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: 4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

[Application No. D-12126]

Z-RIN 1210-ZA37

Proposed QPAM Re-eligibility Options After Disqualification (QROAD) Class Prohibited Transaction Exemption

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of proposed class prohibited transaction exemption.

SUMMARY: This document gives notice of a proposed class prohibited transaction exemption (PTE). This proposed QROAD class PTE (Proposed QROAD Class Exemption) would allow certain qualified professional asset managers (QPAMs) to continue relying on PTE 84-14, known as the QPAM Class Exemption, even after an event that would otherwise make them ineligible under Section I(g) of that exemption. To use this alternative path, the QPAM must comply with the protective conditions in this Proposed QROAD Class Exemption, if granted. This proposal does not change any fiduciary duties under ERISA section 404 or expand the relief available under the QPAM Class Exemption.

DATES: *Exemption date:* If granted, this proposed exemption will be in effect 60 days after the date of publication of the final exemption in the *Federal Register*.

Comments due: Written comments and requests for a public hearing on the proposed exemption must be received by the Department by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: All written comments and requests for a hearing concerning the proposed PTE should be sent electronically to the Employee Benefits Security Administration

(EBSA), Office of Exemption Determinations (OED) through the Federal eRulemaking Portal and identified by Application No. D-12126 and/or Z-RIN 1210-ZA37: *Federal eRulemaking Portal: http://www.regulations.gov* at Docket ID number: EBSA-2026-0397. Follow the instructions for submitting comments.

See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Brian Mica, telephone (202) 693-8540 or email at ClassExemptions@dol.gov, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Comment Instructions

Comments should state the nature of the person's interest in the proposed exemption and how the person would be materially affected by the exemption, if granted. Any person who may be materially affected by an exemption can request a hearing on the exemption if their request includes: (1) the name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be materially affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The U.S. Department of Labor (Department) will grant a hearing request made in accordance with the requirements above when it finds that a hearing is necessary to fully explore material factual issues identified by the requestor and will publish a hearing notice in the *Federal Register*. The Department may decline to hold a hearing if it finds that: (1) the hearing request does not meet the requirements stated above; (2) the only issues identified for exploration at the hearing are

matters of law; or (3) the factual issues identified in the request can be fully explored through the submission of evidence in written (including electronic) form.[1]

Warning: The Department will include all comments received in the public record without change and make them available online at https://www.regulations.gov. The Department notes that it will include any personal information provided by the commenter in the public record and online, unless the commenter claims that any of the information included is confidential, or the disclosure of such information is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential or otherwise protected (such as a Social Security number or an unlisted phone number), or confidential business information that you do not want publicly disclosed. If EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the https://www.regulations.gov website is an "anonymous access" system, which means EBSA will not know your identity or contact information unless you provide them in the body of your comment. EBSA encourages commenters to include supporting facts, research, and evidence in their comments. When doing so, commenters are encouraged to provide citations to the materials referenced, including active hyperlinks. Likewise, commenters who reference materials that have not been published are encouraged to upload relevant data collection instruments, data sets, and detailed findings as a part of their comment. Providing such citations and documentation will assist EBSA in analyzing the comments. EBSA reemphasizes that materials provided will be part of the public record.

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[1] 29 CFR 2570.46(b).

Background on Administrative Exemptions under ERISA

A fiduciary's duties under the Employee Retirement Income Security Act of 1974, as amended (ERISA), are "the highest known to the law."[2] To safeguard Plans[3] and their participants and beneficiaries from the potential for abuse that arises when Plans engage in transactions with closely connected parties, Congress enacted ERISA Section 406, which forbids ERISA fiduciaries from causing their Plans to engage in transactions with "parties in interest" to the Plans. In general terms, "parties in interest" are people or entities closely connected to a Plan, including, among others, ERISA fiduciaries and certain of their direct and indirect owners and subsidiaries.[4] Both ERISA and the Code provide statutory exemptions from these prohibited transactions, and the Department has the authority to grant administrative exemptions—either individually or by class—under ERISA Section 408(a) and Code Section 4975(c)(2). The Secretary of Labor may not grant an exemption unless he finds that such an exemption is: (1) administratively feasible, (2) in the interest of the plan and of its participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries of such plan.[5]

Virtually all administrative exemptions granted by the Department have conditions. These conditions, which often utilize Independent Fiduciaries, as defined in Section I(h), independent auditors and/or compliance officers: (1) allow the Department to make its required findings under ERISA Section 408(a) with respect to transactions that violate ERISA Section 406; and (2) reflect the Department's view that the high

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[2] See *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982).
[3] The term "Plans" includes plans and Individual Retirement Accounts (IRAs) described in Internal Revenue Code of 1986, as amended (Code) Section 4975(e)(1) and ERISA-covered employee benefit plans described in ERISA Section 3(3).
[4] See ERISA Section 3(14). Title II of ERISA, codified in the Code, includes prohibitions that parallel Title I of ERISA and are applicable to "disqualified persons." The term "disqualified person" is defined in Code Section 4975(e)(2) and is similar to the definition of the term "party in interest" codified in ERISA Section 3(14). All references to "party in interest" herein include "disqualified person."
[5] 29 U.S.C. 1108(a).

standard to which ERISA fiduciaries are held is often, by itself, not sufficiently protective of affected Plans in the context of transactions prohibited by ERISA Section 406.

Background of the QPAM Class Exemption

DOL's QPAM Class Exemption[6] is an important, widely-used[7] class exemption that permits an Investment Fund, as defined in Section VI(b) of the QPAM Class Exemption, managed by a Qualified Professional Asset Manager (QPAM)[8] to engage in a broad range of transactions with parties in interest with respect to Plans that invest in the Investment Fund, subject to protective conditions. The QPAM Class Exemption also allows QPAMs to streamline compliance with the prohibited transaction provisions of Title I of ERISA and the Code. A QPAM relying on the QPAM Class Exemption does not need to keep and routinely check a list of parties in interest before engaging in a transaction to avoid inadvertently entering into a prohibited transaction with potentially hundreds, if not thousands, of parties in interest. The QPAM also does not have to seek an individual exemption or, alternatively, forgo investment opportunities that would be in the interest of Covered Plans, as defined in Section I(d), invested in the Investment Fund merely because a party in interest is involved.

In proposing the QPAM Class Exemption, the Department noted, "A QPAM, and those who may be in a position to influence its policies, are expected to maintain a high standard of integrity. Accordingly, the proposed class exemption does not cover transactions if the QPAM or various 'affiliates' have been convicted of various crimes (outlined in section I(g) of the proposal), that involve abuse or misuse of a position of

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[6] 49 FR 9494 (Mar. 13, 1984), as corrected at 50 FR 41430, (Oct. 10, 1985), as amended at 70 FR 49305 (Aug. 23, 2005), as amended at 75 FR 38837 (July 6, 2010), as amended at 89 FR 23090 (Apr. 3, 2024), and as corrected at 89 FR 65779 (Aug. 13, 2024).

[7] The Department notes that 1,063 entities have reported they rely on the QPAM Class Exemption as of July 1, 2026.

[8] "QPAM" is defined in Section VI(a) of the QPAM Class Exemption, 89 FR 65779, 65783 (Aug. 13, 2024).

trust, or felonies generally described in ERISA section 411."[9] As granted, Section I(g) of the QPAM Class Exemption provides generally that a QPAM is ineligible to rely on the QPAM Class Exemption for a period of 10 years if the QPAM, its various Affiliates,[10] or five percent or more owners of the QPAM, engage in certain types of serious misconduct that is prohibited by the QPAM Class Exemption.[11] If an asset manager becomes ineligible to rely on the QPAM Class Exemption, its Covered Plans may miss out on investment opportunities or be required to find a new asset manager.

The preamble to the QPAM Class Exemption, as it was proposed, states that a QPAM must "maintain a high standard of integrity." This is an important premise of the QPAM Class Exemption. Although under ERISA, the duties of fiduciaries are already high, for QPAMs, the added integrity requirement arises because: (1) the scope of Section I of the QPAM Class Exemption is expansive, permitting an Investment Fund managed by a QPAM to engage in all prohibited transactions described in ERISA Section 406(a) with virtually all parties in interest to Plans that invest in the Investment Fund (except the QPAM), with limited relief also from ERISA Section 406(b);[12] and (2) the QPAM Class Exemption is largely self-executing and requires no reporting to, or filing with, the Department, other than a one-time notification to the Department that the asset manager is relying on the QPAM Exemption. Therefore, the concept of QPAM "integrity," as reinforced by Section I(g), is a critical underpinning for the exemptive relief provided in DOL's QPAM Class Exemption.

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[9] Proposed Class Exemption for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers, 47 FR 56945, 56947 (Dec. 21, 1982) (Proposed QPAM Class Exemption).
[10] "Affiliate" is defined in Section VI(d) of the QPAM Class Exemption, 89 FR 65779, 65784 (Aug. 13, 2024).
[11] Prohibited Transaction Class Exemption 84-14 for Transactions Determined by Independent Qualified Professional Asset Managers (the QPAM Exemption); Correction, 89 FR 65779 (Aug. 13, 2024).
[12] One applicant for a QPAM Section I(g) individual exemption represented to the Department that if its QPAMs could not use the QPAM Class Exemption for 10 years, retirement plans with assets managed by the QPAM might have to sell investments early, replace managers, or leave certain hedge fund, private credit, equity, and fixed income strategies. The applicant estimated direct liquidation losses of about $102.8 million, plus other costs for finding a new manager, moving assets, rebuilding portfolios, paying transaction fees, and losing access to closed or customized investments. See 89 FR 49213 (June 11, 2024).

In addition, just as QPAMs are subject to a standard of integrity beyond the duties required of ERISA fiduciaries, QPAMs also must maintain their eligibility for the QPAM Class Exemption under a more demanding standard than that applied to fiduciaries under ERISA generally. As a result, while a person can be precluded from serving as an ERISA fiduciary due to committing violations specified in ERISA Section 411, a QPAM is also subject to the more stringent ineligibility provision in Section I(g) of the QPAM Class Exemption. However, unlike ERISA Section 411, which provides a mechanism to bar an entity that has been convicted of certain crimes from acting as an ERISA fiduciary, Section I(g) does not bar an entity from acting as an ERISA fiduciary. Section I(g) instead proactively ensures that the broad permission afforded under the QPAM Class Exemption for asset managers to engage in certain prohibited transactions does not extend to entities (or are related to entities) that have engaged (or that are related to entities that have engaged) in certain disqualifying events.

In 2024, DOL amended the QPAM Class Exemption. This amendment: (1) clarified the requirement that a QPAM have authority over investment decisions; (2) increased the required asset management and equity thresholds for all QPAMs; (3) added a new recordkeeping requirement, and (4) modified the integrity requirement in Section I(g). The 2024 amendment expanded the disqualification triggers in Section I(g) in three ways: (1) providing that certain foreign convictions are disqualifying; (2) adding certain deferred-prosecution agreements (DPAs) and non-prosecution agreements (NPAs) between QPAMs or their affiliates and Federal or State agencies; and (3) adding certain civil judgments and settlements with Federal and State agencies.

As defined in Section I(*l*) of this Proposed QROAD Class Exemption, the term Prohibited Misconduct has the same meaning as that same term is defined in Section VI(s) of the amended QPAM Class Exemption. It generally refers to when a QPAM, any Affiliate thereof, or any owner, direct or indirect, of a five (5) percent or

more interest in the QPAM enters into a domestic NPA or DPA or is found in a court's final judgment or court approved settlement to have participated in conduct that intentionally violated the QPAM Class Exemption's conditions or provided misleading information in connection with the QPAM Class Exemption's conditions.

As defined in Section I(e), the term Criminal Conviction has the same meaning as the term is defined in Section VI(r) of the QPAM Class Exemption, except that, for purposes of this Proposed QROAD Class Exemption, a "Criminal Conviction" includes all Criminal Convictions that arise from the same incident in that they are the same in nature, and based on the same underlying facts, circumstances and conduct. A "Criminal Conviction" includes "U.S. Convictions" and "Foreign Convictions," as those terms are described below and generally refers to when a QPAM, any Affiliate thereof, or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM is convicted in a U.S. Federal or State court for certain listed offenses described in ERISA section 411; or is convicted by a foreign court of competent jurisdiction of a crime that is substantially equivalent to the listed U.S. offenses.

Further, in the Department's view, the mere fact that an asset manager has not been barred from acting as a fiduciary under ERISA Section 411 does not equate to a demonstration that the asset manager has exhibited sufficient integrity to qualify for a self-executing class exemption that permits the asset manager to engage in a wide range of transactions that otherwise are prohibited by ERISA Section 406(a). For example, an ERISA fiduciary that admits to fraud against its Plan clients in a non-prosecution agreement with the U.S. Department of Justice would not be barred under ERISA Section 411 solely because of the non-prosecution agreement. Similarly, an ERISA fiduciary that engages in misconduct for which its corporate parent is criminally convicted would not be barred under ERISA Section 411 solely because of the Criminal Conviction of the

corporate parent. Nonetheless, both instances could constitute an ineligibility event under the QPAM Class Exemption, as they would raise serious concerns regarding whether the asset manager can be expected to act with integrity if allowed to engage in a wide range of transactions otherwise prohibited under ERISA Section 406(a) essentially unsupervised by the Department. The Department was able to make its required findings under ERISA Section 408(a) when granting such relief to QPAMs under the QPAM Class Exemption, in part, by holding QPAMs to a higher standard of integrity.

