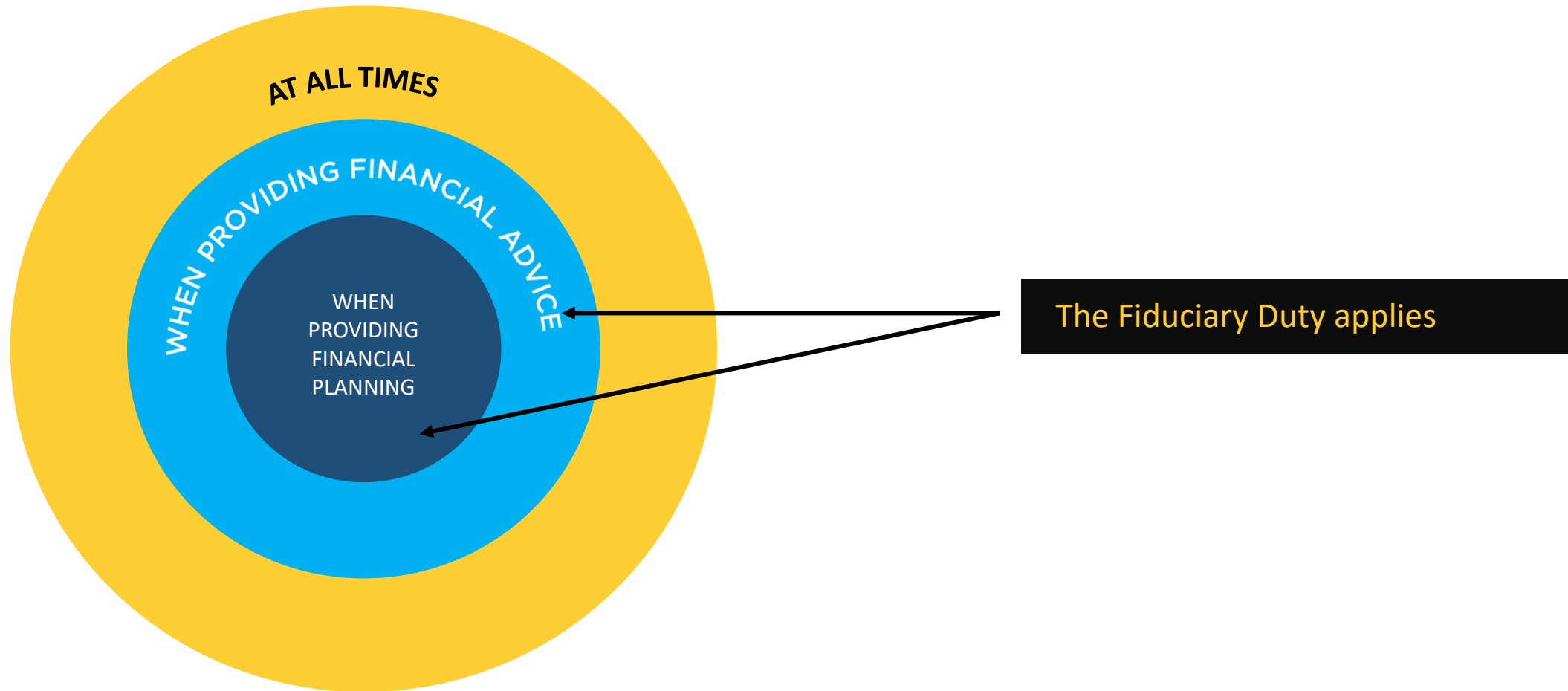
LEARNING OBJECTIVE 2

Apply the Fiduciary Duty



Applies at all times when providing Financial Advice to a Client.

Must act in the best interests of the Client.



Duty of Care

Definition

Duty of Care is a component of the Fiduciary Duty.

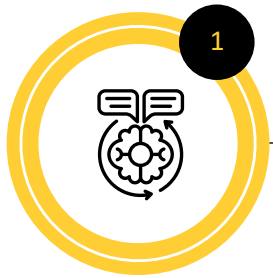
You must act with the care, skill, prudence, and diligence that a prudent professional would exercise in light of the Client's:

- Goals
- Risk tolerance
- Objectives
- Financial and personal circumstances

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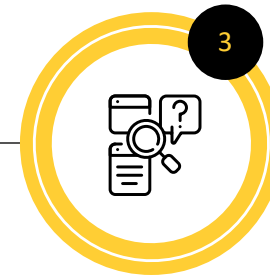
Process for Complying with the Duty of Care



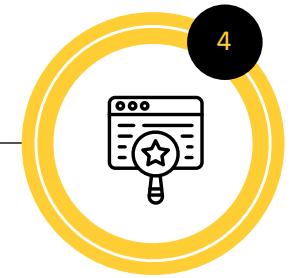
Understand the Client



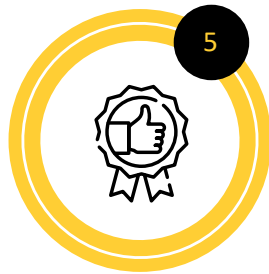
Determine the scope of the engagement



Analyze current and potential courses of action



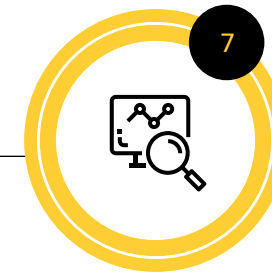
Develop recommendation



Present recommendation



Implement Financial Advice



Consider whether monitoring or updating is needed



Scenario: Duty of Care

Meet Jordan

Jordan is changing jobs and wants advice on what to do about her 401(k) plan.

Scenario: Duty of Care

Meet Avery

Avery is a CFP® professional.

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True or False?

