

The National Association of
Certified Valuators and Analysts

ETHICS OVERSIGHT BOARD

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**POLICIES & PROCEDURES
MANUAL**

March 1, 2009



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The Appendices (Sample Letters) are available to the Ethics Oversight Board only, and as such, are separate from this document.

INTRODUCTION

The Ethics Oversight Board (EOB) of the National Association of Certified Valuators and Analysts (NACVA) operates under the direction and discretion of NACVA's Executive Advisory Board (EAB), and is charged with the monitoring of its membership with regards to ethical and professional standards. The EOB's responsibilities include educating, monitoring and enforcing compliance of NACVA's members. The EOB's duties include recommending standards, creating awareness and understanding of NACVA standards, monitoring compliance; and when necessary investigating and determining whether a member or members have violated NACVA standards.

All Professional and Ethical Standards are set by the Standards Committee. They in turn, report to the Ethics Oversight Board, which has the overall responsibility of monitoring NACVA members.

The EOB accomplishes its responsibilities in the following ways:

Education—The EOB publishes articles regarding ethical and professional standards in either or both *The Value Examiner*[®] and the *Association News*. The EOB will respond by itself or through the Standards Committee to inquiries of members regarding the interpretation of ethical and professional standards. The EOB may prepare and distribute special publications regarding ethical and professional standards.

Standards Setting—The Standards Committee reviews the trends in the industry and responds to those trends by adding, deleting and modifying ethical and professional standards to keep NACVA and its members at the leading edge of the industry. The Standards Committee submits all proposed changes to the EOB for review and approval.

Standards Monitoring—The EOB reviews all information brought to its attention and, if warranted, will open an investigation. After a full review and discussion, the EOB will make a determination as to the final disposition of the matter.

The process and letters provided herein are to be used for all investigations. Understanding that situations arise that require flexibility, the sample letters may be modified to better fit the circumstances in the individual situation.

Note: The following manual is to be used by NACVA's Ethics Oversight Board for the purpose of monitoring its members and enforcing its Professional Standards, and may not be copied or reprinted without the express written consent of NACVA.

The Standards Monitoring Process

The Ethics Oversight Board (EOB) can be made aware of potential breaches of ethical or professional standards in a number of ways. For example, the EOB may receive a complaint from a potentially injured party, a regulatory body, an attorney, another member, etc.

When a Member is reported to NACVA for a potential breach of ethical or professional standards, the Reporting Party will be required to submit a written complaint. The EOB has prepared a “complaint form” which is available to anyone on the NACVA website at www.nacva.com. **Note, all correspondence with the Complainant and/or Respondent shall be sent via “certified mail return receipt requested.”**

1.0 Receipt of Complaint

- 1.1 All complaints will be referred to the Executive Director of NACVA. The Executive Director will assign a number to the complaint using the following convention: (Year)–(Sequential number within year). This number will be known only to the EOB, EAB and the Executive Director.
- 1.2 The Executive Director will research the status of the member’s certification (and recertification) and forward that information with the complaint to the EOB Chairperson. Upon request, the Reporting Party’s name may be removed prior to submission to the EOB.
- 1.3 All cases reported to the EOB must be submitted in writing by the Reporting Party (Complainant). All matters and the names of individuals put before the EOB, or the Executive Advisory Board (EAB), shall be kept in strict confidence. Any references made to a case in the EOB minutes will be referred to by case number only.

2.0 Review of Complaint

- 2.1 The EOB will review the (case number) complaint to determine if there is sufficient information to warrant an investigation. A majority vote is required to proceed.
- 2.2 If the EOB believes there is insufficient information to show that a violation *may* have occurred, the EOB Chairperson may not open a formal investigation and will issue “**Sample Letter #3**” advising the Complainant that his or her complaint has been dismissed due to a lack of documentary support.
- 2.3 If it is determined there is sufficient information to initiate an investigation the complaint will be considered at the next regularly scheduled meeting of the EOB. (However, at the discretion of the Chairperson, an interim meeting may be called for review of and action on the complaint at any time.)
 - 2.3.1 EOB members will identify additional information needed, if any.
 - 2.3.2 The EOB Chairperson will request from the Complainant additional information, if any, that may be necessary by using “**Sample Letter #14**” in the appendix to this manual.
 - 2.3.3 After receiving the additional information and when the EOB determines sufficient information has been gathered, the EOB Chairperson will send the Complainant an acknowledgement using “**Sample Letter #1**” in the appendix to this manual.

3.0 Investigation

3.1 Initial Contact with Respondent.

3.2 If The EOB has determined a violation of NACVA standards may have occurred, a formal investigation will be initiated with the EOB Chairperson selecting an EOB member to be the Investigator of the complaint.

3.2.1 At this time, the EOB Investigator will send “**Sample Letter #2**” to the Respondent, which requests additional information the Investigator requires to perform a complete investigation.

3.2.2 The Respondent and the Respondent’s firm are requested to retain all information pertaining to the engagement and investigation thereof until the investigation is completely closed.

