DODD-FRANK FINANCIAL REFORM AND CONSUMER PROTECTION BILL
What does it mean for you?

August 6, 2010

Dear colleague:

On July 21st, the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010* was signed by President Obama, officially marking the passage of a historic and comprehensive financial reform package. The Financial Planning Association (FPA) has been working tirelessly on key provisions that are specifically important to financial planners. While you have seen numerous media accounts of the legislation, as well as a communication in mid-July from FPA and its Financial Planning Coalition partners, what should financial planners and affiliated service professionals expect next? What are the potential short- and long-term impacts on our profession?

In addition to the below outline, FPA will conduct the following online webinar via its Virtual Learning Center:

- "*Financial Reform and the Impact of Dodd-Frank Bill on your practice*"
- Wednesday, August 18th from 4-5pm (Eastern Daylight Time)
- Free for FPA Members (non-members: $35)
- Please click here for more information http://www.fpanet.org/Learn/VirtualLearningCenter/ClassDescriptions/FinancialReformandtheImpactofDodd-FrankBillonyour/

HIGHLIGHTS

1. Financial Planner Regulation Study

(Study on Financial Planners and the use of Financial Designations-sec. 919c)

The Government Accountability Office (GAO) will conduct a six month-study to review how the existing regulatory structure applies to financial planners. The GAO will look at the role of planners and whether the current regulations are sufficient to protect investors and consumers. The study may recommend an appropriate structure for the oversight of planners and scope of regulations to protect investors and consumers including the need for competency and practice standards for those who hold themselves out as planners.

Impact: The study will help guide policymakers as they consider the possibility of changing how financial planners and financial planning are regulated.

2. Fiduciary Study & Rulemaking

(Study and Rulemaking Regarding Obligations of Brokers, Dealers, and Investment Advisers-sec 913)

The Securities and Exchange Commission (SEC) will conduct a six-month study of the standards of care that apply to brokers and advisers in their relationships with their retail clients. The SEC study will look at the effectiveness of the existing standards; whether or not there are any gaps in the standards that would affect the protection of customers; the resources presently devoted to oversight and enforcement of the standards on brokers and advisers; and the potential impact on access to products if brokers were held to the same standards that now apply to advisers.

Impact: Following the study, the SEC is widely expected to establish rules holding brokers to a fiduciary standard when they provide personalized investment advice to retail customers. If someone provides advice in a broker capacity, these rules would apply. Expect similar rules to be put in place covering adviser conduct, as the SEC looks to harmonize the broker and adviser standards. The SEC rules should not affect one's ability to receive commissions, and brokers will not have an ongoing obligation to monitor a customer's account to comply with the fiduciary standard. Brokers will be able to offer a limited scope of products,

provided they make proper disclosures. The SEC rules could be proposed and released for public comment as early as the beginning of 2011.

3. **Regulation of Mid-Sized Advisers**
(State and Federal Responsibilities; Asset Threshold for Federal Registration of Investment Advisers-sec. 410)

An adviser with assets under management under $100 million will now be required to register with the state regulator in the state where the adviser maintains his/her principal office. This is an increase from the current $25 million threshold for determining state versus SEC registration. However, if an adviser would have to file registration documents with 15 or more states, the adviser may stay registered with the SEC. The SEC is now authorized to raise (but not lower) this amount by rule as necessary.

Impact: An estimated 4,000 advisers could be affected by this change in threshold, which will be effective July 21, 2011. FPA expects the SEC and state securities regulators to provide guidance and promulgate rules to facilitate the changeover. FPA will communicate additional information to assist advisers during this transition.

4. **Indexed Annuities**
(Further Promoting the Adoption of the NAIC Model Regulations that Enhance Protection of Seniors and Other Consumers-sec. 989J)

The SEC is required to treat as exempt any indexed annuity that satisfies standard nonforfeiture laws and is issued by a company that is either from a state that has adopted the NAIC annuity suitability rules or the company itself has implemented the practices contained in the annuity suitability rules.

Impact: The SEC has been seeking to regulate indexed annuities sales practices. This provision precludes SEC oversight, leaving authority to regulate indexed annuities exclusively with the state insurance regulators.

5. **Adviser Study**
(Study on Enhancing Investment Adviser Examinations-sec. 914)

The SEC shall conduct a six-month study of the need for enhanced regulation and examination of advisers and whether the designation of a self-regulatory organization (SRO) for advisers would increase the number of exams.

Impact: With an increase in the SEC budget and the shift of thousands of advisers to state oversight, expect this study to lay the groundwork for a significant increase in the frequency of examinations for SEC registered advisers. The study will also prompt and inform the debate about whether Congress should require SRO oversight of advisers.

OTHER IMPORTANT ITEMS

1. **Mandatory Arbitration**
The SEC is given the power to prohibit or impose conditions on the use of mandatory arbitration in customer contracts, if the SEC finds that it is in the public interest to do so. (sec. 1028)

2. **Accredited Investor**
The value of the primary residence can no longer be included in a person's net worth computation. The SEC is given the power to periodically adjust the standard and the definition itself starting four years from the date of enactment. (sec. 413)

3. **Compensation Practices**
   The SEC shall examine and, when appropriate, make rules prohibiting or restricting certain sales practices and compensation schemes that the SEC deems contrary to the public interest and the protection of investors. (sec. 913(h)(2))

4. **Custody Rules**
   The GAO shall conduct a study of the compliance costs to advisers associated with the present custody rules and the additional costs if the section on operational independence was eliminated. (sec. 412)

5. **SEC Funding**
   The bill authorizes an increase in SEC funding from $1.3 billion in fiscal 2011 to $2.25 billion in fiscal 2015. Although "authorized", Congress has to act separately to actually allocate those funds. The bill also creates a separate SEC reserve fund of up to $50 million per year, but not more than $100 million at one time, to meet expenses. (sec. 991)

FPA will continue to keep you apprised of developments as they occur in the coming months. For those who would like to review aspects of the bill further, please see the following links:

- Comprehensive Summary of the Dodd-Frank Bill by the U.S. Banking, Housing & Urban Affairs committee (16 pages): http://banking.senate.gov/public/_files/070110_Dodd_Frank_Wall_Street_Reform_comprehensive_summary_Final.pdf
- Full Text of the Dodd-Frank Bill via Library of Congress/Thomas: http://thomas.loc.gov/cgi-bin/query/z?c111:h4173

Thank you again for your continued support.

Best Regards,

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The Financial Planning Association is providing this information as a service to its members. While this information deals with legal issues, it does not constitute legal advice. If you have specific questions related to this information, you are encouraged to consult an attorney who can investigate the particular circumstances of your situation.