Recommending whether a Client should roll over an account from a 401(k) is Financial Advice and the Fiduciary Duty applies.



Scenario: Fulfilling the Duty of Care

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Let's follow Avery as she fulfills her Duty of Care to Jordan



Understand the
Client



Analyze



Develop
Recommend-
ations

Scenario: Fulfilling the Duty of Care

CFP BOARD

Let's follow Avery as she fulfills her Duty of Care to Jordan



Understand the
Client



Analyze



Develop
Recommend-
ations



?

Does
Avery have to
recommend
that Jordan remain in
the 401(k)?

Avery determines that

The 401(k) at Jordan's new job is suboptimal to the current 401(k) or an IRA.

The fees in the former employer's 401(k) are lower than rolling over to an IRA.

When in doubt,
DOCUMENT!



How to Document: Duty of Care

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How-to

As a best practice, Avery will document the diligence process in analyzing alternatives.

How would you suggest she document this process? What information should she include?



POLL: Client Instructions

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Has a Client given you instructions that you believed were not in their best interests?

- ☐ NEVER
- ☐ RARELY
- ☐ SOMETIMES
- ☐ OFTEN

Knowledge Check – Client Instructions

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True or False?

1

You must resign the Engagement if you disagree with Client instructions.

2

You must follow Client instructions as long as they are reasonable and lawful or limit the engagement.

3

You must explain why you think the instructions are not in the Client's best interests and the potential consequences.



Scenario: Client Instructions

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Imagine you have a retired Client who instructs you to withdraw retirement funds to help their child start a business.

You do not believe this is in their best interests given their goals in retirement.

How would you proceed?

SCENARIO POLL: Client Instructions

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Imagine you have a retired Client who instructs you to withdraw retirement funds to help their child start a business. You do not believe this is in their best interests given their goals in retirement.

How would you proceed?

- ☐ Withdraw the funds without discussion.
- ☐ Refuse to withdraw funds.
- ☐ Discuss why you think this is not in their best interest and withdraw the funds if they still want to proceed.
- ☐ Discuss why you think this is not in their best interest and terminate the engagement.

Duty of Loyalty

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Definition

Place Client's interests first.

Avoid Conflicts, or:

- Fully Disclose.
- Gain Client's Informed Consent.
- Manage Conflict in the Client's best interest.



Conflict of Interest

Definition

- Your interests (including the interests of your firm) are adverse to duties to a Client.
- You have duties to one Client that are adverse to another Client.

Having a Conflict \neq Acting on a Conflict

Scenario: Duty of Care

Meet Mei

Prospective client with 18 months worth of her expenses in a bank account.

- Wants to invest and is looking for someone to help manage the investments.
- Wants help developing a strategy for paying down her mortgage.



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Scenario: Duty of Loyalty

Meet Darren

CFP® professional compensated through a percentage of assets under management.

Scenario: Duty of Loyalty

Darren's Firm

Darren's firm has an agreement with its clearing broker to receive payments when clients are invested in certain mutual funds.



Scenario: Conflicts of Interest Language

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?

Identify the problems with Darren's statement.

In explaining his services, Darren says that paying a fee for investment advice is “**conflict-free.**”

Scenario: Identify Conflicts of Interest

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?

What conflicts are present?



Interest in maximizing
assets under management.



Interest in giving advice
to invest assets rather than
to pay debt.



Incentive to invest in funds that will
result in firm compensation – even
though Darren is not directly
compensated.

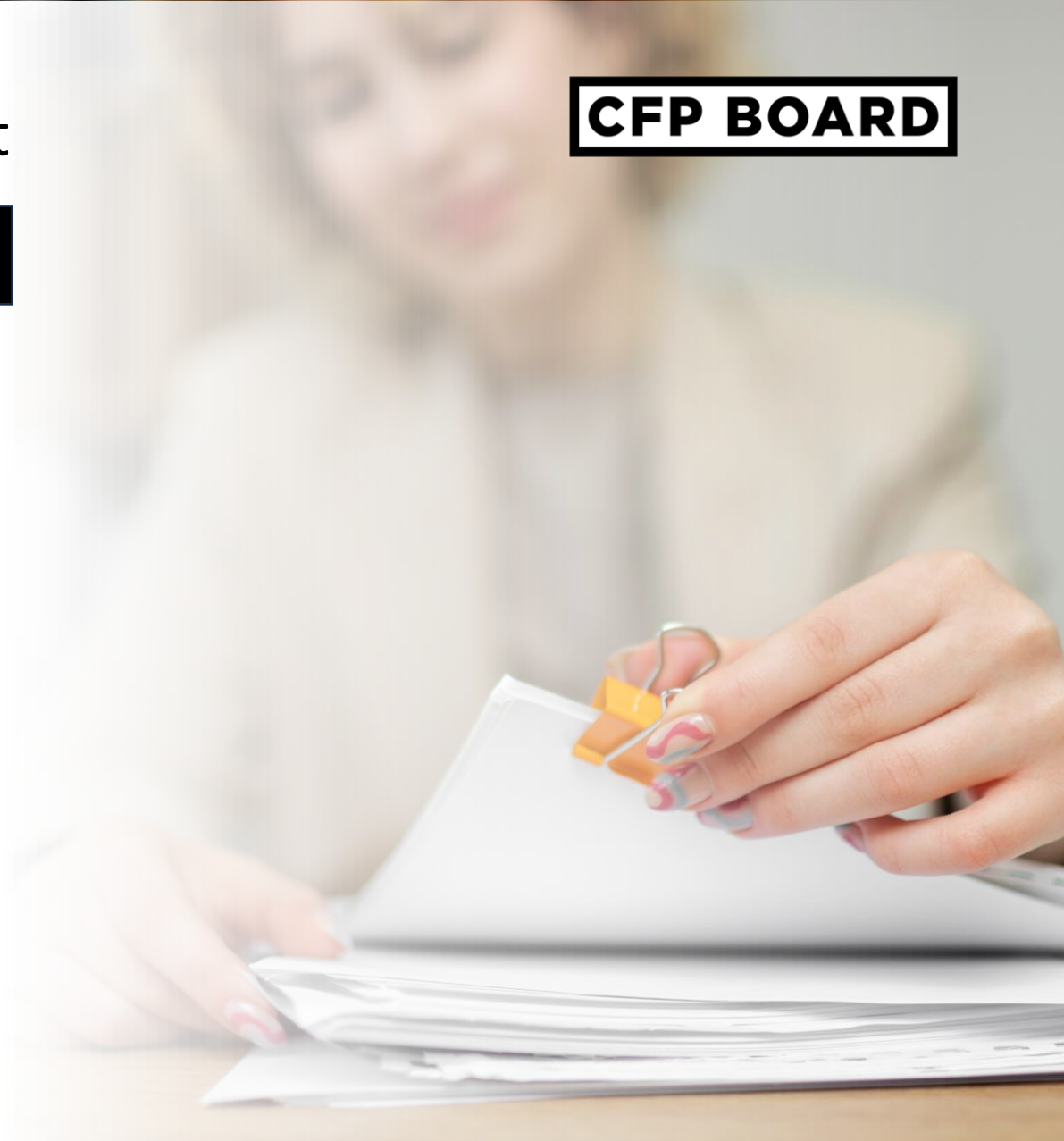
Scenario: Managing Conflicts of Interest

