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KD Alert: "While You Were Waiting . . ." An Update on the Proposed Uniform Fiduciary Standard for the Financial Industry

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There remains much confusion regarding the proposed uniform fiduciary standard (the "Proposal") put forth by the U.S. Department of Labor (the "DOL"), despite the months-long comment period, days of hearings, and months of meetings between the DOL and interested parties. One thing is for certain, absent successful legislative intervention, the DOL's final rule will be published in the Federal Register this year – most likely in late spring or early summer. The draft final rule was sent to the Office of Management and Budget ("OMB") for review on January 28, 2016. The contents of the final rule are anyone's guess. The DOL has gone so far as to indicate it would be modifying the Proposal prior to submitting the final rule for approval, but the nature of those modifications is still a source of great debate. We have updated our White Paper on the push for a uniform fiduciary standard, first published May 22, 2015 (click here to view). Here are some of the highlights:

- The DOL received over 3,500 comments on the Proposal, and the vast majority of comments reflected very strong opinions about the Best Interest Contract Exemption ("BICE").
- Projected costs associated with the anticipated disclosures required under the Proposal, education of customers regarding the new rule and its effect on them, and continued compliance with the final rule have been estimated to be seven to eight figures annually for many financial institutions.
- The DOL has stated it is seeking an "upfront, enforceable commitment of fiduciary status," but is flexible about rule language on when the dotted line must be signed.
- The DOL expects OMB to turn the final rule around in approximately 90 days for publication in the Federal Register, with implementation to begin approximately eight months thereafter.

Implementation of such a final rule will likely be an arduous and costly endeavor for those affected, so financial institutions should begin getting their ducks in a row now (if they have not already). It is time to stop resisting the Proposal's uniform fiduciary standard and begin creating a culture that is able to work within it. The attorneys at Kaufman Dolowich & Voluck, LLP are ready to assist in the understanding and implementation of the requirements under any final rule.