

December 3, 2023

CFP Board
1425 K Street NW #800
Washington, DC 20005

Re: Proposed Revisions to CFP Board Sanction Guidelines and Fitness Standards

Introduction

On September 5, 2023, CFP Board issued proposed revised *Sanction Guidelines* and *Fitness Standards for Candidates for CFP® Certification and Former CFP® Professionals Seeking Reinstatement*.¹ The announcement includes links to (i) a survey seeking responses on key issues and (ii) a 90-minute CFP Board video discussing the proposed revisions.

The proposed revised *Fitness Standards* provide heightened standards for ethical fitness for (i) candidates for CFP® certification and (ii) former CFP® professionals who are eligible for reinstatement. The proposed revised *Sanction Guidelines* (i) expand the description of aggravating and mitigating factors applicable to a sanction guideline and (ii) establish a “preponderance of the evidence” burden of proof to establish grounds for aggravation or mitigation of a sanction guideline.

NAPFA has encouraged Members, including leaders serving on the Board of Directors and the Public Policy Committee, to review the proposed revisions and the video explaining them, and to submit comments to CFP Board through the website CFP Board provided for that purpose. In addition, Members have always had the option to share their views directly with NAPFA. Accordingly, NAPFA offers the following comments concerning the proposed revisions.

Sanction Guidelines

NAPFA requests that CFP Board clarify how three proposed revisions would work together: Section 21 (Rehabilitative Conduct), Section 22 (Remedial Conduct), and Section 26 (Consideration of Other Factors).

Section 21 and Section 22, respectively, provide that the Disciplinary and Ethics Commission and, on appeal, the Appeals Commission (each a “Commission”) may consider as mitigating factors a Respondent’s rehabilitative conduct or remedial conduct. The second paragraph of each Section, however, states that the Commission “should not consider” as a mitigating factor a Respondent’s rehabilitation or remediation that a government agency, regulatory authority, arbitration decision or [legal] settlement requires that the Respondent make or undertake.

The “should not consider” directives in Section 21 and Section 22 suggest that the Commission would be prohibited from considering as a mitigating factor any legally required rehabilitation or remediation made or undertaken by a Respondent. This contrasts with Section 26 which states “[t]he Commission may consider additional general aggravating and mitigating factors that these sanctioned guidelines do not identify explicitly.”

An issue which potentially could raise confusion among CFP® professionals is the extent to which the Commission would have the authority or discretion under the *Sanction Guidelines* to give a Respondent credit as a mitigating factor (i) for legally required rehabilitation or remediation acts or (ii) for voluntary acts of rehabilitation or remediation.

During the Commission’s review of the facts and circumstances, at what point along the disciplinary spectrum would the Commission distinguish legally required acts which would not be mitigating factors versus voluntary acts that would provide a basis for mitigation? At what point does one end and the other begin?

¹ See, <https://www.cfp.net/ethics/enforcement/proposed-revisions-to-sanction-guidelines-and-fitness-standards>, <https://survey.alchemer.com/s3/7492331/2023-Public-Comment-Survey-CFP> and <https://www.youtube.com/watch?v=81d11R3Ge0Y>.

From a practical business perspective, the “should not consider” language in Section 21 and Section 22 may result in overly harsh disciplinary outcomes in light of the Commission’s discretion under Section 26 to consider other aggravating and mitigating factors generally. For these reasons, NAPFA requests that CFP Board weigh these considerations and clarify (i) whether the Commission “should not consider” or “may consider” the rehabilitation and remediation categories stated in Section 21 and Section 22, and (ii) whether the “should not consider” directive in Section 21 and Section 22 would conflict with the Commission’s discretion under Section 26.

Fitness Standards

To assess a financial planning professional’s ethical fitness to hold the CFP® certification, CFP Board evaluates information that may reveal an Applicant’s prior misconduct.

Under the proposed revised *Fitness Standards*, an Applicant is deemed ethically fit for CFP® certification provided the Applicant has not engaged in (i) conduct that presents a permanent absolute barrier to certification (“Conduct that Presents an Absolute Bar”), (ii) conduct that renders the Applicant currently ineligible for certification (“Conduct that Renders an Applicant Currently Ineligible”) or (iii) conduct that the Commission determines presents a bar to certification.

The proposed revised *Fitness Standards*, if adopted, would clearly establish that a CFP® professional’s ethical obligations extend beyond professional conduct and include both criminal conduct and instances of personal financial impropriety.

Section I.A and Section I.B would expand the categories of conduct that would result in an Absolute Bar or in Currently Ineligible status. These proposed revisions are clear and reflect personal and professional conduct that is inconsistent with what the public expects from trusted financial advisors, especially those holding the CFP® certification.

Section I.C would expand and clarify the categories of Applicant conduct that would require an Applicant to file a Petition for Fitness. These would now include more specific categories of professional discipline, criminal convictions, financial impropriety, etc.

Section II outlines clear and workable standards under which the Commission would evaluate a Petition for Fitness from an Applicant or from a CFP professional. Most importantly, Section II makes clear not only the procedure the Commission would follow to evaluate a Fitness Petition, but also clearly identifies each Sanction Determination applicable to a Fitness Determination.

Conclusion

CFP Board’s proposed revised *Sanction Guidelines* and *Fitness Standards* are a welcome clarification of, and improvement on, CFP Board conduct standards and are consistent with both the fiduciary standard and with NAPFA’s Fiduciary Oath. NAPFA applauds this important work of CFP Board’s Commission on Sanctions and Fitness during recent years to develop recommendations to modify the *Sanction Guidelines* and to more closely align the *Fitness Standards* with the *Sanction Guidelines*. Should you have questions, please contact me at your convenience.



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