

ERISA Buffet

Joel Shapiro

SENIOR VICE PRESIDENT, ERISA COMPLIANCE

1.

ESG

The Rollercoaster Continues

In and out of “favor”, DOL issues and new proposed rulemaking.

ESG Rollercoaster

As far back as 1994 the Department of Labor has issued sub-regulatory guidance in the form of interpretive bulletins and field assistance bulletins in regard to economically targeted or ESG investments.

Though regulatory outlook changed from administration to administration regarding level of scrutiny on ESG, certain concepts remained constant:

- Do **not sacrifice opportunity for return** or take on **additional risk**
- Do **not subvert economic goals** to non-economic policies
- Duty of **loyalty**
- Duty of **prudence**
- “**All things being equal**” collateral considerations can serve as tie-breakers

Latest ESG Flip-Flop

TRUMP ADMINISTRATION

Viewed ESG as having higher fees and raises heightened concern under ERISA

Solely pecuniary factors

Must consider reasonably available alternatives

Tie breaker: unable to distinguish + additional documentation requirements

Prohibited from use as QDIA

Impose proxy/voting requirements

BIDEN ADMINISTRATION

Nonenforcement of Trump regulations

Duty of prudence *may* require evaluation of ESG elements

Climate change pertinent to projected returns

Tie breaker: competing investments equally serve financial interests + prominent display of collateral benefits

Remove QDIA prohibition

Return to prior proxy/voting responsibilities

RPAG ESG

RPAG continues to monitor and report on the ESG regulatory environment and research the ESG investment space.



**Client
Blasts**



**Additional
ESG CITs**



**ESG
Balanced CIT**



ESG Scoring
Coming 2022



**Client educational
presentations and webinars**

2.

Cybersecurity

Now YOU can help your clients prepare for the DOL!

DOL investigations are asking for cyber due diligence. Be ready to assist!

DOL Cyber Documents

- 1. Cybersecurity Program Best Practices**
- 2. Tips for Hiring a Service Provider with Strong Cybersecurity Practices**
- 3. Online Security Tips**

DOL maintains that cybersecurity is, and has always been, a fiduciary responsibility.

DOL actively requesting documentation responsive to their issued nonbinding recommendations.

Courts likely to view these recommendations as setting standards.

Cybersecurity Program Best Practices



Establish a formal
Cyber Security
Program.

Cybersecurity Program Best Practices



Conduct annual risk assessments.

Cybersecurity Program Best Practices



Hire third party to audit security controls.

Cybersecurity Program Best Practices



Define and assign information security roles and responsibilities.

Cybersecurity Program Best Practices



Establish strong access control procedures.

Cybersecurity Program Best Practices



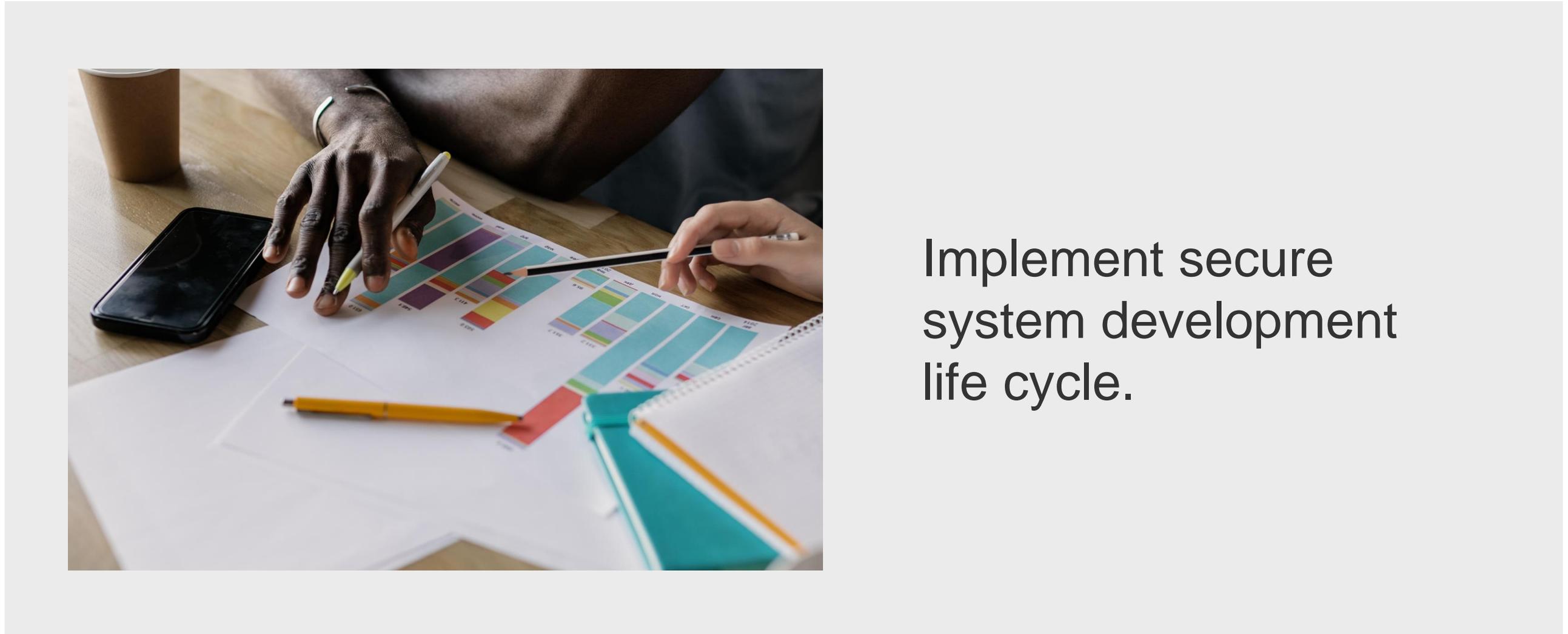
If data stored in cloud or with 3rd party, conduct security reviews.