Overview of this Proposed QPAM Re-eligibility Options After Disqualification (QROAD) Class Exemption

Over the years, the Department has reviewed more than 50 requests for individual exemptions submitted on behalf of QPAMs facing ineligibility under Section I(g) of the QPAM Class Exemption. The requestors sought individual PTEs that would allow the QPAMs to continue to rely on the QPAM Class Exemption, notwithstanding violations of Section I(g) that would otherwise make the QPAMs ineligible to rely on the relief in the QPAM Class Exemption. Based on this experience that the Department has had in considering and granting such individual exemptions, the Department now is proposing the Proposed QROAD Class Exemption. Discussed in the preamble below are the reasons why the Department is proposing this exemption.

In requests for individual exemptions from ineligibility under the QPAM Class Exemption, the factual records supporting them include a detailed exemption application, which typically contains, among other things, court-approved pleadings, comments from interested parties, reports, and audits associated with the application. The Department reviews the nature of the underlying conduct and works with applicants and their attorneys to determine the nature of the criminal conduct or other Prohibited Misconduct. The Department has recently granted individual PTEs that do not provide relief for the

full ten years of ineligibility under the QPAM Class Exemption. The QPAM then relies on an individual PTE for one, three, or five years, and must hire an independent auditor to conduct an audit of its compliance with the individual PTE. The Department receives a copy of that audit and uses it to determine whether to grant another exemption to cover more of the initial ten-year period. A few QPAMs have faced multiple convictions over a ten-year period, and the Department has granted new individual PTEs to provide relief for the additional ineligibility events, as they arose, and to impose new conditions.

The experience the Department gained from processing this type of exemption request, and from reviewing the subsequent audits performed in connection therewith, has led the Department to tentatively conclude that it would be appropriate to grant a class exemption that conditionally permits, in certain instances, an asset manager facing ineligibility under Section I(g) of the QPAM Class Exemption to continue to rely on the QPAM Class Exemption. As discussed below, this Proposed QROAD Class Exemption also reflects the view that, in certain other instances, exemptive relief for asset managers facing ineligibility under Section I(g) of the QPAM Class Exemption is more appropriately considered under the Department's individual exemption process.

The Department believes that this Proposed QROAD Class Exemption will remove a great deal of the uncertainty affecting Covered Plan[13] fiduciaries whose prudently selected asset manager of choice is subject to potential ineligibility under Section I(g) of the QPAM Class Exemption. In this regard, when the Department receives an individual exemption application involving a potential ineligibility event, the Department must consider the entire record attributable to the application prior to granting the requested exemption, including comments received following publication of

[13] The term "Covered Plan" is defined in Section I(d) and generally means a plan or Investment Fund subject to Part4 of Title I of ERISA (an "ERISA-covered plan") or a plan or Investment Fund subject to Code Section 4975 (an "IRA"), in each case, with respect to which the QPAM relies on the QPAM Class Exemption, or with respect to which the QPAM has expressly represented that the manager qualifies as a QPAM or relies on the QPAM Class Exemption.

a proposed exemption. The Department granted 30 Section I(g) individual exemptions during the period 2016 through 2025. During the same period, the Department denied 4 additional applications for relief from the ineligibility provision in Section I(g) and another 5 applications were withdrawn by the applicants. Withdrawals in these circumstances typically occur in anticipation of an impending denial of an application during review. Accordingly, until the application is reviewed, the proposed individual exemption is published for comment, the comments are reviewed and the proposed exemption is finalized, the Department cannot guarantee that an exemption request ultimately will be granted. Therefore, Covered Plan fiduciaries will not know with certainty whether their asset manager will continue to have relief until the individual exemption is granted. Even where the record indicates a likelihood that the Department will grant an individual exemption the Department cannot typically guarantee that the exemption will be granted prior to a lapse in the relief afforded by the QPAM Class Exemption. Under the QPAM Class Exemption, the timing of ineligibility is generally set by a court. Section I(h) provides that a QPAM becomes ineligible upon the judgment of a court or the date of an NPA or DPA. Section I(i) provides a One-Year Transition Period,[14] which allows a QPAM continued relief for up to one year, subject to additional conditions. However, an exemption is not granted until it is published in the *Federal Register*, and the timing for publication depends on when the application is submitted, the completeness of that application, the public comments the Department receives, and various other factors. This creates additional uncertainty for QPAMs facing even a short-term lapse of relief. It is the Department's understanding that these uncertainties are disruptive to Covered Plans. This Proposed QROAD Class Exemption would remove

[14] The term "One-Year Transition Period" is defined in Section I(i) of the QPAM Class Exemption, 89 FR 65779, 65781 (Aug. 13, 2024).

many of these uncertainties by providing a clear, reliable path to exemptive relief in applicable cases.

Further, the Department believes that, under the circumstances described in this Proposed QROAD Class Exemption, a procedurally streamlined approach designed to reduce costs and administrative friction to allow QPAMs to continue relying on the QPAM Class Exemption is appropriate. Based on the Department's consideration of its experience with individual exemption applications from QPAMs otherwise facing ineligibility under the QPAM Class Exemption, as described below, the conditions of this Proposed QROAD Class Exemption are more carefully tailored to the ineligibility events and arrangements that give rise to QPAM ineligibility under the QPAM Class Exemption than the conditions found in the Department's individual exemptions, which, for the most part, have applied a more "one size fits all" approach to these sorts of exemption requests. If this largely self-executing Proposed QROAD Class Exemption is granted, eligible QPAMs will be saved the time and expense of submitting a detailed exemption application, thus alleviating the uncertainty of the individual exemption process.

As noted above, Section I(g) of the QPAM Class Exemption provides generally that a QPAM is ineligible to rely on the QPAM Class Exemption for a period of 10 years if the QPAM, its Affiliates, or five percent or more owners of the QPAM, engage in serious misconduct that is prohibited by the QPAM Class Exemption. As explained further below, Section VI(d) of the QPAM Class Exemption defines the term "Affiliates" for purposes of Section I(g) to include: entities that Control or are Controlled[15] by the QPAM; and certain entities that do not Control or are not Controlled by the QPAM. This distinction is relevant to this proposal because the existence of Control or lack thereof between a QPAM and an entity that is the subject of a Criminal Conviction or Prohibited

[15] The terms "Control," "Controlling," "Controlled by," and "Controls" are defined in Section I(c) of this Proposed QROAD Class Exemption to mean the power to exercise a controlling influence over the management or policies of a person other than an individual.

Misconduct (a Misconduct Entity) will determine what Section of this Proposed QROAD Class Exemption a QPAM may rely on for conditional relief.

Under the terms of this proposal, an arrangement involving a QPAM that Controls or is Controlled by a Misconduct Entity will generally be subject to more conditions than an arrangement involving a QPAM that neither Controls nor is Controlled by a Misconduct Entity. The Department believes that imposing additional conditions when there is direct control is appropriate and also aligns with the expressly stated essential premise of the QPAM Class Exemption noted above, that "a QPAM, and those who may be in a position to influence its policies, are expected to maintain a high standard of integrity." This also reflects the Department's view that the mandate in ERISA Section 408(a) with respect to exemptions that provide expansive self-executing relief from ERISA's prohibited transaction provisions, for QPAMs that Control or are Controlled by an entity that has engaged in serious misconduct, requires greater oversight (audits and compliance officers, for example) than the same relief for QPAMs that do not Control or are not Controlled by such Misconduct Entity.

Moreover, since the relief in both the QPAM Class Exemption and the relief proposed herein is mostly self-executing, the Department believes that, with respect to arrangements involving QPAMs that Control or are Controlled by a Misconduct Entity, the requirements of Section 408(a) warrant not only conditions that are similar to the conditions set forth in the Department's recent individual exemptions, but also warrant Independent Fiduciary oversight, as discussed below. This oversight is important, given that the Department will not be reviewing an exemption application.

Department's Note: As noted above, the Department developed the definitions and conditions in this Proposed QROAD Class Exemption based on its experience processing numerous individual exemption applications involving QPAMs facing ineligibility under Section I(g) of the QPAM Class Exemption. The Department is aware

that comments on the associated individual exemptions have stated that the conditions contained in those exemptions are burdensome, unnecessary, and/or expensive. This proposal addresses many of those concerns with respect to the relief described herein for QPAMs that do not Control or are not Controlled by a Misconduct Entity, because the conditions in this proposal applicable to those circumstances do not include many of the conditions required by the Department's recent individual exemptions.

However, as noted above, this proposal does include many of the conditions set forth in the Department's recent QPAM Section I(g) individual exemptions with respect to QPAMs that Control or are Controlled by a Misconduct Entity. The Department continues to believe that the conditions described below, such as requiring a compliance officer and an auditor to confirm compliance with this Proposed QROAD Class Exemption and the QPAM Class Exemption, are necessary for the Department to make its required findings under ERISA Section 408(a), including that the Proposed QROAD Class Exemption is sufficiently protective of Plans, given that this proposal would provide relief in circumstances where, for example, a Misconduct Entity that Controls a QPAM has engaged in fraudulent activity against its own clients.

Commenters to the Department's recent QPAM Section I(g) individual exemptions have suggested that such exemptions are not "administratively feasible" for the QPAMs and Covered Plans. However, the conditions proposed herein were developed with due consideration of whether this Proposed QROAD Class Exemption would be administratively feasible for the Department, consistent with the meaning of ERISA Section 408(a).[16] Nearly all the exemption conditions described herein are largely self-executing and do not pose an unreasonable burden to the Department.

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[16] See 29 CFR part 2570.48(a)(1); Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications – Decision to Grant Exemptions (89 FR 4662, at 4703, Jan. 24, 2024).

Some commenters to the Department's recent QPAM Section I(g) individual exemptions have further suggested that the conditions contained therein provide no benefit to affected Covered Plans.[17] However, in the Department's view, conditions requiring maintenance and adherence to a QPAM's policies, specialized QPAM training, checks on QPAM compliance, and among other things, the provision of information to Covered Plans so that ERISA fiduciaries can make prudent decisions regarding their retention of their asset manager of choice, are protective of the rights of the participants and beneficiaries of the Covered Plans. The conditions described in this Proposed QROAD Class Exemption help to further empower Covered Plan fiduciaries to make prudent fiduciary decisions, by requiring, in certain situations, their QPAM to indemnify the Covered Plans against any actual losses resulting directly from, among other things, a violation of the conditions of this Proposed QROAD Class Exemption. The indemnification and hold harmless conditions permit Covered Plan fiduciaries to exercise prudence when deciding to retain a new asset manager, without fear of incurring substantial charges, lock-ups, or other disincentives that could otherwise impair their ability to exercise prudence.

However, the indemnification provisions in this proposal are narrower and more targeted than the indemnification provisions in the Department's recent QPAM Section I(g) individual exemptions. This Proposed QROAD Class Exemption limits the QPAM's indemnification obligations to plan losses resulting directly from: the QPAM's violation of this Proposed QROAD Class Exemption; loss of QPAM relief due to failure to satisfy Section I(g) of the QPAM Class Exemption; or prohibited transactions or ERISA fiduciary breaches connected to the misconduct that gave rise to the need for reliance on this Proposed QROAD Class Exemption. Recent individual exemptions have

[17] Other commenters expressed support for conditions included in the QPAM Class Exemption, including the indemnification requirements and the expansion of Section I(g) to cover DPAs and NPAs.

had a larger indemnification scope than this, and include plan losses resulting from the QPAM's violation of its ERISA fiduciary duties and the prohibited transaction provisions of ERISA and the Code, whether or not such violations are tied to a violation of this Proposed QROAD Class Exemption, failure to satisfy Section I(g), or prohibited transactions or ERISA fiduciary breaches connected to the misconduct that gave rise to the need for reliance on this Proposed QROAD Class Exemption.

This proposal would require confirmation from an Independent Fiduciary that certain requirements of this Proposed QROAD Class Exemption have been met. The Department believes that the broad self-executing relief afforded by this Proposed QROAD Class Exemption warrants independent oversight of certain of its terms, not merely representations by a QPAM. Equally, the Department believes that Independent Fiduciary oversight reduces the likelihood that Covered Plans would incur substantial harm in situations where the conditions of this Proposed QROAD Class Exemption subsequently were determined not to have been met, following their QPAM's reliance on the relief in this exemption. Further, the Department considers the Independent Fiduciary requirement more efficient than the process it would replace (application analysis by the Department) because the Independent Fiduciary requirement described herein would involve coordination between the Independent Fiduciary and a senior QPAM officer who is knowledgeable of the misconduct that necessitated reliance on this Proposed QROAD Class Exemption, if granted.

The Department is aware that stakeholders view Section I(g) of the QPAM Class Exemption as too broad. The Department believes this proposal addresses many of these concerns and does so in a streamlined fashion. As discussed below, the alternative route to relief that the Department proposes here is closely tied to the Department's experience with individual exemption applications, and it will more quickly and effectively address stakeholder concerns than would amending the QPAM

Class Exemption itself. The Department invites comments on whether the relief afforded by the Proposed QROAD Class Exemption, if granted, offers sufficiently streamlined paths to relief from stakeholder concerns about the breadth of Section I(g) of the QPAM Class Exemption, while doing so in a manner still sufficiently protective of Plans. This Proposed QROAD Class Exemption does not require an amendment to the QPAM Class Exemption generally, nor Section I(g) in particular, because it does not change the terms of ineligibility; rather, for QPAMs otherwise facing ineligibility under the existing QPAM Class Exemption, the Proposed QROAD Class Exemption offers egress from such ineligibility along two clearly navigable paths. The two alternative paths to relief, each with protections and requirements that were developed in careful consideration of whether control existed between a Reliance QPAM and a Misconduct Entity, are designed to deliver the highest level of protections to Plans. Moreover, under this Proposed QROAD Class Exemption, any QPAM remains free to submit an individual exemption application.

