THE COMMITTEE FOR THE FIDUCIARY STANDARD

Via email to: JLoper@cfpboard.org
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March 6, 2020

Board of Directors
Certified Financial Planner Board of Standards, Inc.
1425 K Street, NW, Suite 500
Washington, DC 20005

Re: Changes to Reduce Transparency on Method of Compensation / Consumer Web Site

Dear Members of the Board of Directors:

As members of the emerging profession of personal financial planners, we write to express our grave concerns regarding the recent changes made by the Certified Financial Planner Board of Standards, Inc. to its "Find a Planner" consumer web site, and specifically in opposition to the Board's decision to remove descriptions of the method of compensation from the disclosures made on such web site. We urge the Board of Directors to reverse this ill-advised action and to restore such disclosures.

The Leadership Role the CFP Board Can Play.

CFP Board establishes and enforces education, examination, experience and ethics requirements for CFP@ certificants. The mission of CFP Board is to benefit the public by granting the CFP@ certification and upholding it as the recognized standard of excellence for personal financial planning. The CFP Board is a 501(c)(3) organization, and as such has as its mission the service of the public by fostering professional standards in financial planning.

The CFP Board assists consumers with its "Let's Make a Plan" consumer search function for CFP® certificants, as consumers are able to locate Certified Financial Planner™ professional who not only meet educational and experience requirements, but who also are required to act in the best interests of their clients by adopting and following business practices designed to prevent "Material Conflicts of Interest" from "compromising the CFP® professional's ability to act in the Client's best interests."

We greatly appreciate many actions the CFP Board has undertaken under the leadership of its Board of Directors and CEO Kevin Keller since the CFP Board's move of its offices to Washington, D.C. over a decade ago. We particularly appreciate the rise of the number of certificants by 50% over the past dozen years, the far greater consumer awareness of Certified Financial Planners™ obtained via the CFP Board's actions, and the Board's embrace of a fiduciary standard for certificants at all times in its recently revised *Code of Ethics and Standards of Conduct*. All of these accomplishments serve the public interest.

The profession of financial planning emerged, by many accounts, from a meeting of thirteen individuals that occurred just over 50 years ago. Since the time the profession has substantially evolved. This evolution continues today, as consumers increasingly eschew conflict-ridden sales agents (who often possess little training or education about financial planning) in favor of trusted advice delivered by fiduciaries who are Certified Financial Planners™.

Let's Make A Plan and Its Method of Compensation Disclosures.

For many, many years the CFP Board has maintained on its consumer web site a search function whereby consumers can find Certified Financial Planners™ and discern key information about them. Disclosures of information about each Certified Financial Planner™ have included:

Name

Name of Firm, Address, Phone Number

Method of Compensation – fee-only, commission-and-fee, commission-only

Minimal Investable Assets

Languages Spoken

Bankruptcy Disclosure in Past 10 Years

Focus Areas (of the CFP®s practice)

As announced by email to CFP® professionals on Monday, March 2, 2020, the CFP Board stated:

> *CFP Board is pleased to share with you some updates to our Public Awareness Campaign website, letsmakeaplan.org. This website is designed for consumers and features the "Find Your CFP® Professional" search tool, on which CFP® professionals seeking new clients may choose to include their profile and contact information.*
>
> *Today, we have updated that tool to remove information about compensation method.*
>
> *The three compensation method categories previously provided by the search tool – Commission-Only, Commission and Fee, and Fee-Only – were broad enough to capture the various compensation methods financial planners use today, but not very specific or helpful to consumers. We believe the best way for consumers to select their financial advisor is to have a conversation with their prospective advisor.*
>
> *To help consumers make an educated decision about choosing and hiring a financial advisor, we have also updated the set of "Questions to Ask Your Financial Advisor" on the letsmakeaplan.org website. These questions are now more easily accessible, with a direct link placed prominently on the letsmakeaplan.org home page.*

No Opportunity Existed for Public Comment.

We note that there was no advance notice of this decision to remove the information about the compensation method. Nor was there any comment period provided to CFP® professions, the general public, and other interested parties. As a result, there was no outreach undertaken to CFP® professionals, including those in past leadership positions within the CFP Board (who often participated in earlier decisions regarding the disclosures of method of compensation, and issues surrounding verification of those disclosures and the value of the accuracy of such disclosures in various disciplinary proceedings.

Any change of this magnitude should only be undertaken following consultation with all stakeholders, including consumers, Certified Financial Planners™, and leaders of the profession.

Contrary to the Announcement, the Method of Compensation was a *Very* Helpful Disclosure to Consumers.

The CFP Board stated in its March 2nd communication that the method of compensation disclosures were "not very specific or helpful to consumers." This is untrue.

The CFP Board itself has taken great measures to delineate who may call themselves a "fee-only planner." The term "fee-only" is, in fact, defined within the CFP Board's *Code of Ethics and Standards of Conduct.*

Largely as a result of the profound growth of fee-only financial planners, the consumer media's advice to those who seek to engage financial planners, and the continued movement of the profession from its product sales roots to compensation paid directly by the client, many consumers today look for fee-only CFPs®.

For example, in a Feb. 17, 2020 article by Liz Weston, a well-known writer in the consumer and financial services arenas, she stated: "*Before you buy any of the following, you'd be smart to investigate lower-cost alternatives and to consult an objective, knowledgeable third party, such as a fee-only financial planner*." ("Liz Weston: Beware of these overhyped financial strategies," NerdWallet.)

