

Q1 Fiduciary Legal Briefing

Fiduciary Advice

- DOL issued prohibited transaction exemption on December 18, 2020, to be effective February 21, 2021
- Meant to align with SEC's Regulation Best Interest ("Reg BI")
- Compensation may be in form of commissions, 12b-1s, sales loads, mark-ups
- 1975 five-part test for determining a fiduciary remains intact
- To qualify for exemption investment professionals must abide by "impartial conduct standards"
 - Recommendation in best interest of participant and cannot place other interests ahead of that interest
 - Compensation paid for recommendation must be reasonable
 - No misleading statements
- Recommendation to take a distribution will be fiduciary in nature

Consolidated Appropriations Act of 2021

- Employers may avoid partial plan termination if number of active participants on March 31, 2021 is 80% of active participants that existed on March 13, 2020
- CARES Act plan relief provisions include money purchase pension plans
- Non-COVID disaster relief
 - Qualified Disaster Distribution – very similar to CRD in CARES Act
 - \$100,000 distribution without penalty
 - Can be taxed ratably over three years
 - Can be repaid over three years
 - Loan suspension and increase in loan amounts similar to CARES Act relief
 - Hardships taken, but not used, for purchase of principal residence may be repaid to plan