

The National Association of
Certified Valuators and Analysts

ETHICS OVERSIGHT BOARD

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**POLICIES & PROCEDURES
MANUAL**

June 20, 2018



WE ESTABLISH, BUILD, PROTECT AND DEFEND VALUE™

*NACVA's Certified Valuation Analyst® (CVA®) designation is the **only** credential accredited by the National Commission for Certifying Agencies® (NCCA®), the accreditation body of the Institute for Credentialing Excellence™ (ICE™).*

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The Appendices (HQ Sample Letters Referenced) 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 NACVA's members and certificants with regards to ethical and professional standards. The EOB's responsibilities include creating policies for educating, monitoring and enforcing compliance. The EOB's duties include recommending standards, creating awareness and understanding of NACVA's Professional Standards, monitoring compliance; and when necessary investigating and determining whether a member and/or certificant has violated NACVA standards. EOB determinations, including the Board's decision and sanction (if any) will be forwarded to a sub-group of four individuals: two voting representatives from the VCB plus two voting representatives from the EAB. The sub-group is empowered to either ratify the decision of the EOB or require the EOB revisit the matter and vote again. Alternatively, the subgroup can defer the matter to the EAB who can elect to close the case or they can ask the EOB to revisit the matter and vote again. Decisions made by the sub-group may be submitted to NACVA's attorney for approval if the gravity of such decision so warrants. Appeals are directed to the NACVA Board of Directors for a final determination.

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

The EOB accomplishes its responsibilities in the following ways:

Education—The EOB publishes articles regarding ethical and professional standards in the *Association News*. The EOB will respond by itself or through the Standards Board or Committee to inquiries of members and/or certificants 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 Board 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 and certificants at the leading edge of the industry. The Standards Board 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 used by NACVA's Ethics Oversight Board (EOB) for the purpose of monitoring its members and/or certificants 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, certificant, etc.

When a Member and/or Certificant is reported to NACVA for a potential breach of ethical or professional standards, the Reporting Party will be required to submit a written complaint providing an explanation of which standard has been violated and why. The EOB has prepared a “complaint form” which is available to anyone on the NACVA website at <https://www.surveymonkey.com/r/NACVAComplaintForm>.

1.0 Receipt of Complaint

- 1.1 All complaints will be referred to the Executive Director of NACVA. The Executive Director will determine the membership/certification status of the person who is the subject of the complaint (hereafter referred to as the Respondent). If the Respondent is not a NACVA member or a NACVA certificant, the EOB does not have jurisdiction. The Executive Director will handle this matter administratively by preparing and sending a letter to the Complainant acknowledging receipt of his or her complaint, the information provided is complete, indicating the individual is an active member/certificant of NACVA, and the matter will be forwarded to the EOB for their review and consideration. The EOB will be notified of this action but no case will be opened.
- 1.2 If the individual is a NACVA member/certificant, the Executive Director will assign a case 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. The Executive Director will notify the EOB Chair of the case.
- 1.3 The Executive Director will research the status of the certification (and recertification) of the Respondent. This information along with the complaint will be forwarded to the EOB Chair. Upon request, the Reporting Party’s name (hereafter referred to as the Complainant) will be removed prior to submission to the EOB.
- 1.4 All cases reported to the EOB must be submitted in writing by the Complainant. All matters and the names of individuals put before the EOB, the Executive Advisory Board (EAB), or the EAB/VCB sub-group, shall be kept in strict confidence. Any references made to a case in the EOB minutes will be referred to by case number only.
- 1.5 The Chair may assign an EOB member to act as Facilitator for the case until Co-investigators are assigned or the case is closed without an investigation.
- 1.6 The EOB has an obligation to investigate all allegations of potential violation(s) of ethical or professional standards. As such, once a complaint is filed, it cannot be withdrawn by either party.

2.0 Review of Complaint

- 2.1 The EOB will review the complaint to determine if there is sufficient information to warrant an investigation. Vote required.
 - 2.1.1 If the EOB determines there is insufficient information to show that a violation *may* have occurred, the EOB *may* decide to request additional information in

order to have sufficient information to determine if an investigation is warranted. Vote required.

