



Welcome to FPA's Virtual Learning Center

We will begin today's program at 2:00 PM Eastern.

"Standards of Conduct"

If you have joined this event early, we invite you to sit back, relax and learn about other upcoming FPA Educational Opportunities.

Thank you for your continued support of FPA and the Virtual Learning Center. We hope you enjoy today's program.

1

About Today's Program:

In this session, you will learn about the rationale, process and proposals set forth by the FPA Fiduciary and Standards of Conduct Task Forces. These groups were brought together to address recent events that are having a significant impact on the standards of conduct required of financial planners. Nicholas A. Nicolette, CFP®, Duane Thompson and Charlie Hughes, CFP®, will discuss the history of these task forces and their recommendations.

2

Join FPA for these Upcoming VLC Events!

Wednesday, March 19, 2008 (12-2 PM ET)
Elder Planning in the New Era
Presented by: Cynthia Zalewski
VLC Track: Technical Knowledge
CFP Board CE 2.0 Approved

Tuesday, March 26, 2008 (12-2 PM ET)
Medical Outsourcing Healthcare
Presented by: Brent McCallum
VLC Track: Journal of Financial Planning

3

FPA Retreat 2008

Join us for FPA Retreat 2008!

Retreat is not your average conference — it is as much about connecting and conversation as it is about advanced education and pushing the boundaries of financial planning.

May 31-June 4, 2008 in Fort Lauderdale, FL.

<http://www.fpanet.org/retreat/>

4

Financial Planning Standards of Conduct Virtual Learning Session

March 18, 2008

Nicholas A. Nicolette, CFP®
Chairman, Financial Planning Association

Charles G. Hughes, Jr., CFP®
Chairman, Fiduciary and Standards of Conduct Task Forces

Duane R. Thompson
Managing Director, FPA Washington Office

The History of the Fiduciary and Standards of Care Conversations in FPA

- **July 2006.** CFP Board publishes exposure draft of new code of ethics, including an optional fiduciary standard.
- **September 2006.** FPA objects to exposure draft; appoints first of two task forces, the Fiduciary Task Force, to review existing standards for financial planners.
- **February 2007.** FPA Fiduciary Task Force recommends that a “best interests of the client” standard apply to all financial planning activities.
- FPA Board adopts motion: “The FPA Board of Directors accepts the work of the Fiduciary Task Force, supports the development of a universal standard of care — based on a client’s best interest — that is unambiguous and without exception, and authorizes the Fiduciary Task Force to proceed with its work to further define that standard of care.”

Fiduciary History – Cont'd.

- **March 2007** . CFP Board withdraws original draft and publishes new draft with fiduciary standard for financial planners.
- FPA appoints Standards of Conduct Task Force to study application of a 'best interest' standard to financial planners.
- DC federal appeals court orders SEC rule providing exemption for brokers from fiduciary standards of 1940 Advisers Act to be vacated.
- **April 2007**. FPA endorses CFP Board's 2nd exposure draft and fiduciary standard.
- **May 2007**. CFP Board adopts new fiduciary standard and other rules for certificants, effective July 1, 2008.
- **August 2007**. FPA Standards Task Force recommends 'best interest' standard apply to all FPA members holding out as financial planners.
- **February 2008**. CFP Board issues new guidance on fiduciary obligations of CFP certificants.

7

Standards of Conduct Task Force asked to address the following:

- *What are the legal and practical implications of the term "fiduciary" relating to financial planning and what standards of conduct should FPA members apply in client relationships?*
- *What role should FPA play in leading the profession as these new standards of conduct are defined?*
- *How can FPA assist members in understanding the standards of conduct planners must live up to and how these standards impact day-to-day practice of financial planning?*

8

Standard of Care

The FPA Fiduciary Task Force identified five elements of a standard of care that a financial planner should be held accountable to:

- Putting the client's interest first;
- Acting with due care and utmost good faith;
- Not misleading clients;
- Providing full and fair disclosure of material facts; and
- Fairly managing all conflicts.

