

GUIDELINES FOR CONFLICTS OF INTEREST IN THE PERFORMANCE OF FEDERAL TAX SERVICES

MAY 2015

NOTICE TO READERS

This practice guide is designed as educational reference material for American Institute of Certified Public Accountants (AICPA) members who provide tax services as defined in the Statements on Standards for Tax Services (SSTS) Nos. 1-7 issued by the AICPA, and Treasury Department Circular 230, Reg. Section 10.2(5) (31 C.F.R., Subtitle A, Part 10, Section 10.2(5)). All references to Treasury Department Circular 230 are hereafter referenced as Circular 230. This report does not establish professional standards or preferred practices. Because the services described in this practice guide are tax services, the standards in the SSTS, and other applicable professional standards as set forth herein, should be applied as appropriate.

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ACKNOWLEDGEMENTS

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Introduction

The purpose of this document is to provide guidance to AICPA members who render tax services with regard to conflicts of interest.

The rule set forth in Circular 230 is not identical to that set forth in the AICPA standards. A member must consider both standards when considering whether there is a conflict of interest and, if so, how to resolve it.

Other related rules not discussed in this document include the Public Company Accounting Oversight Board's (PCAOB) rules concerning independence and State Boards of Accountancy rules relating to independence and conflicts of interest. While this document does not address these rules, members must also take into account any that are applicable to them.

Circular 230 applies only to practice before the IRS as defined in Circular 230, Section 10.3, and therefore is generally not applicable where a member provides services related to state, local or international taxes. The AICPA standards apply equally to Federal, state, local and international tax matters. Accordingly, the AICPA standards may be applicable to services for which the Circular 230 standard does not apply. This document generally considers situations where the services provided by a member are governed both by the AICPA standards and Circular 230.

Rules and Standards on Conflicts of Interest

The AICPA Code of Professional Conduct includes the following rule: "In the performance of any professional service, a member shall maintain objectivity and integrity, shall be free of conflicts of interest, and not knowingly misrepresent facts or subordinate his or her judgment to others. ET section 1.100.001.01.

ET section 1.110.010 Conflicts of Interest for Members in Public Practice provides further explanation regarding conflicts of interest:

- .01 A member or his or her firm may be faced with a conflict of interest when performing a professional service. In determining whether a professional service, relationship or matter would result in a conflict of interest, a member should use professional judgment, taking into account whether a reasonable and informed third party who is aware of the relevant information would conclude that a conflict of interest exists.
- .02 A conflict of interest creates adverse interest and self-interest threats to the member's compliance with the "Integrity and Objectivity Rule" [1.100.001]. For example, threats may be created when

- a. the member or the member's firm provides a professional service related to a particular matter involving two or more clients whose interests with respect to that matter are in conflict, or
- b. the interests of the member or the member's firm with respect to a particular matter and the interests of the client for whom the member or the member's firm provides a professional service related to that matter are in conflict.

Circular 230, Section 10.29, "Conflicting Interests," generally prohibits a Tax Practitioner from representing a client before the Internal Revenue Service (IRS) if the representation involves a conflict of interest. It defines two separate situations in which a conflict of interest would exist: (i) the representation of one client will be directly adverse to another client; or (ii) there is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by personal interest of the practitioner.

Circular 230, Section 10.37 provides that reliance by one member on the advice of another tax professional is not reasonable if the member knows or should know that the other advisor has a conflict of interest.

If a conflict of interest is identified, both the AICPA rules and Circular 230 provides for further analysis as to whether the conflict would prevent the member from providing services

ET 1.110.010.09-12 provides that when a conflict of interest is identified, the member should evaluate the significance of the threat created by the conflict of interest to determine if the threat to integrity or objectivity is acceptable, in light of any safeguards that that can eliminate or reduce the threat. The significance of an identified threat is determined by the significance of the interests or relationships and the connection of the professional service and the matter on which the parties' interests are in conflict. Safeguards include such procedures as using separate engagement teams with clear policies and procedures for maintaining confidentiality and instituting additional, independent reviews. If the member determines that the threat, in light of any safeguards, is at a level at which a reasonable and informed third party, aware of the relevant information, would be expected to concluded that the member's integrity and objectivity is not compromised, then the member should disclose the nature of the conflict of interest to the appropriate parties and obtain their consent to perform the service. Otherwise, the member should decline the service.

