fi360 global fiduciary insights

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***Executive Summary***

**January 2011 GAO Report to Congress:**
**Regulation of Financial Planners and the Use of Financial Designations[1]**

## I. Background

Section 919C of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[2] required the General Accountability Office ("GAO"), an independent auditing arm of Congress, to conduct a study of current regulation of financial planners and the use of misleading titles by individuals.

## II. Relevant Laws Covering Financial Planners.

a. Financial planners are not *per se* regulated as financial planners under federal or state laws. However, their services are generally covered under other laws.

   i. Most are regulated primarily as investment advisers by the SEC or state regulators.

   ii. Many are also subject to FINRA and state insurance regulatory oversight when selling securities and insurance products.

   iii. Banks that provide financial planning services are exempt from registration as investment advisers.

   iv. Only a narrow range of services provided by financial planners are currently unregulated, such as household budgeting advice.

## III. Financial Services Titles

**a.** Surveys indicate consumers may be confused by the titles used by financial planners and advisors.

**b.** About half of state insurance regulators and 31 state securities regulators have adopted restrictions on the use of senior-specific designations.

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[1] *See* U.S. Government Accountability Office, "Regulatory Coverage Generally Exists for Financial Planners, but Consumer Protection Issues Remain" (Publication No. GAO-11-235), January 2011, *at* http://www.gao.gov/new.items/d11235.pdf. .

[2] *See* Sec. 919C, "Study on Financial Planners and the Use of Financial Designations," Dodd-Frank Wall Street Reform and Consumer Protection Act, http://www.gpo.gov/fdsys/pkg/BILLS-111hr4173enr/pdf/BILLS-111hr4173enr.pdf, at 464.

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c. Criteria used by the industry to award 270-plus financial designations vary considerably.

## IV. Consumer Protection Issues

a. Standards of conduct for financial planners vary by law:

   i. Investment advisers and financial planners working in bank trust departments are generally subject to a fiduciary standard;

   ii. Broker-dealer representatives are subject to a suitability standard;

   iii. Insurance producers are subject to suitability standards for annuity sales in 32 states, but not for the sale of life insurance.

b. Enforcement, particularly in regulation of insurance sales practices, may be limited by a lack of uniformity and reciprocity among the states.

c. Conflicts of interest can exist when a financial planner earns a commission on a product sold to a client.

d. Studies indicate most consumers do not understand the distinction between a suitability and fiduciary standard, and most consumers assume their financial advisor is required to act in their best interest.

e. Disclosure requirements covering conflicts of interest vary considerably under different laws.

## V. Suggested Approaches by Others for Regulating Financial Planners

a. Create federal professional standards-setting board for financial planners, similar to Public Company Accounting Oversight Board.[3]

b. Extend coverage of the fiduciary standard to those holding themselves out as financial planners.

c. Private sector initiative to coordinate, strengthen credentialing.

d. Better enforcement of existing laws covering financial planners.

## VI. GAO Findings

a. An additional layer of regulation specific to financial planners is unwarranted at this time.

b. 'More robust enforcement' of existing laws could strengthen oversight.

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[3] The GAO report also discussed past efforts to establish a self-regulatory organization (SRO) for investment advisers which, if authorized by Congress, could affect oversight of financial planners.

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c. Consumers may be unclear about the standards of care that apply to and the titles used by financial planners and advisors.

d. SEC and other regulators have limited information about the nature and extent of problems specifically related to financial planners.

**VII. GAO Recommendations**

a. National Association of Insurance Commissioners should assess consumers' understanding of standards of care involved in the sale of insurance products, and take appropriate action to address problems.

b. SEC's study on financial literacy (required by Dodd-Frank Act) should add assessment of investors' understanding of titles and designations.

c. SEC should collaborate with state securities regulators to better understand, identify, and address problems involving financial planners.

**About fi360**

Fi360 offers a comprehensive approach to investment fiduciary education, practice management and support that has established them as the go-to source for investment fiduciary insights. With substantiated Practices as the foundation, fi360 offers world-class fiduciary Training/Education, Tools and Resources that are essential for fiduciaries and those who provide services to fiduciaries to effectively and successfully manage their roles and responsibilities. Fi360 assists those who rely on their fiduciary education programs, professional AIF® and AIFA® designations, Web-based analytical and reporting software and resources to achieve success. For more information about fi360, please visit www.fi360.com or Twitter: @fiduciary360.

For more information and commentary on the GAO's study, visit the fi360 blog:
http://blog.fi360.com/fi360_blog/2011/01/gao-financial-planner-study-released.html