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Qualified Professional Asset Manager: An Important Tool for ERISA Fiduciaries (2024 Update)

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A key prohibited transaction exemption on which registered investment advisers and other discretionary asset managers of plans and accounts covered by the fiduciary provisions of the Employee Retirement Income Security Act of 1974, as amended (ERISA) or Section 4975 of the Internal Revenue Code of 1986, as amended (Code) rely, is the Qualified Professional Asset Manager Exemption (QPAM Exemption) issued by the Department of Labor (Department or DOL).[1] The QPAM Exemption addresses prohibited transactions that occur during some of the most common transactions between a plan account or individual retirement account (IRA) and parties that provide services to the account or have some other relationship to the account. As such, it is an extremely important exemption.

We described in detail the QPAM Exemption in the February 2022 edition of *The Investment Lawyer*.[2] Since then, the Department made substantial changes to the exemption, which become effective on June 17, 2024 (2024 Amendments). The purpose of this article is to update the 2022 article to reflect the 2024 Amendments so that investment managers, compliance personnel, and others understand (1) the prohibited transaction provisions and the need to utilize prohibited transaction exemptions like the QPAM Exemption to address them, (2) the meaning of the term "qualified professional asset manager" (QPAM), (3) the key conditions of the exemption, (4) the implications of a QPAM's disqualification by reason of certain criminal convictions and other prohibited misconduct, (5) and some issues that may arise when utilizing the QPAM Exemption.

Overview of the Prohibited Transaction Provisions

ERISA requires that asset managers comply with the statute's fiduciary duty requirements, for example, the duty of prudence, with regard to plans and entities covered by the fiduciary provisions of Title I of ERISA. Such plans are "employee benefit plans" as defined in Section 3(3) of ERISA that are sponsored by private sector employers (ERISA Plans). Entities subject to the fiduciary duty provisions include partnerships, limited liability companies, collective investment trusts, collective investment funds, single member and pooled insurance company separate accounts, and other entities the assets of which are deemed to be ERISA Plan assets for purposes of ERISA by reason of ERISA Plans investing in such entities (Plan Asset Entities).[3]

ERISA also imposes certain prohibited transaction restrictions that are designed to ensure that asset

managers and other fiduciaries exclusively act in the interest of the ERISA Plan and its participants and beneficiaries.[4] As discussed below, comparable prohibited transaction provisions are found in Section 4975 of the Code. ERISA Plans and Plan Asset Entities also are subject to the fiduciary duty provisions and the prohibited transaction provisions in the Code.

Tax-favored savings vehicles described in Section 4975, for example, most individual retirement accounts (Non-ERISA Plans), are not subject to ERISA's fiduciary duty or prohibited transaction provisions because such accounts are not provided by an employer. However, such accounts are subject to the prohibited transaction provisions in the Code. Additionally, an entity in which Non-ERISA Plans invest their assets may still be deemed a Plan Asset Entity and subject to the prohibited transaction provisions in the Code despite the fact that no ERISA Plans invested in such entity.

Pursuant to Section 406(a), a fiduciary may not cause an ERISA Plan or a Plan Asset Entity to engage in the following transactions:[5]

- A direct or indirect sale or exchange of property between the ERISA Plan (or Plan Asset Entity) and a party in interest;[6]
- A direct or indirect lending of money or other extension of credit between the ERISA Plan (or Plan Asset Entity) and a party in interest;[7]
- A direct or indirect furnishing of goods, services, or facilities between the ERISA Plan (or Plan Asset Entity) and a party in interest;[8]
- A direct or indirect transfer to, or for the use by or for the benefit of, a party in interest of plan assets;[9] and
- A purchase of employer securities or employer property.[10]

A "party in interest" is defined broadly to include, among others, another fiduciary, a plan service provider and its affiliates, and an employer whose employees participate in the plan and their affiliates.[11] The Code mirrors these prohibited transactions of ERISA. However, the Code uses the term "disqualified person" rather than "party in interest." The term "disqualified person" is defined slightly different than the term "party in interest." A disqualified person includes the aforementioned parties and, among other things, a provider of services to an IRA, the IRA owner, and the IRA's beneficiaries.[12] References to the term "party in interest" throughout this article should be read to include the term "disqualified person" unless otherwise noted.

ERISA contains additional prohibited transaction restrictions that prohibit fiduciaries from engaging in transactions in the face of a conflict.[13] More specifically, ERISA prohibits a fiduciary from engaging in the following transactions:

- Dealing with assets of the ERISA Plan (or Plan Asset Entity) in his or her own interest or his or her own account (or in the interest of a person in which the fiduciary has an interest that could affect his or her judgment as a fiduciary), that is, no self-dealing;[14]
- Acting in any transaction involving the ERISA Plan (or Plan Asset Entity) on behalf of a party whose interests are adverse to the interests of the ERISA Plan (or Plan Asset Entity) or the ERISA Plan's (or Plan Asset Entity's) participants and beneficiaries, that is, the fiduciary or its affiliate cannot be on both sides of a transaction;[15] and
- Receiving any consideration for his or her own personal account from any party dealing with the ERISA Plan (or Plan Asset Entity) in connection with a transaction involving plan assets, that is, no kick-backs.[16]

The Code mirrors the aforementioned restrictions as they relate to self-dealing and kick-backs.[17] Thus, these fiduciary prohibited transaction provisions apply to fiduciaries of ERISA Plans, Plan Asset Entities, and IRAs.

For purposes of this article, we cite the ERISA prohibited transaction provisions, but unless

otherwise noted, the reader should assume that there is a corresponding provision under the Code. As discussed, the Code's prohibited transaction provisions apply to ERISA Plans, Non-ERISA Plans (IRAs), and Plan Asset Entities.