Circular 230 Section 10.37 provides that if the Tax Practitioner reasonably believes that he or she will be able to provide competent and diligent representation to each affected client and the representation is not prohibited by law, then the Tax Practitioner may request that the affected clients waive the conflict of interest. Each affected client must provide written confirmation of informed consent no later than 30 days after the Tax

Practitioner becomes aware of the conflict. The Tax Practitioner must retain copies of the written consents for at least 36 months after the representation has been completed.

The AICPA and Circular 230 rules differ in several ways. First, the AICPA standard is closely related to rules relating to independence and references the perception of a client, employer, or other appropriate party of the member's impaired objectivity. The Circular 230 rule makes no reference to the perception of others. Second, the AICPA standard expressly encompasses client relationships with other members of the same firm, while the Circular 230 rule does not. Third, both the AICPA standard and the Circular 230 rule contemplate the waiver of conflicts by affected parties, but only the Circular 230 rule requires a waiver to be in writing.

As noted above, members must consider both the AICPA standard and the Circular 230 rule when determining whether a conflict of interest does or could exist. Thus, the member must consider whether:

- One client's interests are directly adverse to another client's interests;
- There is a significant risk that the services to a client would be materially limited by the responsibility to provide services to another client (either current or former), to another person, or by the interest of the member or the member's firm; or
- A client or other appropriate party could view the member's objectivity to be impaired because of the client relationships that each holds with the member or the member's firm.

If any one of the above tests is true, there are four additional criteria that must be met before the member may provide the services:

- The member reasonably believes that he or she can provide the service competently, and diligently;
- A reasonable and informed third party, knowing the threats and safeguards, would be expected to conclude that the member's integrity and objectivity is not compromised;
- The member is not prohibited by law from providing the service;¹ and
- All affected parties consent to waive the actual or potential conflict of interest. Where the conflict is of the type indicated in Circular 230 (items i or ii, above), the consent must be provided in writing pursuant to Circular 230 Section 10.29(b). (Three samples of conflict waivers are included as Appendix B, C, and D).

¹ This document does not discuss circumstances where the law prohibits a Practitioner from providing services.

Identifying an Existing or Potential Conflict of Interest

A member firm should adopt reasonable procedures, appropriate for the size and type of firm and its practice, to determine whether a potential or actual conflict of interest exists or is likely to develop. Ignorance caused by a failure to institute such procedures may not excuse the member's violation of Circular 230 Section 10.29. Moreover, Circular 230, Section 10.33(b) and Section 10.36 establish responsibility for tax leaders within a firm to establish procedures that ensure members of the firm comply with rules.

It seems that, at a minimum, each firm should have in place a process by which a member can determine whether services sought by a potential client may be considered adverse to the interests of a current or former client, or whether another professional within the member's firm has a personal conflict with the proposed client or service. Larger firms will likely require more robust and comprehensive systems to manage conflicts and independence checks.

In some cases, an existing or potential conflict may be identified before the engagement is undertaken. In that case, the engagement should be declined unless the member obtains the appropriate informed consent of each affected client.

Example 1: Your client, Corporation A informs you that it is considering acquiring Corporation T, and A asks you to perform due diligence. Corporation T is also your client. You must decline the due diligence engagement unless you believe that you can perform the due diligence service objectively, competently, and diligently, and that both A and T are properly informed of the potential conflict and provide written waivers of the conflict.

In other cases, a conflict may arise during an engagement from unforeseeable developments, such as changes in the client's corporate or organization affiliations or a conflict between spouses for whom the practitioner has prepared a joint return. In those cases, the engagement can continue only after the member has obtained the appropriate informed consent of all affected clients.

Example 2: You have provided services to individual B and his wholly-owned corporation C for several years. B engaged you to advise him on the tax effect of the sale of the stock of C to a private equity group. Midway through the transaction, the management group of C approaches B with an offer to structure the sale of C to an Employee Stock Ownership Plan. The management group approaches you with a request to provide assistance with the structuring and tax implications of the sale. The representation of the management group would be in conflict with the representation of B and C. You must decline the representation of the management group unless you believe that you can perform your service to B and C, as well as the management group, competently and diligently and that a third-party would not be expected to conclude that your integrity and objectivity is compromised. Further, B, C and

the management group must be informed of the conflict and provide written waivers of the conflict.