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Duty of Loyalty requires Darren to

Avoid the Conflicts of Interest, or:

- 1 Fully disclose Material Conflicts of Interest.
- 2 Obtain the Client's informed consent to the conflict.
- 3 Manage the conflict in Client's best interests.



Scenario: Identify Conflicts of Interest

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? Are these conflicts Material?

Information is Material when a reasonable Client or prospective Client would consider the information important in making a decision.





?

Can Darren
avoid the
conflicts of interest in
this situation?

Conflicts of Interest

Interest in Mei maximizing invested assets

No

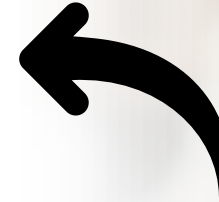
Firm's third-party compensation
arrangement

No

Scenario: Managing Conflicts of Interest

Duty of Loyalty requires Darren to

~~Avoid the Conflicts of Interest, or:~~



- 1** Fully disclose Material Conflicts of Interest.
- 2** Obtain the Client's informed consent to the conflict.
- 3** Manage the conflict in Client's best interests.



Full Disclosure and Informed Consent

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- What is “full” disclosure?
- How do I know if I have informed consent?

Sufficiently Specific Facts

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Definition

Enough so a reasonable Client can:

- Understand the Conflict
- Give informed consent to the Conflict, or
- Reject the Conflict

Must be provided before the Financial Advice.



Types of Sufficiently Specific Facts



The nature and extent of the conflict.



How the conflict affects or could affect the advice.



The sources and scale of compensation for the firm and/or financial professional.

When can informed consent be implied?

Informed consent can be implied with full disclosure.

When is consent less likely to be inferred?

Magnitude of potential harm to the Client if Conflict acted upon

Extent of deviation from business practices

Ambiguity will be interpreted in favor of the Client.

Scenario: Full Disclosure

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How-to

Darren's disclosures need help. Re-write his language so that he fully discloses his Material Conflicts of Interest.

A "I receive an AUM fee"

A better disclosure

The amount I earn from working with you depends on the amount of assets I manage for you. We have a financial incentive to recommend that you make financial decisions to increase the assets I manage.

B "My firm may have revenue sharing arrangements with mutual fund companies".

A better disclosure

My firm receives payments to make mutual funds and exchange-traded funds available to you. I have a financial incentive to recommend the services and products that make us more money.

Written disclosure of conflicts is not required – but it is advised.

Still must be documented.

Discuss reasons why written disclosure is always good idea.



Managing Conflicts of Interest

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Why?

To ensure the Client's interests come first.

What is required?

Reasonably designed business practices to prevent acting on the conflict.



Scenario: Managing Conflicts of Interest

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How-to

Darren wants to make sure he has a system in place to comply with the Duty of Loyalty.

Is there a process Darren can follow to provide advice in Mei's best interests?

Managing Conflicts

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Identify Material Conflicts of Interest

Develop (and periodically review and update) a comprehensive list of the Material Conflicts of Interest that may arise in the CFP® professional's practice.



Review & Evaluate Existing Practices for Management of Conflicts

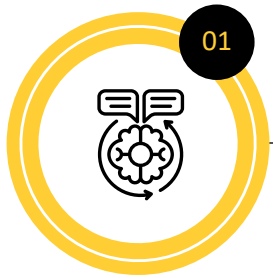
Review the CFP® Professional's Firm's conflicts management or mitigation practices and any additional conflict management practices that the CFP® professional follows.



Implement Any Additional Conflict Management Practices

Consider any additional steps the CFP® professional needs to take to properly manage conflicts under the *Code and Standards* and implement any such practices.