The prohibited transaction provisions in Section 406(a) of ERISA are commonly known as *per se* prohibited transactions. In other words, the intent of the fiduciary who engages in the transaction is not at all relevant. Therefore, in the absence of compliance with a prohibited transaction exemption, a non-exempt prohibited transaction occurs. The law is less clear on whether an act contrary to the terms of Section 406(b) is a per se violation of such provisions. However, regardless of the intent requirement under Section 406(b), asset managers should try to avoid engaging in such transactions. Failure to comply with the ERISA prohibited transaction provisions or failure to meet the conditions of an applicable prohibited transaction exemption, like the QPAM Exemption, will result in fiduciary breaches, while violation of the Code's prohibited transaction provisions without meeting the conditions of an exemption may result in the assessment of excises taxes.[18]

Importantly, an asset manager could unknowingly cause an ERISA Plan, Non-ERISA Plan, or Plan Asset Entity to engage in a per se prohibited transaction simply by receiving services or entering into other transactions in the normal course of business. For example, an ERISA Plan utilizes the custodial services of Bank A for the ERISA Plan. Bank A has a broker-dealer affiliate (Broker Dealer). The ERISA Plan fiduciary hires Manager X to manage a portion of the ERISA Plan's assets. Manager X, which is not affiliated with Bank A or Broker Dealer, executes trades through Broker Dealer. Such transaction would result in a prohibited transaction under Section 406(a) because Broker Dealer is a party in interest to the ERISA Plan by reason of its affiliation with Bank A, which is a party in interest to the ERISA Plan by reason of being a service provider, that is, custodian, to the ERISA Plan. This is a very basic example, but it illustrates how easily the asset manager can cause a prohibited transaction. In the case of an investment fund that has dozens of ERISA Plan investors and the assets of the investment fund are deemed to include the assets of the ERISA Plan investors, making it a Plan Asset Entity, it would be very difficult for the manager of the investment fund to identify every party in interest to each and every ERISA Plan investor.

Prohibited Transactions Exempted by the QPAM Exemption

In the event that a transaction will be prohibited under Section 406(a) or Section 406(b), asset managers should seek to comply with a prohibited transaction exemption like the QPAM Exemption. Asset managers will find that the broad exemptive relief provided by the QPAM Exemption, particularly Part I, will address many of the common party in interest transactions under Section 406(a) that will arise in managing assets including those that occur in the above example. However, the QPAM Exemption provides exemptive relief under very limited circumstances with regard to the prohibited transactions provisions under Section 406(b).

More specifically, Part I of the QPAM Exemption is a class exemption, which permits a QPAM that exercises discretion over the management of investments in an investment fund to engage in Section 406(a) prohibited transactions with most parties in interest to ERISA Plan investors, Non-ERISA Plan investors, and Plan Asset Entity investors in the investment fund without violating ERISA or the Code.[19] However, Part I of the QPAM Exemption does not provide exemptive relief from the prohibited transaction restrictions of ERISA Section 406(b).[20] Parts II, III, and IV of the QPAM Exemption provide very limited Section 406(b) prohibited transaction relief. The QPAM Exemption broadly defines an "Investment Fund" to include "single customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and

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any other account or fund to the extent that the disposition of its assets (whether or not in the custody of the QPAM) is subject to the discretionary authority of the QPAM."[21] Additionally, the investment fund must be a fund "established primarily for investment purposes."[22]

Asset Manager Must Be a QPAM

At the core of the QPAM Exemption is the requirement that the asset manager be a "qualified professional asset manager," that is, a QPAM. To that end, the asset manager must satisfy certain conditions based on financial institution type and certain capitalization and assets under management thresholds.[23] The 2024 Amendments made substantial changes to these thresholds. The Department included the thresholds in the original exemption because in its view "…the QPAM Exemption was originally granted, in part, on the premise that large financial services institutions would be able to withstand improper influence from Parties in Interest…" and that it established "…the asset management and equity thresholds in the exemption to set minimum size thresholds that would help ensure a QPAM would be able to withstand such influence…"[24] The Department was of the view that these thresholds should be increased in order to assure this continued to be the case.

Under the QPAM Exemption, to be a QPAM an asset manager must have the power and respective legal authorization to manage, acquire, and dispose of assets of a plan. The asset manager also must confirm annually, upon review of its annual financial statement and reported assets under management, its status as either of the following:

- A bank, as defined in Section 202(a)(2) of the Investment Advisers Act of 1940, as amended (Advisers Act), that has the power to manage, acquire or dispose of assets of a plan and with equity capital in excess of $1 million. This threshold will increase as follows: (i) effective as of the last day of the fiscal year ending no later than December 31, 2024, the threshold increases to $1,570,300; (ii) effective as of the last day of the fiscal year ending no later than December 31, 2027, the threshold increases to $2,140,600; and (iii) effective as of the last day of the fiscal year ending no later than December 31, 2030, the threshold increases to $2,720,000.[25]
- A savings and loan association that has applied for and been granted by an applicable state or federal regulator trust powers to manage, acquire or dispose of assets of a plan and with equity capital or net worth in excess of $1 million as of the last day of its most recent fiscal year. This threshold will increase as follows: (i) effective as of the last day of the fiscal year ending no later than December 31, 2024, the threshold will increase to $1,570,300; (ii) effective as of the last day of the fiscal year ending no later than December 31, 2027, the threshold increases to $2,140,600; and (iii) effective as of the last day of the fiscal year ending no later than December 31, 2030, the threshold increases to $2,720,000.[26]
- An insurance company that is qualified under the laws of more than one state to manage, acquire or dispose of the assets of a plan with a net worth in excess of $1 million. This threshold will increase as follows: (i) effective as of the last day of the fiscal year ending no later than December 31, 2024, the threshold increases to $1,570,300; (ii) effective as of the last day of the fiscal year ending no later than December 31, 2027, the threshold increases to $2,140,600; and (iii) effective as of the last day of the fiscal year ending no later than December 31, 2030, the threshold increases to $2,720,000.[27]
- A registered investment adviser under the Advisers Act that has total assets attributable to clients under its management and control in excess of $85 million and with net capital and shareholders' equity of at least $1 million as of the last day of the adviser's most recent fiscal year. These thresholds will increase as follows: (i) effective as of the last day of the fiscal year ending no later

than December 31, 2024, assets under management increases to $101,956,000 and shareholder equity increases to $1,346,000; (ii) effective as of the last day of the fiscal year ending no later than December 31, 2027, assets under management increases to $118,912,000 and shareholder equity increases to $1,694,000; and (iii) effective as of the last day of the fiscal year ending no later than December 31, 2030, assets under management increases to $135,868,000 and shareholder equity increases to $2,040,000.[28] In the case of an adviser that cannot meet the applicable shareholder equity requirement, the adviser can still be a QPAM if certain affiliates of the adviser who are financial institutions that otherwise meet the QPAM definition or if certain affiliates that meet the shareholder equity requirements in the exemption unconditionally guarantee the payment of all liabilities incurred by the adviser, including for breaches of Section 404 or Section 406 of ERISA.[29]

The QPAM Exemption also now provides that the above-discussed thresholds will increase after the 2027 fiscal year in accordance with increases in the Consumer Price Index. The Department will communicate such increases via notice in the *Federal Register* and will make such adjustments no later than January 31 of each year. The adjustments will be effective as of the last day of the fiscal year in which the increase takes effect, ending no later than December 31 of such fiscal year.[30]

Regardless of whether an asset manager is a bank, savings and loan association, insurance company, or registered investment adviser, such manager must acknowledge in a "Written Management Agreement" that it is a fiduciary with respect to each ERISA Plan investor, Non-ERISA Plan investor, and Plan Asset Entity investor in the investment fund managed by the QPAM.[31] Note that the definition of QPAM specifically requires that a bank, savings and loan association and insurance company have the power to manage, acquire, and dispose of the assets of a plan because not all of these financial institutions (or their affiliates) have such powers.

