

U.S. Department of Labor Publishes Final Amendment to the QPAM Exemption

MAY 7, 2024

On April 3, 2024, the U.S. Department of Labor (Department) published its final amendment (the [Final Amendment](#)) to Prohibited Transaction Class Exemption 84-14 (the QPAM Exemption or Exemption). The Department previously proposed changes to the QPAM Exemption in July 2022 (the Proposed Amendment), which, among other items, expanded categories of disqualifying conduct.^[1] The Final Amendment retains many of the changes from the Proposed Amendment, but includes several notable modifications.

The QPAM Exemption is heavily relied on by investment professionals who manage the assets of certain employee benefit plans subject to the Employee Retirement Income Security Act of 1974, as amended (ERISA), plans and accounts subject to Section 4975 of the Internal Revenue Code (the Code), and plan asset vehicles (collectively, Benefit Plans). In general, the QPAM Exemption permits a “qualified professional asset manager,” or QPAM, to engage in transactions with a “party in interest” or “disqualified person”—who, in general, are people or entities closely connected to Benefit Plans—that are otherwise prohibited under ERISA and the Code, subject to specific conditions intended to protect Benefit Plan investors. A QPAM is defined as a bank, savings and loan association, insurance company or registered investment adviser that (i) meets specified asset and equity thresholds under the Exemption, and (ii) exercises discretionary authority over Benefit Plan assets. The Final Amendment to the QPAM Exemption is effective June 17, 2024.

Below we have provided a summary of key provisions of the Final Amendment as compared with the Proposed Amendment and the current QPAM Exemption. Although this summary is non-exhaustive, it highlights several important aspects of the Amendment for investment professionals and Benefit Plan fiduciaries:

| PROVISION | CURRENT RULE | PROPOSED AMENDMENT | FINAL AMENDMENT |
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| Assets Under Management (AUM) and Equity | Registered Investment Advisers: | Registered Investment Advisers: | AUM and equity thresholds in the Proposed Amendment will be phased-in |

Thresholds Required for QPAM Status

- AUM in excess of \$85 million as of the end of the most recent fiscal year end (FYE).
- Shareholder or Partner equity in excess of \$1 million.

Banks, Savings and Loan Associations, and Insurance Companies:

- Equity capital and/or net worth threshold in excess of \$1 million.

- AUM in excess of \$135.87 million as of the end of the most recent FYE.
- Equity in excess of \$2.04 million.

Banks, Savings and Loan Associations, and Insurance Companies:

- Equity capital and/or net worth in excess of \$2.72 million

incrementally through 2030, rather than in a single year.

Registered Investment Advisers:

- AUM: \$101,956,000 in 2024; \$118,912,000 in 2027; \$135,868,000 in 2030.

- Shareholder or Partner equity: \$1,346,000 in 2024; \$1,694,000 in 2027; and \$2,040,000 in 2030.

Banks, Savings and Loan Associations, and Insurance Companies:

- Equity capital and/or net worth in excess of \$1,570,300 in 2024; \$2,140,600 in 2027; and \$2,720,000 in 2030.

Note: there will be annual inflation adjustments to these thresholds after 2030.

Filing Requirements with the Department

Currently, QPAMs have no filing requirements with the Department.

QPAMs must file a report with the Department via email. The report includes the legal name of each business entity relying upon the exemption (and any name the QPAM may be operating under).

The report only needs to be filed once, unless there is a change to the legal or operating name of the

The Final Amendment **followed the Proposed Amendment but added a grace period**—if the QPAM fails to report its reliance on the exemption to the Department within 90 days, the QPAM has an additional 90 days to send the Department notice of its reliance and an explanation of the

QPAM. The Department intends to keep a current listing of all entities relying on the QPAM Exemption on its website.

reason(s) it failed to provide timely notice.

Ten-Year Disqualification for Criminal Convictions

A QPAM will lose its qualified status for a 10-year period if convicted in a U.S. court of certain financial crimes including (but not limited to) fraud, theft, misappropriation of funds or securities, or extortion.

The Department expanded the list of disqualifying crimes to include foreign crimes that are substantially equivalent to those crimes in the current QPAM exemption. Any convictions of an affiliate (whether domestic or foreign) would also render the QPAM ineligible.

The Final Amendment retained the domestic and foreign crimes listed under the Proposed Amendment that result in disqualification **(including affiliate convictions)** but excludes crimes in jurisdictions on the Department of Commerce list of “foreign adversaries” (e.g., China, Russia)

Ten-Year Disqualifying Provisions for Prohibited Misconduct

The QPAM Exemption does not currently include other categories of misconduct.

