

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

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On July 27, 2022, the Department of Labor (the “DOL”) proposed 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 “Proposed QPAM Amendment”). In general, the Proposed QPAM Amendment: (i) requires a one-time filing to the DOL as well as updates to investment management agreements; (ii) increases the asset management and equity 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. Written comments and requests for a public hearing on the Proposed QPAM Amendment are to be submitted by September 26, 2022.

The Proposed QPAM Amendment provides for the following changes:

- **DOL Notice:** A requirement that a QPAM notify the DOL via email if it is relying on the exemption. The DOL intends to maintain a current list of entities relying on the QPAM Exemption on its publicly available website.
- **Updated Asset Management and Equity Thresholds:** Increases in the QPAM’s asset management and equity thresholds, along with possible annual inflation adjustments to these thresholds, as follows: (i) equity capital for banks, savings and loans associations, and insurance companies from \$1 million to \$2.72 million; (ii) assets under management from \$85 million to \$135.87 million; and (iii) equity capital for registered investment advisers and broker-dealers from \$1 million to \$2.04 million.
- **Disqualifying Crimes and Prohibited Misconduct:** An update to the list of crimes that would make a QPAM ineligible to explicitly include foreign crimes that are substantially equivalent to the exemption’s listed U.S. crimes (a reversal from DOL guidance issued under the Trump administration) and the addition of a new category of “prohibited misconduct” that may lead to ineligibility.
- **Expansion of Written Management Agreement:** The Proposed QPAM Amendment expands on the written management agreement component of the QPAM Exemption by requiring that QPAMs abide by certain standards of conduct when acting as a QPAM, in addition to acknowledging fiduciary status. It also requires updates to the QPAM’s investment management agreement that would apply in the event the QPAM becomes ineligible, including termination and plan indemnification provisions.

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- **One-Year Wind-Down & Individual Exemption:** Provides a one-year winding-down period from when a QPAM becomes ineligible. The Proposed QPAM Amendment also outlines instructions to ineligible entities for requesting an individual exemption to continue to act as a QPAM, subject to the requirements set forth in the individual exemption.
- **Sole Responsibility Requirement:** The Proposed QPAM Amendment clarifies that a QPAM must not permit other parties in interest to make decisions regarding plan investments under the QPAM's control. Approval of a transaction by the QPAM would not qualify as "sole responsibility" where the transaction is planned or negotiated in whole or in part by another party in interest.
- **Recordkeeping:** The Proposed 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 DOL is currently seeking comments to the Proposed QPAM Amendment. If the Proposed QPAM Amendment is adopted, it will be effective 60 days after the final amendment is published in the Federal Register.

The Proposed QPAM Amendment can be found here:

<https://www.federalregister.gov/documents/2022/07/27/2022-15702/proposed-amendment-to-prohibited-transaction-class-exemption-84-14-the-qpam-exemption>

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