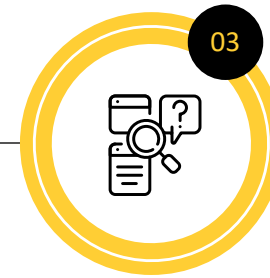
Prudent process consistent with the Duty of Care



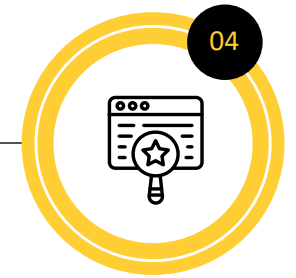
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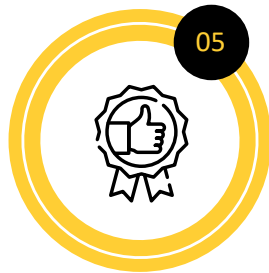
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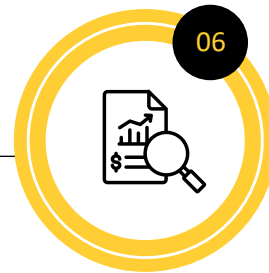
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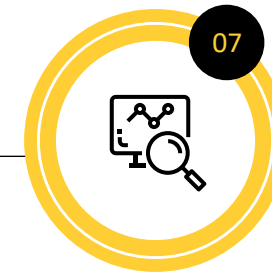
Develop recommendation



Present recommendation



Implement Financial Advice



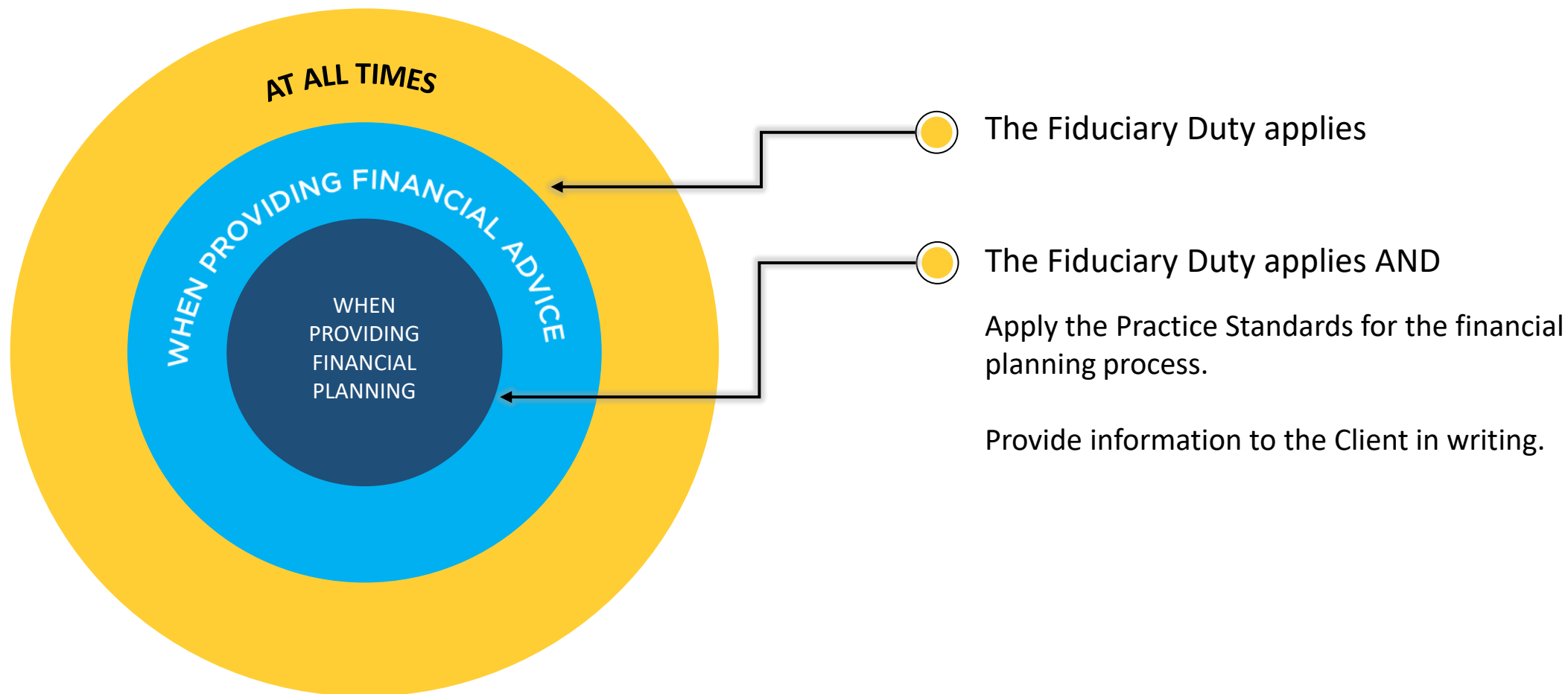
Consider whether monitoring or updating is needed

LEARNING OBJECTIVE 3

Describe When Financial Advice Requires Financial Planning and the Additional Obligations That Apply

Duties of a CFP® Professional

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Financial planning is a specific type of Financial Advice.

A collaborative process that helps maximize a Client's potential for meeting life goals through Financial Advice that integrates relevant elements of the Client's personal and financial circumstances.



Financial Planning

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When does Financial Advice Require Financial Planning?

CFP® professional agrees to provide Financial Planning ; or

Client has reasonable basis to believe Financial Planning is provided; or

CFP® Professional agrees to provide Financial Advice that requires integration of relevant elements of the Client's personal and/or financial circumstances in order to act in the Client's best interests



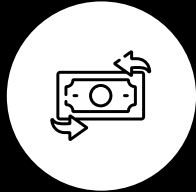
Relevant Personal & Financial Circumstances



DEVELOP GOALS



ASSETS and LIABILITIES



CASH FLOW



RISKS



HEALTH
CONSIDERATIONS



EDUCATIONAL
NEEDS



FINANCIAL SECURITY



PRESERVE or INCREASE
WEALTH



TAX
CONSIDERATIONS



RETIREMENT



PHILANTHROPIC
INTERESTS



ESTATE and LEGACY
MATTERS

Integration Factors

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Number of relevant elements of Client circumstances

Portion and amount of assets

Length of time Client affected

Effect on Client's exposure to risk

Barriers to modification of advice

Pedro is a CFP[®] professional.