As another example, in an article appearing on well-known consumer financial expert Clark Howard's web site, titled "Ask Clark: What is a life insurance retirement plan and are they recommended?" (November 28, 2018), it was opined: "You've built up substantial assets and you're approaching retirement. In your case, there's no substitute for sitting down with a well-trained and educated human being like a fee-only financial planner."

There are numerous additional examples out there. The fact of the matter is, consumers who search for a competent, experienced Certified Financial Planner™ also often desire to limit their search to fee-only advisors. Again, to say that the term "fee-only" and its disclosure as a method of compensation to consumers is "not very specific or helpful to consumers" is clearly an incorrect statement.

<u>Having a Conversation with An Advisor Subjects Consumers to Trust-Based Sales Techniques.</u>

The CFP Board's March 2nd communication also stated: "We believe the best way for consumers to select their financial advisor is to have a conversation with their prospective advisor." While certainly having a conversation with a prospective advisor is helpful, this does not confront the reality today that fee-only advisers remain in the minority, and that a consumer would likely need to meet with many, many financial advisers in order to locate a fee-only adviser.

Moreover, forcing a meeting as a way of initial consumer screening of financial advisers exposes the consumer in search of a fee-only advisor to numerous sales techniques. And consumers' behavioral biases can easily be taken advantage of by those who have been trained in trust-based sales techniques. *See, e.g.,* Robert Prentice, "Whither Securities Regulation? Some Behavioral Observations Regarding Proposals for Its Future," 51 Duke L.J. Vol. 5 (2002), wherein Professor Prentice observes:

> *Whereas standard economic theory assumes that economic actors such as Kira are rational decisionmakers in possession of the full information needed to make important decisions, the reality, of course, is that human rationality is bounded … It is reasonable for decisionmakers such as Kira, who do not have unlimited time and unlimited resources, to choose not to gather all the relevant information for their decisionmaking.* ***Decisionmakers must choose among numerous demands on their time and attention and will often sensibly choose to "satisfice" rather than to optimize their decisionmaking*** *… Kira's optimism [bias] will be fueled by a* ***Wall Street "marketing juggernaut*** *whose dominant message is simple: Wall Street can make you rich – and fast" … Another reason Kira's tendency will be to fail to realize that she is being defrauded and to fail to contract to protect herself from that fraud is the general human insensitivity to the source of information … Unfortunately, people generally believe that they are good at detecting when they are being lied to, when the behavioral research shows that they are not …* ***once a broker successfully cultivates trust****, willing reliance by the sophisticated investor – imprudent though it may seem in hindsight – is quite likely …* ***Once Kira decides that she likes a stockbroker or perceives the broker's intentions as being favorable, all her subsequent views of that broker's actions will be significantly influenced*** *… [and]* ***in daily commercial intercourse, oral communications trump written communications*** *…* ***Securities professionals are well aware of this tendency of investors, even sophisticated investors, and take advantage of it.***

Id. at pp.1447-88. [*Emphasis* ***added****.]*

It is clear that consumers will be subject to a broad variety of trust-based and other sales techniques, by financial planners who have been highly trained in the use of such techniques, should they be forced to interview financial planners to find the fee-only adviser they desire. It would be far, far better for consumers to simply be able to screen for fee-only advisers on the CFP Board's search tool.

The CFP Fosters Transparency, But Does Not Provide a Guarantee.

One observer has opined that the CFP Board cannot "guarantee" that a certificant is fee-only; hence it should not make such a disclosure.

This is nonsense. We fail to follow the logic here. The CFP Board does NOT 'guarantee' anything.

Fiduciary is a High Standard; Fee-Only Is Even Higher

Acting as a fiduciary is a high standard. However, fee-only CFPs® go further and accept fully the restrictions on conduct that the fiduciary duty of loyalty imposes. They vow to not accept third-party compensation. They choose to avoid, rather than disclose and then manage, conflicts of interest.

As a result, fee-only Certified Financial Planners™ have fewer potential conflicts in adhering to their fiduciary obligations in a truly objective manner. Since they don't accept material third-party compensation (such as commissions, 12b-1 fees, payment for shelf space, payment for order flow, reimbursement of marketing expenses, etc.), they avoid the conflicts of interest that might influence them, even unconsciously, to not place the interests of their clients' first.

"Fee-only" possesses significant meaning to consumers, above that of being a fiduciary. As noted above, consumers seek out fee-only planners. It is important that the CFP Board, in serving the public interest, maintain consumers' ability to identify fee-only Certified Financial Planners™ from among the larger population of CFPs®.

The CFP Board just gave itself another "black eye."

After *The Wall Street Journal article* last summer, the CFP Board as a resource for consumers took a hit. The reputation of the CFP Board suffered. Now, the CFP Board is backing down on very, very important disclosures - that are highly important to consumers. We believe that this recent action is a significant failure in the CFP Board's fulfillment of its mission as a 501(c)(3) organization to serve the public interest.

We are astonished that the CFP Board undertook to make these changes. For a 501(c)(3) organization that has in the past issued calls for increased transparency in financial services, we cannot conceive how and why this decision was reached.

The result of the CFP Board's recent action is that consumers can no longer view the CFP Board's "Find a CFP Professional" web site for consumers as a useful search tool. The relevance of the CFP Board, to consumers, has been substantially diminished.

The CFP Board should immediately reverse this decision.

Financial services should move toward increased disclosure of the method of compensation as well as the avoidance of conflicts of interest where possible.

This move by the CFP Board is a seriously ill-advised step in the wrong direction. The CFP Board is not "leading" the profession but rather dragging it down into the mire.

We urge the Board of Directors to immediately reverse its decision.

STEERING GROUP, THE COMMITTEE FOR THE FIDUCIARY STANDARD

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