

Testimony of

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on

“Advising Seniors about Their Money: Who’s Qualified—and Who’s Not?”

Before the Special Committee on Aging

of the

United States Senate

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Thank you, Chairman Kohl, Ranking Member Smith, and other distinguished members of the Special Committee, for providing me the opportunity to add my voice to the chorus of concern raised in the testimony that you've heard today.

I am Nicholas Nicolette, president of the Financial Planning Association®,¹ which represents more than 28,000 financial planning professionals. In my day job, I am a partner in Sterling Financial Group, a small financial planning firm in Sparta, New Jersey. I reside in Port Jervis, New York.

FPA strongly commends this committee for investigating the perplexing world of senior financial designations and shining a spotlight on the alphabet soup of certifications and designations that leaves too many elderly consumers vulnerable to incompetent or fraudulent financial advice.

I am proud that I have the opportunity to lead an organization of professionals who are committed to adhering to the highest standards of professional competence, ethical conduct and clear, complete disclosure for financial planning professionals. Our position on consumer protection is as simple as it is unwavering – financial planners have a fiduciary duty to their clients. Put another way, we are obliged to act in the best interests of our clients – even if it is to our own detriment. There is no higher standard.

I'm also proud to say that like most FPA members, I hold the CERTIFIED FINANCIAL PLANNER™ certification, administered by Certified Financial Planner Board of Standards Inc. (CFP Board).²

¹ The Financial Planning Association is the largest organization in the United States representing financial planners and affiliated firms. Most of FPA's 28,000 members are affiliated with investment adviser firms registered with the Securities and Exchange Commission, state securities administrators, or both. FPA is incorporated in Washington, D.C. where it maintains an advocacy office, with headquarters in Denver, Colorado.

² Certified Financial Planner Board of Standards Inc. (CFP Board) is a separate nonprofit organization whose goal is to benefit and protect the public by establishing and enforcing education, examination, experience and ethics requirements for persons authorized to use its certification marks. CFP Board is the largest such organization in the U.S. with more than 55,000 CFP® certificants.

FPA supports the CFP mark as the highest standard for competent, ethical financial planners. CFP® professionals have met the well-established and rigorous education, examination, experience and ethical requirements of the CFP certification process. The CFP certification is not the only credential that can or should be trusted by the public. But it represents so much of what is missing from some of the other 100-plus designations and certifications this committee has investigated - rigorous education and examination, enforceable ethical standards, and experience. Without these basic criteria, you cannot sustain credibility or the public trust.

CFP certification candidates must pass a comprehensive 10-hour, two-day examination on all aspects of personal finance, including retirement planning for persons of all ages. The exam is extremely rigorous. Only about 55 percent of applicants pass in their first attempt. If they do not have previous financial planning experience, applicants are required to obtain three years of qualifying full-time work experience after passing the exam. They also must undergo a full background investigation and abide by a stringent code of ethics and ongoing continuing education requirements.

In short, it's tough, very tough, to get and stay certified. And that is why the mark is used proudly by those who receive it, why it is waived from testing requirements by state securities regulators, and why it translates into public trust.

But rather than undergo this difficult, but not impossible process, too many simply claim an expertise in financial planning - or in the issue before this Committee, senior financial planning. The tragic stories we have heard so far today are all too common and cast a pall over the entire financial services industry. I have heard from a number of our members who have helped reassemble the shattered lives of senior citizens - victims of these pseudo-financial experts. These seniors have spent a lifetime working hard, raising and educating their children and saving for their retirement. For most, their

financial goal is not to live a lavish lifestyle, but to enjoy their retirement years with dignity and respect.

One particularly tragic case that came to my attention from an FPA member in Pennsylvania involved an elderly man who was victimized by an annuity salesman carrying a senior certification. The 79-year-old man was persuaded by the agent to sign a power of attorney, giving the agent access to the victim's CDs, cash and mutual funds. The assets, not coincidentally, ended up in unsuitable annuities. When the victim learned he had been cleaned out, his family said he went into a deep depression and died a few months later. The insurance company did attempt to rectify this horrible situation by offering the gentleman his money back. The offer was made in a letter which arrived on the day of his funeral. His family buried him with the letter in his pocket.

Sadly this salesman is still doing business, despite being sanctioned several times by state insurance officials.

In contrast to the product-driven process employed by this agent, FPA supports a client-centered process. CFP practitioners, for example, are required by their ethics code to use six clearly defined steps in the financial planning process to help people achieve their life goals, regardless of their stage of life.³ A CFP professional must first establish and define his or her relationship with the client and gather relevant information, including the client's goals, needs and priorities, as well as financial data. The planner will then evaluate the client's financial situation and develop and present his or her recommendations. Specifically, in the case of this unfortunate victim, who had limited resources and was living on a fixed income, we would have worked with him first on a budget plan and identified cash flow for daily needs and emergencies. Only then, as part of the larger planning process, would we have looked at strategies and possible product solutions for ensuring that he did not outlive his resources. Annuities,

³ See the CFP Board's *Code of Ethics, Rules of Conduct, Practice Standards and Disciplinary Rules*.
<http://www.cfp.net/Downloads/2008Standards.pdf>

or any other particular product, may or may not fit into the plan recommendations. If a planner is to be involved in implementing the plan and monitoring, these final two steps are also subject to the CFP Board's Practice Standards. Adherence to these standards is *required* of CFP certificants and is enforceable by CFP Board's Disciplinary and Ethics Commission.

Though these high standards are followed by tens of thousands of financial planners, including many who are not CFP practitioners, there are others who seek to take advantage of the most vulnerable in our society. So, how can we help protect our seniors from those who would prey on them? A combination of well-crafted regulation, vigorous enforcement and education are key.

Today, individuals are required to make more financial decisions that affect the quality of their lives than ever before. We have a responsibility – no, an obligation - to create an environment in which they can seek guidance and make decisions with confidence that their interests are being put first. Director Borg has discussed NASAA's plans to adopt a model regulation that we hope will discourage the use of bogus credentials. We look forward to working with NASAA toward that end. Regulators must also continue to be vigilant and act decisively when they see early indications of fraud. In some ways, though, their hands are tied by an antiquated regulatory system that continues to permit a lower standard for advice in the sale of insurance products. State insurance laws are only now playing 'catch up' to securities laws by establishing suitability requirements in certain product sales.⁴

Additionally, if an insurance agent, or any professional, uses a title or marketing materials suggesting he or she acts in a position of implicit trust on behalf of the client,

⁴ In 2003, the National Association of Insurance Commissioners proposed a model regulation for states to adopt on suitability in annuity transactions with seniors. See, http://www.naic.org/Releases/2003_docs/senior_protection_annuity.pdf. In 2006, the model was amended to apply to annuity transactions with all persons, regardless of age.

and has the expertise to help clients meet their objective, then they should be held to an adviser's fiduciary standard.

Finally, we must help investors – young and old alike – to educate themselves about the background of the person with whom they are investing their assets and their trust.

Thank you again for allowing me to testify today and I will be happy to respond to any questions you may have.