Conditions of the QPAM Exemption

Under Part I of the QPAM Exemption, the prohibited transaction restrictions and the accompanying taxes imposed by the Code, will not apply in the event of an otherwise prohibited transaction under Section 406(a) between the ERISA Plan investor, Non-ERISA Plan investor, or Plan Asset Entity investor (together, a Plan Investor) and a party in interest to the Plan Investor so long as the following conditions are met by the Plan Investor and the QPAM.

QPAM Must Register with Department

As a result of the 2024 Amendments, an asset manager that intends to rely on the QPAM Exemption must notify the Department by email at *QPAM@dol.gov*.[32] The email should include the legal name of each business entity intending to rely on the QPAM Exemption and any name the QPAM may be operating under.[33] This is a one-time notification process unless the QPAM's legal or operating name changes or the QPAM stops relying on the QPAM Exemption. The QPAM must provide notice of reliance on the exemption or a name change within 90 days of the date of reliance or name change. If the QPAM fails to provide such notice, it has an additional 90 days to provide the notice, but also must provide an explanation for why notice did not occur within the first 90 days.[34]

The registration applies to all QPAMs relying on the exemption on or after June 17, 2024, including those relying on the exemption before that date. The Department intends to publish the name of each QPAM on a public website.[35] QPAMs should also assume that the registration information will be used by the Department in connection with its enforcement activities, for example, investigations.

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Power of Appointment

At the time of the transaction, the party in interest with whom the Plan Investor engages in a transaction neither has the ability (nor has exercised discretionary authority) to appoint or terminate the QPAM as the manager of any Plan Investor's assets, nor the ability to negotiate the terms of the management agreement on behalf of the Plan Investor with the QPAM.[36] However, this condition will be deemed satisfied if there are two or more unrelated Plan Investors invested in the investment fund so long as the assets of the Plan Investor that has the party in interest relationship, when aggregated with the assets of any other Plan Investors affiliated with such Plan Investor, represent less than 10 percent of the assets in the investment fund.[37] Importantly, in the case of a commingled fund, the DOL's view is that a party in interest's power to purchase, sell or redeem its interests in the fund is tantamount to a decision to appoint or terminate the QPAM.[38]

This provision establishes that the Plan Investor and the QPAM only get the benefit of the exemptive relief if the counterparty to the transaction, that is, the party in interest, has no power to exert influence over the QPAM's investment decisions with respect to managing the assets of a Plan Investor. Therefore, the DOL requires that the party in interest not have the ability to hire and fire the QPAM. Notably, this restriction only applies to the assets of the Plan Investor involved in the transaction with the party in interest. Therefore, the party in interest can have the ability to hire and fire the QPAM with regard to assets of the Plan Investor that are not part of the transaction for which relief is sought. Furthermore, the DOL acknowledges that a party in interest will have less influence over a QPAM if the Plan Investor and its affiliates are relatively small investors in the investment fund, that is, less than 10 percent, regardless of the party in interest's power of appointment with respect to the QPAM. Therefore, in a commingled fund that meets such investor size requirement, the ability of a party in interest (or its affiliate) to purchase, sell or redeem interests does not affect the satisfaction of this condition.

Prohibited Transactions Covered by Other Exemptions

The QPAM may not rely on the QPAM Exemption in respect of prohibited transactions that arise in connection with certain types of investment transactions, as those investment transactions are covered by other exemptions. These transactions include: (i) prohibited transactions that arise in connection with a QPAM's securities lending practices, which are addressed through compliance with DOL Prohibited Transaction Exemption 2006-16; (ii) prohibited transactions that arise in connection with a QPAM's purchase of interests in mortgage pools, which are addressed through compliance with Prohibited Transaction Exemption 83-1; and (iii) transactions that arise when a QPAM enters into certain mortgage financial arrangements, which are covered by Prohibited Transaction Exemption 82-87.[39]

QPAM Discretionary Authority and Control

The Department has long held the view that the QPAM must negotiate on behalf of the investment fund the terms of the transaction for which exemptive relief is sought. The QPAM Exemption as amended by the 2024 Amendments now includes language emphasizing this point.

The QPAM Exemption states, "[t]he terms of the transaction, commitments, and investment of fund assets, and any associated negotiations are determined by the QPAM… which represents the interests of the Investment Fund."[40] Such terms also may be negotiated by another party under the authority and general direction of the QPAM. Alternatively, in the case of a real estate investment fund, a property manager may negotiate the terms of the transaction so long as the QPAM retains full fiduciary responsibility with respect to the transaction and the property manager acts in accordance

with written guidelines established and administered by the QPAM. In no case, however, may the property manager enter into the transaction if there is "an agreement, arrangement or understanding designed to benefit a party in interest."[41]

The QPAM Exemption, as a result of the 2024 Amendments, also provides that the transaction cannot "be part of an agreement, arrangement, or understanding designed to benefit a Party in Interest. In exercising its authority, the QPAM must ensure that any transaction, commitment, or investment of fund assets for which it is responsible is based on its own independent exercise of fiduciary judgment and free from any bias in favor of the interests of the plan sponsor or other parties in interest."[42] Therefore, "[t]he QPAM may not be appointed or relied upon to uncritically approve transactions, commitments, or investments negotiated, proposed, or approved by the plan sponsor, or other parties in interest."

