A. DUTIES OWED TO CLIENTS, 1. FIDUCIARY DUTY:

13: THE FIDUCIARY DUTY APPLIES TO FINANCIAL ADVICE WITH RESPECT TO THE HOLDING OF BANK DEPOSITS

Bill receives $250,000 in life insurance cash proceeds following the death of his father. Bill is a Client of Mary, a CFP® professional. Bill tells Mary that he does not intend to invest the cash for at least six months. Bill asks Mary how he should hold the cash in the meantime.

Mary recommends that Bill deposit the $250,000 in a depository account at Bank X, a well-known bank whose deposits are insured by the Federal Deposit Insurance Corporation ("FDIC"). Mary advises Bill that his cash will be safe in the account and that he will earn interest at a 0.15% annual rate. Mary does not consider (or discuss with Bill) other available options, such as a certificate of deposit ("CD") or a government Money Market Fund ("MMF") that would pay a higher return with minimal risk.

Bill conducts some research and asks Mary whether a MMF might be a better option. Government MMFs often have a significantly higher interest rate than depository accounts, are highly liquid, and are considered to have very low risk.

Mary confirms that that a government MMF is another option and identifies a government MMF in which Bill may hold the $250,000. Bill then directs Mary to hold the funds in the government MMF.

QUESTION:

Which is the best response?

RESPONSE OPTIONS:

A. **Mary was not required to consider alternatives to bank deposits because bank deposits do not fall within the scope of the *Code and Standards*.**

B. **Mary satisfied her Fiduciary Duty of Care because she recommended a safe product that was suitable.**

C. **Mary did not satisfy her Fiduciary Duty of Care because she did not consider all reasonably available options before making her recommendation.**

Best Response: C is the best response. This case involves the Fiduciary Duty (Standard A.1.) and the definitions of Financial Advice and Financial Assets (Glossary).

At all times when providing Financial Advice to a Client, a CFP® professional must act as a fiduciary, and therefore, act in the best interests of the Client. The Fiduciary Duty includes a Duty of Loyalty, a Duty of Care, and a Duty to Follow Client Instructions. A Client is any person to whom a CFP® professional provides or agrees to provide Professional Services pursuant to an Engagement. Financial Advice includes communications that, based on their content, context, and presentation, would reasonably be viewed as a recommendation to take or refrain from taking a particular course of action with respect to the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets. "Financial Assets" include securities, insurance products, real estate, bank instruments, commodities contracts, derivative contracts, collectibles, or other financial products." Bank deposits are "Financial Assets."

This case involves the Duty of Care, which requires a CFP® professional to act with the care, skill, prudence, and diligence that a prudent professional would exercise in light of the Client's goals, risk tolerance, objectives, and financial and personal circumstances.

In this case, Mary did not satisfy the Duty of Care. Mary failed to consider, as an alternative to the deposit account, other products (including MMFs) that were reasonably available for her to recommend. Mary should have compared the features, risks and benefits of the deposit account to other available alternatives, and made a recommendation based upon the results of that comparison and Bill's goals, risk tolerance, objectives, and financial and personal circumstances. Among the factors that Mary should have considered are liquidity, transparency, rate of return, withdrawal limits, insurance coverage, record of safety, regulation, and the features of the different types of deposits (such as checking accounts, savings accounts, and certificates of deposit) and MMFs (such as government MMFs, prime MMFs, and municipal MMFs) that are reasonably available. Mary also should have considered Bill's six-month time horizon and compared the features of a six-month CD to an MMF.

A is not the best response because bank deposits are "Financial Assets" and a recommendation concerning the value of or the advisability of holding a Financial Asset is Financial Advice that is subject to CFP Board's Fiduciary Duty.

B is not the best response because Mary did not satisfy her Fiduciary Duty of Care when she made a suitable recommendation to deposit the cash in a deposit account. The Duty of Care requires a CFP® professional to act with the care, skill, prudence, and diligence that a prudent professional would exercise. Here a prudent professional would have determined which of the reasonably available options is the best option for the Client. (There may more than one option that is the best option.) Mary did not do so.

Relevant Standards and Definitions: Fiduciary Duty (Standard A.1.); definitions of Financial Advice and Financial Assets (Glossary).