Further, the records attributable to, and the Department's experience with, several individual PTE requests appear to support a wide scope to Section I(g) of the QPAM Class Exemption, by clearly demonstrating that misconduct even by a "far flung" affiliate of a QPAM with no apparent Control over the QPAM, may nonetheless involve numerous personnel spread across the QPAM's organizational structure.

Given the gravity, prolonged duration, and complex nature of misconduct associated with many Criminal Convictions, the Department believes the protections described in this proposal are warranted. However, nothing in this proposal precludes a QPAM from submitting an exemption request with fewer conditions than those described herein. Such a request should clearly demonstrate why an exemption with fewer conditions would be in the interest of, and protective of, Covered Plans, and

administratively feasible, as required under ERISA Section 408(a).

The Department understands that interested parties may have unique insight as to how the Department could revise the terms of this Proposed QROAD Class Exemption to strengthen its protections for Covered Plans and/or lessen unnecessary burdens on Covered Plans, their fiduciaries, and/or their asset managers of choice. The Department welcomes these comments and also welcomes comments from QPAMs that currently rely on individual exemptions due to ineligibility under Section I(g) of the QPAM Class Exemption. In this regard, this proposal requires that QPAMs that have received current individual exemptions, in order to continue relying on the QPAM Class Exemption, must continue to comply with those individual exemptions until the date they are in compliance with all applicable conditions of this exemption. The Department welcomes comments regarding QPAMs' ability to coordinate their individual exemption compliance with the conditions outlined in this Proposed QROAD Class Exemption, if granted, including any difficulties they may anticipate. Additionally, the Department welcomes comments regarding the regulatory alternatives it considered, as discussed in section 10 of the Regulatory Impact Analysis below.

Importantly, all comments should clearly articulate why requested revision(s) to the Proposed QROAD Class Exemption would be administratively feasible and protective of, and in the interest of, affected Covered Plans.

Layout and Structure of this Proposed QROAD Class Exemption

In general terms, QPAMs that do not Control and are not Controlled by a Misconduct Entity (that itself is not a QPAM) may rely on the relief in Section II of this Proposed QROAD Class Exemption, if the conditions in Section II are met. QPAMs that Control or are Controlled by a Misconduct Entity may generally rely on the relief in Section III of this Proposed QROAD Class Exemption, if the conditions in Section III are met. However, in certain instances, if the applicable conditions are met, QPAMs that do

not Control and are not Controlled by a Misconduct Entity, and that are not eligible for the relief in Section II of this Proposed QROAD Class Exemption, may nonetheless be eligible for the relief in Section III.

The Proposed QROAD Class Exemption has four other sections: a definitions section (Section I); a phase-out section (Section IV); a recordkeeping section (Section V); and a date section (Section VI). This preamble summarizes those sections; however, it does not fully describe all the Proposed QROAD Class Exemption's definitions and conditions. See the specific sections below to view all of the proposal's governing terms and conditions.

Section I: Definitions

QPAM

For purposes of this proposal, the term "QPAM" has the same meaning as in the QPAM Class Exemption, and means an Independent Fiduciary that is a bank, savings and loan association, insurance company, or investment adviser registered under the Investment Advisers Act of 1940 (Advisers Act) that meets certain equity, net worth, and assets under management requirements, and acknowledges in a written management agreement its ERISA fiduciary status with respect to each Plan that retains it as a QPAM. Upon the occurrence of a triggering event, Section I(g) imposes ineligibility on a QPAM based on the misconduct by (1) the QPAM itself, (2) any Affiliate, and (3) any owner, direct or indirect, of a five (5) percent or more interest in the QPAM.

Misconduct Entity

The term "Misconduct Entity" means an entity that is the subject of a Criminal Conviction or Prohibited Misconduct, each as defined in the QPAM Class Exemption. Except as expressly allowed, relief in this exemption does not extend to any QPAM that is the subject of a Criminal Conviction or Prohibited Misconduct.

Affiliated QPAMs

Section I(b) of the Proposed QROAD Class Exemption provides that a QPAM is an "Affiliated QPAM" if it is an Affiliate of the Misconduct Entity. The definition of "Affiliate" is the same as the definition of "Affiliate" in Section VI(d) of the QPAM Class Exemption. Thus, for purposes of this Proposed QROAD Class Exemption, a QPAM is defined as an "Affiliated QPAM" with respect to a Misconduct Entity, if the Misconduct Entity:

1) directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is Under Common Control with the QPAM;
2) is any director of, Relative of, or partner in, the QPAM;[18]
3) is a corporation, partnership, trust or unincorporated enterprise of which the QPAM is an officer, director, or a five percent or more partner or owner; or
4) is any employee or officer of the QPAM who:
    a. is a highly compensated employee (as defined in Code Section 4975(e)(2)(H) or officer (earning ten (10) percent or more of the yearly wages of such person); or
    b. has direct or indirect authority, responsibility, or control regarding the custody, asset management or disposition of Plan assets.

The term "Affiliated QPAM" has been used regularly in individual exemptions for QPAMs ineligible under the QPAM Class Exemption. Notably, the definition of Affiliated QPAM is not limited to entities that Control or are Controlled by a Misconduct Entity. Whereas some Affiliated QPAMs may Control or be Controlled by the

[18] QPAM Class Exemption Section VI(g) provides "The term 'Relative' means a relative as that term is defined in ERISA Section 3(15), or a brother, a sister, or a spouse of a brother or sister."

Misconduct Entity and may be eligible for the relief in Section III, others will not have that specific Control relationship and may be eligible for the relief in Section II.

Related QPAM

The term "Related QPAM" has been used regularly in individual exemptions for QPAMs ineligible under the QPAM Class Exemption. The term refers to QPAMs with respect to which a Misconduct Entity directly or indirectly owns a five percent or more interest in the QPAM but does not "Control" the QPAM.[19] These QPAMs are not Affiliated QPAMs because they do not meet any part of the definition of Affiliate.

As further described below, Related QPAMs are generally subject to fewer conditions than Affiliated QPAMs because of the Misconduct Entity's more attenuated relationship to a Related QPAM and limited ability to influence a Related QPAM's policies and management of plan assets. The Department understands that a Misconduct Entity's investments in Related QPAMs are often passive investments, and Related QPAMs maintain their own information and technology infrastructure and are operationally separate and distinct from the Misconduct Entity. In fact, various applicants for individual exemptions have represented that a Misconduct Entity's relationship to a Related QPAM may be so minimal that the Misconduct Entity does not know if the Related QPAM is relying on the QPAM Class Exemption. These factors provide comfort to the Department that different, less robust, conditions are needed to protect Covered Plans of Related QPAMs from a Misconduct Entity. Nonetheless, because a Misconduct Entity's Criminal Conviction[20] or Prohibited Misconduct[21] causes a Related QPAM to

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[19] QPAM Class Exemption Section VI(g)(1) "Ineligibility due to a Criminal Conviction or Prohibited Misconduct. Subject to the Ineligibility Date provision set forth in Section I(h), a QPAM is ineligible to rely on this exemption for 10 years following: (A) A Criminal Conviction, as defined in Section VI(r), of the QPAM or any Affiliate thereof (as defined in Section VI(d)), *or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM*; or (B) The QPAM, any Affiliate thereof (as defined in Section VI(d)), *or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM Participates In Prohibited Misconduct as defined in Section VI(s) and VI(t)*." (emphasis added)

[20] As defined in the QPAM Class Exemption Section VI(r), Criminal Conviction generally means a conviction in a U.S. Federal or State court or conviction by a foreign court of competent jurisdiction.

[21] As defined in the QPAM Class Exemption Section VI(s), Prohibited Misconduct generally means when an entity (1) enters into a non-prosecution or deferred prosecution agreement with a U.S. Federal or State

become ineligible under Section I(g) of the QPAM Class Exemption, this Proposed QROAD Class Exemption would provide relief to those Related QPAMs, subject to the special rule for Related QPAMs described below.

Reliance QPAM

A single Criminal Conviction or instance of Prohibited Misconduct could cause several QPAMs (Affiliated QPAMs and/or Related QPAMs) to be ineligible, and each of those QPAMs may seek to rely on the relief in this Proposed QROAD Class Exemption. Historically, in requests for individual exemptions for relief from Section I(g), the applicants have requested an exemption on behalf of all Affiliated QPAMs and Related QPAMs located within an affected corporate family. However, Proposed QROAD Class Exemption is structured such that a QPAM that relies on the relief in this exemption (a Reliance QPAM) is generally responsible only for its own compliance with the terms of the exemption. In other words, if a Related QPAM and an Affiliated QPAM each reside within the same corporate organizational structure as a Misconduct Entity, and the Related QPAM fully complies with the terms of this exemption but the Affiliated QPAM does not, the Related QPAM will remain eligible for the relief provided by this exemption notwithstanding the non-compliance of the Affiliated QPAM.

However, there is one condition in the Proposed QROAD Class Exemption that requires compliance by all QPAMs under the same corporate organizational structure. Under Section II(b)(3) of this Proposed QROAD Class Exemption, if any QPAM in the corporate organizational structure exercised authority over the assets of any plan in a manner that it knew, or should have known, would further the conduct that is the subject

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prosecutor's office or regulatory agency where the factual allegations would have constituted a crime under the definition of Criminal Conviction in the QPAM Class Exemption, or (2) is found or determined in a final judgment or court-approved settlement by a Federal or State criminal or civil court to have engaged in a systematic pattern or practice of conduct or intentionally engaged in conduct that violates the conditions of the QPAM Class Exemption in connection with otherwise non-exempt prohibited transactions, or provided materially misleading information to the Department, or other regulators, in connection with the conditions of the QPAM Class Exemption.

of the Criminal Conviction or Prohibited Misconduct, then no Affiliated QPAM or Related QPAM can rely on Proposed QROAD Class Exemption. Each QPAM connected to that Misconduct Entity would need an individual exemption to continue operating as a QPAM. This requirement protects Plans and IRAs by ensuring that no QPAM assets within the same organizational structure are used in conduct underlying a Criminal Conviction or Prohibited Misconduct.

Reliance Date

A QPAM that becomes ineligible under the QPAM Class Exemption does not become a Reliance QPAM under this Proposed QROAD Class Exemption until the "Reliance Date." The Proposed QROAD Class Exemption defines Reliance Date as the date on which a QPAM first relies on this exemption with respect to a Criminal Conviction or Prohibited Misconduct.

The Reliance Date may not be earlier than the associated Ineligibility Date[22] under the QPAM Class Exemption. This provides Affiliated and Related QPAMs with flexibility to determine when they will begin complying with the Proposed QROAD Class Exemption. An Affiliated QPAM or Related QPAM, for instance, could first rely on the One-Year Transition Period in Section I(i) of the QPAM Class Exemption for 10 months and then rely on the Proposed QROAD Class Exemption for the remaining 9 years and 2 months of its ineligibility period.

The conditions in the Proposed QROAD Class Exemption must be complied with as of the QPAM's Reliance Date, not its Ineligibility Date. Thus, an Affiliated QPAM or Related QPAM that does not immediately come into compliance with this

[22] As defined in QPAM Class Exemption Section I(h), the Ineligibility Date is the date the QPAM becomes ineligible to rely on the QPAM Class Exemption. This date is either the Conviction Date (the date of the judgment of the court), the date the Misconduct Entity executes a non-prosecution agreement or deferred prosecution agreement, or the date that a final judgment or court-approved settlement is ordered.

exemption as of its Ineligibility Date will not inadvertently miss its opportunity to rely on this exemption.

Independent Fiduciary

This Proposed QROAD Class Exemption would require the oversight of a prudently selected Independent Fiduciary. The term "Independent Fiduciary" has the same meaning as in the Department's Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications,[23] and generally means an individual or entity that has appropriate training, experience, and facilities to act on behalf of the Plan regarding the exemption transaction in accordance with the fiduciary duties and responsibilities prescribed by ERISA, and that is independent of and unrelated to any party in interest engaging in the exemption transaction.

Criminal Conviction

Under this Proposed QROAD Class Exemption, multiple convictions are treated as one single "Criminal Conviction" if the convictions arise from the same incident in that they are based on the same underlying facts, circumstances, and conduct, and were perpetrated by the same person (or group of people) during the same time frame or where the same defective control function enabled the same type of misconduct to occur during the same general time frame. For example, if a Misconduct Entity is convicted in U.S. district court on two charges that are part of the same scheme, such as embezzlement and fraudulent concealment directly related to said embezzlement, then these would be treated as one single "Criminal Conviction" if the convictions are based on the same underlying facts, circumstances, and conduct, and were perpetrated by the same person (or group of people) during the same time frame or where the same defective control function enabled the same type of misconduct to occur during the same general time frame. Likewise, if a Misconduct Entity is convicted in U.S. district court and separately

[23] See 29 CFR 2570.31(j) (89 FR 4662 at 4692).

in a State court, and both charges stem from the same incident in that they are based on the same underlying conduct, those two convictions would be treated as one for purposes of this exemption. However, if the charges underlying the State conviction were brought because the Misconduct Entity continued engaging in the illegal conduct after the Federal conviction, the Federal and State convictions would be considered two separate convictions.