3.2.3 “**Sample Letter #5**” shall be sent to the owner of the member’s firm or owner who has been designated by the firm to be in charge of preserving the records associated with the investigation.

3.3 Deferral of Investigation

3.3.1 All Respondents have the right to request a deferral of the EOB investigation if it is the subject of a similar investigation that is currently being performed by a regulatory body, or it is in litigation. And for the same reasons, either the EOB or EAB may elect to defer the investigation.

3.3.2 If the Respondent requests a deferral, the Respondent must send the EOB, in care of NACVA headquarters, a signed letter via certified mail (return receipt requested) requesting the deferral within 30 days from the date of receiving the opening letter.

3.3.3 If the EOB determines that the request is appropriate or the EOB or EAB elect to defer the case, the deferral shall be granted and acknowledged with “**Sample Letter #4.**”

3.3.4 The EOB Investigator shall request the status of the regulatory investigation or litigation no less than every six months. (However, it should be impressed upon the Respondent that it is his/her responsibility to provide such status updates with or without it being requested.)

3.3.5 Once the proceeding, which was the subject of the deferral, has been completed, the Respondent is required to notify the EOB within 30 days of its completion.

3.4 Monthly Updates

3.4.1 During the period of the investigation, the EOB Investigator shall provide an update on the status of the investigation at each EOB meeting. It is the EOB’s goal to have investigations completed within 90 days from the date of the opening letter or notification that the deferral of the investigation has been lifted.

3.5 Respondent Lack of Cooperation

3.5.1 Should a Member fail to cooperate with the EOB investigation, the Member shall be in violation of NACVA membership requirements.

- 3.5.2 Prior to the EOB finding a failure to cooperate, the EOB investigator shall send the Member “**Sample Letter #6**” notifying the Member of the potential violation and that they have 30 days to cooperate.
- 3.5.3 If the Member continues to be uncooperative, the member shall be subject to disciplinary action up to and including expulsion from NACVA.
- 3.5.4 The EOB shall make a presentation and recommendation for action to the Executive Advisory Board (EAB) who shall have sole discretion to determine the final action.
- 3.5.5 Any member that has his/her membership and/or certification(s) suspended shall remain in suspended status for no less than six months and no more than two years.
- 3.5.6 Any member expelled shall not be permitted to submit an application for membership and certification for a period of no less than two years.

3.6 Interview with Respondent

- 3.6.1 Prior to the completion of the investigation, the Investigator shall offer an interview to the Respondent to notify the Respondent of any questions arising from the investigation and giving the Respondent the opportunity to provide additional information. Notification shall be made to the Member using “**Sample Letters #7 & #8.**”
- 3.6.2 All interviews shall be done via conference call.
- 3.6.3 All interviews shall be conducted with the Investigator and the Chairperson of the EOB.
- 3.6.4 The Respondent shall have the right to bring legal counsel or other witnesses to the interview by giving 15 days or more advanced notice.
- 3.6.5 The Investigator shall notify the EOB and the EAB Chairperson of the respondent’s planning to have legal counsel present and the EAB Chairperson shall determine if he/she or another member of the EAB, and/or NACVA counsel shall participate in the interview.
- 3.6.6 After the interview has been completed or the Respondent has declined the interview, the Investigator shall complete the investigation.

3.7 Full EOB Review

- 3.7.1 Once completed, the Investigator shall present his/her findings and the reasons for the findings at the next regularly scheduled EOB meeting. (The EOB Chairperson may initiate a special meeting outside of the normal EOB schedule should the EOB Chairperson determine such a meeting is necessary to consider the investigation.)
- 3.7.2 If the EOB determines a need for additional information, the EOB shall notify the Investigator and the Investigator shall go back to the appropriate party(s) to gather that information and then make a second presentation to the EOB.

4.0 No Violation Determined

4.1 If after sufficient discussion and a vote of the majority of the EOB members, the EOB determines that **no violation** has occurred, the EOB shall make the following notifications.

4.1.1 To the Member, using “**Sample Letter #10,**” and

4.1.2 To the Complainant using “**Sample Letter #12.**”

5.0 Violation Determined

5.1 Should the EOB determine a **violation** has occurred, the EOB shall determine an appropriate remedial action and shall do so by a vote of the majority of the EOB members.

5.2 Where a valuation report has been submitted, the EOB shall verify the alleged problems with the report.

5.3 The EOB may consider prior violations by the respondent in determining an appropriate remedial action.

5.4 All EOB determinations should be documented in a formal meeting minute similar to the one shown in “**Sample Document #9.**”

5.5 The EOB must present their initial findings and recommendations to the EAB before proceeding.

5.6 All final decisions documented in step 5.5 must be reviewed by the EAB prior to communicating to the reported member. The EAB has the authority to reverse the decision of the EOB or ask that the EOB revisit the issue and vote again.

