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Client Alert | Investment Management

DOL Issued Final Amendments to the QPAM Exemption. What Do You Need to Know?

The U.S. Department of Labor (DOL) [issued final amendments](#) (Amendments) on April 3 to Prohibited Transaction Class Exemption 84-14, commonly referred to as the “QPAM Exemption.” The effective date of the Amendments is June 17, 2024.

Summary of the Amendments

The Amendments change existing conditions and add entirely new ones to the QPAM Exemption. The Amendments include the following key changes:

- **Requirement to Notify DOL of Reliance on Exemption**
The Amendments require a qualified professional asset manager (QPAM) to notify the DOL within 90 days of first reliance on the QPAM Exemption. The notification must be sent via email to QPAM@dol.gov with the legal name of the entity relying upon the exemption and any name the QPAM may be operating under. Notice also must be provided to the DOL in the event of a change to legal or operating names. Additionally, a QPAM may, but is not legally required to, notify the DOL if it is no longer relying upon the exemption at any time.
- **Increased Minimum Asset and Equity Thresholds**
The Amendments increase the equity capital threshold and the assets under management (AUM) threshold for registered investment advisers that a QPAM must satisfy to rely on the exemption. The thresholds are increased in 2025, 2028 and 2031. The Amendments provide that the DOL will make subsequent annual adjustments for inflation to the AUM and equity thresholds no later than January 31 of each year.
- **Scope: Sole Authority**
The DOL was concerned that QPAMs may be hired to rubber-stamp transactions proposed by parties-in-interest to a plan. The Amendments require that the QPAM, among other things, ensure that any transaction is based on its own independent judgment and free from bias in favor of a party-in-interest.
- **Disqualification for Certain Criminal Convictions or “Prohibited Misconduct”**
The QPAM Exemption has long prohibited QPAMs, their affiliates, and 5% or more owners from relying on the QPAM Exemption if they have been convicted of certain crimes. The Amendments clarify and broaden the list of such disqualifiers as follows:

- **Foreign-Equivalent Criminal Convictions**

The Amendments clarify that a criminal conviction by a foreign court of competent jurisdiction serves as a basis for ineligibility of the exemption. This, however, excludes convictions and imprisonment in a country included on the U.S. Department of Commerce's list of "foreign adversaries." The Amendments apply to any foreign-equivalent criminal court convictions arising both before and after the effective date.

- **Prohibited Misconduct**

The Amendments add a new category of disqualification which applies only prospectively after the effective date: "Prohibited Misconduct." Prohibited Misconduct includes:

- Entering into a non-prosecution agreement (NPA) or deferred prosecution agreement (DPA) with certain government and regulatory agencies wherein the allegations that form the basis of the NPA or DPA would constitute a disqualifying crime if they were successfully prosecuted.
- Final judgments or court-approved settlements in a regulatory or criminal proceeding that includes a finding that the QPAM has "participated" in one or more of the following categories of conduct:
 - Engaging in a systematic pattern or practice of conduct that violates the conditions of the QPAM Exemption.
 - Intentionally engaging in conduct that violates the conditions of the QPAM Exemption.
 - Providing materially misleading information to such regulator or state attorney general in connection with the conditions of the QPAM Exemption.

- **One-Year Transition Period**

The Amendments allow a disqualified QPAM to continue to service existing clients while transitioning them from service. When a QPAM becomes ineligible to use the QPAM Exemption, the QPAM may still rely on the exemption for a one-year period, provided that the following conditions are met during the transition period:

- The QPAM acts prudently and loyally.
- Within 30 days, the QPAM provides notice to the DOL and each of its plan clients stating the reason for ineligibility and explaining the initiation of a one-year transition period.
- The QPAM does not restrict the ability of a plan client to terminate or withdraw from its arrangement with the QPAM and does not impose fees, penalties or charges on client plans in connection with the process of terminating or withdrawing from the arrangement, except for reasonable fees that are appropriately disclosed in advance and designed to prevent abusive investment practices and ensure equitable treatment of all investors in a pool fund.
- The QPAM agrees to indemnify, hold harmless and promptly restore actual losses to the plan clients for any damages that directly result from the disqualifying conduct.
- The QPAM does not employ or knowingly engage any individual who participated in the disqualifying conduct.
- The QPAM provides an objective description of the facts and circumstances upon which the triggering event is based and provides sufficient detail to satisfy its fiduciary duties of prudence and loyalty.

Importantly, the transition period relief is only available with respect to transactions involving existing plan clients as of the date of ineligibility and not with respect to any new plan clients.

- **Recordkeeping Requirements**

The Amendments also impose new recordkeeping requirements on QPAMs. Specifically, they are required to maintain records for six years from the date of the transaction in a manner that is reasonably accessible for examination. If a QPAM refuses to disclose information on the basis that the information is exempt from disclosure, the QPAM must provide a written notice advising the DOL of the reason for the refusal.

Key Takeaways

- Smaller investment managers may be precluded from relying on the QPAM Exemption based on the heightened AUM and equity thresholds.
- Firms relying on the QPAM Exemption will need to notify the DOL, and revisit and implement new recordkeeping requirements.
- In light of the changes to the scope of the exemption, QPAMs will need to consider whether proposed transactions are eligible for relief under the exemption.
- Interpretative issues are likely to arise regarding the types of factual allegations that could constitute Prohibited Misconduct.

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