BY ELECTRONIC DELIVERY

July 14, 2009

The Honorable Barney Frank
Chairman
The Honorable Spencer Bachus
Ranking Member
House Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

Re: Section 913 of Administration's Proposed Legislation to Strengthen Investor Protection

Dear Chairman Frank and Ranking Member Bachus:

Certified Financial Planner Board of Standards (CFP Board), the Consumer Federation of America (CFA), the Financial Planning Association (FPA), Fund Democracy, the Investment Adviser Association (IAA), the National Association of Personal Financial Advisors (NAPFA), and the North American Securities Administrators Association (NASAA)[1] are writing to express our strong support for the proposal in the Administration's White Paper on financial regulatory reform to subject all those who provide investment advice to a fiduciary duty to act in their clients' best interests. Moreover, we are pleased at the speed with which the Treasury Department has moved to adopt these reforms, proposing the "Investor Protection Act of 2009" last week, which incorporates this and other investor protection priorities.

Although our organizations represent diverse interests and constituencies, including state securities regulators, consumer groups, and industry and professional groups related to investment advisers and financial planners, we share the view that the highest legal standard—a fiduciary duty—should apply to all who give financial advice to clients. Over the years, we have looked on in dismay as brokers have been allowed to offer extensive advisory services, and market their services based on the advice offered, all without having to comply with the Investment Advisers Act of 1940 (Advisers Act). The Administration's White Paper demonstrates a clear understanding of the problem and proposes the appropriate solution—a fiduciary duty for all.

Section 913 of the proposed legislation—entitled "Establishment of a Fiduciary Duty for Brokers, Dealers, and Investment Advisers, and Harmonization of the Regulation of Brokers, Dealers, and Investment Advisers"—seeks to accomplish that goal, though we fear it may fall short. It authorizes but does not require the SEC to issue rules under the Securities Exchange Act of 1934 (the primary federal law regulating broker-dealers) and the Advisers Act (the primary federal law regulating investment advisers) that “in substance” provide that the “standards of conduct for all brokers, dealers, and investment advisers, in providing investment advice about securities to retail customers or clients ... shall be to act solely in the interest of the customer or client without regard to the financial or other interest of the broker, dealer or investment adviser providing the advice.”[2]

While we applaud the intent evident in this provision and believe it represents a good starting point, we believe revisions will be needed to unambiguously provide for the extension of the *overarching* fiduciary duty that investment advisers owe their clients under the Advisers Act to brokers and others who provide investment advice, that this fiduciary duty is explicitly recognized in law, and that the legislation does not in any way undermine the fiduciary duty that already exists under the Advisers Act.

We greatly appreciate the Administration’s efforts in putting forward this legislation and look forward to working with you and members of this Committee to ensure that the Administration’s intent to bolster investor protections is fully realized.

Respectfully,

Kevin R. Keller, CAE
Chief Executive Officer
CFP Board

Barbara Roper
Director of Investor Protection
CFA

Marvin W. Tuttle Jr., CAE
Executive Director and CEO
FPA

Mercer Bullard
Founder and CEO
Fund Democracy

David G. Tittsworth
Executive Director
IAA

Fred J. Joseph
President
NASAA

Ellen Turf
Chief Executive Officer
NAPFA

Cc: House Financial Services Committee Members
The Honorable Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission
The Honorable Timothy F. Geithner, Secretary of the Treasury, U.S. Department of the Treasury

[1] CFP Board is a non-profit organization that acts in the public interest by fostering professional standards in personal financial planning through setting and enforcing education, examination, experience, and ethics standards for financial planner professionals who hold the CFP® certification. CFP Board's mission is to benefit the public by granting the CFP® certification and upholding it as the recognized standard of excellence for personal financial planning. CFP Board currently regulates nearly 60,000 CFP® professionals who agree, on a voluntary basis, to comply with our competency and ethical standards and subject themselves to the disciplinary oversight of CFP Board under a fiduciary standard of care.

CFA is a non-profit association of approximately 280 pro-consumer groups, representing more than 50 million Americans. It was established in 1968 to advance the consumer interest through research, education, and advocacy.

FPA® is the leadership and advocacy organization connecting those who provide, support, and benefit from professional financial planning. FPA demonstrates and supports a professional commitment to education and a client-centered financial planning process. Based in Denver, Colo., FPA has close to 100 chapters throughout the country representing more than 29,500 members involved in all facets of providing financial planning services. Working in alliance with academic leaders, legislative and regulatory bodies, financial services firms, and consumer interest organizations, FPA is the community that fosters the value of financial planning and advances the financial planning profession.

Fund Democracy is the leading voice for America's mutual fund shareholders. It has spoken out on mutual fund issues in financial publications such as TheStreet.com, Barron's, SmartMoney.com, and others. Fund Democracy also has engaged in a number of advocacy initiatives on behalf of mutual fund shareholders.

IAA is a not-for-profit organization that represents the interests of SEC-registered investment advisory firms. Founded in 1937, its membership today consists of more than 450 firms that collectively manage in excess of $7 trillion in assets for a wide variety of individual and institutional investors. For more information, please visit www.investmentadviser.org.

Since 1983, NAPFA has provided Fee-Only financial planners across the country with some of the strictest guidelines possible for professional competency, comprehensive financial planning, and Fee-Only compensation. With more than 2,000 members across the country, NAPFA has become the leading professional association in the United States dedicated to the advancement of Fee-Only financial planning. For more information on NAPFA, visit www.napfa.org.

NASAA is the oldest international organization devoted to investor protection. NASAA is a voluntary association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. For more information, visit: www.nasaa.org.

[2] This section also authorizes the SEC to issue regulations to "facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with investment professionals" and to prohibit "sales practices, conflicts of interest, and compensation schemes for financial intermediaries (including brokers, dealers, and investment advisers) that it deems contrary to the public interest and the interests of investors."