- 2.1.2 If the EOB decides to request the Complainant provide additional information, the Complainant will be given 60 days in which to provide the additional information (HQ Letter #2.1.2).
- 2.2 If the EOB determines there is insufficient information to show that a violation *may* have occurred and the EOB does not request additional information, or the Complainant does not respond within the time allowed, the EOB will advise the Complainant that his or her complaint has been dismissed due to a lack of documentary support. (HQ Letter #2.2)
- 2.3 If it is determined there is sufficient information and the EOB decides to initiate an investigation, the EOB will send the Complainant an acknowledgement (HQ Letter #2.3.1).
 - 2.3.1 If the EOB determines a violation of NACVA's standards *may* have occurred, a formal investigation will be initiated with the EOB Chair selecting two EOB members to serve as Co-investigators of the complaint. Vote Required.
 - 2.3.2 The Respondent is then notified of the complaint and the subsequent investigation and is required to retain all information pertaining to the engagement and investigation thereof until the investigation is closed. The Respondent is also advised which EOB members will be the Co-investigators (HQ Letter # 2.3.3-A).
- 2.4 If it is determined there is sufficient information and the EOB decides not to initiate an investigation, the complaint will be dismissed, the case closed, and the EOB will advise the Complainant that his or her complaint has been dismissed without further investigation. Vote Required (HQ Letter #2.2).

3.0 Investigation

- 3.1 The Co-investigators will determine if the case is subject to litigation or is under investigation by a governmental regulatory body.
- 3.2 Upon written request of the Respondent, the investigation shall be deferred during the pendency of litigation and/or governmental investigation.
 - 3.2.1 In such case, the EOB will explain the obligations of the Respondent imposed by membership/certification that the Respondent must inform the Executive Director within 30 days of the conclusion of the litigation or investigation. The 30-day period begins upon the conclusion of the litigation or investigation and is not extended by the possibility of appeal (HQ Letter #5.2).
 - 3.2.2 A deferred investigation will begin after notification of the end of litigation of governmental investigation. However, the investigation will be deferred again in the event of an appeal of the litigation or governmental investigation except in the case of conviction of any felony or a misdemeanor of moral turpitude. The member's/certificant's obligations, including the obligation to notify the Executive Director within 30 days of the conclusion of the litigation or investigation, will be explained again as they relate to the deferral for appeal (HQ Letter #5.2).
 - 3.2.3 The EOB Co-investigators 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 The Co-investigators may request additional information required to perform an investigation (HQ Letter #3.3).
- 3.4 The Co-investigators shall determine if the Respondent is cooperating with the EOB investigation (See 4.0. Respondent Cooperation).
- 3.5 The Co-investigators shall consult as needed with the Chair and may request assistance from other EOB members as they deem appropriate.
- 3.6 Interviews with Complainant and Respondent
 - 3.6.1 Prior to the completion of the investigation, the investigators shall offer a separate interview to the Complainant and Respondent to ask questions arising from the investigation and giving each the opportunity to provide additional information (Notification will be made to the Respondent using HQ Letter #3.6.1).
 - 3.6.2 All investigating interviews shall be done via conference call and conducted with both Co-investigators participating (if both are unable to participate, request the EOB Chair, or EAB Liaison, or HQ Liaison).
 - 3.6.3 The Complainant and Respondent shall have the right to have legal counsel or other witnesses participate in the interview process by giving reasonable advance notice.
 - 3.6.4 After the interviews have been completed as applicable, and all provided documents have been reviewed, the Co-investigators shall complete the investigation and develop recommendations to be presented to the EOB (See EOB Review 5.0).
 - 3.6.5 During the period of the investigation, the EOB Co-investigators 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.
- 3.7 Findings of the Co-investigators
 - 3.7.1 The Co-investigators will determine if they believe that a violation has occurred. A violation is a departure from the professional standards of the National Association of Certified Valuators and Analysts that is significantly or materially incorrect or improper based on the facts and circumstances.
 - 3.7.2.1 Should the EOB agree with the Co-investigators that a violation has occurred, the Co-investigators shall determine the category of the violation(s):
 - 3.7.2.1.1 Ethics
 - 3.7.2.1.2 Standards—Reporting
 - 3.7.2.1.2.1 For Complaints regarding alleged violations of NACVA's Reporting Standards, the Co-investigators shall utilize the Business Valuation Scenario Experience Scoring Key in determining the level of appropriate disciplinary actions

3.7.2.1.3 Standards—Development

3.7.2.2 The level of appropriate disciplinary actions are based on the following:

3.7.2.2.1 Admonishment—Violation found, although not significant to require remedial action, but significant enough to include in the member's/certificant's record.