The premise behind the QPAM Exemption is that the insertion of an appropriately qualified professional investment manager between the Plan Investor and the party in interest should adequately protect the Plan Investor from prohibited transactions between it and parties in interest so long as such QPAM is independent of the parties in interest and has full discretionary authority over the assets involved in the transaction with the party in interest. Therefore, the Department, in emphasizing the independence condition, wanted to make clear that the QPAM Exemption is not available if a party in interest, such as the plan sponsor or named fiduciary, pre-negotiates the terms of the transaction and then asks the QPAM to approve it. This does not mean that the sponsor or named fiduciary cannot establish investment guidelines pursuant to which the QPAM must operate, but the QPAM should never be so constrained that it does not have the appropriate degree of independence.[43] The Department also has stated that the plan fiduciary that hires the QPAM cannot have final veto power over the investment decision made by the QPAM.[44] In the Department's view, without a sufficient degree of independence, the QPAM may be influenced to enter into a transaction that is not in the interest of the Plan Investor. The exemption, however, provides some more latitude when a property manager enters into an agreement with a party in interest in connection with the investment fund so long as the QPAM has sufficient oversight and authority.

Unrelated Party

The party in interest with which the investment fund transacts can neither be the QPAM nor related to the QPAM. A QPAM is "related" to a party in interest if as of the last day of its most recent calendar quarter: (i) the QPAM owns 10 percent or more of the party in interest; (ii) a person controlling or controlled by the QPAM owns 20 percent or more of the party in interest; (iii) the party in interest owns 10 percent or more of the QPAM; or (iv) a person controlling or controlled by the party in interest owns 20 percent or more of the QPAM.[45]

Additionally, a party in interest is related to the QPAM if (i) a person controlling, or controlled by, the party in interest has an ownership interest that is less than 20 percent but greater than 10 percent in the QPAM and such person exercises control over the management or policies of the QPAM by reason of its ownership interest, or (ii) a person controlling, or controlled by, the QPAM has an ownership interest that is less than 20 percent but greater than 10 percent in the party in interest and such person exercises control over the management or policies of the party in interest by reason of its ownership interest.[46]

Consistent with other conditions of the exemption, this requirement is designed to ensure the independence of the QPAM's decision-making with respect to the party in interest. Practically speaking, this means that QPAMs should be aware that the QPAM and its affiliates must rely on other prohibited transaction exemptions for transactions that lack independent decision-making.[47] Also, an affiliate relationship between the QPAM and a party in interest often results in prohibited transactions

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under Section 406(b), which for the most part are not covered by the QPAM Exemption.

20 Percent Assets under Management Limitation

At the time of a party in interest transaction that would otherwise violate Section 406(a), the assets of a Plan Investor managed by the QPAM (when aggregated with the assets of other affiliated Plan Investors) must be equal to or less than 20 percent of the QPAM's total assets under management.[48] The Department intends that this requirement help prevent the QPAM from being unduly influenced by a particularly large investor.[49] Importantly, the limit applies to the QPAM's book of business, not just to the investment fund the assets of which are involved in the transaction. This is the case even if management is spread across multiple advisers established as separate legal entities across a controlled group of corporations that are separately managed and separately accountable for their own operating profits or losses.

Arm's Length Terms

At the time of the party in interest transaction (and any renewals or modifications thereafter), the terms of the transaction must be at least as favorable to the Plan Investor as terms generally available in arm's length transactions between unrelated parties.[50] Because the QPAM is intended to be a professional investment management organization with a certain level of size and sophistication that is independent and not affiliated with the party in interest, the assumption should be that the terms of the transaction would be negotiated between the QPAM and party in interest at arm's length. The Department makes that clear by including it as a condition of the QPAM Exemption.

Certain Criminal Convictions and Prohibited Misconduct

The QPAM Exemption has always stated that if an asset manager, its affiliate, or a direct or indirect 5 percent or more owner of the asset manager is convicted of certain crimes, the asset manager may not rely on the QPAM Exemption for a period of 10 years from the date of conviction. Similarly, a manager that is a QPAM relying on the QPAM Exemption will lose its ability to continue to rely on the exemption in the event of a conviction. In the latter case, the QPAM would have to request an individual prohibited transaction exemption from the DOL in order to get exemptive relief comparable to the QPAM Exemption or rely on another exemption. The latest version of the QPAM Exemption includes the same condition.[51] The 2024 Amendments further clarified the Department's view on what a "Criminal Conviction" for this purpose is and what other "Prohibited Misconduct" would prevent an asset manager from relying on the QPAM Exemption.

The QPAM exemption defines a "Criminal Conviction" as the following:

> …convicted in a U.S. federal or state court or released from imprisonment, whichever is later, as a result of any felony involving abuse or misuse of such person's Plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities…[52]

Additionally, a conviction for the "conspiracy or attempt to commit" the above-described crimes or a conviction for a crime "in which any of the foregoing crimes is an element" is also a Criminal Conviction.[53] Finally, a Criminal Conviction includes a conviction for the crimes identified or described in ERISA Section 411, which include among others "robbery,

bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving controlled substances, murder, rape, kidnaping, perjury, [and] assault with intent to kill…"[54] Notably, a conviction under Section 411 does not have to be a felony conviction.

The Department in the 2024 Amendments clarified that a conviction by a foreign government for a crime that is "substantially equivalent" to the above-described crimes is also a Criminal Conviction.[55] The only exceptions are "convictions and imprisonment that occur within a foreign country that is included on the Department of Commerce's list of "foreign adversaries" that is codified in 15 CFR 7.4, as amended."[56] Prior to the 2024 Amendments, it was not clear to some managers whether foreign convictions would prohibit reliance on the QPAM Exemption.

The 2024 Amendments also added a definition of "Prohibited Misconduct," which is defined as entry "…into a non-prosecution (NPA) or deferred prosecution agreement (DPA) on or after June 17, 2024 with a US federal or state prosecutor's office or regulatory agency, where the factual allegations that form the basis for the NPA or DPA would have constituted a crime…" described above "if they were successfully prosecuted" for committing such crimes.[57]

Additionally, Prohibited Misconduct includes a finding or determination "…in a final judgment, or court-approved settlement by a Federal or State criminal or civil court that is entered on or after June 17, 2024 in a proceeding brought by the Department, the Department of Treasury, the Internal Revenue Service, the Securities and Exchange Commission, the Department of Justice, the Federal Reserve Bank, the Office of the Comptroller of the Currency, the Federal Depository Insurance Corporation, the Commodities Futures Trading Commission, a state regulator, or state attorney general to have participated in…" certain categories of conduct.[58] These categories include: (i) "engaging in a systematic pattern or practice of conduct that violates the conditions of [the QPAM Exemption] in connection with otherwise non-exempt prohibited transactions;" (ii) "intentionally engaging in conduct that violates the conditions of [the QPAM exemption] in connection with otherwise non-exempt prohibited transactions;" or (iii) "providing materially misleading information to" the above-listed governmental entities "in connection with the conditions of the exemption."[59]

The Department is of the view that a QPAM and the organization of which it is a part must be of the highest integrity in order for the Plan Investors to trust the QPAM acts in their interests rather than the interests of parties in interest.[60] The Department insists on a "culture of compliance" throughout the organization not just with regard to the QPAM.[61] Therefore, in the event of a Criminal Conviction or a finding of Prohibited Misconduct by the QPAM, an affiliate, or a direct or indirect 5 percent or more owner of the QPAM, a QPAM may not rely on the QPAM Exemption. A QPAM must take certain steps, now included in the QPAM Exemption by reason of the 2024 Amendments (and summarized below), in order to rely on the QPAM Exemption for an interim one-year period.