Two convictions also would not be treated as one when the types of misconduct are distinct and/or there is no direct connection between the misconduct underlying the two separate convictions. For example, if a Misconduct Entity is convicted for fraud in U.S. district court and for tampering with a witness with respect to the fraud proceedings, the two convictions will be treated as distinct. In that example, while some of the facts associated with the two convictions might be the same, the charged conduct underlying each conviction is different. For purposes of this proposal, a Criminal Conviction includes U.S. Convictions and Foreign Convictions, as those terms are described below.

The Department invites comments on whether this approach towards counting Criminal Convictions is appropriately calibrated and whether the proposed approach should be modified in the final exemption.

Section II: Exemptive Relief Where No Control Relationship Exists Between the Reliance QPAM and the Misconduct Entity

Section II relief extends to an Affiliated QPAM or Related QPAM that is ineligible under the QPAM Class Exemption as a result of: (1) a single Criminal Conviction described in Section VI(r)(1) of the QPAM Class Exemption[24] (a U.S.

[24] This section refers to a conviction 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; conspiracy

Conviction); and/or (2) one or more Criminal Convictions described in Section VI(r)(2) of the QPAM Class Exemption[25] (Foreign Convictions); and/or (3) one or more instances of Prohibited Misconduct. The Misconduct Entity must neither Control nor be Controlled by the Reliance QPAM and must not itself be a QPAM. Importantly, relief in this Section (and Section III below) is not available if the conduct that is the subject of a Criminal Conviction or the Prohibited Misconduct involved assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975.

The Department acknowledges that the Proposed QROAD Class Exemption takes a different approach to Foreign Convictions than the Department has historically taken in granting individual exemptions from the QPAM Class Exemption's ineligibility provision. The Department continues to believe that Foreign Convictions for substantially equivalent crimes raise serious integrity concerns. However, the Department believes this different treatment is warranted given that foreign criminal justice systems may differ from the U.S. system with respect to procedural rules, evidentiary standards, prosecutorial practices, judicial independence, appellate review, and other due process safeguards. Although Foreign Convictions remain relevant to QPAM integrity and continue to trigger ineligibility under Section I(g), the Department preliminarily believes these cross-jurisdictional differences support a more tailored approach for class-wide relief, including permitting relief for one or more Foreign Convictions under Sections II and III subject to the exemption's protective conditions. The Department invites comments on whether this treatment of Foreign Convictions is appropriately calibrated,

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or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any crime that is identified or described in ERISA Section 411.

[25] This section refers to a conviction by a foreign court of competent jurisdiction or released from imprisonment, whichever is later, as a result of a crime, however denominated by the laws of the relevant foreign government, that is substantially equivalent to an offense described in PTE 84-14 Section VI(r)(1) (excluding convictions and imprisonment that occur within a foreign country that is included on the Department of Commerce's list of "foreign adversaries").

whether additional safeguards are needed, and whether the proposed distinction between Foreign Convictions and U.S. Convictions should be modified in the final exemption.

Similarly, the Department acknowledges that this Proposed QROAD Class Exemption takes a different approach to NPAs and DPAs than the Department has historically taken in connection with the QPAM Class Exemption's ineligibility provision. The Department continues to believe that conduct underlying NPAs and DPAs can raise serious integrity concerns relevant to whether a QPAM should be able to rely on the broad, self-executing relief provided by the QPAM Class Exemption. However, the Department believes this different treatment is warranted given that, unlike Criminal Conviction, an NPA or DPA may not involve an adjudication of guilt and may include no admission of culpability by the relevant entity, even though the agreement may describe serious misconduct and impose meaningful obligations. Although NPAs and DPAs remain relevant to QPAM integrity and continue to trigger ineligibility when they constitute Prohibited Misconduct under Section I(g), the Department preliminarily believes the distinctions between NPAs and DPAs and Criminal Conviction support a more tailored approach for class-wide relief, including permitting relief for one or more instances of Prohibited Misconduct under Sections II and III, subject to the exemption's protective conditions. The Department invites comments on whether this treatment of NPAs and DPAs is appropriately calibrated, whether additional safeguards are needed, and whether the proposed distinction between U.S. Convictions and Prohibited Misconduct should be modified in the final exemption.

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Section II Examples:

Example 1:[26] Misconduct Entity A (not a QPAM) receives a U.S. Conviction for fraud in U.S. district court. The fraud conviction did not involve assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975. Misconduct Entity A is an Affiliate of Bank B, a QPAM, but does not Control Bank B and is not Controlled by Bank B. Bank B would be eligible to rely on the relief in Section II of the Proposed QROAD Class Exemption, if granted, as a Reliance QPAM if the definitions in Section I and the conditions in Section II are met.

Example 2: Assume the same facts as in Example 1 above except that Misconduct Entity A subsequently (but within ten years of the U.S. Conviction) receives a Foreign Conviction and enters into a Non-Prosecution Agreement (NPA) with the U.S. Department of Justice (DOJ). Neither the Foreign Conviction nor the Prohibited Misconduct (reflected in the NPA) involved assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975. Despite the additional instances of misconduct, Bank B, the QPAM, would be eligible to rely on the relief in Section II of the Proposed QROAD Class Exemption, if granted, as a Reliance QPAM if the definitions in Section I and the conditions in Section II are met.

Example 3: Assume the same facts as Example 1 above, except that Misconduct Entity A subsequently (but within ten years of the first U.S. Conviction) receives an additional U.S. Conviction in U.S. State court in which the crime is the same in nature and the underlying facts and circumstances are the same as in Misconduct Entity A's U.S. Conviction. Assume neither U.S. Conviction involved assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975. Because the two U.S. Convictions were the same in nature and involved the same underlying facts and

[26] All examples in this proposal assume the granted class exemption will have the same terms as the proposed class exemption.

circumstances, Bank B, the QPAM, would be eligible to rely on the relief in Section II of the Proposed QROAD Class Exemption, if granted, as a Reliance QPAM if the definitions in Section I and the conditions in Section II are met.

Department's Note: Each definition in Section I and each condition in Section II must be met with respect to each Criminal Conviction and instance of Prohibited Misconduct in order for the Affiliated QPAM or Related QPAM to rely on this Proposed QROAD Class Exemption.

Section II Conditions:

Section II(b) Eligibility

Relief under Section II(b)(1) and (2) requires that, as of the Reliance Date, no officer, director, agent (other than the Misconduct Entity), or employee of the Reliance QPAM or a party engaged on behalf of the Reliance QPAM, who had responsibility for, or exercised authority in connection with, the management of plan assets, knew of or had reason to know of,[27] or Participated In,[28] received direct compensation, or knowingly received indirect compensation, in connection with the conduct that is the subject of the Criminal Conviction or Prohibited Misconduct. In other words, by the Reliance Date, there must no longer be any association between the Reliance QPAM and any individuals who were aware of the misconduct during the time the misconduct was ongoing or profited from the misconduct. The Department considered whether, when a person at the Reliance QPAM knew or had reason to know of the misconduct at the time the misconduct was ongoing, or profited from the misconduct, meeting this threshold should require removal of the chief compliance officer regardless of that individual's direct

[27] Facts that a person "knew of or had reason to know of" include facts that are known to the individual or facts that should be known to the individual based on the individual's possession of sufficient information or circumstances to reasonably infer such facts; and, with respect to an entity other than a natural person, includes facts that are known to the directors and officers of the entity or should be known to such individuals based on their possession of sufficient information or circumstances to reasonably infer such facts.

[28] The term Participated In is defined in Section I(k) of this Proposed QROAD Class Exemption.

involvement in the misconduct or whether the officer knew of it. The Department notes that, by virtue of their duties and purview, key management leaders can often set the stage for misconduct whether or not they are directly culpable. Moreover, it can be difficult to establish a direct causal link between misconduct conducted at lower levels and key management leaders. The Department is concerned that, ultimately, it may be immaterial if a key management leader like a chief compliance officer is unaware of misconduct, since their role is to establish controls and oversight to prevent such misconduct, and the existence of misconduct may be proof of failure in that regard. Accordingly, the Department is seeking comment regarding whether meeting the Section II eligibility threshold should require the automatic removal of the chief compliance officer or other compliance officials responsible for overseeing the conduct of the Reliance QPAM, regardless of whether they knew of the misconduct or were directly involved.

Section II(b)(3) requires that neither the Reliance QPAM nor any Related QPAM or Affiliated QPAM of the Misconduct Entity exercised authority over any ERISA-covered plan or IRA assets in a manner that it knew or should have known would further the misconduct, or caused the Reliance QPAM or its Affiliates, or any officers, employees or partners to directly or indirectly profit from the misconduct.

Further, Section II(b)(4) through (6) require that, as of the Reliance Date: the Reliance QPAM must not use its authority to direct an Investment Fund to enter into any transaction with a Misconduct Entity; the Reliance QPAM's asset management decisions must be independent of the management and business activities of the Misconduct Entity; and the Misconduct Entity may not act as a fiduciary under ERISA or the Code with respect to ERISA-covered Plan and IRA assets, except that it may act as an ERISA fiduciary with respect to employee benefit plans sponsored for its own employees or employees of an Affiliate. Section II(b)(7) requires that the conduct that is the subject of

the Criminal Conviction or Prohibited Misconduct must not have involved assets of any Plan or fund subject to ERISA Title 1, Part 4 and/or Code Section 4975. Finally, Section II(b)(8) requires ongoing compliance by the Reliance QPAM with the applicable conditions of the Proposed QROAD Class Exemption, if granted, and of the QPAM Class Exemption.

Section II(c)(1) Policies

Section II(c)(1) requires the Reliance QPAM to implement, maintain (with necessary adjustments), and follow written policies (the Policies) requiring that: (1) the asset management decisions of the Reliance QPAM are conducted independently of the asset management and business activities of the Misconduct Entity; (2) the Reliance QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions; (3) any filings or statements made by the Reliance QPAM to regulators on behalf of or in relation to Covered Plans are materially accurate and complete; (4) the Reliance QPAM does not make material misrepresentations or omissions in its communications with regulators with respect to Covered Plans or in its communications with Covered Plans; (5) the Reliance QPAM adheres to the Training requirements specified in the exemption; and (6) the Reliance QPAM complies with the terms of this exemption and corrects violations promptly upon discovery by the Reliance QPAM in accordance with the applicable terms of this exemption.

Section II(c)(2) Training

Section II(c)(2) requires the Reliance QPAM to conduct at least annually a program of training (the Training) for all relevant Reliance QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and conducted by a professional who has been prudently selected. At a minimum, the Training must cover the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the exemption,

and prompt reporting of wrongdoing (including resources on how to report suspected wrongdoing within the Reliance QPAM, and to EBSA and other relevant Federal oversight agencies).

The purpose of this Training is twofold. First, it ensures that everyone working in the above-identified job categories understands their obligations under relevant law. Second, it reinforces a culture of compliance by ensuring relevant Reliance QPAM personnel understand the importance of ethical conduct, the consequences of noncompliance with applicable rules, and the need to promptly report instances of noncompliance.

Section II(d) Independent Fiduciary

Section II(d) of this Proposed QROAD Class Exemption requires the Reliance QPAM to prudently select an Independent Fiduciary to review the Reliance QPAM's eligibility for relief under Section II and determine whether the Reliance QPAM has developed the Policies required under this section. The Reliance QPAM must select an Independent Fiduciary that has appropriate technical training and proficiency with ERISA and the Code and must grant the Independent Fiduciary unfettered access to all the information that the Independent Fiduciary deems necessary in its sole discretion to make its required findings. Within 90 days of the Reliance Date, the Independent Fiduciary must submit a written report to the Reliance QPAM that details its processes and procedures and certifies that, to the best of the Independent Fiduciary's knowledge and belief, all of the representations made in such report are true and correct and whether the Reliance QPAM is in compliance with the conditions in Section II(a) and (b)(1) through (7) and all of the Policies required by Section II(c) have been established.

Relief in this exemption is contingent on the Independent Fiduciary report containing clear, unambiguous statements that: the Independent Fiduciary has prudently performed its duties as an ERISA fiduciary on behalf of all affected Covered Plans; and

all of the conditions in Section II(a) and (b)(1) through (7) have been met and the Policies required by Section II(c) have been established. Given the importance of the requirement that no person who knew or had reason to know of the misconduct that gave rise to a violation of Section I(g) of the QPAM Class Exemption, whether or not such person was ultimately convicted for participating in the crime, the report must contain an express statement confirming that, to the best of the Independent Fiduciary's knowledge, no person who knew or had reason to know of the misconduct that gave rise to a violation of Section I(g) of the QPAM Class Exemption currently works at the QPAM or any party engaged on behalf of the Reliance QPAM. The Independent Fiduciary's report must be made publicly available on the Reliance QPAM's website upon completion. It is the Department's expectation that the Independent Fiduciary's report will not contain privileged or confidential business information, however under the narrow circumstance where such information may exist in the report, the Reliance QPAM may redact such information for purposes of posting on the website. In accordance with the Recordkeeping condition in Section V, the Reliance QPAM must retain an unredacted copy of the Independent Fiduciary's report which can be reviewed by the Department upon request. The Independent Fiduciary's report also must include a certification by the head of compliance of the Reliance QPAM stating that to the best of their knowledge and belief, such head of compliance has diligently investigated the misconduct that gave rise to the violation of Section I(g), shared all material information regarding that investigation with the Independent Fiduciary, and avers that the Independent Fiduciary's report is accurate and complete.

