



Testimony of Marilyn Mohrman-Gillis, Esq.
Before The Employee Benefits Security Administration,
U.S. Department Of Labor
Hearing on the Definition of Fiduciary Investment Advice
Monday, August 10, 2015

Assistant Secretary Borzi and members of the panel, thank you for the opportunity to testify at this important hearing. My name is Marilyn Mohrman-Gillis. I am Managing Director for Public Policy and Communications for the Certified Financial Planner Board of Standards. I am testifying today on behalf of the Financial Planning Coalition, which is comprised of CFP Board, the Financial Planning Association® and the National Association of Personal Financial Advisors.

The Coalition formed in 2009 around a set of principles that includes support for the fiduciary standard in the delivery of financial advice. We believe that a strengthened fiduciary rule under ERISA is essential for America's Retirement Investors, and we strongly support adoption of the Department's re-proposed rule.

We believe that the Coalition brings a unique perspective to the table. Our stakeholders and members have committed, by virtue of their Certified Financial Planner™ certification or their FPA or NAPFA membership codes of conduct, to provide financial planning services under a fiduciary standard. They provide fiduciary-level services across business models – as investment advisers, broker-dealers and insurance producers – and across compensation models – including commission and fee-based models.

When CFP Board adopted a fiduciary standard of conduct for CFP® professionals in 2007, many firms and industry organizations made arguments similar to those being made about the Department's re-proposed rule today. They asserted that CFP Board's fiduciary requirement was unworkable with their business models and that CFP® professionals would be forced to rescind their certification if required to operate under a fiduciary standard.

Contrary to those predictions, the number of CFP® professionals has grown by more than 30 percent to over 72,000 since CFP Board established a fiduciary standard. And many firms, to their credit, are recognizing the value of competent and ethical advice and are supporting CFP® certification for their Advisers.

Based on our own experience working with firms on compliance with CFP Board's rules, we believe the re-proposed rule can work for Advisers. That doesn't mean it's perfect and, in our comment letter, the Coalition offered the Department concrete suggestions to make the re-proposed rule more workable across business models.

Many argue that the rule will eliminate the broker-dealer business model and force Advisers into only fee-based models that will be more expensive for consumers. This is not consistent with the rule itself or with our experience in implementing a fiduciary standard. The Best Interest Contract Exemption is a principles-based, business-model neutral exemption that allows Advisers to continue to receive commissions and still comply with the fiduciary standard under ERISA.

To those who say that the BIC requirements are unworkable, we point to CFP Board's *Standards of Professional Conduct*, which contain requirements that are similar to those under BIC Exemption. Under CFP Board's *Standards*, CFP® professionals, when providing financial planning, are required to:

- Act in the best interest of the client;
- Exercise reasonable and prudent judgment;
- Execute a written contract with the client;
- Identify and mitigate conflicts of interest; and
- Provide written disclosures including the full costs of products and services and compensation paid to the CFP® professional and the employer.

In short, CFP® professionals today are operating under these BIC-like requirements with commission-based – not just fee-based business models.

Our experience also belies the notion that Advisers, who are required to obligate themselves to act in the best interest of the client, will be unable to serve middle-class clients. Today, there are thousands of CFP® professionals and FPA and NAPFA members across the country who provide fiduciary-level services to everyday Americans either under commission-based business models or for fees with no or very low minimum asset requirements. If our experience is any indication, firms and Advisers are more likely to adjust their policies and practices than to abandon middle-class clients.

Retirement Investors face a perfect storm in today's financial services marketplace. With ever-increasing responsibility for their own retirements and the need to choose from an increasingly complex set of financial products and services, Retirement Investors more than ever need competent financial advice that is in their best interest. Yet the current regulatory framework allows Advisers' interests to be misaligned with the interests of Retirement Investors resulting in the loss of billions of dollars in retirement savings.

The need for a strengthened fiduciary rule under ERISA is long overdue. The Coalition urges the Department to move as expeditiously as possible to make needed adjustments to the re-proposed rule and promulgate a final rule to protect Retirement Investors from further harm.