Issues to Consider When Relying on the QPAM Exemption

In considering how an asset manager will deal with prohibited transaction issues when managing Plan Investors' assets and whether it will comply with the QPAM Exemption to address such prohibited transactions, the asset manager should consider the following common issues that arise in complying with the QPAM Exemption and what other options may be available.

Loss of Ability to Rely on QPAM Exemption by Reason of Criminal Conviction or Prohibited Misconduct

As described previously in this article, in the event of a Criminal Conviction of or a finding of Prohibited Misconduct by the QPAM, an affiliate

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of the QPAM, or a 5 percent or more owner of the QPAM, the QPAM may no longer rely on the QPAM Exemption. The QPAM Exemption, as amended by the 2024 Amendments, provides that the QPAM may rely on the QPAM Exemption for the one year period (Transition Period) starting from the "Ineligibility Date."[62] The "Ineligibility Date" is the date of conviction by a trial court for a Criminal Conviction, the date on which a Non Pros or Deferred Pros agreement is executed, or the date on which the trial court enters a final judgment related to other Prohibited Misconduct.[63] The Ineligibility Date applies regardless of whether there is an appeal of a Criminal Conviction or court finding related to Prohibited Misconduct that has not yet been decided by an appellate court.

In order to get exemptive relief during the Transition Period, the QPAM must take very specific steps and provide certain rights to Plan Investors beginning on the Ineligibility Date and during the Transition Period. Additionally, the QPAM will not have the benefit of exemptive relief with regard to any new Plan Investors during the Transition Period and must consider what exemption strategy it will put in place for such new investors.

The QPAM must notify the Department of Prohibited Misconduct by sending within 30 calendar days of the Ineligibility Date written notice to the DOL at *QPAM@dol.gov* with an explanation of such conduct and the QPAM's contact information.[64] During the Transition period, the QPAM also must take the following steps:[65]

- The QPAM must continue to comply with the conditions of the QPAM Exemption;
- The QPAM must manage Plan Investor assets prudently and loyally during the Transition Period;
- The QPAM must provide a written notice (Ineligibility Notice) stating certain information described below to the Department at *QPAM@dol.gov* and each of its Plan Investor clients within 30 days of the Ineligibility Date; and
- As of the Ineligibility Date, the QPAM must not employ or knowingly engage any individual that "Participated in," as defined in the QPAM Exemption, the conduct that is the subject of a Criminal Conviction or that Participated in the Prohibited Misconduct;

After the Transition Period, and if the Criminal Conviction is not reversed on appeal, the QPAM may not rely on the QPAM Exemption for 10 years from the Ineligibility Date unless the QPAM obtains an individual exemption permitting it to continue relying on the QQPAM exemption.

As discussed, the QPAM must provide an Ineligibility Notice. That notice according to the QPAM Exemption must include certain information including the following statements:[66]

- A Conviction or Prohibited Misconduct occurred and thus the Transition Period applies;
- During the Transition Period, the QPAM "[a]grees not to restrict the ability of a client Plan to terminate or withdraw from its arrangement with the QPAM;"
- During the Transition Period, the QPAM "[w]ill not impose any fees, penalties, or charges on client Plans in connection with the process of terminating or withdrawing from an Investment Fund managed by the QPAM except for reasonable fees, appropriately disclosed in advance, that are specifically designed to…" protect the interests of other investors in a pooled investment vehicle and as further described in the QPAM Exemption;
- During the Transition Period, the QPAM "[a]grees to indemnify, hold harmless, and promptly restore actual losses to the client Plans for any damages that directly result to them from a violation of applicable laws, a breach of contract, or any claim arising out of the conduct

that is the subject of a Criminal Conviction or Prohibited Misconduct…"; and

- During the Transition Period, the QPAM "[w]ill not employ or knowingly engage any individual that Participated In the conduct that is the subject of a Criminal Conviction or Prohibited Misconduct, regardless of whether the individual is separately convicted in connection with the criminal conduct."

Notably, the above-listed conditions with regard to termination, fees, and indemnification apply regardless of what the written agreement between the QPAM and the Plan Investor states in this regard.

The Ineligibility Notice also must provide "[a]n objective description of the facts and circumstances upon which the Criminal Conviction or Prohibited Misconduct is based, written with sufficient detail to fully inform the client Plan's fiduciary of the nature and severity of the conduct so that the fiduciary can satisfy its duties of prudence and loyalty under..." ERISA's fiduciary duty provisions of Section 404 of ERISA. The explanation must be provided to the Plan Investor so that it can make decisions "…with respect to hiring, monitoring, evaluating, and retaining the QPAM in a non-QPAM capacity…"[67] Here, the Department clearly signals to the Plan Investor fiduciaries that they are responsible for determining whether they should continue utilizing the QPAM notwithstanding the Criminal Conviction or Prohibited Misconduct.

The Department states that the exemptive relief during the Transition Period does not apply to new Plan Investor clients. Therefore, QPAM will have to rely on another exemption such as the service provider exemption under Section 408(b)(17) of ERISA, discussed later in this article. Another possible alternative is to seek an individual prohibited transaction exemption and request that it be applied retroactively to the Ineligibility Date, but the QPAM should not assume that such approach works without first discussing with the Department.

Application for Individual Prohibited Transaction Exemptions

In the event of a Criminal Conviction or Prohibited Misconduct as described above, the QPAM must consider its exemption strategy with respect to all Plan Investors after the Transition Period. One approach would be to ask the Department for an individual prohibited transaction exemption (IPTE). Several QPAMs have taken this approach. However, the difference under the QPAM Exemption as amended by the 2024 Amendments and prior versions of the exemption is that the IPTE process must be completed by the end of the Transition Period. Therefore, the QPAM must begin the IPTE process as soon as possible after the Ineligibility Date or even before the Ineligibility Date.