Malik, 35, is Pedro's new Client who recently received a small inheritance.



Applying the Integration Factors

Malik has no current plans for the inheritance, and he expresses that he just wants it invested in the market.

The Engagement Agreement is explicitly limited to portfolio management of the inheritance.



Is Financial Planning Required?

Number of relevant elements

Portion and amount of assets

Length of time

Exposure to Risk

Barriers to modification



?

Is Financial
Planning
required?

WHAT IF?

Several years later, Malik gets a much larger inheritance. He meets with Pedro and asks:

- ☐ Do I have enough to buy a larger home?
- ☐ Can I provide for my 2-year-old twins' college?
- ☐ Can I leave my current job and begin investing my inheritance in real estate? Can you help with that?



What does Pedro need to do now?



The Financial Planning Process

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Scenario: Applying Integration Factors

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?

WHAT if

What if Malik didn't want to engage Pedro in financial planning?

What could Pedro do?

1

Terminate the Engagement.

2

Limit the Scope of Engagement.

3

Provide the requested services after informing the Client of two key points.

LEARNING OBJECTIVE 4

Identify Duties When Using or Referring Other Service Providers
or Technologies



Have you ever had a Client ask you for recommendations for these service providers?
(Choose all that apply.)

- ☐ Attorney
- ☐ Accountant
- ☐ Insurance agent
- ☐ Other

Have you ever had a Client ask you for recommendations for a personal finance application or other software?

☐ YES

☐ NO



Scenario: Recommendations

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Kareem, a CFP® professional, has a financial planning Client, Javier.

Javier has decided to start a business.



Scenario: Recommendations

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Javier asks Kareem if he knows of any accountants for small businesses.

Scenario: Recommendations

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Recommending or Engaging Additional Persons to Provide Professional Services to a Client



Reasonable basis for the recommendation:
Reputation | Experience | Qualifications



Disclosure of any compensation agreement for referring the provider



When engaging a person to provide services for a Client, exercise reasonable care to protect the Client's interests.



Practice Tip

Consider recommending more than one person if you have a reasonable basis for each recommendation.

Scenario: Tech Recommendations

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Javier asks for recommendations for small business accounting *software*?

Kareem is not familiar with those programs, but he wants to be helpful. Kareem knows a colleague liked CashFlow Finance Solutions.

Does Kareem have enough knowledge to make a recommendation?

Technology Standard

Reasonable care and judgment

Reasonable level of understanding

Reasonable basis for trusting the technology



Knowledge Check – Technology Recommendation

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Identify the appropriate communications to Javier given Kareem's level of knowledge.

1

I have no recommendation.

2

Cash Flow CareTaker is good.

3

My colleague told me they like Cash Flow CareTaker, but I do not have experience with it or other programs.



Selecting and Using Technology

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- Understand the Technology Platform.
- Monitor the Technology Platform.
- If selecting, conduct due diligence (can reasonably rely on your firm or custodian's due diligence).
- Gain necessary proficiency.
- Understand embedded assumptions.
- Gut check output.

Technology is a tool.
Technology does not replace expertise.



Technology Standard: Helpful Resources

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Comprehensive
guidance to assist CFP®
professionals