3.7.2.2.1.1 As a guide, admonishment is appropriate if under the Reporting Standards, the Respondent's score with the Business Valuation Scenario Experience Scoring Key is between 70 and 75 points (out of a possible 100 points).

3.7.2.2.2 Remediation Required—Violation was significant, although remedial action would appear sufficient. A corrective action plan is imposed based on the facts and circumstances of the violation.

3.7.2.2.2.1 As a guide, remediation is appropriate if under the Reporting Standards, the Respondent's score with the Business Valuation Scenario Experience Scoring Key is between 50 and 69 points (out of a possible 100 points). The EOB may recommend the individual attend an education program/course on the subject of standards, ethics, report writing, etc.

3.7.2.2.3 Suspension—Violation not significant enough to require termination, although significant enough to require suspension.

3.7.2.2.3.1 As a guide, suspension is appropriate if under the Reporting Standards, the Respondent's score with the Business Valuation Scenario Experience Scoring Key is between 30 and 49 points (out of a possible 100 points). The EOB may recommend suspension for a period of time so they can review the individual's next few reports prior to the certificant returning to active status.

3.7.2.2.4 Termination of Credential/Membership—Violation so significant that it materially misrepresented or resulted in a material error in conclusion/opinion or the case was a blatant disregard for NACVA's professional standards.

3.7.2.2.4.1 As a guide, termination is appropriate if under the Reporting Standards, the Respondent's score with the Business Valuation Scenario Experience Scoring Key is below 30 points (out of a possible 100 points).

3.7.2.3 The Co-investigators may also conclude that there is not a violation, but that weaknesses exist warranting a Letter of Concern (HQ Letter #6.8-E), and advising the Respondent to be aware of specific issues.

- 3.7.2 The Co-investigators will set forth their conclusions 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). If the Co-investigators are of the opinion that a violation occurred, they will also normally present a recommended remediation plan in accordance with Section 8 of the EOB Policies and Procedures.
- 3.7.3 If the EOB determines a need for additional information, the EOB shall notify the Co-investigators and the Co-investigators shall go back to the appropriate party(s) to gather that information and then make a second presentation to the EOB.

4.0 Respondent Cooperation

- 4.1 The Co-investigators can determine at any time that the Respondent is not cooperating with the EOB investigation. If the Co-investigators determine that the Respondent is not cooperating, they will make a recommendation to the EOB that the member/certificant be sent a sanction letter. A vote is required for a determination of “Lack of Cooperation.” A Member/Certificant that fails to cooperate with the EOB investigation shall be in violation of NACVA membership/certification requirements.
- 4.2 Upon a finding that the member/certificant is not cooperating with the investigation, the EOB will send the Respondent member/certificant notification of the lack of cooperation and the possibility that the member/certificant will be subject to sanctions and will offer the member/certificant 30 days to resume cooperation (HQ Letter #4.2).
- 4.3 If the Member/Certificant continues to be uncooperative, the member/certificant shall be subject to disciplinary action up to and including expulsion from NACVA and/or revocation of certification.
 - 4.3.1 The EOB shall make a presentation and recommendation for action to a sub-group of four individuals: two voting representatives from the VCB plus two voting representatives from the EAB. The sub-group is empowered to either approve/ratify the recommendation of the EOB or require the EOB revisit the matter and vote again. Alternatively, the subgroup can defer the matter to the EAB who can elect to close the case or they can ask the EOB to revisit the matter and vote again. Decisions made by the sub-group may be submitted to NACVA’s attorney for approval if the gravity of such decision so warrants. .
 - 4.3.2 Any member/certificant who 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.
 - 4.3.3 Any member expelled shall not be permitted to submit an application for membership for a period of no less than two years. Any certificant whose certification is revoked shall not be permitted to submit an application for certification for a period of no less than two years.