The QPAM Exemption states that "[a] QPAM that is ineligible or anticipates that it will become ineligible due to an actual or possible Criminal Conviction or Participating In Prohibited Misconduct…may apply for an individual exemption from the Department to continue to rely on the relief provided in this exemption for a longer period than the One-Year Transition Period."[68] The Department encourages the applicant for an IPTE to "…review the Department's most recently granted individual exemptions involving Section I(g) ineligibility with the expectation that similar conditions will be required of the applicant…" The Department also states that "if an applicant requests the Department to exclude any term or condition from its requested exemption that is included in a recently granted individual exemption, the applicant must include a detailed statement with its exemption application explaining the reason(s) why the proposed variation is necessary and in the interest and protective of" the Plan Investors and their respective participants and beneficiaries or others on behalf of whom an account is established, for example, an IRA owner.[69]

This quoted language from the QPAM Exemption should be read as cautionary in that

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the Department will likely view with skepticism any IPTE applications that vary from IPTEs the Department recently granted to other QPAMs. Also, such an application may result in delays such that the Department will not grant the IPTE by the end of the Transition Period.

Foreign Non Pros and Deferred Pros Agreements

The final QPAM Exemption does not define Prohibited Misconduct to include entry into NPAs or DPAs (or their equivalent) with a foreign government. Thus, the entry of the QPAM, its affiliate, or a 5 percent or more owner of the QPAM into such an agreement will not result in the QPAM losing its ability to rely on the QPAM Exemption. However, a condition of the Exemption is that the QPAM notify the DOL of its entry into an agreement that is substantially equivalent to a domestic NPA or DPA by sending an e-mail to *QPAM@dol.gov* describing the conduct that led to entering into the agreement and contact information for the QPAM.

Procedures to Identify Criminal Convictions, Prohibited Misconduct and Foreign DPAs and NPAs

Given the importance for many asset managers of being able to rely on the QPAM Exemption, the actions the QPAM must take immediately after the Ineligibility Date, and the relatively short Transition Period during which the QPAM has to remedy the loss of the QPAM Exemption, QPAMs and their affiliates should consider what policies and procedures they should have in place to identify Criminal Convictions and Prohibited Misconduct. Similarly, the QPAM and its affiliates should be able to identify when the QPAM, an affiliate, or 5 percent or more owner of the QPAM enters into a foreign DPA or NPA (or equivalent thereof) so that it can be reported to the DOL as required by the QPAM Exemption. The ability to keep track of these events can be particularly challenging in large, complex, and multi-national financial institutions.

Limited 406(b) Relief

As discussed earlier in this article, Section 406(a) of ERISA prohibits certain transactions between a Plan Investor and a party in interest and Section 406(b) of ERISA prohibits fiduciaries from using their authority to enter into transactions that might benefit itself or parties in which they have an interest, for example, the fiduciaries' affiliates. So long as its conditions are met, Part I of the QPAM Exemption exempts the prohibited transactions under Section 406(a). However, except in the very limited circumstances described below, the QPAM Exemption does not exempt prohibited transactions under Section 406(b). Therefore, asset managers, even if they are QPAMs, will be required to comply with another exemption to address the Section 406(b) prohibited transactions or take other action to eliminate the conflict.

Part II(a) of the Exemption provides exemptive relief from the prohibited transactions under Section 406(a) and Section 406(b)(1) of ERISA, that is, the prohibition on self-dealing, when the QPAM engages in certain transactions with a party in interest and the party in interest is an employer (or an affiliate of an employer) whose employees are covered by an employee benefit plan that is a Plan Investor in the investment fund. As discussed earlier, Part I is not available under these circumstances.[70] Part II applies to the sale, leasing or servicing of goods to and the furnishing of services to the investment fund by such party in interest. There are a number of conditions for exemptive relief, including the requirement that "the amount attributable in any taxable year of the party in interest to transactions engaged in with an investment fund pursuant to Section II(a) of this exemption does not exceed one (1) percent of the gross receipts derived from all sources for the prior taxable year of the party in interest."

Part II(b) of the QPAM Exemption also exempts prohibited transactions resulting from the leasing of commercial or office space by an investment fund maintained by a QPAM to a party in interest with respect to an employee benefit plan investor in the

fund if, among other things, such party in interest is an employer whose employees are covered by such Plan Investor or certain affiliates of such employer. There are a number of conditions for exemptive relief, including a limit on the portion of the rentable space of the property that may be rented to the investment fund.

Part III exempts from Sections 406(a), 406(b)(1), and 406(b)(2) of ERISA the leasing of commercial or office space by a QPAM-managed investment fund to the QPAM, by an affiliate of the QPAM as described in Sections 3(14)(G), 3(14)(H), and 3(14)(I) of ERISA or by a person who cannot rely on Part I of the exemption because such person has a power of appointment that is not permitted under Part I(a).[71] Part III provides for a number of conditions for exemptive relief, including the requirement that the amount of space covered by the lease does not exceed the greater of 7,500 square feet or one percent of the rentable space of the office building, integrated office park, or of the commercial center in which the investment fund has the investment.[72] Finally, Part IV of the QPAM Exemption exempts from Sections 406(a), 406(b)(1), and 406(b)(2) of ERISA the furnishing of services and facilities by a place of public accommodation owned by a QPAM-managed investment fund to a party in interest of a Plan Investor so long as such facilities and services are furnished on a comparable basis to the general public.[73]

Clearly, the exemptive relief under Section 406(b) of ERISA is very narrow. Such limited relief is important for asset managers who intend to rely on the QPAM Exemption to understand. As discussed, the use of affiliates to provide services to the investment fund may prohibit the use of QPAM exemptive relief for Section 406(a) of ERISA party in interest transaction provisions with respect to the transactions involving such affiliates. However, even if the QPAM Exemption is available to address the Section 406(a) prohibited transactions, the exemption more often than not will be unavailable to exempt any Section 406(b) transactions.

"Plan Asset" Funds

Asset managers should be concerned with the prohibited transaction provisions with regard to each and every transaction that the asset manager causes the investment fund to enter if the assets of the investment fund are deemed assets of the Plan Investor for purposes of ERISA and the Code.[74] Part I of the QPAM Exemption will allow an asset manager that is a QPAM to enter into most transactions with parties in interest to the Plan Investors that invest in the fund so long as the party in interest is neither the QPAM nor an affiliate of the QPAM. Therefore, the QPAM Exemption allows the QPAM to avoid identifying each and every party in interest (other than the QPAM's affiliates) to the Plan Investors in the fund so long as the other conditions of the exemption are met. Of course, the QPAM must be concerned about affiliate transactions and violations of the fiduciary prohibited transaction provisions under Section 406(b), which in large part are not exempted by the QPAM Exemption.

