Dodd-Frank Wall Street Reform and Consumer Protection Act
Overview of Impacts to CPA Financial Planners and AICPA Positions

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act. The AICPA released a white paper providing a comprehensive analysis of the many provisions of critical importance to CPAs, including those related to CPA financial planners. It highlights the key points of the Act and describes what they mean for CPAs and their clients or employers. Additionally, a brief overview of issues of relevance and interest to CPA financial planners, and how they are addressed in the Act, is summarized below:

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". Investment advisers regulated by the SEC and/or states are also not subject to Bureau oversight.

2. **Regulation and oversight of the financial planning profession.**
   Section 919C of the Act required a governmental study due 180 days after enactment to evaluate the current state and federal oversight structure and regulations for 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. Furthermore, the CFPB has oversight over financial planning that is not currently regulated, thereby eliminating gaps in regulation. Our goal, first and foremost, is to protect the public's best interest, while also recognizing the regulatory framework that currently exists for CPAs.

   The AICPA met with the GAO on August 16, 2010 to discuss additional oversight of financial planning and articulate our position. On January 18, 2011, the GAO submitted a report summarizing the findings of its study of the current state and federal oversight structure and regulation of financial planners. Given the current regulatory regime, the GAO concluded that additional financial planning regulation or oversight would be duplicative, a conclusion generally consistent with the AICPA's position.

   Refer to the following updates for additional details regarding the study on regulation and oversight of financial planning.
   - GAO Report Concludes Additional Oversight of Financial Planners Duplicative (January 2011)
   - AICPA Meets with GAO to Discuss Study on Regulation of Financial Planning (August 2010)

3. **Duty of Care applicable to Broker-Dealers and Registered Representatives.**
   Section 913 of the Act required that the SEC conduct a study due 180 days after enactment on the effectiveness of existing 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.

   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.

On January 21, 2011, the SEC submitted to Congress its study on the obligations and standards of conduct of financial professionals. The study recommended that the SEC adopt and implement a uniform fiduciary standard of conduct for broker-dealers and investment advisers -- no less stringent than currently applied to investment advisers under the Advisers Act -- when those financial professionals provide personalized investment advice about securities to retail investors. Note that the PFP Executive Committee supports this elevated standard of care in this situation. Additionally, when broker-dealers and investment advisers are performing the same or substantially similar functions, the study recommends that SEC consider whether to harmonize the regulatory protections applicable to such functions.

Refer to the following update for more information on the SEC's study of standard of care.

- SEC Report Released on Broker-Duty Standard of Care (January 2011)

4. **Increase of the AUM threshold for investment advisers to register with the SEC.**
   On the date of enactment (with limited exceptions), advisers with over $30 million in AUM were 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.

   In June 2011, the SEC released a final rule implementing this change and requiring mid-sized advisers with AUM between $25 and $100 million to switch to state registration. Mid-sized advisers switching to the states have until June 28, 2012 to complete the move. Note that the rule allows advisers with their principal offices in Minnesota, New York and Wyoming to remain registered with the SEC, as well as provides a buffer to prevent advisers from frequently having to switch between SEC and state registration.

   Refer to the following updates for more information on the RIA registration transition.
   - Results from the SEC's Open Meeting: Mid-Sized Advisers Must Switch to State Regulation by June 28, 2012 (June 2011)
   - RIA SEC to State Transition Extension Likely (April 2011)
   - SEC Proposes Rules to Improve Oversight of Investment Advisers (November 2010)

5. **Examination and enforcement resources for investment advisers, including the necessity of SRO oversight.**
   Section 914 of the Act required that the SEC review and analyze the need for enhanced examination and enforcement resources for investment advisers and the necessity of a self-regulatory organization (SRO) to "augment the Commission's efforts in overseeing investment advisers." Under the current regulatory regime, investment advisers and their representatives are under the direct jurisdiction and oversight of the SEC whereas broker-dealers and their representatives are subject to the direct oversight of FINRA, which in turn is responsible to the SEC.

   When SRO oversight began to gain traction in November 2010, the AICPA submitted a comment letter reinforcing our position that the principles-based regulatory approach of the Investment Advisers Act of 1940 and its related rules should continue to govern investment advisers, and further, that regulatory oversight should remain exclusively with the SEC and/or states. We believe that an SRO (particularly FINRA) would bring a broker-dealer perspective and bias to investment adviser examinations and that its rules-based, check-the-box approach is not conducive to adequate regulation of the investment advisory profession nor is it in the public's best interest.

   On January 19, 2011, the SEC released its staff report, which concludes that the current SEC RIA examination program faces significant capacity and funding challenges, and recommends three options to strengthen the existing program.
   1. Impose "user fees" on SEC-registered investment advisers that could be retained by the Commission to fund the investment adviser examination program;
   2. Authorize one or more SROs to examine, subject to SEC supervision, all SEC-registered investment advisers; or

3. Authorize FINRA to examine dual registrants for compliance with the Investment Advisers Act of 1940.

The AICPA will continue to monitor and keep you apprised of developments as Congress considers the three options proposed in the SEC's report. Refer to the following updates for more information on possible SRO oversight of investment advisers.

- Financial Services Committee Hearing on Oversight of Investment Advisers and Broker-Dealers (September 2011)
- SEC Report Released on Study of RIA Examinations (January 2011)
- AICPA Comments on Proposed SRO Oversight for Investment Advisers (November 2010)

6. **Family office exemption from definition of investment adviser.**
Section 403 eliminated the exemption from registration for investment advisers with fewer than 15 clients in the preceding 12 months, as previously provided for in the Investment Advisers Act of 1940, effective beginning July 21, 2011. However, ***Section 409*** also provided for a new exemption from registration for family offices under the Advisers Act, requiring that the SEC define the term "family office."

The SEC issued a proposed rule in October 2010 defining "family offices" for purposes of the exclusion under the Advisers Act, which the AICPA subsequently commented on. Specifically, the AICPA's comment letter addressed the definition of family clients, ownership and control of family offices, the provision that prohibits a family office from holding itself out to the public as an investment adviser, the need for additional guidance with respect to the grandfathering provisions, and previously issued exemptive orders. Lastly, we commented on two other matters not specifically addressed in the Proposed Rule that we suggested warranted consideration by the SEC, namely investment advisory services provided without compensation and relief provisions to rectify inadvertent and unintentional violations.

In June 2011, the SEC released a final rule defining "family offices" that will be excluded from the definition of an investment adviser. Many of the AICPA's suggestions were adopted in the final rule. The final rule states that a family office is exempt from registration if it provides investment advice only to "family clients," is wholly owned by family clients and is exclusively controlled by family members and/or family entities, and does not hold itself out to the public as an investment adviser. If family offices do not meet the terms of the exclusion, they will have to register with the SEC or applicable state securities authorities by March 30, 2012. Read a summary and comparison of the AICPA's recommendations as compared to the final rule.

Refer to the following updates for more information on the family office exemption.

- Results from SEC's Open Meeting: Family Office Exemption Defined (June 2011)
- AICPA Comments on Family Office Proposed Rule (November 2010)
- Proposed Exemption for "Family Offices" Under Investment Advisers Act of 1940 (October 2010)

7. **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 is required within 3 years of the Act's enactment.

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