Example 3: Client A has engaged you to represent her in the Internal Revenue Service examination of A's income tax returns for 20x0 and 20x1 – returns that you prepared. During the course of the examination, the IRS agent discovers an apparent error in the returns that, if proven, would be a serious violation of Internal Revenue regulations. The error is such that it may give rise to an assessment of a preparer penalty for disregard of the regulations. You must suspend representation of the client, and explain the potential conflict as well as the effects if representation is continued. The client may choose to engage another representative to continue the examination or may opt to waive the conflict. You may continue representation only if you believe that you can represent Client A competently and diligently and that a third-party would not be expected to conclude that your integrity and objectivity is compromised. Further, Client A must provide her informed, written consent.

A conflict of interest does not arise merely from the fact that a member is paid from a source other than the client, provided that the arrangement does not compromise the member's integrity, objectivity and independent judgment to the client. If acceptance of the payment from any other source presents a significant risk that the member's representation of the client will be materially limited by the member's own interest in accommodating the payer, or by the member's responsibilities to a payer who is also a client, then the member must comply with the requirement of Circular 230 Section 10.29(b) relating to written consent to waiver of conflict before accepting the representation. The member's obligation of confidentiality is to the client, and not to the party who is paying for the service. It may be prudent for the member to ensure that the parties understand the member's obligation before the engagement is undertaken.

Conflicts between current clients

For purposes of this discussion conflicts among current clients are categorized into three broad categories: transactional conflicts, relational conflicts, and adversarial conflicts.

Transactional conflicts

A potential conflict of interest may occur when a member or firm is asked to provide services to two or more clients who are directly or indirectly involved with the same transaction ("transactional conflict"). For example, a member may be asked to represent the seller of a business, "S", that is negotiating with a buyer, "B", that is also a client of the member or member's firm. As indicated in paragraph 11, above, the member cannot undertake the engagement without obtaining informed consent if any of the following is true:

- "S's" interests are directly adverse to "B's" interests;
- There is a significant risk that services to either "S" or "B" would be materially limited by the responsibility to provide services to the other; or

- “S,” “B,” or other appropriate party could view the member’s objectivity to be impaired because of the client relationships that each holds with the member or the member’s firm.

In addition, the member may seek consent from “S” and “B” only if the member believes that the service can be provided competently and diligently and that a third-party would not be expected to conclude that your integrity and objectivity is compromised. Consent by “S” and “B” must be provided in writing pursuant to Circular 230 Section 10.29(b) if either items (i) or (ii), above, are true. A sample conflict waiver is included as Appendix B.

Other potential sources of transactional conflicts among current clients are listed below. In each case an analysis similar to that described in the preceding paragraph must be undertaken.

- The work for a client involves the review of work previously performed by the member or another member in the same firm.
- Client “A” requests the member to perform due diligence on a target company that it is considering acquiring. The target company is also a client of the member or the member’s firm.

Example 4: Client F, a private equity group, request you to perform due diligence on Company T, a business that F is considering to acquire. T is currently not your client, but in prior years you perform services for T. Those services would now be relevant to the due diligence review. Circular 230 §10.29 applies to both current and former clients. Because the due diligence service for Client F would involve member reviewing the work that member did for Company T, you must decline the due diligence engagement unless you believe that you can perform the work competently and diligently and that a third-party would not be expected to conclude that your integrity and objectivity is compromised. In addition, both F and T provide informed, written consent.

Example 5: Your long-standing client, Adam, has informed you that he is planning to enter into a new business venture with another individual, Bob, and has requested your advice with regard to setting up a new partnership. In the process of performing a conflict check, you learn that Bob has already retained a tax professional within your firm for advice with respect to entering into the new venture with Adam. Although Adam and Bob have a common interest in setting up an effective and efficient business arrangement, they may also have interests and concerns that diverge or that they wish to keep confidential from the other during the setup. You should not agree to assist Adam unless you believe that services to both Adam and Bob can be provided competently and diligently and that a third-party would not be expected to conclude that your integrity and objectivity is compromised. In addition, both Adam and Bob waived the conflict and have consented to the engagement.