Questions for the Profession

1. *Do you think these are appropriate standards of care for financial planners?*
2. *What are the implications in applying these standards to your own practice?*
3. *What are the implications of these standards in maintaining institutional relationships that support your practice?*
4. *Should the FPA's task force recommendation on a "holding out as a planner" standard be mandatory for a member who attests to be in the primary practice of financial planning?*
5. *Or should FPA's Board adopt the CFP Board's version based on "material elements" of financial planning services?*

Questions – cont'd.

6. The FPA Standards of Conduct Task Force recommended that the Board require a client's best interest standard apply to FPA member/practitioners for all aspects of financial planning except in the following limited circumstance:
- where the planner sells a financial product to a new client who did not previously receive financial planning services; and
 - the planner clearly discloses that advisory services are not being provided.

Do you agree with this recommendation?

11

Side by Side Comparison: CFP Board v. FPA Task Force Standards

- | | |
|--|---|
| <ul style="list-style-type: none">• Fiduciary Definition.
"One who acts in utmost good faith, in a manner he or she reasonably believes to be in the best interest of the client." (From 'Terminology' section of revised Standards of Professional Conduct.)
<i>Note:</i> In addition, CFP Board requires a baseline 'duty of care' for all certificants, which it defines as 'plac[ing] the interest of the client ahead of her or her own' and irrespective of service provided [Rule 1.4]). | <ul style="list-style-type: none">• Fiduciary Definition.
"Generally, a person who is in a relationship of trust and confidence with a client and who owes the client broad duties of due care, utmost good faith, and loyalty."
<i>Note:</i> The task force did not propose an explicit fiduciary definition for FPA members. However, it recommended that a planner maintain five responsibilities to the client: (1) putting the clients' best interests first; (2) acting with utmost due care and in good faith; (3) not misleading clients; (4) providing full and fair disclosure of all material facts; and (5) disclosing and fairly managing material conflicts of interest. |
|--|---|

12

CFP-FPA Standards – Cont'd.

- **'Holding Out' Criteria.**
CFP Board's baseline 'duty of care' applies to all certificants, whether or not the logo is printed on stationery or business cards.
- **'Holding Out' Criteria.**
Use of certification marks on business card or letterhead creates a reasonable expectation that advisory services are being offered, thus establishing a 'best interest' standard of care.
- **Standard of Conduct Going Forward.**
Generally, once a financial planning relationship is established with a client, all future services are likely to be deemed part of the financial planning process, and therefore subject to a fiduciary standard.
- **Standard of Conduct Going Forward.**
Similar to CFP Board interpretation, if a financial planning relationship previously existed, a higher standard will apply to all subsequent activities. A disclaimer that other non-advisory services may be offered later would not be available to the FPA member.

13

CFP-FPA Comparison – Cont'd.

- **'Material Element' Standard.**
A fiduciary standard, as defined by CFP Board, is imposed on certificants when providing financial planning or material elements of the planning process.
Factors to be considered:
Client's understanding and intent when engaging the certificant;
The degree to which multiple financial planning subject areas are involved;
Comprehensiveness of data gathering; and
Breadth and depth of recommendations.
Other activities that may be material elements of financial planning:
Detailed data-gathering of multiple aspects of a client's situation. (Apparently similar to bullet 3 above.)
Making wide-ranging recommendations as part of a 'needs' analysis.
Providing advisory services as defined by the SEC.
- **'Material Element' Standard.**
Unlike CFP Board, the FPA Standards Task Force did not recommend a standard of conduct based on functional activities of an FPA member.
Also, the task force did not provide specific factors, criteria, or examples of activities that may or may not be deemed subject to a higher standard of care.

14

CFP-FPA Comparison – Cont'd.

- **'Predominant Services' Standard.**
CFP Board appears to address this standard somewhat differently from the FPA task force, largely based on a consumer perspective. Under its 'material elements' standard, expectations of financial planning services depend upon the client's 'understanding and intent' in consulting with the Certificant.
- **'Predominant Services' Standard.**
Even with appropriate disclosure of non-advisory services, if communications suggest the FPA member is 'predominantly' offering financial planning services, then there is a 'rightful' expectation by the consumer that an advisory relationship exists.

Questions & Answers