Section II(e) Notice to the Department and Covered Plan Fiduciaries

Section II(e) requires the Reliance QPAM to send notices to the Department and to its Covered Plan clients. This condition is based on notice conditions that the Department has consistently included in recent individual exemptions involving

violations of Section I(g) of the QPAM Class Exemption. However, unlike such individual exemptions, Section II of this Proposed QROAD Class Exemption requires that Reliance QPAMs provide a one-time notice within 90 calendar days of the Reliance Date, rather than repeatedly providing notices throughout the Exemption Period.

The Department notes that some in the regulated community have suggested that disclosures from ineligible QPAMs to Covered Plan fiduciaries would be sufficiently protective of Covered Plans. The Department disagrees. It is the Department's responsibility, not that of Covered Plan fiduciaries, to ensure that the QPAM Class Exemption is in the interest of, and protective of, affected Covered Plans, and administratively feasible. Disclosures to Covered Plan fiduciaries by asset managers interested in retaining their clients are not, by themselves, sufficient grounds for the Department to allow those asset managers to continue to engage in prohibited transactions covered by the QPAM Class Exemption. The conditions in this Proposed QROAD Class Exemption, taken as a whole, are intended to strike the appropriate balance that ensures Covered Plans are informed and protected while also ensuring QPAMs place their ERISA fiduciary responsibilities and integrity at the forefront of their compliance structure.

Under Section II(e), the notice must include a representation from the Reliance QPAM's head of compliance and general counsel (or their functional equivalent) that, to the best of their knowledge and belief, the Reliance QPAM is compliant with the eligibility requirements of Section II(a) and (b) and has established the Policies and Training required by Section II(c). In addition, to ensure all Covered Plans understand why the QPAM became ineligible under the QPAM Class Exemption, the notice must include a detailed description of the circumstances, conduct, and entities that Participated In the Criminal Conviction and/or the Prohibited Misconduct. Lastly, the notice must include instructions on how to retrieve the certified written report of the Independent

Fiduciary required by Section II(d) and the Policies required by Section II(c) from the Reliance QPAM's website once available. The Reliance QPAM must send the notices to the Department via email to QPAM@dol.gov, and to Covered Plans, in a manner that ensures receipt by the ERISA fiduciary of each Covered Plan.

Section II(f) Subsequent Criminal Convictions or Prohibited Misconduct Events

Section II(f) requires that the Reliance QPAM comply with each condition of Section II for each Criminal Conviction or instance of Prohibited Misconduct that otherwise qualifies for relief under Section II, beginning on the Reliance Date corresponding to each ineligibility event. This means that under the facts in Example 2 above, when Misconduct Entity A receives a Foreign Conviction, Bank B is still eligible for the relief in Section II (as stated in Example 2), but has a new Reliance Date and will need to make sure all conditions are met for the new Reliance Date, including that notices be sent within 90 days of the Reliance Date. If the Misconduct Entity enters into the NPA with DOJ on yet another date, the Reliance QPAM will have a third Reliance Date. In other words, each ineligibility event begins a new 10-year ineligibility period.

Section II(g) Special Rule for Related QPAMs that are Reliance QPAMs

Related QPAMs that are Reliance QPAMs can rely on the relief in Section II, subject to fewer conditions. Specifically, a Related QPAM that is a Reliance QPAM must satisfy the eligibility conditions in Section II(b)(1) through (8) requiring independence, and, if any additional Criminal Conviction or instance of Prohibited Misconduct occurs, the Related QPAM must follow the requirements of Section II(f) described above.

Section III: Exemptive Relief Under a Control Relationship Between the Reliance QPAM and the Misconduct Entity

Section III extends relief to an Affiliated QPAM or Related QPAM that is ineligible under the QPAM Class Exemption, where ineligibility is the result of: (1) a single U.S. Conviction of a Misconduct Entity that is not a QPAM, where the Misconduct

Entity, at any time, either Controls or is Controlled by the Reliance QPAM; and/or (2) collectively, up to two U.S. Convictions by one or more Misconduct Entities, if no Misconduct Entity is a QPAM and where no more than one U.S. Conviction involves a Misconduct Entity that, at any time, either Controls or is Controlled by the Reliance QPAM; and/or (3) one or more Foreign Convictions, including where the Misconduct Entity is a QPAM; and/or (4) one or more instances of Prohibited Misconduct, including where the Misconduct Entity is a QPAM.

Section III Examples:

Example 4: Assume the same facts as in Example 2 above, except that subsequently (but within ten years of the original U.S. Conviction) Misconduct Entity A receives a second U.S. Conviction for tax evasion that also did not involve assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975. The underlying facts and circumstances of the second Criminal Conviction are unrelated to Misconduct Entity A's previous Convictions or Prohibited Misconduct. Under these facts, Bank B, the QPAM, is not eligible to rely on Section II due to the second U.S. Conviction of Entity A. However, Bank B would be eligible to rely on the relief in Section III of the Proposed QROAD Class Exemption, if granted, as a Reliance QPAM if the definitions in Section I and the conditions in Section III are met.

Example 5: Misconduct Entity C (not a QPAM) receives a Foreign Conviction for fraud that did not involve assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975. Bank D (a QPAM) is an Affiliate of and Controlled by Misconduct Entity C. Notwithstanding the misconduct, Bank D would be eligible to rely on the relief in Section III of the Proposed QROAD Class Exemption, if granted, as a Reliance QPAM if the definitions in Section I and the conditions in Section III are met.

Example 6: Assume the same facts as in Example 5 above. Bank D, the QPAM, subsequently (but within ten years of the Foreign Conviction) enters into a deferred

prosecution agreement (DPA) with the DOJ (thereby becoming itself a Misconduct Entity) that does not involve assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975, and the underlying facts and circumstances are unrelated to Misconduct Entity C's Foreign Conviction. Notwithstanding the collective misconduct, Bank D, now a Misconduct Entity, would be eligible to rely on the relief in Section III of the Proposed QROAD Class Exemption, if granted, as a Reliance QPAM if the definitions in Section I and the conditions in Section III are met.

Example 7: Assume the same facts as in Example 6 above. Misconduct Entity C subsequently (but within ten years of the original Foreign Conviction) is convicted of criminal tax evasion in the U.S., and that U.S. Conviction does not involve assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975 and the facts and circumstances are unrelated to either of Misconduct Entity C's Foreign Conviction or Bank D's Prohibited Misconduct. Notwithstanding the collective misconduct, Bank D (the QPAM) would be eligible to rely on the relief in Section III of the Proposed QROAD Class Exemption, if granted, as a Reliance QPAM if the definitions in Section I and the conditions in Section III are met.

Department's Note: A Reliance QPAM must meet each definition in Section I and each condition in Section III for each Criminal Conviction and instance of Prohibited Misconduct to obtain relief under this Proposed QROAD Class Exemption.

Section III Conditions:

Section III(b) Eligibility

This section generally imposes the same eligibility conditions as in Section II(b) on the Reliance QPAM with regards to: knowledge of, and participation and compensation in connection with, the misconduct; the use of authority over any ERISA-covered plan or IRA assets; profiting from the misconduct; the independence of its asset management decisions; and the Misconduct Entity's ability to act as an ERISA fiduciary.

This Section also requires that misconduct did not involve assets of any Plan or fund subject to ERISA Title 1, Part 4 and/or Code Section 4975 and requires ongoing compliance with the applicable conditions of the Proposed QROAD Class Exemption, if granted, and of the QPAM Class Exemption.

Section III(c) Policies and Training

This section generally imposes the same conditions as Section II(c). The policies and training conditions are similar to conditions in the Department's recent individual exemptions involving violations of Section I(g) of the QPAM Class Exemption.

Section III(d) Independent Fiduciary

To ensure the Reliance QPAM is eligible to rely on Section III and in compliance with the Proposed QROAD Class Exemption, this section imposes the same requirement that is in Section II(d) to engage an Independent Fiduciary to submit a written report certifying to the Reliance QPAM's eligibility and compliance with Sections II(b)(1)-(7), III(a), and establishment of Policies under Section III(c).

Section III(e) Audit Requirement

This section requires the Reliance QPAM to prudently select an independent auditor who has appropriate technical training and proficiency with ERISA and the Code to perform an audit every two years during the Exemption Period to evaluate the adequacy of, and the Reliance QPAM's compliance with, the Policies, Training, and eligibility conditions required by the exemption.[29] The Reliance QPAM and any Affiliate must grant the independent auditor unfettered access to its businesses, and the independent auditor's engagement must specifically require the auditor to test the

[29] The Reliance QPAM and the auditor must submit any executed auditor engagement agreement to the Department via email to QPAM@dol.gov no later than 60 calendar days after execution. Further, the Reliance QPAM must notify the Department of a change in the independent auditor no later than 60 calendar days after the engagement of a substitute or subsequent auditor and explain the reason for the substitution.

QPAM's operational compliance with the Policies, Training, and eligibility conditions set forth in Section II(a), (b) and (c) of this exemption.[30]

For each audit, the auditor must issue a written report (the Audit Report) to the Reliance QPAM that describes the procedures performed by the auditor during the course of its examination[31] and includes the auditor's specific determinations regarding, among other things, the adequacy of, the need to strengthen, and any identified instances of noncompliance with the Policies and Training.[32] Further, the Reliance QPAM must promptly address any instance of noncompliance identified by the auditor[33] and promptly address or prepare a written plan of action to address the auditor's determinations and recommendations. Any action or plan of action must be included in an addendum to the Audit Report.

Section III of this exemption also requires the general counsel or one of the three most senior executive officers of the Reliance QPAM to certify in writing that they have reviewed the Audit Report and the exemption, and that to the best of their knowledge and belief, the Reliance QPAM has addressed, corrected, or remedied (or has an appropriate written plan to address) any identified instance of noncompliance regarding the Policies and Training identified in the Audit Report. The signatory must also certify that the Policies and Training are adequate to ensure compliance with this exemption, ERISA, and the Code.

The Reliance QPAM must provide the Audit Report to the Department within forty-five (45) calendar days of completion, and the Department will make the Audit

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[30] The auditor must provide the Department, upon request, with access to all the workpapers it created and utilized in the course of the audit.

[31] At its discretion, the auditor may issue a single consolidated Audit Report that covers all Affiliated QPAMs.

[32] Any determination by the auditor that the Reliance QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance.

[33] The auditor must notify the Reliance QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor.

Report available to the public upon request. At the Department's request, the Reliance QPAM and the auditor must provide the Department with updates on the progress of the audit. Further, the Reliance QPAM must make its Audit Report unconditionally available, electronically or otherwise, to all other relevant regulators and any ERISA fiduciary of a Covered Plan upon request. The Department invites comment on the extent to which proactive disclosure rather than reactive disclosure to the public upon request, would be warranted.

Section III(f) Warranties

With respect to any arrangement, agreement, or contract between the Reliance QPAM and a Covered Plan (or in an addendum thereto), the Reliance QPAM must agree and warrant: (1) to comply with ERISA and the Code, including the standards of prudence and loyalty set forth in ERISA Section 404, as applicable, and refrain from engaging in non-exempt prohibited transactions; (2) to indemnify and hold harmless the Covered Plan for any "actual losses"[34] resulting directly from: the Reliance QPAM's violation of the conditions of the Proposed QROAD Class Exemption; loss of QPAM relief due to failure to satisfy Section I(g); and prohibited transactions or fiduciary breaches connected to the misconduct that gave rise to reliance on this exemption, if granted; (3) to not require (or otherwise cause) the Covered Plan to waive, limit, or qualify the Reliance QPAM's liability from violating ERISA or the Code, or engaging in prohibited transactions; (4) with narrow exceptions, to not restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the Reliance QPAM; (5) with narrow exceptions, to not impose any fees, penalties, or charges for such

[34] The term "actual losses" includes, but is not limited to, losses and related costs arising from prudently unwinding transactions with third parties and from prudently transitioning Plan assets to an alternative asset manager as well as costs associated with exposure to excise taxes under Code Section 4975 as a result of a Reliance QPAM's inability to rely on the relief in the QPAM Class Exemption. Pursuant to Section III(f)(2)(B) of this Proposed QROAD Class Exemption, the Reliance QPAM must develop and maintain written processes that clearly describe: (i) how the Reliance QPAM identifies and quantifies "actual losses;" and (ii) how Covered Plans may recover or avoid incurring the "actual losses."

termination or withdrawal; and (6) to not include exculpatory provisions disclaiming or otherwise limiting the liability of the Reliance QPAM for a violation of such agreement's terms. Separately, the Reliance QPAM must, within 60 calendar days after the Reliance Date, send a notice of these obligations to each Covered Plan, including a copy of its process to identify, quantify, and recover "actual losses."