Relational conflicts

Conflicts may also arise because of relationships that exist among clients (“relational conflicts”). For example, a member may have prepared a joint return for a husband and wife in past years, but the couple filed for divorce during the current tax year. To the extent that the divorce is, or may become, adversarial, the husband, the wife or both could view the member’s objectivity to be impaired because of the client relationship that the member holds with the other. It is also possible that the manner in which an item is reported on the tax return of one spouse may be directly adverse to the interests of the other spouse. Thus, it seems likely that a member, or members within the same firm, could not prepare returns for spouses undergoing an adversarial separation or divorce without obtaining written consents from both spouses.

Below are other situations where relational conflicts may arise:

- Client “A” requests advice from the member with respect to setting up a joint venture. The other Joint Venture partner, “B”, is also a client of the member or the member’s firm.
- Client “A” requests the member to provide tax advice to “A” in a bankruptcy proceeding where “B”, also a client of the member or the member’s firm, is a creditor in the bankruptcy.
- Client “A” requests the member to provide tax advice with respect to stock options granted to employees of “A” and “B,” an employee of “A” also requests the member to provide advice to “B.”

Example 6: You have prepared a joint federal income tax return for a married couple for several years without incident. This year, however, as you are in the process of preparing the return, the wife separately informs you that she expects to leave her husband before the end of the calendar year, asking you not to tell her husband and whether there is something she should be doing from a tax perspective. In this situation, you may be able to objectively complete the joint return for the past year, but you should decline providing advice to the wife without the husband’s consent because such advice could be perceived as being adverse to the husband’s interests.

Example 7: You have prepared a fiduciary income tax return for the Blackacre Trust and the individual income tax return for Thomas Cromwell, an income beneficiary of the Blackacre Trust. Mary Tudor is the sole principal/remainderman beneficiary of the trust; you have never provided tax services to Mary Tudor. The Blackacre Trust instrument gives the trustee discretion regarding whether to allocate trustee fees as a charge against income or principal. The trustee asks your advice as to whether the trustee should charge trustee fees to income or principal. If the fee is charged to income, your client Cromwell will be adversely impacted; if charged to principal, Tudor will be adversely impacted. A conflict of interest exists because your relationship with Cromwell could be perceived as impacting your

objectivity. In this case, Tudor is an affected party, and consent from her, in addition to Cromwell and the trustee, is required if you decide to proceed.

Adversarial conflicts

A third area where conflicts may arise is the area of controversy where clients of the same member or member's firm are adversaries ("adversarial conflicts"). Consider the situation where the IRS is challenging an item on a joint return for a husband and wife. One spouse may have a defense to the detriment of the other spouse, such as the innocent spouse defense. Where one spouse has an innocent spouse defense, it seems that it may be impossible for a single member to represent both spouses competently and diligently. In that case a member could not represent the interests of both even if the spouses were to provide written consents.

The following are other situations where adversarial conflicts may arise:

- A member is asked to serve as an expert witness in litigation where the opposing party is a client of the member or the member's firm.
- Client A asks member to provide advice on an issue that Client A may use in a claim against Client B, a client of the member or the member's firm.

It seems unlikely that a member could properly advise multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but where the clients' interests are generally aligned, common representation by a member could be permissible. For example, helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest, or assisting with a property distribution in settlement of an estate are situations where the focus is on developing the parties' mutual interests.

Before accepting an engagement to provide representation to multiple parties, the member must carefully evaluate whether the relationship with one or more of the parties could impair the member's integrity or objectivity. The member must ensure that all affected parties have waived the conflict and consented to the arrangement. It would also be prudent for the member and the prospective parties to consider the consequences if, during the course of the engagement, the clients' interests diverge such that the member can no longer provide objective, competent or diligent service, or one or more of the clients withdraw consent to waiving the conflict. When clients' interests diverge in this manner, the member generally should terminate the engagement with all of the affected parties.

In many situations where a conflict or potential conflict arises among clients (whether current or former) the member must consider his or her duty of confidentiality to each client. Where a conflict arises among clients of different practitioners within the same firm, confidentiality may be preserved and clients may be more inclined to provide consent where the engagement teams for the separate client are physically separated one from other, information with respect to one client

is physically and electronically separated from information with respect to the other client, and there is a commitment to keep information confidential within the respective engagement teams (see ET 1.110.010.10).

