

Department of Labor Finalizes Changes to the QPAM Exemption, PTE 84-14

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PRACTICES Labor and Employment, Employee Benefits and Executive Compensation

As an update to our prior briefing on the proposed changes to the Qualified Professional Asset Manager Exemption, PTE 84-14 (available [here](#)), on April 2, 2024, the Department of Labor (the **DOL**) finalized significant changes to its Qualified Professional Asset Manager Exemption (commonly known as the **QPAM Exemption**), which provides exemptive relief for investment funds that hold “plan assets” of plans and IRAs and are managed by a qualified professional asset manager (a **QPAM**) to engage in certain transactions that would otherwise be prohibited under the Employee Retirement Income Security Act of 1974, as amended, and the Internal Revenue Code of 1986, as amended (the **Final QPAM Amendment**). In general, the Final QPAM Amendment: (i) requires a one-time filing to the DOL; (ii) increases the equity capital, net worth and assets under management thresholds for QPAMs; (iii) includes foreign crimes on the list of crimes that make a QPAM ineligible and a new category of “prohibited misconduct”; and (iv) adds a six-year recordkeeping retention provision.

The Final QPAM Amendment provides for the following changes:

- **DOL Notice:** A QPAM must notify the DOL via email if it is relying on the QPAM Exemption, within 90 days of its reliance on the QPAM Exemption. The DOL intends to maintain a current list of entities relying on the QPAM Exemption on its publicly available website.
- **Updated Equity Capital, Net Worth, and Assets Under Management Thresholds:** The Final QPAM Exemption increases the equity capital, net worth, and assets under management required thresholds over the course of several years (subject to further annual adjustments for inflation) with each increase effective as of the last day of the fiscal year ending no later than December 31st of such year as provided below.

<u>Financial Thresholds</u>	<u>Current</u>	<u>12/31/2024</u>	<u>12/31/2027</u>	<u>12/31/2030</u>
Equity Capital or Net Worth for banks, savings and loan associations, and insurance companies	\$1,000,000	\$1,570,300	\$2,140,600	\$2,720,000
Assets under Management for registered investment advisers	\$85,000,000	\$101,956,000	\$118,912,000	\$135,868,000
Equity Capital or Net Worth for registered investment advisers and broker-dealers	\$1,000,000	\$1,346,000	\$1,694,000	\$2,040,000

- **Disqualifying Criminal Convictions and Prohibited Misconduct:** The Final QPAM Amendment updates the list of criminal convictions that would make a QPAM ineligible to include foreign crimes that are substantially equivalent to the exemption’s listed U.S. crimes, subject to exceptions, and the addition of a new category of “prohibited misconduct” that may lead to ineligibility, such as entering into non-prosecution and deferred prosecution agreements. This would apply to crimes and prohibited conduct by the QPAM, its affiliates, and any owners of 5% or more of the QPAM. The QPAM must also notify the DOL within 30 days following its ineligibility date for any prohibited misconduct or the execution date of any substantially equivalent foreign non-prosecution or deferred prosecution agreement.
- **One-Year Transition Period, Notice, and Individual Exemptions:** The exemption provides for a one-year transition period from when a QPAM becomes ineligible. Within 30 days after the ineligibility date, the QPAM must provide notice to the DOL and its client plans providing that the QPAM: (i) is ineligible to serve as a QPAM (unless an exemption is obtained), along with an objective description of the criminal conviction or prohibited conduct; (ii) will not restrict plans from withdrawing or impose termination fees or penalties other than reasonable fees disclosed in advance, and will indemnify client plans for losses; and (iii) will not employ or knowingly engage any individual that participated in the conduct that is subject to the criminal conviction or prohibited conduct. This notice requirement is a change from the DOL’s proposal which initially required all QPAMs to update their client agreements with prospective termination and plan indemnification provisions in the event the QPAM became ineligible. The Final QPAM Amendment also outlines instructions to ineligible entities for requesting an individual exemption during this transition period to continue to act as a QPAM, subject to the requirements set forth in the individual exemption.
- **Responsibility Requirement:** The Final QPAM Amendment clarifies that a QPAM must not permit other parties in interest to make decisions regarding plan investments under the QPAM’s control. In exercising its authority, the QPAM must ensure that any transaction, commitment, or investment of fund assets for which it is responsible is based on its own independent exercise of fiduciary judgment and free from any bias in favor of the interests of the plan sponsor or other parties in interest.
- **Recordkeeping:** The Final QPAM Amendment would add a six-year recordkeeping retention provision, to enable the DOL, fiduciaries, contributing employers, and plan participants to determine that the QPAM Exemption has been met with respect to a transaction.

The Final QPAM Amendment will be effective June 17, 2024, and can be found [here](#).