Cybersecurity Program Best Practices



Conduct cyber security awareness training.

Cybersecurity Program Best Practices



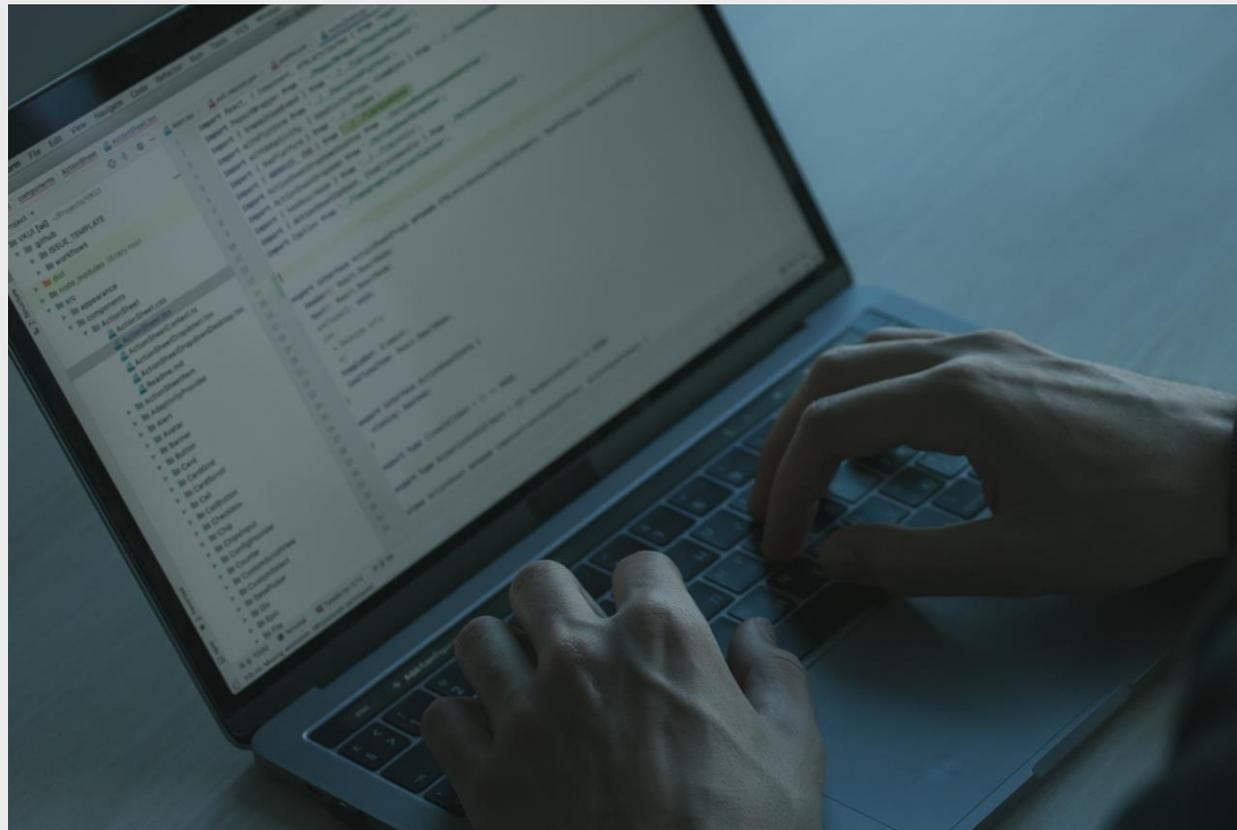
Implement secure system development life cycle.

