August 21, 2017

Certified Financial Planner Board of Standards, Inc.
Commission on Standards
1425 K Street NW #800
Washington, DC 20005

Ladies and Gentlemen,

The Financial Planning Association® (FPA®), the country's largest voluntary membership association for CERTIFIED FINANCIAL PLANNER™ (CFP®) professionals and those who support financial planners and the financial planning process, is pleased to provide the following comment letter on CFP Board's proposed changes to the *Standards of Professional Conduct* (Standards).

FPA was formed in 2000 through the merger of the International Association of Financial Planners (IAFP) and the Institute of Certified Financial Planners (ICFP). Since that time, FPA has been committed to providing a professional home for those practitioners who strive to adhere to the high standards evidenced by the CFP® marks. With 23,000 members across the country, including more than 17,000 CFP® professionals, FPA is profoundly interested in seeing the marks be recognized by the public as an indication that a CFP® professional is committed to the highest standards of competency and ethical behavior.

In accordance with FPA's Primary Aim, which is "to be the community that fosters the value of financial planning and advances the practice and profession of financial planning" and FPA's Strategic Directive, which is "to be the recognized and unquestioned professional membership resource and advocate for CFP® professionals," this comment letter serves to both substantiate FPA's purpose of advancing the financial planning profession and support FPA's role in being the voice and advocate for CFP® professionals.

Advancing the Financial Planning Profession

As it relates to advancing the financial planning profession, FPA's Commission on the Fiduciary Standard proposed a principles-based Standard of Care in 2007 that continues to be a foundational policy of FPA. FPA's Standard of Care states that:

All financial planning services will be delivered in accordance with the following standard of care:

Principle 1 - Put the client's best interests first.
Principle 2 – Act with due care and in utmost good faith.

Principle 3 – Do not mislead clients.
Principle 4 – Provide full and fair disclosure of all material facts.
Principle 5 – Disclose and fairly manage all material conflicts of interest.

In developing its Standard of Care, FPA leaders believed that an expanded and unambiguous fiduciary standard was needed to both distinguish and elevate the financial planning profession.

CFP Board has done an admirable job since its Standards were last updated 10 years ago to protect the marks and grow their recognition and support. We applaud CFP Board for taking the bold and necessary step in expanding the fiduciary standard for CFP® professionals, which we believe is aligned and in harmony with FPA's Standard of Care on a principles-based level.

FPA recognizes that when taking a principles-based approach to standard setting, case specific experiences will be necessary to close the gap in understanding the practical application and impact of the principles. However, given the significant impact the draft Standards represent for the profession and practicing CFP® professionals, we strongly believe CFP Board has several layers of work that need to be done before the Standards can be finalized and implemented.

Specifically, it will serve the interests of CFP Board, CFP® professionals and the public for CFP Board to take the next step in providing detail, direction and context for the principles and terms contained in the draft Standards. While we recognize that all the gaps can't be filled absent case law experience, we believe CFP Board can provide "on the record" definitions, examples, and criteria to help concretize the general terms that are currently contained in the draft Standards. Fundamentally, before the Standards are required practice, CFP® professionals need to be able to answer basic questions like "What is the practical applied meaning of the Standards?" and "How do I change my practice to stay in compliance?"

We reference as an example of the work that still needs to be done, the scope of detail contained in fi360's "Prudent Practices for Investment Advisors" Handbook. The Handbook contains the Four Steps Fiduciary Quality Management System, the 21 practices within the Four Steps, and dozens of criteria that drill down into the practices. With the breadth of historical case study data CFP Board has at its disposal, CFP Board should be able to provide the legal substantiation behind the Standards.

FPA recognizes from its own multi-year work in developing its Standard of Care that the variations and nuances contained in the fiduciary landscape is as varied as the relationships that financial planners have with their clients. It is because of this complexity and the importance of CFP Board's work in expanding the scope of the fiduciary standard for CFP® professionals that necessitates CFP Board taking the next step in providing robust detail before the new Standards are finalized and enacted.

<u>The Voice of the CFP® Professional</u>

FPA acknowledges the time and attention CFP Board and the Commission on Standards put into revising the Standards and traveling to multiple cities to obtain feedback from practitioners. Also, FPA applauds those volunteer practitioners who selflessly gave their time and energy to this important work. It was a momentous undertaking, but one that will help set financial planning on a course to be recognized as a true profession.

As it relates to FPA being the voice of the CFP® professional, just as the Commission on Standards took their role seriously in the formation of these proposed Standards, FPA took its role seriously in ensuring the voice of the CFP® practitioner community was heard on these proposed changes. Since the proposed changes became public on June 20th, FPA's Member Advocacy Council (MAC) orchestrated a series of feedback opportunities for our CFP® professional members that enabled the association to collect qualitative and quantitative input on the proposed Standards.

As you are aware, much of the input FPA received early in our feedback process showed considerable confusion among CFP® professionals as to what changed specifically and the consequences of the changes on practitioners. As a consequence of this initial wave of input, Nick Nicolette, CFP®, Chair of the MAC, sent a request to Ray Ferrara, CFP®, Chair of the Commission on Standards, asking for additional materials to be developed to help practitioners better understand the changes being proposed. We were heartened by the response we received and how quickly CFP Board accommodated this request by issuing a side-by-side comparison of the old and proposed standards and a Frequently Asked Questions document.

After carefully reviewing the feedback provided by CFP® professional members of FPA, from both before and after the additional resources became available, it's clear that CFP® professionals require more clarity. While we asked our members for their opinions on the proposed Standards, many were unable to do so because they remain unsure of what is being proposed, what the changes will mean to them as practitioners, and how the proposed Standards will be implemented and enforced.

