

MEMO# 35807

August 16, 2024

DOL Issues Technical Correction to QPAM Exemption

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: DOL Issues Technical Correction to QPAM Exemption

The US Department of Labor (DOL) on August 12, 2024, issued a technical correction^[1] to the amended QPAM prohibited transaction class exemption ("QPAM Exemption") that was published in the Federal Register on April 3, 2024.^[2] The QPAM Exemption, PTE 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 QPAM Exemption provides a streamlined process whereby a plan can retain a third-party investment manager that can then enter into transactions with parties in interest. The amendments to the exemption finalized in April make several changes to the exemption conditions and expand the circumstances under which a QPAM will become ineligible to rely on the class exemption.

The Technical Correction makes two changes to the QPAM Exemption. First, it removes an erroneous use of the word "or" from the end of section I(g)(1)(B) of the QPAM Exemption. This correction does not impact the meaning of section I(g)(1)(B).

Second, the Technical Correction makes a substantive change to the limits on an ineligible QPAM's activity during the one-year transition period following ineligibility. Sections I(i)(1)(B)(i) and (ii) of the QPAM Exemption prohibit a QPAM during this transition period from restricting a client's ability to terminate or withdraw from its arrangement with the QPAM; and from imposing any fees, penalties or charges on client plans in connection with such withdrawal or termination, other than certain fees disclosed in advance that—among other things—"ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors." The Technical Correction adds to the prohibition on termination/withdrawal restrictions an exception similar to that for the prohibition on fees/penalties in connection with the withdrawal from or termination of an arrangement with an ineligible QPAM.

The newly added exception allows for reasonable restrictions, appropriately disclosed in

advance, which are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. DOL explained in the preamble to the Technical Correction that it intended to include this language in both Sections I(i)(1)(B)(i) and (ii), but that it was inadvertently omitted from subsection (i).^[3] This language, which is based on conditions DOL has included in individual exemptions granted to ineligible QPAMs (due to criminal convictions), is designed to "protect[] ERISA-covered plans and IRAs from circumstances that could occur where a few investors immediately withdraw from the fund, resulting in the fund not having sufficient liquidity to satisfy the remaining investors' withdrawal requests, causing delays and potential harm to the remaining investors."^[4]

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Notes

^[1] 89 Fed. Reg. 65779 (August 13, 2024) ("Technical Correction"), available at <https://www.govinfo.gov/content/pkg/FR-2024-08-13/pdf/2024-17586.pdf>.

^[2] See ICI Memorandum No. 35680, dated April 16, 2024, available at <https://www.ici.org/memo35680>.

^[3] 89 Fed. Reg. at 65780.

^[4] Id.