Section III(g) Notice to the Department and Covered Plan Fiduciaries

As with Section II(e), this Section requires the Reliance QPAM to send notices to the Department and to its Covered Plan clients. These notices are based on notice conditions that the Department has consistently included in recent individual exemptions involving violations of Section I(g) of the QPAM Class Exemption. The one-time notice must include a representation from the Reliance QPAM's head of compliance and general counsel (or their functional equivalent) that, to the best of their knowledge and belief, the Reliance QPAM is compliant with the eligibility requirements of Section III(a) and (b), and has established the Policies and Training required by Section III(c). The notice also must include a detailed description of the circumstances, conduct, and entities that Participated In the Criminal Conviction and/or the Prohibited Misconduct, and must include instructions on how to retrieve the certified written report of the Independent Fiduciary required by Section III(d) and the Policies required by Section III(c) from the Reliance QPAM's website once available. The Reliance QPAM must send the notices to the Department via email to QPAM@dol.gov, and to Covered Plans in a manner that ensures receipt by the ERISA fiduciaries of the Covered Plans.

Section III(h) Compliance Officer

Each Reliance QPAM must designate a senior compliance officer (the Compliance Officer) to be responsible for the Reliance QPAM's compliance with the

Policies and Training requirements.[35] The Compliance Officer must have extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code, and must have a reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management. In this role, the Compliance Officer must conduct a review of each twelve-month period comprising the Exemption Period to determine the adequacy and effectiveness of the Reliance QPAM's Policies and Training requirements, and issue a written report on the findings.

Section III(i) Subsequent Criminal Convictions or Prohibited Misconduct Events

Like Section II(f), Section III(i) requires that the Reliance QPAM comply with each condition of Section III for each Criminal Conviction or instance of Prohibited Misconduct beginning on the Reliance Date corresponding to each ineligibility event.

Section IV: *Phase Out Period Due to Noncompliance*

This section provides a phase out period (the QROAD Phase Out Period) to prevent the QPAM from immediately losing exemptive relief if a Reliance QPAM fails to comply with a condition of the Proposed QROAD Class Exemption. The Department designed the QROAD Phase Out Period to mitigate the costs, disruptions, and uncertainties to Covered Plans, their participants and beneficiaries, and IRA owners that can occur when a Reliance QPAM becomes ineligible for relief under this Proposed QROAD Class Exemption.

The QROAD Phase Out Period lasts for a period of one year and begins on the date the Reliance QPAM knew or reasonably should have known of the noncompliance (Noncompliance Date). QPAMs that are not compliant with this exemption may find it beneficial to utilize the QROAD Phase Out Period while seeking exemptive relief under

[35] The Proposed QROAD Class Exemption does not require the designated individual to have the organizational title of "compliance officer."

the Department's individual exemption process, as described below. Relief under the QROAD Phase Out Period requires the Reliance QPAM to, among other things, provide a notice of noncompliance to each of its Covered Plan clients and the Department at QPAM@dol.gov within 60 calendar days after the Noncompliance Date, and manage Covered Plan assets prudently and loyally during the QROAD Phase Out Period.

After the QROAD Phase Out Period expires, the QPAM will cease to be a Reliance QPAM, and will once again be ineligible to rely on the QPAM Class Exemption until the expiration of its 10-year ineligibility period, unless it obtains an individual exemption (or the applicable Criminal Conviction or Prohibited Misconduct is reversed on appeal).[36]

Individual Exemption Option

As noted above, nothing in this exemption would preclude a QPAM that is ineligible for the relief described in this proposal from seeking an individual exemption from the Department.

Individual Exemption Examples:

Example 8: Assume the same facts as in Examples 5, 6, and 7. Misconduct Entity C subsequently (but within 10 years of the original Foreign Conviction) is convicted of fraud in the U.S. that does not involve assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975, and the facts and circumstances are unrelated to either of Misconduct Entity C's or Bank D's previous misconduct. Because Misconduct Entity C is a Controlling Entity of Bank D and has received a second U.S. Conviction, Bank D would not be eligible to rely on the relief in Section II or III of the Proposed QROAD Class Exemption, if granted. However, Bank D could apply for an

[36] Prohibited Transaction Class Exemption 84-14, 89 FR 65779, 65781 (Aug. 13, 2024).

individual exemption that, if granted, would allow Bank D to continue to rely on the QPAM Class Exemption.

Example 9: Misconduct Entity E, a QPAM, is convicted of fraud in the U.S. that does not involve assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975. Because Misconduct Entity E is a QPAM, Misconduct Entity E and its Affiliated and Related QPAMs would not be eligible to rely on the relief in Section II or III of the Proposed QROAD Class Exemption, if granted. However, Misconduct Entity E could apply for an individual exemption that, if granted, would allow Misconduct Entity E and its Affiliates to continue to rely on the QPAM Class Exemption.

Example 10: Misconduct Entity F engaged in Prohibited Misconduct involving Plan assets. Misconduct Entity F and its Affiliated and Related QPAMs would not be eligible to rely on the relief under Section II or III of the Proposed QROAD Class Exemption, if granted. However, Misconduct Entity F could apply for an individual exemption that, if granted, would permit the QPAMs to continue relying on the QPAM Class Exemption.

Section V: Recordkeeping

Reliance QPAMs must maintain records demonstrating compliance with this exemption, if granted, for six years following the date of any transaction for which the Reliance QPAM relies upon the relief in this exemption.[37] The Department generally imposes recordkeeping requirements in exemptions so that parties relying on the exemption can demonstrate, and the Department can verify, compliance with the conditions of the exemption. Under this exemption, the Reliance QPAM must make the

[37] This information collection requirement is included in the revised PRA package, OMB control number 1210-0128.

records available upon request, to the extent permitted by law, to any authorized employee of the Department or the Internal Revenue Service or another State or Federal regulator; any ERISA fiduciary of a Covered Plan; any contributing employer and any employee organization whose members are covered by a Covered Plan; and any participant or beneficiary of a Covered Plan.

No party other than the Reliance QPAM would be subject to the civil penalty that may be assessed under ERISA Section 502(i) or the excise tax imposed by Code Section 4975(a) and (b), if applicable, if the Reliance QPAM did not maintain or make available the records as required by the exemption. A Reliance QPAM's failure to maintain the records necessary to determine whether the conditions of this exemption have been met would result in the Reliance QPAM losing relief provided under this exemption only for the transaction or transactions for which such records are missing or have not been maintained.

Section VI: Dates

If granted, under Section VI(a), the Proposed QROAD Class Exemption will be effective 60 calendar days after publication of the final exemption in the *Federal Register*, consistent with other class exemptions.

An Affiliated QPAM or Related QPAM that currently relies on an individual exemption to engage in transactions described in the QPAM Class Exemption notwithstanding a violation of Section I(g) of the QPAM Class Exemption may continue to rely on that individual exemption. Under Section VI(b), if that QPAM prefers instead to rely on this exemption, if granted, it can do so, provided it satisfies all applicable terms and conditions of this exemption based on the circumstances of the original ineligibility. However, as discussed above, many conditions described in this Proposed QROAD Class Exemption are based on conditions included in existing individual exemptions.

Therefore, an Affiliated QPAM or Related QPAM currently relying upon an individual exemption already may be performing tasks that satisfy the conditions of this exemption. For instance, a QPAM may have already appointed an auditor who is conducting regular audits, incorporated warranty provisions into written management agreements, and appointed a compliance officer.

If a QPAM that is not a Misconduct Entity is acquired by a Misconduct Entity or an Affiliate of a Misconduct Entity and thus becomes an Affiliated QPAM or Related QPAM after the Misconduct Entity's Ineligibility Date as a result of that acquisition, Section VI(c) of this exemption would give the newly acquired QPAM six months after the acquisition to become a Reliance QPAM by coming into full compliance with the conditions of this exemption, if granted. If a newly acquired QPAM becomes an Affiliate of another Reliance QPAM that is subject to an ongoing audit under Section III(e) of this Proposed QROAD Class Exemption, this exemption permits the newly acquired QPAM to have the same audit period as that other Reliance QPAM. For the first audit, the auditor's review of the newly acquired QPAM must cover the period that begins six months after the acquisition date and continues to the end of the audit period. The Department believes that this six-month period would provide sufficient time for newly acquired QPAMs to adjust their internal processes and bring them into compliance with the requirements of this exemption as a Reliance QPAM, while also providing important protections to their Covered Plan participants and beneficiaries.

QROAD Decision Analysis Flow Chart

Attached to this notice of proposed class exemption in Appendix A is a preliminary flow chart that illustrates the compliance methods that are available under various circumstances of QPAM ineligibility. This flow chart is meant to assist the reader only as a supplemental guide, and is subject to change or removal from this exemption, if granted; and it in no way or manner supersedes, replaces, or modifies the operative

language of the Proposed QROAD Class Exemption, if granted. In the event that any portion of the flow chart conflicts with the operative language of the Proposed QROAD Class Exemption, if granted, such operative language shall control.

Regulatory Impact Analysis

Summary

The Department has examined the impacts of this proposed exemption as required by Executive Order 12866,[38] Executive Order 13563,[39] Executive Order 14192,[40] the Paperwork Reduction Act of 1995,[41] the Regulatory Flexibility Act,[42] section 202 of the Unfunded Mandates Reform Act of 1995,[43] and Executive Order 13132.[44]

1. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, "significant" regulatory actions are subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more;

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[38] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[39] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 18, 2011).
[40] Unleashing Prosperity Through Deregulation, 90 FR 9065 (Jan. 31, 2025).
[41] 44 U.S.C. 3506(c)(2)(A) (1995).
[42] 5 U.S.C. 601–612 (1980).
[43] 2 U.S.C. 1531–38 (1995).
[44] Federalism, 64 FR 43255 (Aug. 10, 1999).

or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant");

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Based on the Department's estimates, OMB's Office of Information and Regulatory Affairs (OIRA) has determined this exemption is significant under section 3(f). Below, in the Regulatory Impact Analysis (RIA), the Department has provided an assessment of the potential costs and benefits associated with this proposed exemption, which OIRA has reviewed.

Executive Order 14192, titled "Unleashing Prosperity Through Deregulation," was issued on January 31, 2025. Section 3(a) of Executive Order 14192 requires an agency, unless prohibited by law, to identify at least ten existing regulations to be repealed when the agency issues a new regulation. In furtherance of this requirement, section 3(c) of Executive Order 14192 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations. A significant regulatory action (as defined in section 3(f) of Executive Order 12866) that would impose total costs greater than zero is considered an Executive Order 14192 regulatory action. As discussed in the analysis below, the Department expects that this proposal would result in cost

savings. Therefore, if finalized as proposed, this action would be considered deregulatory under Executive Order 14192.

2. Introduction and Need for Regulation

Section 408(a) of ERISA permits the Department to grant exemptions from certain prohibited transaction provisions. Under the current framework, QPAMs that are ineligible to rely on the QPAM Class Exemption due to noncompliance with Section I(g) of the QPAM Class Exemption may seek individual exemptions. This process can be time-consuming and costly for QPAMs. The individual exemption application process typically involves consulting outside legal counsel, internal legal review, preparing and submitting a detailed exemption application, Department review and potential revisions, and possible operational disruptions during the review period.

The Department proposes to create a complementary exemption framework that provides an alternative to the individual exemption process that also promotes greater regulatory clarity, reduces uncertainty and reliance on individual exemptions, and improves administrative efficiency. The proposed exemption is intended to establish clear eligibility criteria and compliance obligations that will reduce the burdens applicable to certain otherwise ineligible QPAMs.

3. Baseline

Under the baseline, QPAMs must comply with the conditions of the QPAM Class Exemption to maintain eligibility (except for the Section I(g) condition that necessitated reliance on this exemption). If a QPAM becomes ineligible under Section I(g) of the QPAM Class Exemption but does not qualify for (or elects not to rely on) the relief in this proposed exemption, it may apply for an individual exemption. If granted, QPAMs relying on an individual exemption generally must also be subject to an independent audit.

4. Proposed Class Exemption

The Department is proposing a new class exemption, as an alternative to an individual exemption, for QPAMs experiencing ineligibility events under Section I(g) of the QPAM Class Exemption. Rather than amending the QPAM Class Exemption, the proposal establishes a new, complementary framework that creates two compliance methods that depend on, among other things, whether a relationship with Control exists between the Misconduct Entity and the Reliance QPAM. This approach is intended to standardize relief while tailoring conditions based on: the number and/or type of triggering events; the type of assets involved in the misconduct; and/or the relationship between the Misconduct Entity and the Reliance QPAM. Benefits and costs presented in the analysis reflect the compliance methods contained in the proposed exemption relative to the existing framework in which QPAMs must seek an individual exemption. The proposed compliance methods and how they differ from the requirements for an individual exemption are summarized below.

4.1. Misconduct Entity is not a QPAM and is an Affiliate that does not Control nor is Controlled by the QPAM (Section II of the Proposed QROAD Class Exemption)

First, in the case where a Misconduct Entity is not a QPAM but is an Affiliate that does not Control nor is Controlled by the Reliance QPAM, the proposed exemption would require the Reliance QPAM to establish and maintain certain policies and procedures, provide a one-time notice to the Department and the Reliance QPAM's clients, and obtain a certification from an Independent Fiduciary of the QPAM's compliance with Section II compliance method, which is not required by the Department's QPAM Section I(g) individual exemptions. The one-time notice must include representations from the Reliance QPAM regarding the Reliance QPAM's compliance with Section II and information on how to obtain the certification report of the Independent Fiduciary. The Department notes that under the baseline, QPAMs in this

group seeking an individual exemption would have been required to notify their clients and perform audits. Under this Proposed QROAD Class Exemption, while QPAMs must still notify their clients, they are no longer required to perform audits, which results in a burden reduction for QPAMs qualifying to use this compliance method. More information about the notice content in the Proposed QROAD Class Exemption can be found in the preamble.

