

July 1, 2009

Dear Colleague:

Earlier this spring the Financial Planning Coalition outlined the broad concepts of a legislative proposal that we are advocating on behalf of the financial planning profession before Congress and the SEC. Broadly speaking, we seek the establishment of a professional standards-setting oversight board for financial planners subject to SEC authority. The board would establish competency standards and the fiduciary standard of care that would apply to anyone who provides financial planning services to individuals or families or who holds himself out as a financial planner or similar titles. Our proposal is outlined in our [Case Statement](#), and has been developed to further the goals outlined in our [Statement of Understanding](#).

As you are probably aware, on June 17, 2009, President Obama released his highly publicized reform proposal: "Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation." Rather than summarize the significant and sweeping proposals contained in the 88-page white paper, we will highlight a few components of the proposal that are most relevant to financial planners and some opportunities that will help in advancing our legislative agenda on Capitol Hill.

A key goal of the President's proposal is to protect consumers and investors from financial abuse. Two recommendations to advance this goal are particularly relevant to us. First, the proposal would empower the SEC to "[e]stablish a fiduciary duty for broker-dealers offering investment advice and harmonize the regulation of investment advisers and broker-dealers." This proposal recognizes that "[f]rom the vantage point of the retail customer . . . an investment adviser and a broker-dealer providing 'incidental advice' appear in all respects to be identical" and that "the legal distinction between the two is no longer meaningful." The proposal recommends legislation that would require broker-dealers who provide investment advice to have "the same fiduciary obligations as registered investment advisers," provide "simple and clear disclosure to investors," and prohibit "certain conflict of interests and sales practices that are contrary to the interests of investors."

We applaud the Administration for recognizing the need to extend the fiduciary duty to broker-dealers who offer investment advice. However, there are two significant challenges for the Coalition as this proposal moves through the legislative process: (1) to insure that the fiduciary standard as codified is not watered down to a "fiduciary-lite" or "suitability-plus" standard that would be acceptable to broker-dealers; and (2) to extend the application of the fiduciary standard not just to individuals who provide investment advice (including broker-dealers) but to all "financial intermediaries" who offer broad-based financial advice.

The second recommendation in the white paper most relevant to financial planners is the proposed Consumer Financial Protection Agency ("CFPA"). This agency would be dedicated to "protecting consumers in the financial products and services markets." Its jurisdiction would cover consumer financial products such as credit cards, savings accounts, and mortgages, and possibly insurance, but notably leaving securities transactions and investment advice to the SEC. Among other things, the CFPA would be empowered to establish regulations to improve the transparency, fairness, and appropriateness of consumer products and services, and to carry out examinations and take enforcement actions.

Of relevance to our initiative, the proposal recommends authorizing the CFPA "to establish or facilitate registration and licensing regimes" for financial service providers and "to use registration systems to help weed out bad actors wherever they may operate." While the focus of the CFPA is on banks, debt collectors, debt counselors, and mortgage counselors, many of the concepts included in the CFPA, such as using registration and licensing regimes to weed out bad actors and to

protect consumers, are the same concepts underlying our proposed professional oversight board for financial planners.

We will be using these concepts to strengthen our arguments for a registration and licensing regime for financial planners that will extend a fiduciary obligation to all those who provide financial advice—whether they call themselves broker-dealers, financial planners, financial advisors, wealth managers, or any similar title.

We would like to suggest that you do the same. Many of you may have the opportunity to speak with your Members of Congress over the Fourth of July recess this week as they schedule meetings back home with their constituents. Please take the opportunity to advocate our legislative proposal. Below are some simple message points to make if you have the opportunity. Please also refer to the Case Statement and Statement of Understanding for further background information.

In the coming weeks, we expect to provide you with additional advocacy tools, including templates for personalized letters and e-mails, templates for personalized op ed articles, and additional talking points for phone calls and conversations with your congressional representatives and staff. The Administration has signaled its understanding and support for registration, licensing, and standards-setting regulations to protect consumers. We need to capitalize on this opportunity to secure long overdue registration and licensing for financial planners and advisors.

We have appreciated the very positive feedback that we have received from many of you in response to our previous communications. We continue to want to hear from you, particularly with feedback or insights from any discussions you may have with your congressional representatives or their staff.

Signed,

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*P.S.: Please use the message points below to communicate with your congressional representatives over the July 4th recess.*

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### **Message Points Professional Oversight Board for Financial Planners July 4th Recess**

1. I was pleased to see that the President's financial reform proposal recommended extending the fiduciary standard of care to broker-dealers who provide investment advice.
2. However, this will not address all the gaps in the delivery of financial advice to consumers and investors.
  - Financial planning—which is the process of advising individuals and families across a range of personal finance topics in addition to investment advice—is unregulated as a profession.

- The patchwork of regulation covering financial planners has left gaps that allow anyone to hang up a shingle and call themselves a financial planner or advisor without appropriate oversight.
- This has resulted in consumer confusion, misrepresentation, and fraud.
- [Share personal experience advising a client who was misled by a financial agent who was not working in the client's best interests.]

**3.** Our financial planning community, led by the three leading financial planning organizations, is seeking to have regulation of financial planners and advisers included in the financial reform package.

- Financial planners and advisers—like doctors, lawyers, and accountants—should be subject to a professional oversight board that establishes and enforces baseline competency and ethical standards.
- We believe that all who provide financial planning services or hold themselves out as financial planners or advisers should be required to adhere to a fiduciary standard of care.
- Consumers expect and deserve a relationship with a financial advisor that puts their best interests first.
- Holding financial planners and advisers to basic competency levels and a fiduciary standard is a key component to restoring consumer confidence.

**4.** We ask you to support inclusion of this important consumer protection measure in the financial reform package.

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