Created a new category of prohibited misconduct that could result in ten-year disqualification. Such actions generally included (i) conduct that forms the basis of a non-prosecution or deferred prosecution agreement (or its foreign equivalent), (ii) intentional or systemic violations of the Exemption, and (iii) providing materially misleading information to the Department.

The Final Amendment retains the new category of prohibited misconduct that could result in ten-year disqualification but has revised the actions to include active or knowing participation in conduct that results in (i) certain non-prosecution or deferred prosecution agreements, or (ii) judgment or settlement by a U.S. Court, federal or state regulators, or state attorney general finding systemic or intentional violation of the Exemption, or provision of materially misleading information to the Department and other regulators

in connection with the conditions of the Exemption.

For the foreign equivalent of a non-prosecution or deferred prosecution agreement, disqualification is not automatic. Instead, the QPAM must notify the Department of such conduct by email within 30 days that the agreement is executed.

Recordkeeping Requirement

The QPAM Exemption is silent with respect to the retention of records.

Required the QPAM to maintain, for six years, records that demonstrate compliance with the Exemption. Records must be accessible to the Department, the Internal Revenue Service, covered federal or state regulators, plan fiduciaries, employer organizations, participants, and beneficiaries.

Same as the Proposed Amendment. The Department reasons that a recordkeeping requirement on parties relying on the Exemption will ensure such parties are able to demonstrate, and the Department will be able to verify, ongoing compliance with the Exemption.

One-Year Transition Period

Currently, the QPAM Exemption contains no transition provisions when a QPAM becomes disqualified.

Added a one-year transition period that would allow Benefit Plans to re-examine and possibly restructure their relationship with a disqualified QPAM.

The Final Amendment adopts the one-year transition period under the Proposed Amendment upon the QPAM meeting certain conditions.

Mandatory Management Agreement Language

There are standard provisions in agreements with Benefit Plans (i.e., acknowledgement of fiduciary status), but

Agreements must include certain language, such as: (i) the Benefit Plan's ability to terminate or withdraw its

The Final Amendment **does not require** the Proposed Rule's provisions in its management agreements with

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| | <p>there are no mandatory provisions as a condition of the Exemption.</p> | <p>relationship with the QPAM, (ii) indemnification for losses and damages resulting from the QPAM's violation of law, breach of contract or conduct related to the QPAM's disqualification or criminal conviction, and (iii) restrictions on employing certain individuals who participated in conduct that is the subject of a criminal conviction or disqualification.</p> | <p>Benefit Plan clients; <i>however, a disqualified QPAM must agree in writing that it: (i) will not restrict the Benefit Plan's ability to terminate or withdraw its relationship with the QPAM, and (ii) will provide indemnification for losses and damages resulting from the QPAM's violation of law, breach of contract, or conduct related to the QPAM's disqualification.</i></p> |
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| <p>Authority over Investment Decisions</p> | <p>The Current Rule provides that the QPAM exemption is available only if the Benefit Plan's assets are the sole responsibility of an independent investment manager.</p> | <p>The Proposed Amendment clarifies that the QPAM must have sole responsibility for making Benefit Plan investment decisions that are under its control, and that the QPAM cannot act as a rubber stamp to approve transactions designed by the Party in Interest who appointed the QPAM.</p> | <p>The Final Amendment follows the Proposed Amendment and clarifies that the QPAM must have sole discretion over the investments of Benefit Plan assets and the related negotiations. <i>However, a QPAM may still use a sub-adviser as long as the QPAM maintains sole authority with respect to planning, negotiating, and initiating covered transactions.</i></p> |
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WINSTON TAKEAWAYS

Investment professionals who rely on the QPAM Exemption should:

- begin tracking the increased financial AUM equity, and net-worth thresholds, and monitor the changes to these amounts (every three years through 2030 and annually thereafter);
- review and update written management agreements, reporting, and recordkeeping procedures to ensure compliance with the Exemption;
- file the required report with the Department via email no later than September 15, 2024; and

- for those with global operations and foreign affiliates, review expanded ineligibility criteria and consider whether the organization and/or affiliates are compliant.

Fiduciaries who engage QPAMs for investment of their Benefit Plans' assets should:

- consider revising their due diligence efforts in reviewing agreements with current and future investment professionals to ensure compliance with the new requirements.

Please contact your Winston & Strawn attorneys for additional information.

Winston & Strawn Paralegal Kristine Lofquist also contributed to this blog post.

[1] See Winston & Strawn's previous Benefits Blasts for additional posts regarding the [QPAM Exemption](#), the Department's [proposed changes to the QPAM Exemption](#) and [monitoring conduct of affiliates in the United States and abroad](#).

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