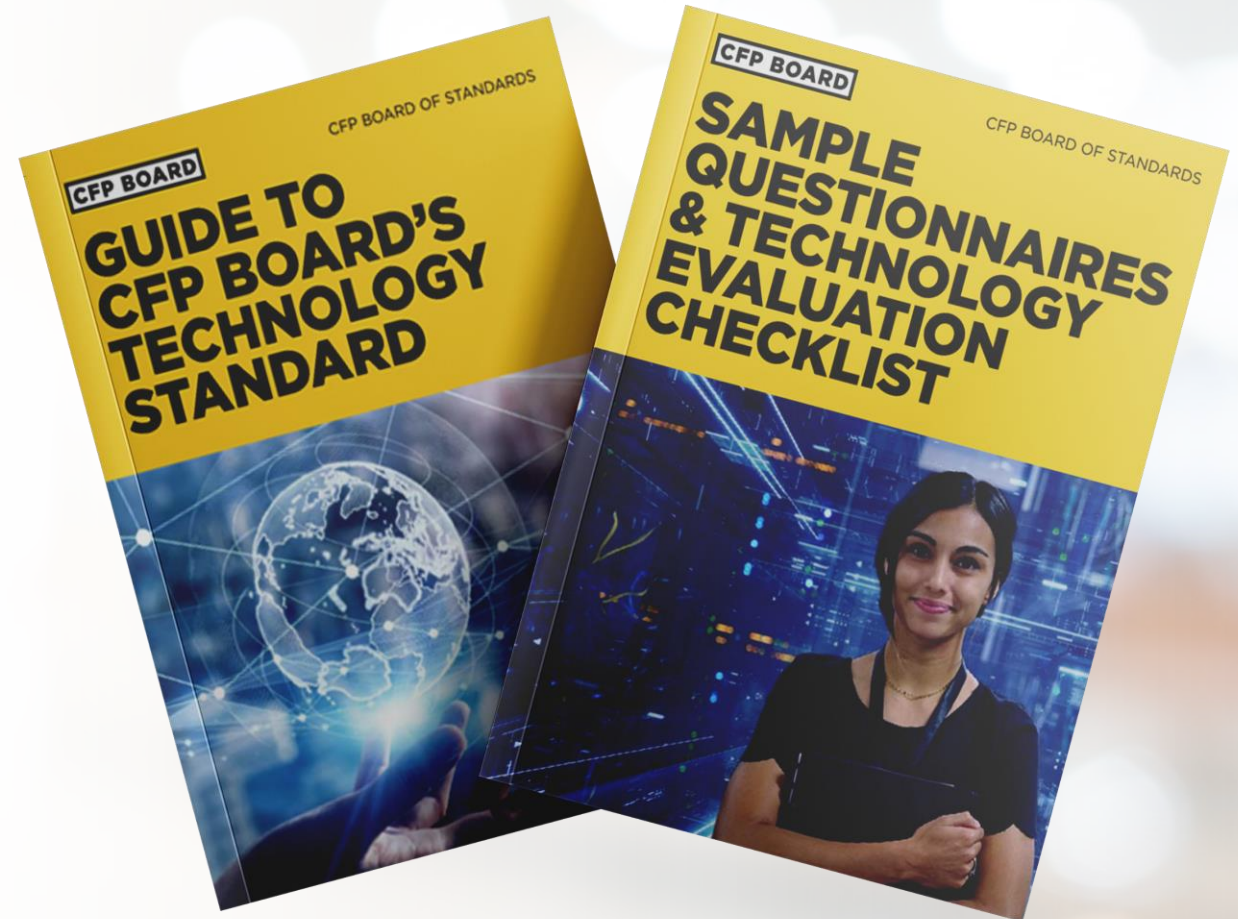


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LEARNING OBJECTIVE 5

Describe the Process CFP Board Follows to Uphold the *Code and Standards*

Enforcement Process Overview

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After watching the video, be prepared to answer these questions:

Which sanctions are published on CFP® Board's website?

- ☒ Public censure
- ☒ Suspension
- ☐ Private censure
- ☒ Revocation

Which statements about the Disciplinary and Ethics Commission (DEC) are TRUE?

- ☒ The DEC is comprised of CFP® professionals and members of the public
- ☐ The DEC investigates allegations
- ☒ The DEC imposes sanctions

Importance of the Duty to Report

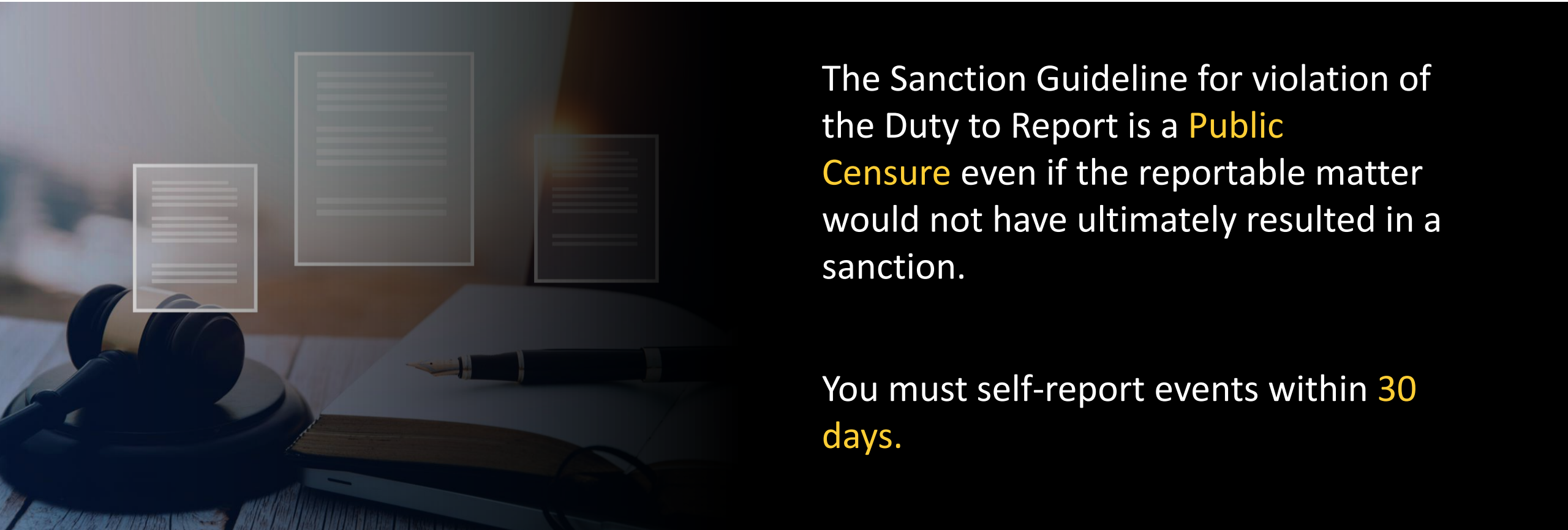
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Why is the Enforcement process important?

- For the value of the CFP® certification
- For Clients
- For Individual CFP® professionals

