

**MEMO# 35251**

April 18, 2023

# ICI Submits Additional Comment on Proposed Amendments to QPAM Exemption

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TO: Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: ICI Submits Additional Comment on Proposed Amendments to QPAM Exemption

ICI on April 6, 2023, submitted additional comments to the US Department of Labor (DOL) on proposed amendments to the QPAM Exemption (the "Proposal"). The comment letter is attached.

## Background

The QPAM Exemption (or Prohibited Transaction Class Exemption 84-14) is a longstanding exemption governing financial institutions acting as qualified professional asset managers (or QPAMs) for IRAs or employer-provided retirement plans. The exemption allows QPAMs to cause a plan to engage in transactions in which a party in interest to the plan is involved in some manner. For financial institutions managing large pools of ERISA plan assets for multiple plans—and consequently many parties in interest—the PTE is often considered a practical necessity.

In July 2022, DOL proposed amendments to the exemption that would be significant and would likely increase the cost of using the exemption and significantly expand the instances when the exemption would be unavailable.[\[1\]](#) ICI submitted a comment letter to DOL on October 11, 2022 ("Initial Comment"),[\[2\]](#) expressing significant concerns regarding the Proposal. Our Initial Comment explained that the changes, if finalized, will make it more difficult and expensive to use the exemption, put the scope of its coverage in doubt, and in some instances will actually harm the very interests of those parties it seeks to protect.

More recently, on March 23, 2023, DOL announced that it was reopening the comment period on the Proposal until April 6, 2023.

## Supplemental Comment Letter

After soliciting input from members, ICI submitted a follow-up comment that detailed five broad concerns.

- A reopened comment period of only two weeks is of limited utility to interested parties, especially considering the significant import of the Proposal and the fact that DOL did not indicate any specific areas it was seeking additional input on.
- The Proposal would increase costs for plans and plan participants, without any indication that the current QPAM Exemption is not working as intended or any justification as to why the additional costs the Proposal would impose are warranted.
- The Proposal would significantly undermine plan fiduciaries' discretion to determine what is in the interests of plans and plan participants.
- The Proposal would impose requirements on trustees of collective investment trusts (CITs) and asset managers that conflict with SEC and OCC requirements and that also run counter to the basic realities of how CITs are managed.
- DOL appears to not have consulted with other agencies, notably the US Department of Justice, about the impact of the Proposal on their activities.

ICI also reiterated the recommendation in our Initial Comment that rather than moving forward with a final exemption, DOL should withdraw the Proposal and seek industry and other stakeholder input as to the impact of any contemplated amendments.

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#### Notes

[1] For a summary of the proposed amendments, see ICI Memorandum No. 34239, dated August 3, 2022, available at <https://www.ici.org/memo34239>.

[2] Letter to Office of Exemption Determinations, EBSA, from David Abbey et al., dated October 11, 2022, available at <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA07/00017.pdf>. See ICI Memorandum No. 34308, dated October 12, 2022, available at <https://www.ici.org/memo34308>.