Conflicts with former clients

A member's responsibility not to disclose confidential client information without the specific consent of the client, as set forth in ET 1.700.001, continues after the engagement is over and after the taxpayer is no longer a client. This duty of confidentiality to former clients may give rise to a conflict of interest with new services. For example, consider the situation where a member prepared the tax return for Client A's business two year ago, but has not provided services to Client A since that time. If the spouse of Client A were to approach the member today to assist with a divorce proceeding against Client A, the member must consider the potential for, or appearance of, a conflict. As the tax return preparer for Client's A business, the member may have access to, or knowledge of, information that could be used to benefit the spouse in the divorce proceedings, but it would violate the member's duty of confidentiality to Client A to make use of the information. In such a situation, the member should not undertake the engagement for Client A's spouse unless he or she believes that information he or she possesses in connection with the work for Client A is not relevant to the services requested by Client A's spouse, and both Client A and Client A's spouse provide written consents pursuant to Circular 230 Section 10.29(b). A sample conflict waiver is included as Appendix C.

A member's duty to protect confidentiality of a former client continues after that member moves from one firm to another. Continuing the example in the previous paragraph, suppose that the member served as part of a tax preparation team with Firm X to prepare the business return for Client A. Last year, member move from Firm X to Firm Y. Client A's spouse has approached Firm Y to assist with the divorce proceedings. Firm Y must consider the work that the member did while at Firm X before it can accept the engagement with Client A's spouse.

Conflicts with member's own interests

In addition to conflicts with current or former clients, a member's duties of integrity and objectivity may be materially limited by the member's own interests. For example, a client may request that a member assist it with an IRS exam of a tax return prepared by that member. Typically, at the outset of an IRS exam, the client's and the member's interests are aligned. Suppose, however, that an issue arises in the exam such that the member's work in preparing the return under exam is called into question. The member's interest in defending his or her work may conflict with obtaining the best outcome for the client. If the diverging interests are such that the member can no longer competently and diligently represent the client in the exam or a third-party could be expected to conclude that the member's integrity and objectivity is compromised, the member must withdraw from the engagement.

The following are other situations which could give rise to a conflict of interest with the member's own interests:

- A member receives a commission or fee in connection with a product or service.
- A member, also properly registered as an investment adviser, is paid an investment advisory fee for managing a client's investment account.
- A member, also properly licensed as an insurance intermediary, is paid a commission for placing a life insurance policy on the life of a client.
- A member, also a properly licensed FINRA registered representative, is paid a commission for placing a client's investment in an IRA or a Section 529 plan.
- A client has invited the member to consider employment with the client, or the member has made inquiries of employment possibility with the client.
- A member has a financial interest in the client or the client's business, has made a loan to the client, serves on its board of directors, or has some other business relationship or involvement with the client.
- The company that employs the member's spouse seeks to engage the member.
- A member receives a referral fee in cash or other tangible benefit for referring a client to another service provider.

Note that ET section 1.520.001 prohibits such commissions and fees in certain circumstances, and section 1.520.001.03 requires disclosure of commissions and fees where permitted. Some states (e.g., New Jersey), also require the written consent from the client, which could then serve as the written consent required by Circular 230. Various states differ as it relates to (a) whether a commission may be taken at all (see California); (b) the extent to which disclosure must be made; and (c) the timing of the required disclosure (i.e., before the commission is received). The sample waiver contained in Appendix D may contain more detail than required for some states and insufficient detail required by others.

Resolving the Conflict of Interest

Resolution of a conflict of interest, actual or potential, requires the member to first decide whether he or she believes that he or she can perform the service competently and diligently. The member must also consider whether a reasonable and informed third party, knowing the threats and safeguards, would be expected to conclude that the member's integrity and objectivity is not compromised.

If the member has identified a conflict and has determined that the tests in the preceding paragraph have been met, the affected clients must be informed of the nature of the conflict and provide advance consent to having the services performed despite the actual or possible conflict of interest. Three samples of conflict waivers are included as Appendix B, C, and D.

The consent must be “confirmed in writing by each affected client, at the time the existence of the conflict of interest is known by the practitioner if there is an actual conflict or a substantial risk that a service may be materially limited by the member’s responsibilities to another client (“Circular 230 conflict,” see paragraph #5 above),” The written confirmation of the consent must be provided no later than 30 days after the affected client provides informed consent. While not defined in the regulation, consent is generally considered to be informed consent when the affected client is aware of the relevant circumstances and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. It is a good practice to recommend that affected clients seek independent counsel or advice with respect to any questions concerning the waiver.