Although the process of obtaining feedback from our members is ongoing, we can offer some themes that are emerging. The enclosed **Attachment A: Common Questions** lists the key and common questions we have received from our members where further clarification is necessary before our members and FPA can provide further commentary on the Standards.

<u>Recommendations for Next Steps</u>

FPA recognizes the profound step CFP Board is taking to extend the fiduciary standard and we are beyond encouraged that there appears to be harmonization between FPA's Standard of Care and CFP Board's proposed Standards on a principles-based level. Given the magnitude of this shift and what we assume to be our aligned desired outcomes for the profession and the public, much work needs to be done to ensure an effective as possible transition to a new era of practice for CFP® professionals as guided by the new Standards.

With an eye toward not losing CFP® professionals because of a lack of clarity and guidance, and while providing those who are committed to the CFP® marks the means necessary to comply with the Standards, FPA respectfully recommends CFP Board consider the following:

1. Develop the next layer of explanation and clarification for CFP® professionals to understand how they will need to alter their practices to stay in compliance, which would include expanded definitions, concrete examples and legally substantiated criteria.

2. Engage in additional educational activities, including:

    a. Virtual events where the proposed standards can be explained in greater detail and practitioner questions can be answered directly.

   b. Availability of charts, diagrams and scenario-based case studies that will help CFP® professionals better understand the application of the proposed Standards that will help them "map" their current processes with the new Standards being proposed.

3. Add another comment period after more detail is developed and disseminated to allay the concerns of practitioners who want to comply as soon as the Standards are adopted and prior to implementation.

A strong foundation has been laid by CFP Board and the Commission on Standards to revise the *Standards of Professional Conduct,* but more must be done. FPA believes CFP Board's effort will be rewarded with another level of patience, work, and clarity.

We welcome an opportunity to further discuss this matter and the recommendations FPA has proposed. Please know FPA stands ready to further engage our community of CFP® professionals on this critically important issue and will do everything we can to support the profession and our members as CFP Board develops, finalizes and implements the new Standards.

Respectfully Submitted on Behalf of the 2017 FPA Board of Directors,

Shannon J. Pike, CFP®
2017 FPA President

Pamela Sandy, CFP®
2017 FPA Chair

Frank Paré, CFP®
2017 FPA President-Elect

Lauren M. Schadle, CAE
Executive Director/CEO

Attachment A: Common Questions

Extension of the fiduciary requirement to all financial advice:

- What constitutes "material conflicts of interest?"
- How are "material conflicts of interest" to be disclosed? Is this disclosure required to be written or oral?
- What would constitute a full disclosure since the proposed Standards state "fully disclose Material Conflicts of Interest to the Client?"
- How should "informed consent" be obtained? Is this disclosure required to be in written or oral?
- How should "informed consent" be addressed for any material conflicts that may arise throughout the relationship with a client (e.g. conflicts that did not exist at the time of engagement)?
- How is CFP Board defining "reasonable and lawful" direction from a client? Is "reasonable" an objective or subjective standard?
- What happens if a client provides direction to the CFP® professional that he/she knows is not in the client's best interest? Are CFP® professionals being forced to carry out instructions that they know are not in the best interest of the client?
- How are CFP® professionals expected to "…act without regard to the financial or other interests of the CFP® professional, the CFP® professional's firm…" if they receive compensation outside of fees?
- What constitutes "other interests?"
- How will CFP Board enforce this new standard?

Revised definition of 'Financial Planning':

- How is CFP Board defining "life goals?" Since "life goals" for clients may change over time along with current factors such as financial resources, should those be considered for the CFP® professional?
- Is "maximize" the right word? Wouldn't "optimize," "increase," or "enhance" be more in line with the work CFP® professionals perform?
- What happens when a client only wants help with one specific objective and will not engage the CFP® professional for services that include other personal or financial objectives?
- Should the definition consider the steps CFP® professionals take in the financial planning process?

New definition of 'Financial Advice':

- Are referrals to "other persons to provide financial or professional services to the client" necessary for this definition? Are CFP® professionals then liable for the advice and services rendered by these outside parties?
- Is "discretionary authority" a necessary aspect of this definition? Can't the engagement with the client be discretionary and non-discretionary?
- "Financial assets" is broad and should be expanded to be more specific.
- Couldn't "viewed as a suggestion" basically include any conversation that includes any financial planning concept? Can this be explained in more clarity?

- Would CFP® professionals who do not offer/perform comprehensive financial planning really be able to adhere to this definition?
- It seems much of the definition includes those items that are more "transactional" and not necessarily "advice." Was that intentional?
- Will the definition unnecessarily lead to confusion by the public that a CFP® professional will engage in everything outlined? Should the language state that financial advice "may" include these activities?

New requirement for documentation (Section A-12):

- Is the intent of the phrase "…facts and circumstances require…" to be subjective in order allow the CFP® professional discretion as to what should be documented?
    - Is the above quoted phrase being proposed to protect the CFP® professional or the client?
    - What information is deemed to be of "significance" to CFP Board in the above quoted phrase?
    - Is this a requirement for the client relationship or for every transaction?
    - Is this requirement for pre-engagement representations or post-engagement activities or both?
- How is CFP Board defining "…must act prudently…" as prudence can be defined in different ways by different practitioners?
- Does every piece of advice require documentation?
- How does CFP Board suggest CFP® professionals properly document whether implementation is part of the scope of the engagement?
- How is the documentation required to be kept by the CFP® professionals?