On the other hand, if the assets of the investment fund are not plan assets, the prohibited transaction provision issues become much less of a concern. For example, there is no transfer of Plan Investors' assets to a party in interest pursuant to Section 406(a)(1)(A), no loan or extension of credit of Plan Investors' assets to a party in interest pursuant to Section 406(a)(1)(B), and no use of Plan Investors' assets by a party in interest pursuant to Section 406(a)(1)(D) when the assets of the investment fund are not deemed plan assets. Additionally, the asset manager's exercise of discretion over the investment fund's assets is not an exercise of discretion over plan assets, which means the prohibited transaction provisions under Section 406(b) are not implicated. The assets of the investment fund are not plan assets for purposes of ERISA and the Code if the Plan Investors' equity participation in the investment fund is not significant or the investment fund is an operating company, including a venture capital operating company or real estate operating company, as set forth in the Department's plan asset regulation.[75]

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Based on the foregoing, an asset manager should consider whether it wants the assets of an investment fund to be deemed plan assets as that decision will have a substantial impact on how the asset manager will operate the fund. For those assets managers that are interested in managing the assets of a "plan asset" fund, compliance with the QPAM Exemption likely is the best way to comply with the prohibited transaction provisions under Section 406(a), that is, the party in interest prohibited transactions. However, the QPAM Exemption has its limits as explained elsewhere in this article. Furthermore, asset managers will often start from the position that it will establish the fund as a non-plan asset fund, but will then rely on the QPAM Exemption in the event that the assets of the fund become plans assets. This certainly is a possible approach, but in reality, compliance with the QPAM Exemption after the fund begins its operations may be very difficult.

Ability of an Asset Manager to Be or Remain a QPAM

The definition of "qualified professional asset manager" as set forth in the QPAM Exemption may preclude certain asset managers from relying on the QPAM Exemption because the asset managers will not meet the requirements of the definition. This issue tends to arise with regard to certain investment advisers. Furthermore, the final QPAM Exemption as amended could give rise to a situation where an adviser may meet the requirements in one year, but not meet those requirements in a future year because the asset manager's business does not grow as fast as the increases in the assets under management and shareholder equity thresholds under the exemption grow.

As discussed, an investment adviser must be registered under the Advisers Act, have at least $85 million of assets under management, and have net capital and shareholders' equity of at least $1 million. These latter two requirements are difficult to meet for startup investment advisers, which was the intent of the Department when it added this requirement to the QPAM definition. The Department is of the view that such net capital and shareholder equity requirements are necessary to protect investors. Start-up advisers will even have more difficulty meeting these thresholds as they increase over time pursuant to the 2024 Amendments.

Additionally, at times, even registered investment advisers with $2 or $3 billion of assets under management cannot meet the net capital and shareholder equity requirements due to the ownership structure of the firm. Some investment advisers may not have the opportunity to or may be unwilling to ask an affiliate to contractually assume the liabilities of the adviser in lieu of the adviser meeting the net capital and shareholder equity requirements as permitted under the QPAM definition.

Additionally, smaller advisers should pay attention to the applicable thresholds as they increase over the years. They may find themselves to be a QPAM one year and not a QPAM the next year, thus scrambling to change how it addresses possible prohibited transactions.

Also, the QPAM definition may pose challenges for investment funds that do not have ties to the United States. Such funds are often managed by an investment adviser registered under the laws of a country other than the United States. However, that adviser cannot be a QPAM unless it is registered under the Advisers Act. Therefore, if the fund intended to allow its assets to be deemed plan assets for purposes of ERISA and the Code, the fund would have to hire an adviser registered under the Advisers Act to exercise discretion with regard to management of the fund's assets in order to rely on the QPAM Exemption.

QPAM for a Day

Oftentimes, plan fiduciaries will look to hire a registered investment adviser or another type of financial services company, like a bank trustee, to review and approve a proposed transaction between the plan and another party, which is a party in

interest as defined under ERISA. The primary reason for hiring the adviser or other financial institution to review and approve the transaction is to limit the plan fiduciary's exposure to prohibited transactions under Section 406(b) because the DOL has stated that a Section 406(b) prohibited transaction does not occur if a fiduciary does not use its discretion or authority to cause the transaction. However, the fiduciary also wants the financial institution to be a QPAM particularly if the counter-party to the transaction is a party in interest to the plan and thus the transaction could result in prohibited transactions under Section 406(a). This concept is colloquially known as "QPAM for a day."

As discussed, the QPAM Exemption is available only for those transactions that the QPAM negotiates and authorizes on behalf of an investment fund. This has always been the Department's position, but as discussed earlier in this article, the Department vis-à-vis the 2024 Amendments emphasized its position by directly addressing the issue in the text of the QPAM Exemption.

Other Exemptions

An asset manager may lose its ability to rely on the QPAM Exemption by reason of a Criminal Conviction or Prohibited Misconduct or may lose its status as a QPAM because its business does not grow fast enough to keep up with assets under management and equity thresholds under the "qualified professional asset manager" definition. Therefore, it must look to other prohibited transaction exemptions. Alternatively, an asset manager may conclude that it wants to comply with statutory or class exemptions other than the QPAM Exemption because it better suits its business model or offers broader exemptive relief such as relief from prohibited transactions under Section 406(b). Additionally, an asset manager, particularly certain investment advisers, may not meet the definition of a "qualified professional asset manager" and thus must look to other exemptions. Finally, even if an asset manager is a QPAM, it may need to rely on other exemptions or take other actions to address prohibited transactions because the QPAM Exemption is not available to exempt one or more transactions involving the investment fund.

As discussed, certain banks and insurance companies may be QPAMs and thus may rely on the QPAM Exemption. However, banks may also look to statutory and class exemptions that specifically apply to banks. Section 408(b)(8) of ERISA provides broad exemptive relief for investments by Plan Investors in bank-maintained collective investment trusts, while Section 408(b)(4) provides for exemptive relief in connection with bank deposits, and Section 408(b)(6) provides exemptive relief in connection with a bank's provision of ancillary services. The Department also has issued Prohibited Transaction Exemption 91-38, which provides exemptive relief for prohibited transactions that arise in connection with certain bank collective investment funds that may not be covered under Section 408(b)(8).[76] Similarly, Section 408(b)(8) of ERISA also exempts prohibited transactions that arise in connection with pooled insurance company separate accounts, while Prohibited Transaction Exemption 90-1 provides exemptive relief for certain prohibited transactions that arise in connection with insurance company separate accounts. Banks and insurance companies will often look to these exemptions rather than the QPAM Exemption.

