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October 11, 2022

SUBMITTED VIA REGULATIONS.GOV

The Honorable Martin J. Walsh
Secretary
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

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

Dear Secretary Walsh:

We write regarding the "Proposed Amendment to Prohibited Transaction Class Exemption 84-14 (the QPAM Exemption)" (proposed amendment).[1] We are concerned that the proposed amendment is yet another example of a flawed regulation that will hurt the workers, retirees, and plan sponsors it purports to protect. The proposed amendment would make the exemption for qualified professional asset managers (QPAM) unworkable and prohibitively costly to use. It has far-reaching, negative implications for workers, retirees, and plan sponsors which the Department of Labor (DOL) has not fully recognized. We urge you to withdraw this proposal.

DOL has long interpreted the *Employee Retirement Income Security Act of 1974* (ERISA) in such a way that beneficial, benign transactions between sponsoring employers, fiduciaries, and service providers require an exemption from DOL to avoid being considered as violating the law's prohibited transactions and incurring associated penalties. For example, in the normal course of business, an investment manager hired by a plan may enter into an investment transaction with a completely unrelated financial institution that provides an unrelated service to the plan, like check-writing services. While such transactions are uncontroversial and do not pose a threat to retirement savers, DOL believes they require an exemption to occur.

[1] 87 Fed. Reg. 45,204 (proposed July 27, 2022) [hereinafter Proposed Amendment].

In 1984, DOL provided a workable prohibited transaction exemption to allow QPAMs to engage in many routine transactions, better known as the QPAM Exemption.[2] Investment managers routinely use the QPAM Exemption to help plans and participants navigate the market. However, it appears DOL is attempting to appease the far left by punishing financial institutions and completely redefining when the QPAM Exemption could apply. The proposed amendment is far more than a mere "clarification" as alleged by DOL.

Under the proposed amendment, many routine investment arrangements and interactions would be deemed impermissible. By excluding any transaction "planned, negotiated, or initiated … in whole or part" by any party-in-interest, employer plan sponsors are barred from making investment suggestions to a QPAM.[3] For example, an employer sponsoring a plan may have important views about how best to protect participants from market volatility. Employers often have an overall investment policy regarding how plan's investments work together, while the asset manager may hold only part of that plan. Clearly, plan sponsors will have their own views on investments and should be allowed to interact with a QPAM on such matters without fear of government retribution.

The proposed amendment also bars other financial institutions from proposing transactions to the investment manager. Considering that many financial transactions are entered between two parties (i.e., a financial institution and an investment manager), it is confusing that DOL would prohibit information about available products from coming to a QPAM. This creates a world where a plan's investment manager would miss out not only on advantageous transactions, but also on transactions that reduce the risk to pension plans. Ultimately, plan participants and plans would suffer under the proposed "clarification."

The proposed amendment further includes a "winding-down" period during which an investment manager who is disqualified from using the QPAM Exemption can continue to service the plan. While this provision may be intended to help participants and plan sponsors, it is not workable. During the winding-down period, the investment manager may not engage in any new transactions. [4] This winding-down period is useless because, in practice, plan participants and sponsors would be immediately stuck with an investment manager who cannot protect them from market volatility.

Finally, under the proposed amendment, DOL may unilaterally remove an investment manager's QPAM Exemption, leaving plan participants without an active investment manager overseeing their investments. If DOL decides the investment manager provided incorrect information, the investment manager can be disqualified from the exemption almost immediately. The proposed amendment lacks an appeals process, providing DOL unchecked power. This is a disappointing departure from current law, which requires any change to an exemption, including any

[2] Class Exemption for Plan Asset Transaction Determined by Independent Qualified Professional Asset Managers, 49 Fed. Reg. 9,494 (Mar. 13, 1984).
[3] Proposed Amendment, 87 Fed. Reg. at 45,227.
[4] *Id.* at 45,228.

revocation of an exemption, to be completed through public notice and comment.[5] Public notice and comment is fundamental to our regulatory process. DOL's proposal to avoid a transparent and fair process is concerning. The use of such unilateral power will ultimately leave workers and retirees without the benefit of experts overseeing their hard-earned savings.

These are just a few examples of the misguided nature of the proposed amendment to the QPAM Exemption. The proposed amendment would seem to be a solution in search of a problem, and it will jeopardize the hard-earned savings of millions of Americans. This proposal should be withdrawn.

Thank you for your consideration of our views.

Respectfully submitted,

Virginia Foxx
Ranking Member

Rick Allen
Ranking Member
Subcommittee on Health, Employment, Labor, and Pensions

[5] 29 C.F.R. § 2570.50.