Circular 230 conflict rules are similar to the Model Rules of the American Bar Association (ABA). ABA Rule 1.0(e) defines “Informed Consent” as the agreement by a person to a proposed course of conduct after the lawyer (i.e. practitioner) has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. Comment 18 to Rule 1.7 of the ABA Model Rules further provides that informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. When dealing with a multiple client conflict care must be exercised so that there is no breach of confidentiality when explaining the conflict. In many cases it may be advisable for a member to suggest that the affected client(s) seek legal counsel so that any questions regarding the informed consent are adequately explained.

Circular 230 Section 10.29(c) requires that copies of the written consents must be retained for at least thirty-six months from the date of conclusion of the representation of the affected clients. The written consents must be provided to any officer or employee of the IRS upon request.

There is no requirement to obtain written confirmation of the consent from affected clients where there is no actual conflict and the service would not be materially limited by the member’s responsibilities to another client, but the service could be viewed as impairing the member’s objectivity (“AICPA conflict,” see paragraph #4 above). Members should consider, however, whether and how to document such non-written consent in order to avoid future disputes.

A client who has given consent and waived a conflict may revoke the consent and, like any other client, may terminate the member’s representation at any time. The termination of one client relationship may not terminate the conflict if the conflict involves prior services to the former client or a conflict with the member’s own interest. Where one client has revoked consent in connection with a situation with multiple affected clients, the member may need to withdraw from providing services to all the affected clients because he or she no longer has the consents required under the rules and standards.

Appendix A – Side-by-Side Comparison of AICPA and Circular 230 Conflict of Interest Rules

| AICPA | Circular 230 |
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| <p>1.110.010 Conflicts of Interest for Members in Public Practice</p> <p>.01 A <i>member</i> or his or her <i>firm</i> may be faced with a conflict of interest when performing a <i>professional service</i>.</p> <p>In determining whether a <i>professional service</i>, relationship or matter would result in a conflict of interest, a <i>member</i> should use professional judgment, taking into account whether a reasonable and informed third party who is aware of the relevant information would conclude that a conflict of interest exists.</p> <p>.02 A conflict of interest creates adverse interest and self-interest <i>threats</i> to the <i>member's</i> compliance with the "Integrity and Objectivity Rule" [1.100.001]. For example, <i>threats</i> may be created when:</p> <p>a. the <i>member</i> or the <i>member's firm</i> provides a <i>professional service</i> related to a particular matter involving two or more <i>clients</i> whose interests with respect to that matter are in conflict, or</p> <p>b. the interests of the <i>member</i> or the <i>member's firm</i> with respect to a particular matter and the interests of the <i>client</i> for whom the <i>member</i> or the <i>member's firm</i> provides a <i>professional service</i> related to that matter are in conflict.</p> | <p>§ 10.29 Conflicting interests.</p> <p>(a) Except as provided by paragraph (b) of this section, a practitioner shall not represent a client before the Internal Revenue Service if the representation involves a conflict of interest. A conflict of interest exists if —</p> <ol style="list-style-type: none"> (1) The representation of one client will be directly adverse to another client; or (2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner. <p>(b) Notwithstanding the existence of a conflict of interest under paragraph (a) of this section, the practitioner may represent a client if —</p> <ol style="list-style-type: none"> (1) The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client; (2) The representation is not prohibited by law; and each affected client waives the conflict of interest and gives informed consent, confirmed in writing by each affected client, at the time the existence of the conflict of interest is known by the practitioner. The confirmation may be made within a reasonable period of time after the informed consent, but in no event later than 30 days. |

Disclosure of a Conflict of Interest and Consent

.12 When a conflict of interest exists, the *member* should disclose the nature of the conflict of interest to *clients* and other appropriate parties affected by the conflict and obtain their consent to perform the *professional services*. The member should disclose the conflict of interest and obtain consent even if the *member* concludes that *threats* are at an *acceptable level*.

.18 When practicing before the IRS or other taxing authorities, *members* should ensure compliance with any requirements that are more restrictive. For example, Treasury Department Circular No. 230, *Regulations Governing Practice before the Internal Revenue Service*, provides more restrictive requirements concerning written consent by the *client* when a conflict of interest exists.

(c) Copies of the written consents must be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the affected clients, and the written consents must be provided to any officer or employee of the Internal Revenue Service on request.

(d) *Effective/applicability date*. This section is applicable on September 26, 2007.

