Regulatory Update: Financial Services Regulatory Reform Bill Reported out of Conference

On June 25th, the House-Senate Conference responsible for reconciling the House and Senate's bills on financial services regulatory reform concluded. The legislation produced as a result of the Conference, entitled the *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("Act"), now heads to a vote by the House and Senate. If approved by both Chambers, it will be sent to the President for his signature.

A brief summary of issues of relevance and interest to CPA financial planners, and how they are addressed in the Act, is as follows:

1. **Establishment of a Consumer Financial Protection Bureau.** The Act establishes a Bureau of Consumer Financial Protection to regulate the offering and provision of consumer financial products or services. In recognition of the valuable advice and counsel that CPAs give Americans on financial decisions and the existing regulatory framework for CPAs, ***Section 1027 of the Act carves out,*** *from Bureau oversight,* all licensed and/or certified CPAs (and employees and non CPA partners of CPA firms) when providing "customary and usual accounting activities" which are subject to the regulatory authority of a State board of accountancy or federal authority, as well as other services that are "incidental to such customary and usual accounting activities to the extent that such incidental services are not offered or provided by the person separate and apart from such customary and usual accounting activities".

2. **Regulation and oversight of the financial planning profession**. As the AICPA expected, ***Section 919C*** of the Act requires a governmental study to evaluate the current state and federal oversight structure and regulations for financial planners. The study would be due within 180 days of the Act's enactment, and would be required to consider the following:
    a. The role of financial planners in providing advice regarding the management of financial resources, including investment , income tax , education , retirement , estate and risk management planning;
    b. Whether current regulations at the state and federal level provide adequate ethical and professional standards for financial planners;
    c. The possible risk posed to investors and other consumers by individuals who hold themselves out as financial planners or as otherwise providing financial planning services in connection with the sale of financial products, including insurance and securities;
    d. The possible risk posed to investors and other consumers by individuals who otherwise use titles, designations or marketing materials in a misleading way in connection with the delivery of financial advice;
    e. The ability of investors and other consumers to understand licensing requirements and standards of care that apply to individuals who hold themselves out as financial planners or as otherwise providing financial services;
    f. The possible benefits to investors and other consumers of regulation and professional oversight of financial planners.

    The AICPA believes that because CPAs are subject to regulation by their state boards of accountancy and further, by the SEC or states when providing investment advice, that additional regulation of the profession of financial planning is duplicative for CPA financial planners. Our goal, first and foremost, is to protect the public's best interest, while also recognizing the regulatory framework that currently exists for CPAs. If the Act becomes law, the AICPA will provide input into this study.

3. **Duty of Care applicable to Broker-Dealers and Registered Representatives**. A topic that elicited much conference debate related to the appropriate standard of care applicable to brokers and dealers when providing investment advice. Ultimately, ***Section***

913 of the Act requires that the SEC conduct a study on the effectiveness of existing legal/regulatory standards of care for brokers, dealers, investment advisers (and their representatives) when providing personalized investment advice and recommendations about securities to retail customers. Another component of the study dictates an analysis of the potential impact of removing the broker-dealer exclusion from the definition of "investment adviser" under 202(a)(11)(c) of the Advisers Act. The SEC's study will consider public input, data and comments, and would be due within 6 months of the Act's enactment. Section 913 also amends the '34 Securities Act so as to empower the SEC with the *authority* to promulgate rules to provide that brokers and dealers (and their representatives), when providing personalized investment advice to retail customers, adhere to the same duty of care as that which is applicable to investment advisers.

   a. Note: The PFP Executive Committee supports this elevated standard of care in this situation.

4. **Increase of the AUM threshold for investment advisers to register with the SEC**. Currently (and with limited exceptions), advisers with over $30 million in AUM are required to register with the SEC, pursuant to Advisers Act Rule 203A-1. ***Section 410*** of the Act amends section 203A of the Advisers Act and essentially raises this threshold to $100 million, thus shifting thousands of advisers to the jurisdiction of the state securities regulators. Advisers who, as a result of the increased threshold, must register in 15 or more states may register with the SEC.

5. **Custodial requirements applicable to investment advisers and investment adviser representatives**. ***Section 411*** of the Act amends the Advisers Act of 1940 by adding a new section 223 to the '40 Act which requires advisers to take steps to safeguard assets over which they have custody, including "without limitation, verification of such assets by an independent public accountant, as the Commission may, by rule, prescribe." Related to this issue is ***Section 412*** of the Act, which requires the GAO to conduct a study of the compliance costs associated with Adviser Act Rules 204-2 and 206(4)-2 (the "Custody Rule"), to include an assessment of additional costs if part (b)(6) of the custody rule were eliminated (part of the rule eliminating the surprise verification requirement for certain related advisers who are operationally independent). This GAO study would be required within 3 years after of the Act's enactment.

6. Other issues included in the legislation of interest include the "accredited investor" definition and a GAO study on enhancing investment adviser examinations, elimination of the private adviser exemption (for advisers to funds with assets greater than $150 million), and the addition, to the '40 Act's definition as to who is not an "investment adviser," "any family office as defined by rule, regulation or order of the SEC."

The PFP Division continues to actively analyze and monitor these issues - in collaboration with the AICPA's Congressional Affairs Team – as they unfold. We will keep you apprised of developments as they unfold. Please email us at regulatoryreform@aicpa.org with any questions or concerns.