Testimony of V. Raymond Ferrara, CFP®
Before The Employee Benefits Security Administration,
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Assistant Secretary Borzi and members of the panel, thank you for the opportunity to testify. My name is Ray Ferrara and I am Chairman and CEO of ProVise Management Group LLC, based in Clearwater, Florida. I am a Certified Financial Planner™ Professional and a member of the Financial Planning Association®. Previously, I served on the Financial Planning Association® Board of Directors and served on the CFP Board, Board of Directors from 2009-2014 and was Chair in 2014. I am a practitioner and small business owner and I testify today on behalf of the Financial Planning Coalition.

This testimony today will focus on my experience providing advice to retirement plans under ERISA as well as my experience in providing financial advice under a fiduciary standard of conduct across different business models. Even though a majority of Advisers try to do the right thing, the Department's re-proposed rule is needed to protect retirement investors.

Many in the industry say the re-proposed rule is unworkable, too costly and will force Advisers to abandon middle-class clients. Based on our firm's actual experience, we don't share these views; we believe that, with some refinements and clarifications, the rule is workable.

ProVise is a financial planning firm that provides advisory, brokerage and insurance services under compensation models that include flat fee, assets under management and/or commissions. The firm's minimum requirement for assets under management to serve clients on a fee basis is \$25,000. For clients with less than \$25,000, we provide commission-based services.

Since 1988, ProVise has been a registered investment adviser with the Securities and Exchange Commission. Most of our financial planners are registered representatives of a broker-dealer – which is a member of the Financial Industry Regulatory Authority – and are licensed to sell insurance products. Ten out of twelve of our financial planners hold the CFP® certification. Although not legally required to act as a fiduciary when providing brokerage or insurance products such as mutual funds and annuities for commission-based compensation, we strive to do so because it is the right thing to do for our clients.

Many prospective individual clients come to us as they are considering rolling their assets out of an ERISA retirement plan. Unfortunately, some come to us after receiving advice that is not in their best interest. As an example, a state employee was advised to move 100% of the assets in her retirement plan into a single product, which carried a large and long surrender charge.

Fortunately, in this case, she was referred to us for a second opinion before the money was moved out of the plan. We were able to structure a retirement option, which met the prospective client's goals and objectives, but had no surrender charge and much lower costs on an on-going basis.

ProVise also advises 18 small business owners on their 401(k) plans who collectively have nearly \$100 million and 1,850 participants with an average account balance of \$51,400. Whether providing advice on a commission- or fee-basis, we do so in the best interest of the client. Under a DOL re-proposed rule, we expect to continue to serve these individual and small business clients.

We believe that, with some needed adjustments and refinements, the BIC exemption will allow us to continue to serve our commission-based clients. Many of the BIC requirements are similar to the *Standards of Professional Conduct* that I have voluntarily agreed to comply with as a CFP® professional. ProVise enters into a written agreement with our clients outlining the scope of service; we disclose likely conflicts of interest; we disclose accurate and understandable information related to our compensation; and we make a commitment to provide financial planning services under a fiduciary standard of conduct.

For over 25 years, we have profitably absorbed the small additional costs of serving as fiduciaries and have not experienced undue compliance issues. Under the re-proposed rule, we will most likely need to incur minor costs to develop a best interest contract and make sure our policies and procedures and disclosures comply with the rule. For those who have not practiced under a fiduciary standard in the past, their costs may be higher, but the consumer benefits far outweigh these costs.

Finally, the argument that this rule will diminish the availability of services to middle-class Americans is simply not credible. ProVise has successfully served middle-class clients under a fiduciary standard for years. The re-proposed rule still allows us, and everyone else to, provide advice using a commission or fee model. For anyone claiming that they are unable to serve middle-class clients under the re-proposed rule, ProVise and scores of CFP® professionals and FPA and NAPFA members across the country would be happy to help fill the gap.

In closing, we fully support the Department's efforts to strengthen consumer protection under ERISA and look forward to working with the Department as it refines the re-proposed rule.