Appendix B – Sample Conflict Waiver between Current Clients

[Address and salutation]

You have requested that we assist you in [describe service and transaction]. Our firm has also been requested to assist [other client] with [describe service and transaction]. Because there is a potential that your interests could differ from [other client], our firm could have a conflict of interest in providing both requested services. [Provide further explanation of the conflict, as appropriate.]

After careful consideration, we believe that we can provide both services objectively, competently, and diligently by assigning the services to separate persons to be performed. Your services will be performed by personnel who do not perform any services to [other client], and personnel performing services to [other client] will not perform any services for you. The persons performing these services have been instructed, and have agreed, not to share information or discuss their respective projects. Confidential information obtained in connection with your service will not, without your prior permission, be disclosed to [other client] or anyone providing services to [other client].

If you wish us to provide the requested service under the described protocols, please return the executed acknowledgment below. You are free to seek independent advice in determining whether to execute the acknowledgement, and you may contact me with questions as to contents herein.

[Member signature]

ACKNOWLEDGEMENT AND AGREEMENT:

I acknowledge the relationships described above. I consent to you continuing to provide the services indicated pursuant to the described protocols, and waive any potential or existing conflicts of interest.

[Client signature and date]

Appendix C – Sample Conflict Waiver with Former Client

[Address, date, and salutation]

Mr. N has asked me to assist him with the preparation of his 20xx federal income tax return. (“Requested Service”) In prior years, I assisted both of you with preparing your joint federal income tax return. My earlier assistance with your joint tax return creates a risk that my professional practice responsibilities to each of you could potentially be materially limited if I provide the Requested Service.

I will not provide the Requested Services without both of your prior written consents. You should be informed of the following:

- Any information obtained during my prior services to both of you would remain confidential among both of you and would require written consents from both of you to be shared with any third party;
- If you both consent, in writing, to me continuing to provide the Requested Service to Mr. N, then all future communications and advice to Mr. N will be confidential as to him and will not be provided to Mrs. N.

In accordance with applicable professional standards, I ask that each of you execute and return this letter in order to confirm that:

1. you are aware the services described above were provided to both of you;
2. you have had the opportunity to discuss the scope of Requested Services with me;
3. you acknowledge and consent that the Requested Services in connection with the Matter will not be the source of a claim against me with regard to a conflict of interest, real or perceived;
4. you waive any claim against me with regard to any disclosure, to either of you, of confidential information stemming from the previous services provided to both of you, and
5. in connection with the future Requested Services anticipated to be provided to only Mr. N, you both understand that confidentiality protections will only extend to him.

To the extent that you have questions whether to execute this waiver, I recommend that you seek independent advice. You may contact me with questions as to this process generally or as to facts described above.

[Member signature]

ACKNOWLEDGEMENT AND AGREEMENT:

[Mr. N signature and date]

[Mrs. N signature and date]

Appendix D – Sample Conflict Waiver Regarding Personal Interest

[Address and salutation]

You have requested that I provide you with the sale of a [Sec. 529 Qualified Educational Savings Plan]. I have previously provided the following services to you: individual income tax return preparation and individual income tax planning. These services were subject to certain professional standards, and a conflict of interest could arise if I advised you regarding the tax advantages of a [Sec. 529 plan], and you later purchase a [Sec. 529 plan] from me, which would result in my earning a brokerage commission on the sale of this investment product. This conflict of interest may be material.

You should be informed that the gross commissions earned on the sale of this type of investment product may range from [0% to 5.75%] and that under the arrangements with my broker-dealer, [ABC Securities], I may receive [90%] of the gross commissions. Therefore, I am not only billing you for the tax return compliance and tax planning advice I'm giving you to purchase a [Sec. 529 plan to pay for your son's future education], I am also receiving a commission by assisting you with the purchase of this security. There are a number of different savings arrangements and a number of different [Sec. 529 plans] available that would not provide me with any commissions, but you are consenting to my receiving a commission for implementing the tax advice I'm giving you to use this particular [Sec. 529 plan]. Please acknowledge your understanding and agreement by returning the executed acknowledgment below. You are free to seek independent advice in determining whether to execute the acknowledgement. You may contact me with questions as to facts described above.

[Member signature]

ACKNOWLEDGEMENT AND AGREEMENT:

I acknowledge the relationships described above, and waive any potential or existing conflicts of interest.

[Client signature and date]