

CERTIFIED FINANCIAL PLANNER  
BOARD OF STANDARDS, INC.

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FINANCIAL PLANNING ASSOCIATION  
*The Heart of Financial Planning™*

NAPFA  
The National Association of  
Personal Financial Advisors

**STATEMENT OF**

**THE FINANCIAL PLANNING COALITION**

**BEFORE THE**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**COMMITTEE ON FINANCIAL SERVICES**

**ON**

**CAPITAL MARKETS REGULATORY REFORM:  
STRENGTHENING INVESTOR PROTECTION, ENHANCING  
OVERSIGHT OF PRIVATE POOLS OF CAPITAL, AND CREATING A  
NATIONAL INSURANCE OFFICE**

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October 6, 2009

Mr. Chairman, Ranking Member Bachus, and Members of the Committee, thank you for the opportunity to submit this statement as part of the record for the House Committee on Financial Services hearing on October 6, 2009, titled “Capital Markets Regulatory Reform: Strengthening Investor Protection, Enhancing Oversight of Private Pools of Capital, and Creating a National Insurance Office.” During this hearing, Congressman Cleaver raised questions that highlighted a significant gap in the regulation of financial planners. The Financial Planning Coalition appreciates the opportunity to provide responses to the questions Congressman Cleaver posed during the hearing.

The Financial Planning Coalition, comprised of the three leading financial planning organizations, is dedicated to improving consumer access to competent and ethical financial planners and advisors. Consumers must have the tools and support necessary to make smart and potentially life-changing financial decisions. For this reason, the Coalition supports the creation of a professional oversight board that would establish baseline competency, practice, and ethics standards for financial planners and advisors, and require adherence to a stringent fiduciary standard of care.

Financial services regulation, one of many responses to the Great Depression, has developed along roughly dual tracks: laws governing the sale of financial products and laws governing the provision of investment advice. When the delivery of financial services involves a combination of various product sales and broad-based financial advice, the dual regulatory structure has resulted in consumer confusion, conflicts of interest, gaps in oversight, or no oversight at all.

One significant gap involves the delivery of broad financial advice to the public. Financial planning evolved as a discipline in the 1960s to provide comprehensive advice, beyond selecting and managing investments, to a wide array of areas affecting families: planning and preparing income taxes; saving for college, home ownership, and a comfortable retirement; obtaining appropriate insurance coverage; and estate planning. Unfortunately, these areas are covered by a diverse set of existing regulations. As a result, no single law governs the delivery of financial planning advice to the public. The byproduct of this is a patchwork regulatory scheme in which financial planners currently maintain as many as three different licenses—insurance, brokerage, and investment adviser—with different standards of care and accountability to consumers.

There is no easy way for consumers to differentiate among the many people offering advice. Indeed, as Congressman Cleaver indicated, anyone today can hang out a shingle, call himself a financial planner or financial advisor, attract clients, and advise them on various personal financial issues.

Unfortunately, many financial intermediaries hold themselves out as financial planners not because they are qualified to provide a specialized service to their clients, but because of the potential to increase their own monetary gain. According to a survey of members of three insurance organizations conducted by the Partnership for Retirement Education and Planning, those individuals who identified themselves as “planning experts” significantly increased their revenue. They reported clients with double the total assets of those focused on product sales,

three times the total assets under management, and a 40% higher annual revenue structure.<sup>1</sup> Other industry research shows that nearly 300,000 financial agents refer to themselves as a financial advisor, using titles such as money manager, investment planner, financial planner, and wealth manager, yet many are only qualified to sell certain products or to give advice in a single area of the financial services sector, and the ethical and legal standards to which they are held vary widely.<sup>2</sup> This has led to consumer confusion, misrepresentation, and fraud—all things that the Committee seeks to reform in its regulatory reform package.