5.7 If the EAB approves the EOB’s initial findings and recommendation(s), then the Investigator and EOB Chairperson will draft and send a written communication (letter of Required Corrective Action [RCA], **Sample Letter #11**) to the Respondent to:

5.7.1 Inform them that he or she has been found in violation,

5.7.2 Inform the Respondent of the finding(s) of the EOB and why,

5.7.3 Spell out the Required Corrective Action, and

5.7.4 Set-up a conference call to give him or her an opportunity to respond,

5.7.5 Establish a deadline upon which Respondent may appeal the decision and /or RCA.

6.0 Subsequent Member Contact

6.1 Should the Member contact NACVA headquarters regarding the RCA letter, NACVA shall have the option to refer the Member’s request to the (1) Investigator, (2) the EOB Chairperson, (3) or NACVA HQ who shall contact the member via telephone or USPS Certified Mail to explain the results of the investigation, the elements of the RCA letter, and address any other appropriate questions the Member may have, or refer the matter to the EAB.

6.2 If the reported Member presents persuasive information that is deemed worthy of further deliberation, the reported member will be informed that the case will be reconsidered, upon receipt of a formal written appeal is received within thirty days from the date of NACVA’s letter/communication to reconsider.

- 6.3 If the Member does not appeal the findings and requirements under the RCA letter, “**Sample Letter #13**” shall be used to notify the member that the EOB has accepted their compliance with the terms of the RCA letter and the investigation has been closed.

7.0 Appeals

- 7.1 Appeals must be reviewed by the EOB or EAB, as the case may be, within thirty days of receipt.
- 7.2 If the appeal does not persuade a different point-of-view, the EOB or EAB will notify the reported member verbally and in writing.
- 7.3 If the EOB or EAB, as the case may be, determines the reported Member’s appeal is valid and that no violation has occurred, or the RCA should be changed as appealed, the EOB or EAB will:
- 7.3.1 Notify the EAB or EOB, respectively,
 - 7.3.2 Advise the Respondent in writing of the decision, annotate the file, and
 - 7.3.3 Either close the process with no further action or reissue the RCA letter (**Sample Letter #11**) whichever is applicable.

8.0 Document Disposition

- 8.1 Once a complaint file has been closed, all EOB members, other than the Chairperson are to destroy all documents provided to them relating to the complaint. The Chairperson’s complete copy of the file shall be forwarded in a sealed envelope, annotated with only the complaint number, to the Executive Director. The envelope containing the file is not to be opened by NACVA staff. The unopened complaint files will be maintained by the Executive Director in a secure and restricted location, in accordance with NACVA’s Record Retention Policy.

9.0 Required Corrective Action Recommendations

- 9.1 As a general rule, the EOB will recommend the following remedial action (Required Corrective Action) to the reported member (after approval by the EAB):
- 9.1.1 The reported member is required to take and successfully complete NACVA’s *Current Update in Valuations* (CUV) course, or other recommended training such as consulting, or mentoring as agreed to by the Board, within three months from the date of notification (current date). (Other time periods may be established by the Board depending on the availability of the designated course[s]) The eight-hour CUV course is also available in self-study.
 - 9.1.2 If the reported member does not successfully complete the course(s) within the three months, the EOB will recommend to the EAB that the reported member’s membership and/or credential(s) be placed on formal suspension, and given three additional months to successfully complete the course(s) (during which time they may not hold themselves out to the public or anyone as a NACVA member and/or use their NACVA credential, as is applicable). After approval by the EAB, the EOB will notify the reported member within a prescribed timeframe established by the EOB. If, during this period the Respondent “elects to resign” his/her membership he/she would not be eligible to reinstate his/her membership for a period of at least two years.

- 9.1.3 If the reported member has not successfully completed the course(s) after six months from the date of notification the EOB will recommend to the EAB that the reported member's membership and credential be revoked and such action be published in the next issue of the current NACVA general membership publication within a prescribed timeframe established by the EOB.
- 9.2 Members who have had their membership/credential revoked under the above procedures must wait no less than two years before reapplying for NACVA membership and/or a credential, which will then be subject to review, recertification requirements, and recommendation by the EOB.
- 9.3 When a complaint or investigation discloses an instance of misconduct that, in the opinion of the EOB, does not warrant formal action by the EOB but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the certificate holder.
- 9.4 If a situation should arise where a current or former Member has failed to recertify and/or is no longer a Member and they continue to hold themselves out as holding a certification from NACVA, the EOB will:
 - 9.4.1 If the person's membership is still active: promptly notify the Member they must immediately cease holding themselves out as a certificate holder and give them 30 days to do so, including the removal of all advertising, stationary, business cards, etc., that indicate they hold a NACVA certification.
 - 9.4.2 If the Member fails to comply, it shall be deemed an act discreditable and the matter shall be referred to the EAB for action.
 - 9.4.3 If the person is no longer a member or has never been a member, immediately refer the matter to the EAB for action.
- 10.0 EAB Authority
 - 10.1 If during an investigation, the EAB becomes aware of a matter, and based on the facts and circumstances of each matter, the EAB may in its sole discretion, and in the best interest of the complainant(s), respondent(s), and the organization's integrity and objectivity, may advise the EOB, assist with the investigation, and if necessary, complete the investigation.

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