5.0 EOB Review

- 5.1 If after sufficient discussion and a vote of the majority of the EOB members, the EOB determines that **no violation** has occurred, the case will be closed and the EOB shall make the following notifications:
 - 5.1.1 To the Member/Certificant, using (HQ Letter #6.3.1), and
 - 5.1.2 To the Complainant using (HQ Letter #6.3.2)
- 5.2 The Co-investigators shall recommend, and the EOB shall consider, the recommended remedial plan of the Co-investigators and determine if it is an appropriate remedial action and shall do so by a vote of the majority of the EOB members. If the recommended remedial plan does not pass the majority vote of the EOB, the EOB can either:
 - 5.2.1 Request the Co-investigators to evaluate additional remedial action plans within specific parameters provided by the EOB and present them at the next EOB meeting for a majority vote of the EOB;
 - 5.2.2 Discuss and determine an appropriate remedial action plan which would require a majority vote of the EOB; or
 - 5.2.3 In egregious cases, recommend suspension or expulsion which would require a majority vote of the EOB.
- 5.3 The EOB may consider prior violations by the Respondent in determining an appropriate remedial action.
- 5.4 Should the EOB determine that a violation has occurred, the EOB must present its findings and recommendations to the EAB/VCB sub-group before proceeding. The sub-group is composed of four individuals: two voting representatives from the VCB plus two voting representatives from the EAB. If one or more violations involve a written report, the finding shall set forth the specific problems with the report. All final decisions must be ratified by the EAB/VCB sub-group prior to communicating to the reported member/certificant. The sub-group is empowered to either ratify the decision of the EOB or require the EOB revisit the matter and vote again. Alternatively, the subgroup can defer the matter to the EAB who can elect to close the case or they can ask the EOB to revisit the matter and vote again. Decisions made by the sub-group may be submitted to NACVA's attorney for approval if the gravity of such decision so warrants. Appeals are directed to the NACVA Board of Directors for a final determination.
- 5.5 If the EAB/VCB sub-group and/or, in the case of an Appeal - NACVA Board of Directors, approve the EOB's initial findings and recommendation(s), then the Co-investigators and EOB Chairperson will draft and send a written communication (letter of Required Corrective Action [RCA]), (HQ Letter #6.8-A, #6.8-B, #6.8-C or #6.8-D) to the Respondent to:
 - 5.5.1 Inform the Respondent that he/she has been found in violation,
 - 5.5.2 Inform the Respondent of the finding(s) of the EOB and why,
 - 5.5.3 Spell out the Required Corrective Action, if any
 - 5.5.4 Advise the Respondent of any admonition (HQ Letter #6.8-A), remediation (HQ Letter #6.8-B), suspension (HQ Letter #6.8-C) or expulsion (HQ Letter #6.8-D);

- 5.5.5 Advise the Respondent that a finding of admonition, remediation, suspension, or expulsion will be posted on NACVA's website for a period of seven (7) years; and
- 5.5.6 Advise Respondent that he/she may appeal the decision and/or RCA within thirty (30) days.
- 5.6 All EOB determinations will be documented in formal meeting minutes.

6.0 Subsequent Member/Certificant Contact

- 6.1 Should the Member/Certificant contact NACVA headquarters regarding the RCA letter, NACVA shall have the option to refer the Member/Certificant's request to the (1) Co-investigators, (2) the EOB Chairperson, (3) or NACVA HQ who shall contact the Member/Certificant 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/Certificant may have, or refer the matter to the EAB.
 - 6.1.1 The Member/Certificant shall be advised that they have thirty (30) days from the date of NACVA's letter/communication to submit a formal written appeal.
- 6.2 If the Member/Certificant does not appeal the findings and requirements under the RCA letter, then upon completion of any required corrective action, HQ Letter #6.10 shall be used to notify the Member/Certificant that the EOB has accepted the Member/Certificant's compliance with the terms of the RCA letter and the investigation has been closed. The Complainant shall be advised of the closing of the investigation and the level of disciplinary action taken (HQ Letter #6.9).

