

Dodd-Frank Wall Street Reform and Consumer Protection Act Summary of Provisions Affecting CFP® Professionals

On July 21, 2010, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), a historic and comprehensive financial regulatory reform bill. Certified Financial Planner Board of Standards, Inc. (CFP Board), in conjunction with its Financial Planning Coalition partners and others, has worked hard over the past 18 months to secure key provisions in the Dodd-Frank Act. Below you will find a summary of key provisions affecting CFP® professionals. The Patton Boggs Financial Services Policy Group provides a detailed summary of the Dodd-Frank Act at [http://www.pattonboggs.com/files/News/5f873a3d-8f27-4a92-bb1a-17ab54cd3291/Presentation/NewsAttachment/1050235c-f474-49af-8816-1defdc41badc/Patton%20Boggs%20Financial%20Regulatory%20Reform%20Update%20--%20Dodd-Frank%20Bill%20\(7%2021%202010\).pdf](http://www.pattonboggs.com/files/News/5f873a3d-8f27-4a92-bb1a-17ab54cd3291/Presentation/NewsAttachment/1050235c-f474-49af-8816-1defdc41badc/Patton%20Boggs%20Financial%20Regulatory%20Reform%20Update%20--%20Dodd-Frank%20Bill%20(7%2021%202010).pdf).

Study on Financial Planners and the Use of Financial Designations

Section 919C of the Dodd-Frank Act requires the Government Accountability Office (GAO) to conduct a six-month study on financial planners and the use of financial designations. The GAO will evaluate the effectiveness of state and federal regulations to protect consumers from individuals who hold themselves out as financial planners, the current State and Federal oversight structure for financial planners, and any legal or regulatory gaps in the regulation of financial planners. In conducting its study, the GAO will consider the role financial planners play in providing financial advice, the adequacy of ethical and professional standards for financial planners, the ability of consumers to understand the licensing requirements and standards of care that apply to individuals who hold themselves out as financial planners, and the possible benefits to consumers of regulation and professional oversight of financial planners. The GAO will report its findings, including recommendations for the appropriate regulation of financial planners, to the House Committee on Financial Services; the Senate Committee on Banking, Housing, and Urban Affairs; and the Senate Special Committee on Aging. This study should prove instructive as policymakers consider enhancing regulation and oversight of financial planners.

Study and Rulemaking Regarding Obligations of Brokers, Dealers, and Investment Advisers

Section 913 of the Dodd-Frank Act requires the Securities and Exchange Commission (SEC) to conduct a six-month study on the gaps in regulation of brokers, dealers, and investment advisers, and grants the SEC permissive authority to establish a fiduciary duty following the study. The SEC will evaluate the effectiveness of existing standards of care for brokers, dealers, and investment advisers when providing personalized investment advice about securities to retail customers, as well as whether there are any legal or regulatory gaps, shortcomings, or overlaps in the standards of care. The SEC will report its findings, conclusions, and recommendations to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs.



Following the study, the SEC has authority to conduct a rulemaking to require broker-dealers and investment advisers to meet the same fiduciary standard of care when providing personalized investment advice about securities to retail customers. First, investment advisers, when providing personalized investment advice about securities to retail customers, would be required to act in the best interest of the customer without regard for the financial or other interest of the adviser providing the advice. That standard would be no less stringent than that provided by section 206(1) and (2) of the Investment Advisers Act of 1940. Next, broker-dealers would be required to meet the same standard of care applicable to investment advisers under the Investment Advisers Act.

Any rule must require that material conflicts of interest be disclosed and consented to by the customer. Additionally, broker-dealers and investment advisers would be permitted to receive commissions without violating the fiduciary standard. Unlike investment advisers, broker-dealers would not be subject to a continuing duty of care or duty of loyalty after providing personalized investment advice about securities to retail customers. The SEC would also be permitted to adopt rules requiring broker-dealers who sell only proprietary or a limited range of products to provide notice to the customer and obtain the customer's consent or acknowledgement.

Study on Enhancing Investment Adviser Examinations

Section 914 of the Dodd-Frank Act requires the SEC to conduct a six-month study regarding the need for enhanced examination and enforcement resources for investment advisers. The SEC will examine the number and frequency of examinations of investment advisers over the last five years and whether designating a self-regulatory organization (e.g., FINRA) to augment the SEC's efforts in overseeing investment advisers would improve the frequency of examinations of investment advisers. The SEC will report its findings to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs.

State and Federal Responsibilities; Asset Threshold for Federal Registration of Investment Advisers

Section 410 of the Dodd-Frank Act increases the assets under management threshold for registration with the SEC from \$25 million to \$100 million. An investment adviser with assets under management greater than \$100 million will need to register with the SEC, while an adviser with assets under management less than \$100 million will need to register in the state in which it maintains its principal office. Those advisers who operate in more than 15 states would be permitted to register with the SEC.

Indexed Annuities Provision: Further Promoting the Adoption of the NAIC Model Regulations that Enhance Protection of Seniors and Other Consumers

Section 989J of the Dodd-Frank Act exempts from the definition of "security" under the Securities Act of 1933 any indexed annuity that does not vary according to the performance of a separate account, satisfies standard non-forfeiture laws at the time of issue, and is issued by an insurance company from a state that has adopted the Suitability in Annuity Transactions Model Regulation adopted by the National Association of Insurance Commissioners (NAIC) or an insurance company that adopts and implements practices on a nationwide basis that meet or exceed the minimum requirements established by the NAIC suitability rules.