Importance of the Duty to Report

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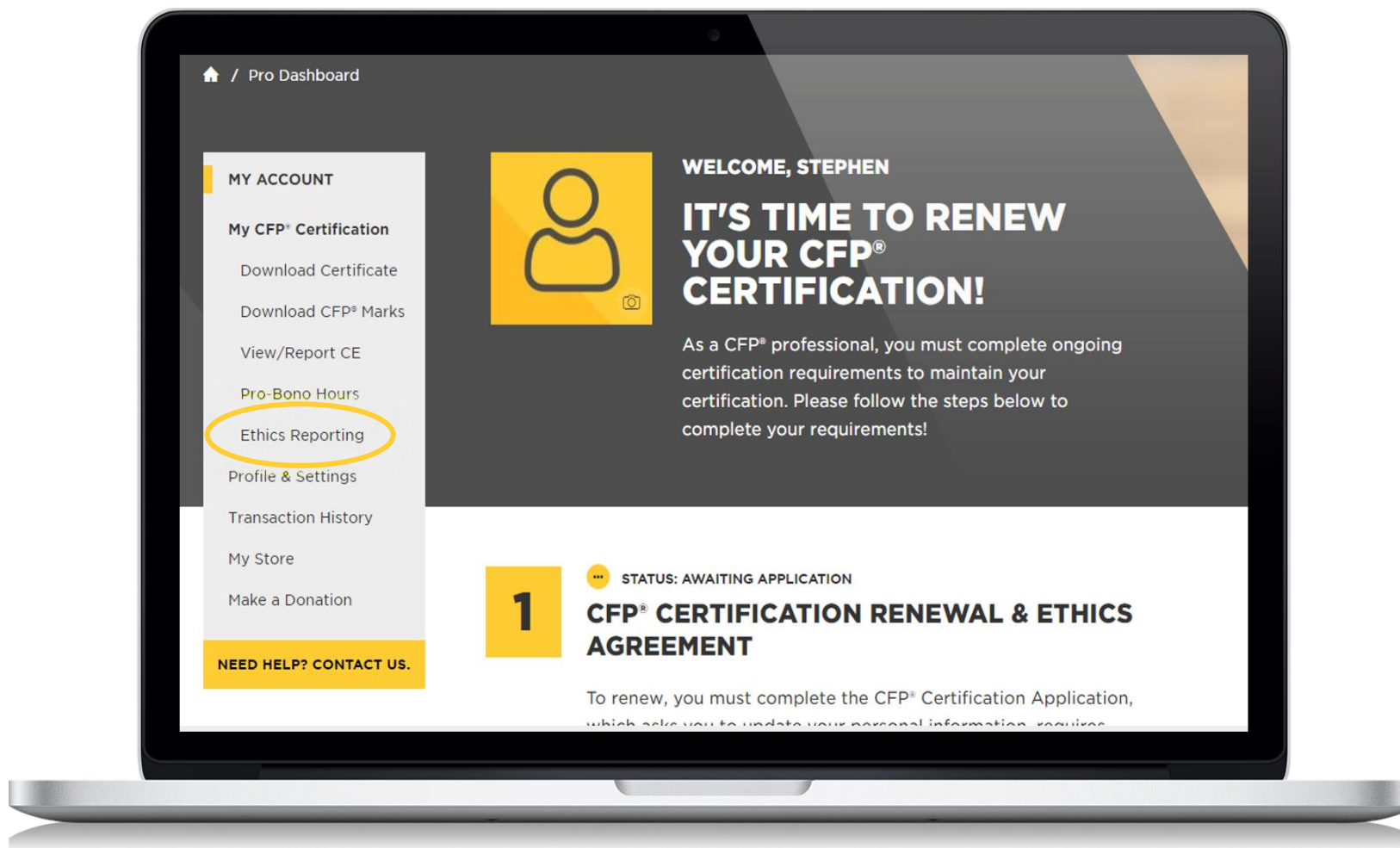


The Sanction Guideline for violation of the Duty to Report is a **Public Censure** even if the reportable matter would not have ultimately resulted in a sanction.

You must self-report events within **30 days**.

How to Report

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Reporting – General Categories

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- Regulatory or SRO Investigations or actions
- License suspension or revocation
- Felonies and certain misdemeanors
- Customer complaints
- Termination for regulatory or firm policy violation
- Litigation or arbitration
- Bankruptcies and liens



Reporting – Common Mistakes

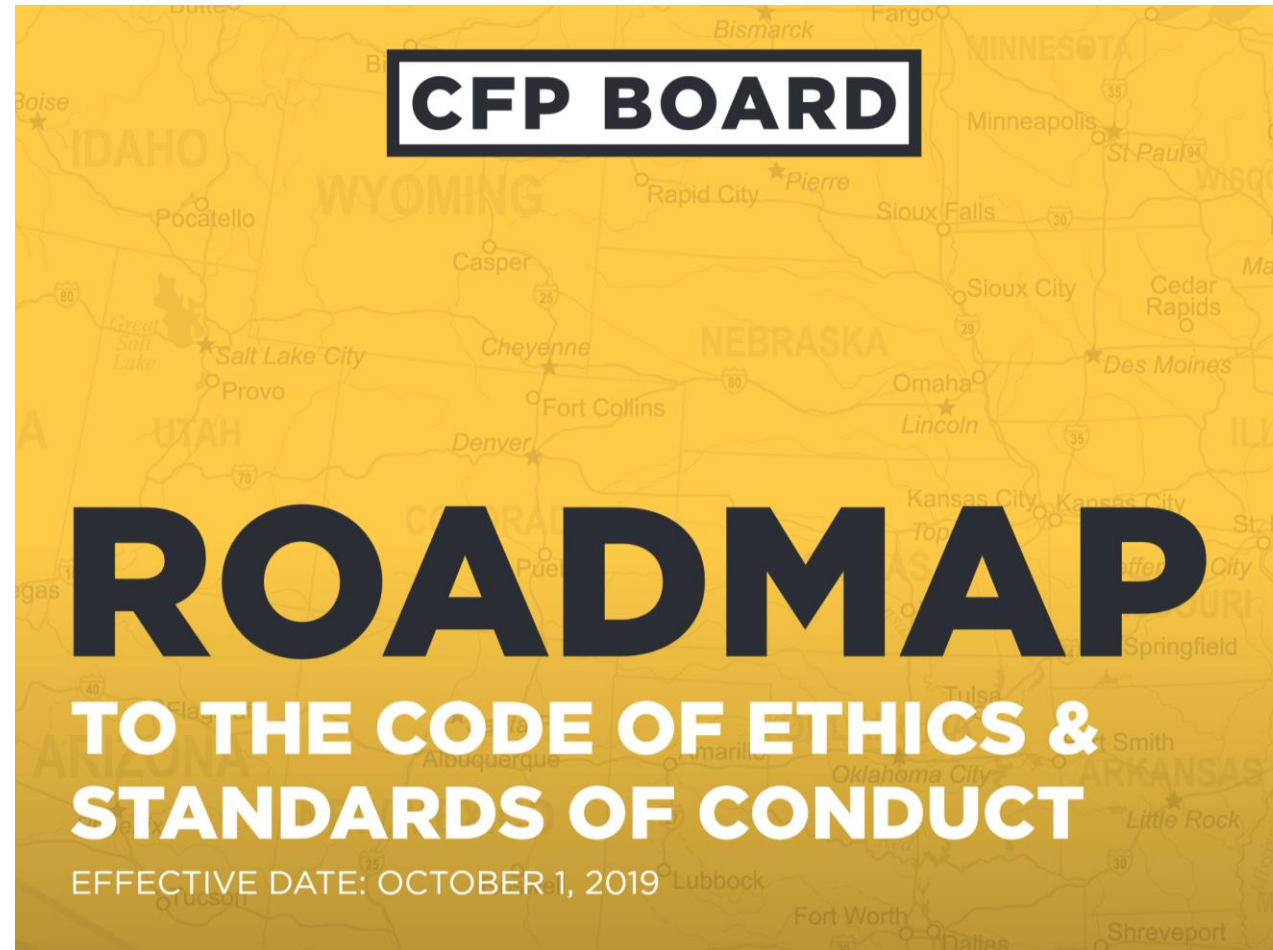
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- Waiting until next renewal cycle to report
- Waiting to report a complaint until the firm has investigated
- Not reporting events unrelated to Professional Services
- Assuming your firm will handle reporting