7.0 Appeals

- 7.1 Appeals must be reviewed by the EAB within thirty (30) days of receipt. The EAB may refer the case back to the EOB for reconsideration in which case the EOB will make its further recommendation to the EAB.
- 7.2 The EOB or EAB will notify the Respondent in writing as to disposition of the appeal.
- 7.3 If the EOB or EAB, as the case may be, determines the reported Member's appeal is valid and that either no violation has occurred, or that the original RCA should be changed, the EOB or EAB will:
 - 7.3.1 Notify the EAB or EOB, respectively,
 - 7.3.2 Advise the Respondent and Complainant 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 (HQ Letter #6.8-A, #6.8-B, #6.8-C or #6.8-D) whichever is applicable.

8.0 Required Corrective Action Recommendations

- 8.1 As a general rule, the EOB will recommend the following remedial action (Required Corrective Action) to the reported member/certificant (after approval by the EAB):
 - 8.1.1 The reported Member/Certificant shall be required to take and successfully complete NACVA's *Current Update in Valuations* (CUV) course, and/or other recommended training as agreed to by the Board, within a predetermined period

(which may be extended) from the date of notification. The eight-hour CUV course is also available in self-study and via webinar.

- 8.1.2 If the reported Member/Certificant does not successfully complete the course(s) within the predetermined time period, as may be extended, the EOB will recommend to the EAB/VCB sub-group that the reported individual's membership and/or credential(s) be placed on formal suspension, and the reported Member/Certificant given three additional months to successfully complete the course(s) (during which time the Member/Certificant may not hold himself/herself out to the public or otherwise as a NACVA member and/or use the NACVA credential, as is applicable). After approval by the sub-group, the EOB will notify the reported Member/Certificant. If, during this period the Respondent "elects to resign" his/her membership and/or certification as applicable he/she would not be eligible to reinstate his/her membership/certification for a period of at least two years.
- 8.1.3 If the reported member/certificant has not successfully completed the course(s) after six months from the date of notification, the EOB will recommend to the EAB/VCB sub-group that the reported individual's membership and/or credential be suspended and such action be published in the next issue of the current NACVA general membership publication.
- 8.2 While training should be the primary remedial action in most cases, the EOB may require (subject to EAB/VCB sub-group approval) as an alternative or as additional remedial action that the Respondent submit one or more reports to an approved grader and to continue submissions for as long as necessary to ensure quality.
- 8.3 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 (subject to EAB approval) and sent, by certified mail, to the certificate holder, and no remedial action will be required.
- 8.4 In egregious cases, the EOB may recommend suspension of a Member/Certificant for a period of no less than six months or no more than two years or expulsion of a Member/Certificant, which is subject to EAB/VCB sub-group approval.
- 8.5 If a situation should arise where a current or former Member/Certificant has failed to recertify and/or is no longer a Member/Certificant, and after having been notified of such by NACVA HQ, he/she continues to hold himself/herself out as having either membership or certification from NACVA, the EOB will:
 - 8.5.1 If the person's membership is still active: promptly notify the Member that he/she must immediately cease holding himself/herself out as having a certificate and give them 30 days to do so, including the removal of all advertising, stationary, business cards, websites, directories, social media sites, etc., that indicate they hold a NACVA certification.
 - 8.5.2 If the Member fails to comply, it shall be deemed an act discreditable and the matter shall be referred to the EAB for action.
 - 8.5.3 If the person is no longer a Member or has never been a Member, promptly notify the certificant that he/she must immediately cease holding himself/herself out as having a certificate and give them 30 days to do so, including the removal

of all advertising, stationary, business cards, websites, directories, social media sites, etc., that indicate they hold a NACVA certification..

- 8.6 Certificants who have had their credential suspended under the above procedures will continue being subject to recertification requirements. 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, applicable recertification requirements, and recommendation by the EOB.

9.0 EAB/VCB Sub-Group Authority

If during an investigation, the EAB and/or the EAB/VCB sub-group becomes aware of a matter, and based on the facts and circumstances of each matter, the EAB/VCB sub-group 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 an investigation, and if necessary, complete the investigation.

10.0 Document Disposition

Once a complaint (Case) file has been closed, all EOB members, other than the Chairperson are to destroy (shred) 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 Case 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.

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