Cybersecurity Program Best Practices



Create effective business resiliency program.

Cybersecurity Program Best Practices



Encrypt sensitive data.

Cybersecurity Program Best Practices



Respond to cyber security events.

Tips for Hiring a Service Provider with Strong Cybersecurity Practices

Ask provider about:

- Security standards. Have they been met?
- Security practices
- Security policies
- Audit results
- How does it validate practices?
- Past security breach(es), response(s), evolution of practices as result
- Insurance policies. What's covered?

Tips for Hiring a Service Provider with Strong Cybersecurity Practices

Does the provider offer a cybersecurity guarantee?

If so:

When does it apply?

Is participant action required?

Is plan sponsor action required?

Are there conditions for triggering guarantee?

Is guarantee backed by insurance of provider's general assets?

Tips for Hiring a Service Provider with Strong Cybersecurity Practices

Does the provider offer a cybersecurity guarantee?

If so:

When does it apply?

Is participant action required?

Is plan sponsor action required?

Are there conditions for triggering guarantee?

Is guarantee backed by insurance of provider's general assets?

Tips for Hiring a Service Provider with Strong Cybersecurity Practices

Does the provider offer a cybersecurity guarantee?

If so:

When does it apply?

Is participant action required?

Is plan sponsor action required?

Are there conditions for triggering guarantee?

Is guarantee backed by insurance of provider's general assets?

Tips for Hiring a Service Provider with Strong Cybersecurity Practices

Does the provider offer a cybersecurity guarantee?

If so:

When does it apply?

Is participant action required?

Is plan sponsor action required?

Are there conditions for triggering guarantee?

Is guarantee backed by insurance of provider's general assets?

Tips for Hiring a Service Provider with Strong Cybersecurity Practices

Does the provider offer a cybersecurity guarantee?

If so:

When does it apply?

Is participant action required?

Is plan sponsor action required?

Are there conditions for triggering guarantee?

Is guarantee backed by insurance of provider's general assets?

Tips for Hiring a Service Provider with Strong Cybersecurity Practices

Does the provider offer a cybersecurity guarantee?

If so:

When does it apply?

Is participant action required?

Is plan sponsor action required?

Are there conditions for triggering guarantee?

Is guarantee backed by insurance of provider's general assets?

Participant Online Security Tips



1 Register your account



2 Regularly monitor your account



3 Use strong and unique passwords



4 Use multi-factor Authentication



5 Do not use Free wifi



6 Keep personal contact info current



7 Close or delete unused accounts



8 Beware of Phishing attacks



9 Do not store login info in your email



10 Use anti-virus Software



11 Report identity theft to your employer and recordkeeper

RPAG Cybersecurity Assistance

Template you may use to request responses from service providers that include:

- All DOL's recommendations
- Additional probing questions for further clarity

Review Topics

Data Security Questionnaire

1. Cybersecurity program & policies
2. Risk assessment & preparedness
3. Third-party audits
4. Cyber security personnel criteria
5. Access control procedures for IT systems & data
6. Third-party providers & cloud storage
7. Cybersecurity Awareness training
8. System Development Life Cycle (SDLC) Program
9. Business Resiliency Program
10. Data storage, transfers, & sharing
11. Technical controls for security practices
12. Security incidents & breaches
13. Services agreement & contract provisions

RPAG Cybersecurity Assistance

Individual reports for each recordkeeper for use with clients.

