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Congress of the United States
House of Representatives
Washington, DC 20515

April 5, 2023

The Honorable Julie A. Su
Acting Secretary
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: RIN 1210 ZA07, Proposed Amendment to Prohibited Transaction Class Exemption 84-14 (the QPAM Exemption)

Dear Acting Secretary Su:

I write regarding the Proposed Amendment to Prohibited Transaction Class Exemption 84-14 (the QPAM Exemption). I am concerned that the proposed amendment will greatly alter longstanding Department of Labor (DOL) policy and harm ERISA plans, plan participants and the businesses that serve plans.

As you know, the Employee Retirement Income Security Act of 1974 (ERISA) restricts certain activities in an effort to prohibit potential conflicts of interest or self-dealing by plan providers. When ERISA was enacted, Congress understood that exemptions to permit ordinary transactions was in the interest of all concerned, including plan participants. Since 1984, the DOL's qualified professional asset manager (QPAM) exemption has safely permitted a wide variety of plan investment transactions effected by state-regulated insurance companies, SEC-registered asset managers, or state or federally chartered banks that serve as QPAMs.¹ However, the proposed amendment would upend what has been a nearly 40-year success story.

In particular, the following aspects of the proposed amendment are some examples of changes not in the interests of plans, plan sponsors, the regulated community and American workers:

The Written Management Agreement Requirement. Under the proposed amendment, current or existing agreements are not excluded from DOL's new "written management agreement".

¹ Savings and loan associations may also serve as QPAMs. All financial institutions must also meet certain capitalization requirements and, in the case of SEC-registered asset managers, assets under management requirements.


requiring all existing agreements to be amended with DOL-drafted language, language which appears tied to the new disqualification authority the DOL would grant itself. Overriding existing and oftentimes long-standing agreements creates unnecessary burdens, expenses, and could open contracts to renegotiations in ways that may ultimately disadvantage plans and American workers.

The Changes to the Scope of the QPAM Exemption. Currently, if a fiduciary identifies a transaction that is advantageous to a plan but that is prohibited as a transaction with a party-in-interest, the fiduciary may engage a QPAM to evaluate the transaction and, if the QPAM determines the transaction is in fact in the plan's interest, enter into the transaction on behalf of the plan. However, the proposed amendment would bar any transaction "planned, negotiated, or initiated by a Party of Interest in whole or in part." This exclusion would create uncertainty at a minimum (which conversations between plan sponsor and prospective QPAM are permitted and which are not?) and would, at worst, bar plans from entering into otherwise advantageous transactions. Put another way, the proposed amendment does not reasonably target real abuses but declares a broad swath of currently permitted transactions to be abusive.

New Recordkeeping Requirement. This requirement is unduly burdensome and potentially duplicative. All QPAMs are regulated by other state or federal agencies, which have their own recordkeeping requirements, and the DOL already has the power to subpoena documents and investigate if it concludes that a violation of ERISA may be occurring or may have occurred.

In sum, the proposed amendment would improperly grant vastly expanded police and judicial authority to the DOL and would otherwise impose burdensome, duplicative, and unnecessary requirements, the cost of which would be passed on to plans and American workers. Rather than protect the retirement savings of Americans, the proposed amendment risks upending millions of plans with more costs and fewer options. I urge you to withdraw the proposed amendment.

Sincerely,



Lisa C. McClain
Member of Congress