4.2. Misconduct Entity is not a QPAM and is an Affiliate that Controls or is Controlled by the QPAM; or is an Affiliate without a Control relationship but with certain multiple convictions; or is the QPAM but no U.S. Conviction (Section III of the Proposed QROAD Class Exemption)

Section III addresses where there is: (1) A single U.S. Conviction of a Misconduct Entity that is not a QPAM, where the Misconduct Entity, at any time, either Controls or is Controlled by the Reliance QPAM; and/or (2) collectively, up to two U.S. Convictions by one or more Misconduct Entities, if no Misconduct Entity is a QPAM and where no more than one U.S. Conviction involves a Misconduct Entity that, at any time, either Controls or is Controlled by the Reliance QPAM; and/or (3) one or more Foreign Convictions, including where the Misconduct Entity is a QPAM; and/or (4) one or more instances of Prohibited Misconduct, including where the Misconduct Entity is a QPAM.

Under any of these circumstances, the Reliance QPAM must comply with certain conditions under the Section III compliance method that are structured similarly to current individual Section I(g) exemptions. These conditions include: (1) notifying clients and the Department; (2) making certain warranties in any agreement with a Covered Plan that the Reliance QPAM will comply with ERISA and Code and protect Covered Plans from harm due to the ineligibility; (3) establishing and maintaining Policies; and (4) designating a Compliance Officer to be responsible for compliance with the Proposed

QROAD Class Exemption.

Under the baseline, QPAMs relying on an individual exemption also would be subject to audits conducted on an annual or biennial basis. Alternatively, under the Proposed QROAD Class Exemption, all QPAMs using this compliance method would undergo biennial audits performed by an independent auditor. The proposed exemption would therefore result in a burden reduction for QPAMs that previously were subject to an annual audit.

4.3. Misconduct Entity is the QPAM with a U.S. Conviction; or Certain Subsequent/Multiple Ineligibility Events by Affiliates; or Misconduct Involves Plan Assets

As detailed in the discussions above on Section II and III of the proposed exemption and as illustrated in the above individual exemption examples, where the Misconduct Entity is the QPAM with a U.S. Conviction, and for certain subsequent/multiple ineligibility events by an Affiliate of the QPAM, and/or where the misconduct involved assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975, the Reliance QPAM is not eligible to use the Proposed QROAD Class Exemption, though QPAMs may apply for an individual exemption. This group is unimpacted by the Proposed QROAD Class Exemption.

5. Summary of Impacts

In accordance with OMB Circular A–4, Table 1 depicts an accounting statement summarizing the Department's assessment of the costs and benefits associated with these regulatory actions. The Department is unable to quantify all costs and benefits of the Proposed QROAD Class Exemption, but has sought, where possible, to describe these non-quantified impacts.

The effects in Table 1 reflect non-quantified impacts and estimated direct monetary costs resulting from the provisions of the Proposed QROAD Class Exemption.

TABLE 1. Accounting Statement

<table>
<tr><td colspan="5">Benefits:</td></tr>
<tr><td colspan="5">• Reduced reliance on individual exemptions for QPAMs.
• Greater regulatory certainty for QPAMs.
• Reduced operational disruption for Covered Plans.</td></tr>
<tr><td>Cost:</td><td>Estimate</td><td>Year Dollar</td><td>Discount Rate</td><td>Period Covered</td></tr>
<tr><td rowspan="2">Annualized Monetized ($million/year)</td><td>-$0.046</td><td>2026</td><td>7 percent</td><td>2026 - 2035</td></tr>
<tr><td>-$0.048</td><td>2026</td><td>3 percent</td><td>2026 - 2035</td></tr>
<tr><td colspan="5">The estimated net cost savings reflect multiple components, including the costs associated with rule familiarization and preparing required notices, as well as the cost savings resulting from reduced reliance on individual exemptions.
<u>Quantified Costs</u>:
• Rule familiarization:
o Total cost of $48,755.
• Preparing the certification for Section II compliance method:
o Total cost of $40,625.
• Preparing the certification for Section III compliance method:
o Total cost of $40,625.
<u>Quantified Cost Savings</u>:
• The proposed exemption will result in a total cost savings of $621,649. This is comprised of:
o Total cost savings of approximately $559,347 from reduction in applying for individual exemptions for entities using the Section II and Section III compliance methods.
o Total cost savings of approximately $62,302 from reduction in audits for entities using the Section III compliance method.</td></tr>
<tr><td colspan="5">Perpetual Time Horizon Costs:</td></tr>
<tr><td colspan="5">• Annualized Cost (in 2024 dollars) (EO 14192 accounting): -$0.49 million/year</td></tr>
</table>

6. Request for Comments

The Department invites comments on:

- The estimated number of affected QPAMs;
- The estimated number of client plans serviced by each affected QPAM;
- The extent to which each affected QPAM relies on outside legal counsel;
- The cost of individual exemption applications under the baseline;
- The potential impact on small entities;
- Any data that would improve the Department's cost or benefit estimates.

7. Affected Entities

Table 2 summarizes the number of QPAMs, plan clients, and IRA clients that would be affected by the proposed exemption. These estimates and their sources are discussed in greater detail later in this section of the RIA.

TABLE 2. Affected Entities

Description	Amount
QPAMs that rely on the QPAM Class Exemption	1,063
Individual Exemptions that have been Granted (2016-2025)	30
QPAMs covered by Individual Exemptions (2016-2025)	Approximately 50
Client Plans with QPAM relationships	Approximately 150,000
ERISA Plans per QPAM	Approximately 140

7.1. QPAMs

A financial institution qualifying as a QPAM must be a bank, savings and loan association, insurance company, or an investment adviser registered under the Advisers Act that meets specified standards regarding financial size as specified in the QPAM Class Exemption. The financial institution must also acknowledge in a written management agreement that it is an ERISA fiduciary with respect to each plan that retains it as a QPAM.

Approximately 1,063 entities have notified the Department that they rely on the QPAM Class Exemption.[45] The number of QPAMs that could be affected by this Proposed QROAD Class Exemption in any given year depends on the number of QPAMs that would otherwise request an individual exemption because of Criminal Convictions or Prohibited Misconduct events covered by Section I(g), as well as the number of entities within a corporate family operating as QPAMs.

To estimate the number of individual exemptions that may be sought in a typical year, the Department utilizes the 30 individual exemptions granted to QPAMs since

[45] Employee Benefits Security Administration, *Entities Relying on PTE 84-14 (the Qualified Professional Asset Manager Exemption),* (as of July 1, 2026), available at https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/exemptions/qpam-reliance-notices.

2016, covering approximately 50 individual QPAMs.[46] This translates into approximately three individual exemptions being granted each year, and includes extensions of existing exemptions.[47] The Department notes, however, that the number of triggering events (e.g., a criminal conviction) and the number of individual exemptions are not equal, as individual exemptions are generally granted with a term less than the full 10 year ineligibility period (typically five years). QPAMs typically need to reapply after the five-year period for an individual exemption to provide relief for the remainder of the ineligibility period.

Financial institutions often operate multiple Affiliated QPAMs within a corporate group, and so a single exemption typically applies to several Affiliated QPAMs, with approximately four Affiliated QPAMs, on average, covered by a single exemption.[48] However, since the cost of the individual exemption process and compliance is directly or indirectly shared across affected QPAMs and it is possible that the parent organization may bear some of the cost, the Department relies on the number of individual exemptions as the basis for its analysis. The Department requests comments on this assumption.

7.2. ERISA Plan Clients of QPAMs

Plans that maintain relationships with QPAMs also may be affected by the Proposed QROAD Class Exemption. Without it, plans could face significant costs from the potential loss of chosen investment and trading strategies, as well as the costs associated with seeking another QPAM to manage their assets. To minimize this

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[46] Employee Benefits Security Administration, *Index of Granted Individual Exemptions*, available at https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/exemptions/granted. Since financial institutions often operate multiple Affiliated QPAMs within a corporate group, a single exemption may apply to several Affiliated QPAM entities.

[47] This estimate is calculated in the following manner: 30 individual exemptions ÷ 10 years = 3 individual exemptions per year. Most of these exemptions have varying exemption periods, extending up to five years, although one exemption, PTE 2026-03, provides a nine-year exemption period. Given the singularity of PTE 2026-03, and the uniqueness of every individual exemption, the nine-year exemption period provided by PTE 2026-03 was not incorporated into the Department's calculation as to how many exemptions may be granted in the future.

[48] Employee Benefits Security Administration, *Index of Granted Individual Exemptions*, available at https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/exemptions/granted

uncertainty and mitigate impact on plans, the Proposed QROAD Class Exemption would establish a clear process for the QPAM to continue relying on the QPAM Class Exemption. Based on the most recent 2023 Form 5500 data, the Department estimates there are approximately 150,000 ERISA plans with QPAM relationships, resulting in an average of 140 ERISA plans per QPAM.[49] The Department requests data and comments on these estimates.

7.3. IRA Clients of QPAMs

The Proposed QROAD Class Exemption also covers IRAs.[50] Therefore, the Proposed QROAD Class Exemption also affects IRA owners who hire a discretionary asset manager that is a QPAM or invest in a pooled fund managed by a QPAM. In 2022, nearly 70 million U.S. taxpayers had an IRA.[51] A survey of U.S. households conducted by the Investment Company Institute found that approximately half of the households with a traditional IRA consulted a professional financial adviser on how to manage income and assets in retirement.[52] The Department does not, however, have data on the proportion of IRA holders who rely on a discretionary asset manager. The Department assumes that such relationships are rare, or else the involvement of a QPAM is through a pooled Investment Fund managed on a discretionary basis. The Department requests data

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[49] The Department analyzed Schedule C data and found 48,008 unique relationships between plans and QPAMs. However, small plans are not required to file schedule C, so the Department lacks data on the relationships between small plans and QPAMs. To address this lack of data, the Department adjusted its estimate by tripling the initial estimate from 48,008 to 144,024, which was rounded to 150,000 due to uncertainty. 1,063 QPAMs have notified the Department that they rely on the QPAM Class Exemption, so 150,000 relationships /1,063 QPAMs = 141 client plans per QPAMs, rounded to 140 client plans per QPAM.

[50] The term "Plan" refers to an employee benefit plan described in ERISA Section 3(3) and/or a plan described in Code Section 4975(e)(1).

[51] Internal Revenue Service, *SOI Tax Stats—Accumulation and distribution of Individual Retirement Arrangements (IRA)*, Table 1, (2022), available at https://www.irs.gov/statistics/soi-tax-stats-accumulation-and-distribution-of-individual-retirement-arrangements.

[52] The study found that 69 percent of traditional IRA-owning households have a strategy for managing income and assets in retirement and that 78 percent of those households consulted with a professional financial advisor on how to manage income and assets. The percent of IRA-owning households that consulted with a professional financial advisor is estimated as: 69% × 78% = 54%. (*See* Investment Company Institute, *The Role of IRAs in US Households' Saving for Retirement*, (2024), ICI Research Perspective: Vol. 31, No. 2. (Mar. 2025), available at https://www.ici.org/system/files/2025-03/per31-02.pdf.)

and comments on these assumptions.

8. Benefits

The Department expects that the Proposed QROAD Class Exemption may provide several benefits for QPAMs, Covered Plans, and Covered Plan participants. By establishing clearer eligibility standards and structured compliance methods following ineligibility events, the proposal may reduce reliance on individual exemption applications, improve regulatory certainty, and reduce operational disruption for plans and investment managers. In addition, clearer requirements may reduce legal and administrative burdens associated with seeking individualized relief and support more timely compliance decisions. The following discussion describes several potential benefits associated with this proposal.

8.1. Reduced Reliance on Individual Exemptions

The proposal may reduce the number of individual exemption applications that QPAMs will submit when an ineligibility event occurs. Under the current framework, affected QPAMs typically prepare lengthy applications with the assistance of outside counsel, and then must wait on the Department's review and grant of relief. This process may be costly.[53] By establishing clear, predefined methods with standard conditions, certain QPAMs may rely on the structured process described in this Proposed QROAD Class Exemption, instead of applying for an individual exemption. This could lower legal and administrative costs, reduce delays, and make it easier for firms to respond promptly to misconduct events while still ensuring the required safeguards are in place to protect Covered Plans, and their participants and beneficiaries.

[53] SIFMA, Comment Letter, (Oct. 11, 2022), available at https://www.regulations.gov/comment/EBSA-2022-0008-0014.

8.2. Greater Regulatory Certainty

The proposal provides clearer guidance about what steps QPAMs that face Section I(g) ineligibility must take to remain eligible to rely on the QPAM Class Exemption. Specifically, the proposal helps Reliance QPAMs better understand their obligations and reduce uncertainty about how Affiliate misconduct affects their status. Without clearer standards, a Plan may attempt to retain an asset manager that no longer qualifies for the QPAM Class Exemption while waiting to determine whether the manager can obtain an individual exemption with retroactive relief.[54] This approach can result in uncertainty and create significant risk for Plan sponsors. By clarifying the expectations for continued eligibility, the proposal reduces ambiguity and supports more timely decision-making. Moreover, with more defined requirements, Reliance QPAMs may be able to train staff more effectively and address issues earlier.