Registered investment advisers, on the other hand, are more likely to rely on the QPAM Exemption. However, as discussed, some registered investment advisers will not be a "qualified professional asset manager" because they do not meet the US registration requirements or do not meet the net capital and shareholder equity requirements. In such circumstances, the investment adviser should look for other exemptions. One such exemption is the service provider exemption under Section 408(b)(17) of ERISA, which was added to ERISA with the enactment of the Pension Protection Act of 2006. Advisers will find that this exemption can be applied in many situations that the QPAM

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Exemption would otherwise be applied. Note, however, the service provider exemption does not provide relief for transactions with affiliates (like the QPAM Exemption) or relief for transactions that violate Section 406(b). In those cases, the adviser may have to take steps to eliminate the conflict.

Conclusion

In conclusion, the QPAM Exemption provides broad exemptive relief from the party in interest prohibited transaction provisions found in Section 406(a) of ERISA and identical provisions found in Section 4975 of the Code. Therefore, discretionary asset managers who are "qualified professional asset managers" under the definition in the exemption should consider meeting the conditions of the exemption as it will allow them to more easily conduct their day-to-day investment management activities. This is particularly true for registered investment advisers. Banks and insurance companies, which may otherwise be a QPAM, may find broad exemptive relief under other statutory exemptions found in ERISA or other class exemptions issued by the DOL.

Asset managers who intend to rely or who do rely on the QPAM Exemption should review the exemption, as revised by the 2024 Amendments, and their policies and procedures to ensure that they can meet all of the conditions of the QPAM Exemption including when a Criminal Conviction or Prohibited Misconduct occurs. To the extent that the exemption is not available, asset managers should look to other exemptions or other strategies to deal with conflicts of interest as required by ERISA and the Code.

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NOTES

1 Amendment to Prohibited Transaction Exemption (PTE) 84-14 for Plan Assets Transactions Determined by Independent Qualified Professional Assets Managers (the QPAM Exemption), 89 Fed. Reg. 23090 (Apr. 3, 2024).

2 "Qualified Professional Asset Manager: An Important Tool for ERISA Fiduciaries," *The Investment Lawyer*, Vol. 29, No. 2 (Feb. 2022).

3 ERISA § 3(42); 29 C.F.R. § 2510.3-101.

4 ERISA § 406(a).

5 *Id.*

6 ERISA § 406(a)(1)(A).

7 ERISA § 406(a)(1)(B).

8 ERISA § 406(a)(1)(C).

9 ERISA § 406(a)(1)(D).

10 ERISA § 406(a)(1)(E).

11 ERISA § 3(14).

12 I.R.C. § 4975(c)(1).

13 ERISA § 406(b).

14 ERISA § 406(b)(1).

15 ERISA § 406(b)(2).

16 ERISA § 406(b)(3).

17 I.R.C. § 4975(c)(1).

18 I.R.C. § 4975(a).

19 89 Fed. Reg. at 23138, QPAM Exemption § I.

20 *Id.*

21 89 Fed. Reg. at 23141-42, QPAM Exemption § VI(b).

22 *Id.* at 23138, QPAM Exemption § I(c).

23 *Id.* at 23141, QPAM Exemption § VI(a).

24 *Id.* at 23111.

25 *Id.* at 23141, QPAM Exemption § VI(a)(1).

26 *Id.*, QPAM Exemption § VI(a)(2).

27 *Id.*, QPAM Exemption § VI(a)(3).

28 *Id.*, QPAM Exemption § VI(a)(4).

29 *Id.*

30 *Id.*, QPAM Exemption § VI(a)(5).

31 *Id.*

32 *Id.* at 23140, QPAM Exemption § I(k).

33 *Id.*

34 *Id.*

35 89 Fed. Reg. at 24093.

36 89 Fed. Reg. at 23138, QPAM Exemption § I(a).

37 *Id.*

38 *Id.*

39 *Id.*, QPAM Exemption § I(b).

[40] *Id*., QPAM Exemption § I(c).
[41] *Id*.
[42] *Id*.
[43] 89 Fed. Reg. at 23106.
[44] Id. at 23109.
[45] 89 Fed. Reg. at 23138, QPAM Exemption §§ I(d) & VI(h).
[46] *Id*.
[47] 89 Fed. Reg. at 23141, QPAM Exemption § V.
[48] *Id*., QPAM Exemption § I(e).
[49] 89 Fed. Reg. at 23112.
[50] *Id.* at 23138, QPAM Exemption, § I(f).
[51] *Id.* at 23138, QPAM Exemption, § I(g)
[52] 89 Fed. Reg. at 23143, QPAM Exemption, § V(r)(i).
[53] *Id*.
[54] *Id*.; ERISA § 411(a).
[55] *Id*., QPAM Exemption, § V(r)(1).
[56] *Id*., QPAM Exemption, § V(r)(2).
[57] *Id*., QPAM Exemption, § V(s)(1).
[58] *Id*., QPAM Exemption, § V(s)(2).
[59] *Id*.
[60] 89 Fed. Reg. at 23113.
[61] *Id*. at 23091.
[62] *Id*. at 23139, QPAM Exemption § I(i).
[63] *Id*. at 23139, QPAM Exemption § I(h).
[64] *Id*. at 23139, QPAM Exemption § I(g)(2).
[65] *Id*., QPAM Exemption § I(i).
[66] *Id*., QPAM Exemption § I(i)(1).
[67] *Id*.
[68] *Id*., QPAM Exemption § I(i).
[69] *Id*.
[70] PTE 84-14, Part II; 75 Fed. Reg. at 38842.
[71] PTE 84-14, Part III; 75 Fed. Reg. at 38842.
[72] PTE 84-14, Part III(a) – (d).
[73] PTE 84-14, Part IV; 75 Fed. Reg. at 38843.
[74] *See* 29 C.F.R § 29 C.F.R. § 2510.3-101, *as modified by* ERISA § 3(42).
[75] 29 C.F.R § 2510.3-101(a)(2).
[76] 56 Fed. Reg. 31966 (July 12, 1991), as corrected at 56 Fed. Reg. 59299 (Nov. 25, 1991).

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