Provider Overview
Data Security

Service Provider:
Fidelity
Q3 2021

Turn here™
Fidelity
INVESTMENTS

CONFIDENTIAL
For Plan sponsor use only. Not for further distribution

RPAG Cybersecurity Assistance

First batch of recordkeeper responses uploaded to the Resource Center:



RPAG Cybersecurity Assistance

Additional providers to be added this month:



RPAG Cybersecurity Assistance

How to find the pre-populated reports in the Resource Center:

The screenshot displays the RPAG Resource Center dashboard for user Paola Guillen. The interface includes a navigation menu, a spotlight section for regional summits, and several key performance indicators (KPIs) and reports.

Spotlight: RPAG Regional Summits - Next Month! (Austin, Orange County, Chicago, Philadelphia).

My Activity (Next 30 Days):

Upcoming Meetings	615
Calls to Make	0
Tasks to Do	0
Proposal Bids to Review	45
PAL Feeds to Accept	386

Client Servicing (Current Quarter):

Clients with Service Plans: 771/1959 (39%)

Meetings Completed	773
Scheduled Meetings	1488/688
Reports to Create	687/727
Meeting Minutes	7/38

Prospecting:

Warm	\$34.2 M	575
Early	\$465.0 M	428
Hot	\$3.6 M	94
Total		1097

Revenue:

Average Revenue	\$5.1 M
Average Plan Size	\$53.3 M
Plans With Compensation	405
Plans Without Compensation	1554

Fee Benchmarking/RFP:

In Progress	236
Completed	404

PAL:

Accepted	550
Need to Accept	386
Not on PAL	1003

My Calendar: October 2021

SUN	MON	TUE	WED	THU	FRI	SAT
26	27	28	29	30	1	2
3	4	5	6	7	8	9

Meetings:

9:00 AM	Brembo North America, Inc. Investment Review
9:00 AM	Stephens Distributing Company, Inc. Investment Review
1:00 PM	Airbus U.S. Space & Defense, Inc. Fiduciary Fitness Review
1:00 PM	Catri, Holton, Kessler & Kessler, PA Investment Review

Details:

- Date: 10/25/2021 9:00 AM PST
- Client: Brembo North America, Inc.
- Primary Service Consultant: Charles Catagnus
- Description:

RPAG Cybersecurity Assistance

Programming of the questionnaire to be released later this year to our main Service Highlights Questionnaire in the portal itself for use in **Provider Analysis and Provider Overview** reports where providers can keep it updated on an ongoing basis.

3.

Rollovers

Navigate the coming responsibilities for advisors

2022 will launch fiduciary responsibilities for rollover recommendations – are your ducks in a row?

Fiduciary Advice Exemption

PTE 2020-02

DOL acting to ensure that retirement investors are receiving advice that is prudent and loyal

DOL seeking to mitigate conflicts of interest

Rollover advice as a fiduciary action with fiduciary standards

Advice Standards

Obligations for financial institutions and investment professionals relying on exemption:

Fiduciary status in writing

Disclose services

Disclose material conflicts of interest

Impartial Conduct Standards (ICS)

Undivided loyalty making recommendations

Reasonable compensation

Policies and procedures ensure ICS & mitigate conflicts

Document and disclose reasons rollover recommendations are in best interest of retirement investor

Annual retrospective compliance review

Preclusions from exemption

Advice Standards

Impartial Conduct Standard:

Investigate and evaluate investments

No misleading statements

Not place own interests ahead of investor's

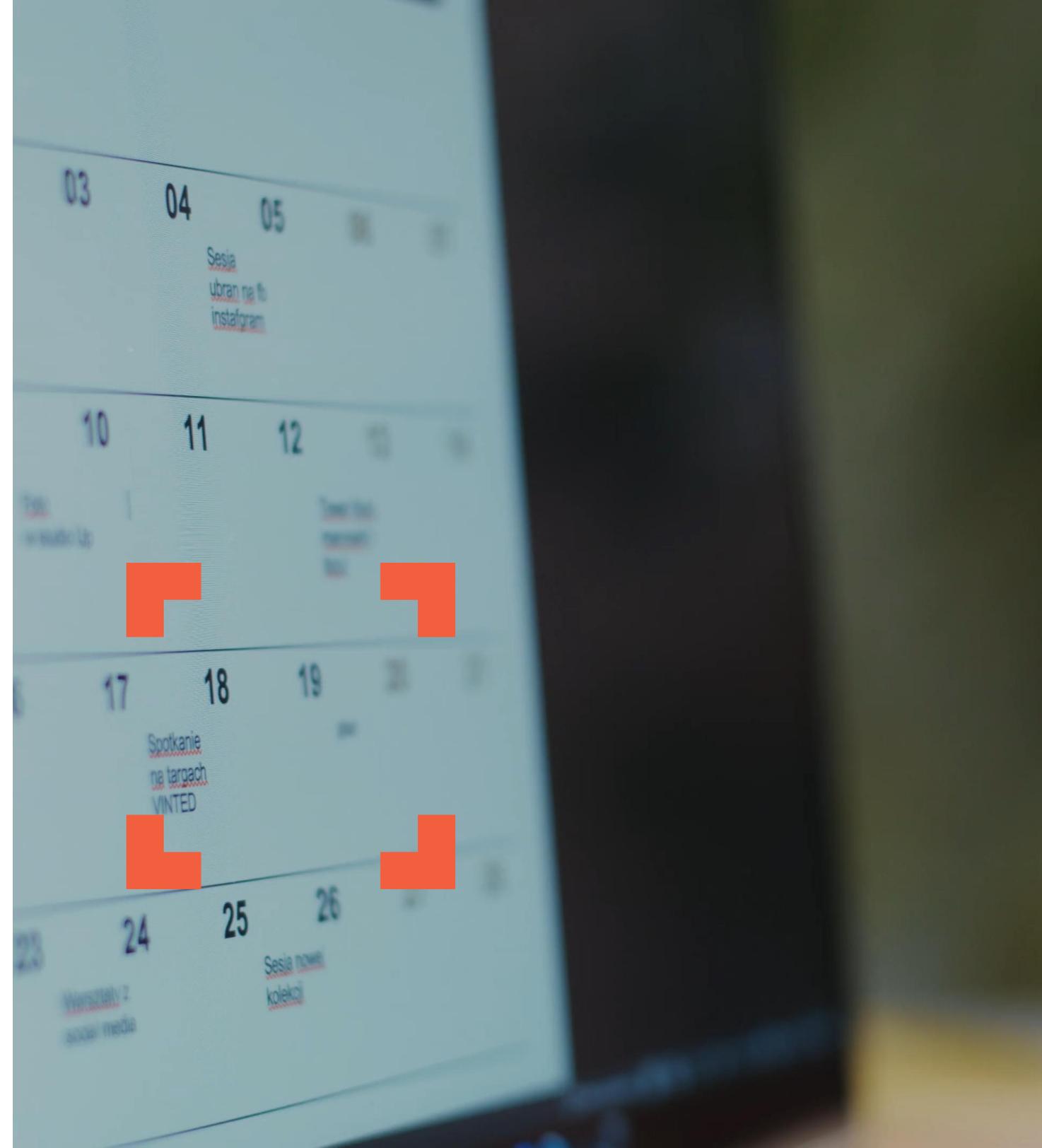
Reasonable compensation & best execution

**Provide advice and exercise sound judgment as a knowledgeable/impartial professional
(prudence)**

ICS standard already in play.

Advice Standards

- Everything in addition to ICS was set to become effective 1/1/22 – FAB 2021 – 02 extends non-enforcement to **January 31, 2022**, and Document/Disclosure requirements for rollovers through **June 30, 2022**.
- Plenty of time to get prepared. **RPAG is here to help!**



RPAG Rollover Analyzer

RPAG construction underway on:

**Customizable disclosure
templates**

Rollover Analyzer

Comparison tool:

- Alternatives
- Fees and expenses
- Who pays fees
- Investments
- Services

**Rollover Analysis
Attestation**

**Institution level
dashboard**

**Retrospective
compliance review
report**

Certifications

4.

Litigation

**Are the courts taking a turn
in favor of fiduciaries?**

Impactful cases over the past year provide insight into fiduciary responsibilities.

Cases of Note



Koch

- \$4M for 105,000

T. Rowe Price

- Judge skeptical of becoming policymaker

AON

- Victory for innovation

Banner

- Attorney fees slapped down

University of Maryland

- Goalmaker as QDIA

Great West

- Sanctions

PNC

- “Possible to probable”
- More than identify conflict

Cornell

- Some errors are harmless
- File first, build claims later

NYU

- Shifts burden
- Awful fiduciaries