By now everyone is familiar with the Ponzi schemes used by Bernard Madoff and Allen Stanford to defraud investors of billions of dollars. Massive schemes like these devastate communities and consumers alike. Other stories involving consumers who lose sizeable amounts of money due to inappropriate, and often fraudulent, advice that is not in the consumer's best interests do not draw as much attention, but are equally damaging to that consumer's financial situation. Consider, for example, this story shared by a CFP<sup>®</sup> certificant involving a purported financial advisor who was not subject to baseline competency, practice, and ethics standards:

My client was the widow of a dear friend and colleague who had a substantial amount of money she wanted to invest. I placed her in some well-diversified American Funds and a variable annuity with a guaranteed income benefit. These investments were doing well. About eight months later, I noticed some movement in her account and called her to find out what was going on. She said she had met a “nice man” who was a “financial advisor” who told her I had placed her in very risky investments. He proceeded to withdraw her money from the variable annuity (which carried a surrender charge) and from a Vanguard fund that she had inherited from her husband, thereby exposing her to about \$40,000 worth of gains. He was placing her in an equity-indexed annuity with a sixteen-year surrender period. He told her not to worry about the surrender charge from the annuity I had placed her in because his product had a bonus that would offset the charge (it actually did not and she was still several thousand dollars down). Ultimately, I did get everything placed back but not before she had to recognize a substantial gain on her mutual funds. I figured that he would have made around \$40,000 from this transaction. She also told me she felt sorry for him because he was battling cancer.

This individual, like other so-called financial advisors, was not subject to any competency, practice, or ethics standards. It is exactly this type of anti-consumer activity that should be a focus of the current financial regulatory reform efforts. The Financial Planning Coalition believes consumers deserve the tools and support necessary to make sound financial decisions on their path to the American dream. They should easily be able to identify competent and ethical financial planners and advisors to help them make that dream a reality.

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<sup>1</sup> Stuart Kahan, *Holistic Financial Planning is Quite Lucrative*, WEBCPA, May 1, 2009, <http://www.webcpa.com/news/-30943-1.html>. The survey was conducted among members of National Association of Insurance and Financial Advisors, the Society of Financial Services Professionals, and the Million Dollar Round Table.

<sup>2</sup> CERULLI ASSOCIATES, CERULLI QUANTITATIVE UPDATE: ADVISOR METRICS (2008) (on file with author).

The Coalition supports the creation of a professional oversight board that would establish baseline competency, practice, and ethics standards for financial planners and advisors, and require adherence to a stringent fiduciary standard of care. This would directly address the concerns raised by Congressman Cleaver at the hearing regarding those who hold themselves out as financial planners or advisors, requiring that they be qualified to perform the services they claim to provide and that they operate in the best interests of their clients.

The professional oversight board would:

1. Establish rules designed to prevent fraudulent and manipulative acts and practices;
2. Establish baseline competency standards (e.g. education, examination, and continuing education);
3. Establish standards for professional and ethical conduct, including the fiduciary standard of care as applied under the Investment Advisers Act of 1940;
4. Require registration of financial planners; and
5. Perform investigative and disciplinary actions.

The Coalition seeks to apply principles-based regulation to *individuals* providing comprehensive financial planning services or holding themselves out as financial planners, not to the firms that employ them. This leaves intact other regulatory coverage for institutions and operates consistently with existing federal regulation for broker-dealers and investment advisers, as well as state regulation of insurance producers, accountants, and lawyers.

Of critical importance is the understanding that financial planning is a process, not a product. A financial planner provides a much-needed service to his clients, undertaking a comprehensive review of each client's financial situation and goals in order to design a plan to achieve those goals, which may involve investments, education savings, tax planning, and debt management (including mortgages and credit cards). If an individual represents to his clients that he is providing financial planning services, he must demonstrate that he is actually capable of doing so—namely, he must demonstrate a fundamental competency in the financial planning process.

A financial planner oversight board would ensure that all individuals who provide financial planning services or who hold themselves out as financial planners are qualified to act in that capacity. The board would establish baseline competency and ethics requirements as conditions for registration. An individual wishing to register as a financial planner with the board would need to demonstrate his understanding of the financial planning process and adhere to other practice and ethics standards established by the board, including the fiduciary standard of care. All financial intermediaries who offer broad-based financial advice must be held to the high standards of a fiduciary—the principles-based standard applied under the Investment Advisers Act of 1940.

Increased transparency and rigorous standards are good for both consumer and industry alike. Bringing all financial planners under the same regulatory “umbrella” and eliminating the current silo approach will only serve to enhance harmonization efforts. Comprehensive regulation of financial planning advice, through functional oversight, baseline competency standards, and

meaningful enforcement mechanisms, will fill a crucial regulatory gap, decrease confusion, and protect consumers.