

Executive Compensation, Employment & Benefits

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U.S. Department of Labor Finalizes Changes to the QPAM Exemption

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On April 3, 2024, the U.S. Department of Labor (DOL) released its final amendment to Prohibited Transaction Class Exemption 84-14, known as the Qualified Professional Asset Manager (QPAM) exemption. The QPAM exemption is frequently relied on by investment fiduciaries, including fund managers and investment advisers, to avoid engaging in transactions with respect to employee benefit plans that might otherwise be prohibited by the Employee Retirement Income Security Act of 1974 (ERISA) and/or the Internal Revenue Code (IRC). For a detailed description of pre-amendment QPAM requirements, see [Plan Fiduciaries, Including Investment Advisers and Fund Managers, Take Note – U.S. Department of Labor Proposes Enhanced QPAM Requirements](#). The final amendment is effective June 17, 2024.

Purpose of the QPAM Exemption.

ERISA prohibits transactions between a plan and a “party-in-interest” unless an exemption applies. Similar transactions are prohibited under the IRC. The QPAM exemption is often relied on by investment managers, including managers of pooled investment vehicles that are deemed to have plan assets for purposes of ERISA, to enable them to engage in transactions that might otherwise be prohibited by ERISA and/or the IRC, including certain transactions with counterparties that might be parties-in-interest.

Increase in QPAM AUM and Equity Requirements.

To qualify as a QPAM, an investment manager must be a registered investment adviser that has, prior to the new changes and as of the last day of its most recent fiscal year, total assets under management (AUM) in excess of \$85 million and shareholders’ or partners’ equity in excess of \$1 million, as reflected in the most recent balance sheet prepared (in accordance with GAAP) within the two-year period preceding the particular transaction (or have an unconditional guarantee of all the manager’s liabilities by an affiliate with more than \$1 million in equity).

The final amendment raises these thresholds, starting in a QPAM’s first fiscal year ending in 2024, as follows:

	Fiscal Years Ending In:		
	2024-2026	2027-2029	2030*
AUM	\$101,956,000	\$118,912,000	\$135,868,000
Shareholders'/Partners' Equity	\$1,346,000	\$1,694,000	\$2,040,000

*After 2030, the thresholds will be adjusted annually for inflation.

QPAMs with calendar year fiscal years will need to satisfy the 2024 thresholds by December 31, 2024, to continue to qualify as a QPAM.

New Notice Requirement.

The final amendment requires all investment managers that wish to rely on the QPAM exemption to notify the DOL of such intent via email (at QPAM@dol.gov). The DOL intends to publish on its website a list of all QPAMs that provide the notice.

The notice must be provided within 90 days of a manager’s initial reliance on the exemption. While it seems logical that existing managers relying on the QPAM exemption have up to 90 days after the final amendment becomes effective (i.e., September 14,

2024) to provide the notice, existing managers should consider providing notice to the DOL by June 17, 2024 to ensure continued reliance on the exemption.

There is also a 90-day cure period for inadvertent failures to notify the DOL. However, failure to notify the DOL within 180 days of reliance on the QPAM exemption will result in the QPAM not being eligible to rely on the exemption for any transactions until the failure is cured.

Once notice is made, no further notice is required unless the QPAM changes its legal name or no longer intends to rely on the exemption.

Authority Over Investment Decisions.

The final amendment expressly requires that in order to rely on the exemption, a QPAM must have the sole responsibility with respect to a transaction. The intent of this amendment is to ensure that a QPAM has responsibility for transactions approved by the QPAM and cannot merely ratify a transaction substantially negotiated by another plan fiduciary.

Expanded Scope of Disqualifying Conduct.

The pre-amendment QPAM exemption is not available to an investment manager for 10 years following certain criminal convictions of the manager or its affiliates or to a 5 percent or more owner of the manager or an affiliate. The final amendment expands the list of disqualifying crimes to expressly cover certain crimes in non-U.S. jurisdictions.

The final amendment also extends the disqualification rules to cover (i) entering into a domestic nonprosecution agreement (NPA) or deferred prosecution agreement (DPA) with a federal, state, or regulatory agency that, if prosecuted, would have been a disqualifying crime; (ii) engaging in a repeated practice or pattern that violates the QPAM exemption or intentionally engaging in conduct that violates the QPAM exemption, in each case as determined by a final judgment or court-approved settlement; or (iii) providing materially misleading information to the DOL or certain other regulatory bodies in connection with the QPAM exemption as determined by a final judgment or court-approved settlement (all the foregoing are considered Prohibited Misconduct). A QPAM that enters into the foreign equivalent of an NPA or a DPA must notify the DOL.

The disqualification rules apply to Prohibited Misconduct that occurs after June 17, 2024. Within 30 days of becoming ineligible to rely on the QPAM exemption, the manager is required to provide a detailed notice of its disqualification to plan clients and the DOL.

The final amendment allows for a one-year wind-down period during which the QPAM exemption can still apply to a manager that engaged in a disqualifying crime or Prohibited Misconduct. During the wind-down period, the QPAM may enter into new transactions on behalf of plan clients with preexisting agreements. The rationale behind this is to allow clients time to transition to another manager if desired.

Under the final amendment, a QPAM that is disqualified due to a disqualifying crime or Prohibited Misconduct must indemnify the plan that the QPAM managed for any actual losses to the plan resulting directly from violation of applicable law, breach of contract, or any claims arising out of the criminal conviction or Prohibited Misconduct.

New Recordkeeping Requirements.

The final amendment requires QPAMs to maintain records evidencing compliance with the QPAM exemption for six years beginning from the date the QPAM began relying on the exemption. A QPAM must permit access to these records by certain regulators, plan fiduciaries, and plan participants and beneficiaries upon request. A QPAM that fails to maintain sufficient records for a transaction will lose the ability to rely on the exemption for such a transaction.

Conclusion.

Investment managers relying on the QPAM exemption should review the final amendment and be mindful of the changes and how they may impact investment managers' ability to rely on the QPAM exemption going forward. In particular, an existing QPAM should:

- Determine whether any action is needed to meet the new AUM and shareholder/partner equity thresholds
- Prepare for and notify the DOL of its QPAM status no later than September 14, 2024 (and preferably by June 17, 2024)
- Review investment management agreements with ERISA clients to determine if any changes are required
- Establish policies and procedures that conform to the new recordkeeping requirements

The authors and other members of our ERISA team regularly advise investment managers on the intricacies of being a QPAM. Please contact the authors or any other Lowenstein Sandler lawyer with whom you regularly work if you have any questions or for assistance with complying with the final amendment to the QPAM exemption.

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

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