LEARNING OBJECTIVE 6

Determine what Information Must be Provided to the Client and
When to Document the Exchange of Information



Duty to Provide Information to a Client

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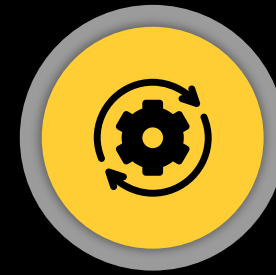
When to Provide Information

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Timing

Prior to or at the time of
engagement



Updating

Ongoing obligation
Within 90 days for bankruptcy or
public discipline

POLL: Providing Information

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Do you have a system in place to document when you provide information to clients?

☐ YES

☐ NO

Seeking Guidance

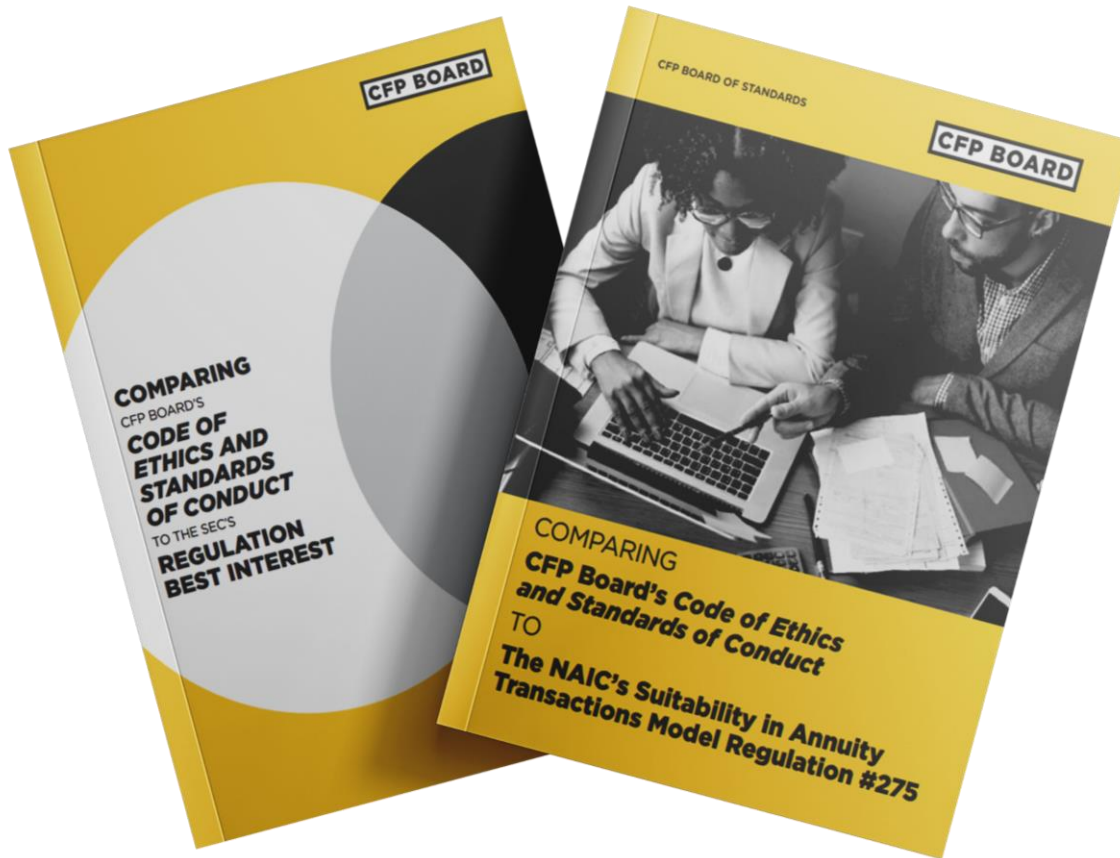
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CFP BOARD RESOURCES!



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THANK YOU