8.3. Reduced Operational Disruption

When a QPAM becomes ineligible to rely on the QPAM Class Exemption due to a violation of Section I(g) of that class exemption, Covered Plans may face uncertainty about whether their assets can continue to be managed without interruption. In particular, failure to obtain timely individual exemptive relief could bar new transactions that are dependent on the exemption, which may result in Covered Plan clients being unable to retain their investment positions, thus negatively impacting those plans and their participants and beneficiaries.[55] This proposal aims to reduce that uncertainty by providing defined conditions that permit continued, uninterrupted operation in certain cases to help avoid abrupt transitions to new asset managers, reduce potential transaction

[54] American Benefits Council, Comment Letter (Oct. 11, 2022), https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA07/00027.pdf.
[55] DWS Investment Management Americas, Inc., Letter to the Department (June 12, 2023) (Supplemental Information for Prohibited Transaction Exemption Application Nos. D-12059 and D-12090).

costs associated with switching managers, and support stability in long-term investment strategies.

8.4. Summary of Benefits

The proposal would increase regulatory clarity, reduce reliance on individual exemptions, and limit operational disruption following ineligibility events under Section I(g) of the QPAM Class Exemption. By establishing clearer standards and defined compliance methods in certain circumstances, the proposal also would reduce uncertainty for a QPAM and its Affiliates, and lower legal and administrative costs associated with seeking an individual exemption. Taken together, the proposal also may promote continuity in asset management and reduce transaction costs associated with switching managers, while maintaining protections for Covered Plans, and their participants and beneficiaries.

9. Costs

This proposed exemption establishes defined compliance methods that may reduce the need for certain QPAMs to apply for individual exemptions following ineligibility events described in Section I(g) of the QPAM Class Exemption. Under the Proposed QROAD Class Exemption, Reliance QPAMs must prepare notices for clients and the Department and meet other eligibility requirements, such as certifications or audits.

The Department expects the proposal to result in significant cost savings stemming from a reduced need to prepare individual exemption applications and for some QPAMs to conduct biennial audits instead of annual audits. Costs and cost savings to QPAMs may ultimately be passed to clients of Reliance QPAMs. Costs, such as fees or other charges, would primarily occur during the first year a QPAM transitions to or begins using the new compliance method, while cost savings would occur during all years the QPAM relies on the proposed exemption.

Overall, the Department estimates the total gross cost savings to be $621,649. After accounting for rule familiarization and notice preparation costs, the Department estimates the net cost to be -$491,644.

9.1. Rule Familiarization (First-Year Cost)

QPAMs may incur one-time costs to review the proposed exemption and assess their compliance status. The Department expects that QPAMs that previously received individual exemptions will review the Proposed QROAD Class Exemption to determine whether the new class exemption provides a compliance method to operate without seeking future individual exemptions, or whether to continue relying on existing individual exemptive relief. In the future, QPAMs with an ineligibility event will also need to review the Proposed QROAD Class Exemption to see if they qualify to use the exemption. Besides the QPAMs, there is a small community of outside legal counsel that will review the Proposed QROAD Class Exemption to assist their clients.

As discussed in the Affected Entities section, the compliance costs may be directly or indirectly shared across affected QPAMs; therefore, the Department relies on the number of individual exemptions as the basis for its analysis. Approximately 30 individual exemptions to QPAMs have been granted since 2016, with 15 separate triggering events each covering multiple QPAMs.[56] QPAMs seeking an individual exemption are expected to perform the review themselves and utilize outside legal counsel for additional assistance. The Department estimates that 30 entities would conduct a one-time review during a ten-year time horizon.

The Department assumes these QPAMs will conduct at least an internal legal review and consult outside ERISA counsel for interpretive guidance. The Department

[56] Employee Benefits Security Administration, *Index of Granted Individual Exemptions*, available at https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/exemptions/granted.

estimates two hours of internal ERISA counsel time at $187.58 per hour[57] and two hours of outside ERISA counsel time at $625 per hour.[58,59] Please see Table 3 for burden and cost calculations.

9.2. Non-Controlling / Controlled Misconduct Entity (Section II of the Proposed QROAD Class Exemption)

As discussed above, approximately 30 individual exemptions have been granted during the 10-year period from 2016 through 2025. Based on this figure, the Department assumes that, without this Proposed QROAD Class Exemption, the same number would be granted over the next ten years. Among the individual exemptions granted over the 10-year period from 2016 through 2025, approximately 43 percent of individual exemptions had fact patterns suggesting the affected QPAMs could utilize the Section II compliance method. The Department therefore assumes that 13 entities would utilize the Section II compliance method under the Proposed QROAD Class Exemption.[60] The incremental costs associated with this method are limited to obtaining the certifications. There are no other incremental costs associated with this compliance method, as all other requirements, such as sending notices to participants, need to be done both under the baseline and the Proposed QROAD Class Exemption.

9.2.1. Certification (First-Year Using Proposed Class Exemption Cost)

The proposed exemption also requires the Reliance QPAM to obtain a certification from an Independent Fiduciary in its first year of using the Proposed QROAD Class Exemption following any triggering event that confirms the Reliance QPAM meets the eligibility requirements of the Section II compliance method. The

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[57] Internal DOL calculation based on 2026 labor cost data. For a description of DOL's methodology for calculating wage rates, *see* https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf.

[58] Laffey Matrix, *4-7 Years of Experience*, available at https://www.laffeymatrix.com/see.html.

[59] The Department utilized a reading rate of 250 words per minute in estimating the time needed to familiarize with the proposed exemption.

[60] This estimate is calculated in the following manner: 30 entities x 43 percent = 13 entities.

Department assumes that the Independent Fiduciary would spend approximately, on average, five hours reviewing the relevant representations and preparing the certification at a wage rate of $625. The proposed exemption also requires the certification to be posted on the QPAM's website when completed, and to be available to the Department and all Covered Plan Clients. Certification costs can be found in Table 3.

9.3. Controlling / Misconduct Entity (Section III of the Proposed QROAD Class Exemption)

As discussed above, approximately 30 individual exemptions were granted the 10-year period from 2016 through 2025, and the Department has assumed the same number would need relief over the next 10 years. Of these 30 individual exemptions, about 43 percent, or 13 individual exemptions, had fact patterns suggesting that the affected QPAMs could utilize the Section III compliance method under the Proposed QROAD Class Exemption.[61] The incremental costs associated with this method are limited to obtaining the certifications. There are no other incremental costs associated with this compliance method as all other requirements, such as sending notices to participants, need to be done both under the baseline and Proposed QROAD Class Exemption.

9.3.1. Certification (First-Year Using Proposed Class Exemption Cost)

The proposed exemption also requires the Reliance QPAM to obtain a certification from an Independent Fiduciary in its first year of using the Proposed QROAD Class Exemption following any triggering event that confirms the Reliance QPAM meets the eligibility requirements of the Section III compliance method. The Department assumes that the Independent Fiduciary would spend approximately, on average, five hours reviewing the relevant representations and preparing the certification at a wage rate of $625. The proposed exemption also requires the certification to be

[61] This estimate is calculated in the following manner: 30 entities x 43 percent = 13 entities.

posted on the QPAM's website when completed, and to be available to the Department and all Covered Plan Clients. Certification costs can be found in Table 3.

TABLE 3. Cost Associated with Proposed Class Exemption

Activity	Number of QPAMs	Average Hour Burden	Total Hour Burden	Hourly Wage Rate	Total Cost
	(A)	**(B)**	**(C) = (A x B)**	**(D)**	**(E) = (C x D)**
Rule Familiarization					
Internal ERISA counsel reviews rule	30	2	60	$187.58	$11,255
Outside ERISA counsel reviews rule	30	2	60	$625	$37,500
Section II Pathway					
Certification					
Independent Fiduciary reviews the relevant representations and prepares the certification	13	5	65	$625.00	$40,625
Section III Pathway					
Certification					
Independent Fiduciary reviews the relevant representations and prepares the certification	13	5	65	$625.00	$40,625
Total Cost	-	-	**250**	**-**	**$130,005**
Average Annual Cost	-	-	**25**	**-**	**$13,001**
Note: The average annual cost represents the cost during a ten-year period.					

TABLE 4. Summary of Ten-Year Costs Associated with Proposed Class Exemption

Rule Familiarization Costs	$48,755
Certification Costs for Section II Compliance Method	$40,625
Certification Costs for Section III Compliance Method	$40,625
Total Rule Costs	**$130,005**
Average Annual Cost	**$13,001**

9.4. Cost Savings

9.4.1. Cost Savings Associated with Individual Exemption Application

The proposal may remove costs currently associated with applying for individual exemptions. Potential savings include reduced legal fees paid to outside counsel, and reduced business disruption costs associated with exemption processing delays. These savings would accrue primarily to QPAMs that would otherwise seek individual exemptions under the baseline.

The Department assumes that most QPAMs currently operating under individual exemptions would elect instead to rely on one of the compliance methods established in the Proposed QROAD Class Exemption for continued eligibility. The Department estimates, of the 30 entities granted individual exemptions over the 10-year period from 2016 through 2025, 13 would utilize the Section II compliance method and 13 entities would utilize the Section III compliance method. Therefore, 26 entities would no longer need to apply for an individual exemption during each future 10-year period if the Proposed QROAD Class Exemption is granted. This change would result in meaningful cost savings. The four remaining entities would seek an individual exemption because they would not qualify for relief under the Proposed QROAD Class Exemption. Since the proposal does not change the compliance pathway applicable to those entities, no incremental costs are attributed to them.

The Department assumes the entities would save 25 hours of outside ERISA counsel to consult and assist with preparing an individual exemption application at $625.00 per hour, 25 hours of internal counsel time to draft the application at $187.58 per hour, and 5 hours of senior executive oversight and review of the application at $238.46 per hour. The Department also assumes QPAMs would save a mailing cost of $6.50 per

application.[62] Please see Table 5 for cost savings and calculations. The Department requests comments on these assumptions and cost savings.

9.4.2. Cost Savings Associated with Audit

The proposal is expected to reduce audit-related costs for many QPAMs that qualify under the proposed exemption. When an ineligibility event stems from a Criminal Conviction or Prohibited Misconduct by a Misconduct Entity that neither Controls nor is Controlled by a QPAM, those QPAMs would no longer be required to complete an audit under the Section II compliance method. When the ineligibility event is triggered by a Criminal Conviction or Prohibited Misconduct by a Misconduct Entity that Controls or is Controlled by the QPAM, under the Section III compliance method all Affiliated QPAMs or Related QPAMs would be required to complete biennial audits performed by an independent auditor and submit the resulting reports to the Department.

Under the current baseline, two main audit patterns exist for QPAMs whose fact patterns are consistent with eligibility for the Section III compliance method: some QPAMs underwent annual audits; others underwent audits every two years; and two others, granted in 2026, are scheduled to undergo audits every five years.[63] The Department has determined, after reviewing prior individual exemptions with similar compliance method fact patterns, that roughly four audits per year would be eliminated by moving from annual to biennial audits under the Proposed QROAD Class Exemption's audit requirements. The Department estimates these entities would save 20 hours of outside ERISA counsel assistance, 10 hours of financial professional drafting the notice, and 5 hours of senior executive review and sign-off of the audit. The Department

[62] Based on experience, the Department assumes each individual application will be approximately 70 pages, double-sided. The Department also assumes the individual application will be a mailed in a 6-oz large envelope at a cost of $3.00 (*Source:* United States Postal Service). Therefore, the mailing cost will be estimated in the following manner: $3.00 + $0.05 x 70 pages = $6.50.

[63] Given the recency of these two exemptions, and the uniqueness of each individual exemption granted by the Department, the Department is unable to determine at this time whether future individual exemptions will require audits every five years. Therefore, the Department has not incorporated the possibility that future individual exemptions may require audits every five years into this cost analysis.

also estimates that QPAMs would save mailing costs of $7.50 for the audit.[64] Please see Table 5 for cost savings and calculations. The Department requests comments on these assumptions and cost savings.

9.4.3. Summary of Cost Savings

The Department estimates the total gross labor cost savings for all QPAMs relying on the proposed exemption conditions instead of the individual exemption process to be $621,649. After accounting for rule familiarization and notice preparation costs, the Department estimates the net cost to be -$491,644. The gross cost savings are presented in Table 5. The net cost can be found in Table 6.

TABLE 5. Gross Cost Savings Associated with Proposed Class Exemption (10-Year Total)

Activity	Number of QPAMs	Average Hour Burden	Total Hour Burden	Hourly Wage Rate	Labor Cost Savings	Mailing Cost Savings	Total Cost Savings
	(A)	(B)	(C) = (A x B)	(D)	(E) = (D × C)	(F) = (A × $6.50 for application or $7.50 for audit)	(G) = (E + F)
Section II Pathway							
Individual Exemption							
Outside ERISA counsel assist with application	13	25	325	$625.00	$203,125	-	$203,125
Internal counsel draft application	13	25	325	$187.58	$60,964	$85	$61,049
Senior executive reviews and sign-off	13	5	65	$238.46	$15,500	-	$15,500
Section III Pathway							
Individual Exemption							
Outside ERISA counsel assist with application	13	25	325	$625.00	$203,125	-	$203,125
Internal counsel draft application	13	25	325	$187.58	$60,964	$85	$61,049

[64] Based on experience, the Department assumes each audit will be approximately 90 pages, double-sided. The Department also each assumes the audit will be a mailed in a 6-oz large envelope at a cost of $3.00 (*Source:* United States Postal Service). Therefore, the mailing cost will be estimated in the following manner: $3.00 + $0.05 x 90 pages = $7.50.

Senior executive reviews and sign-off	13	5	65	$238.46	$15,500	-	$15,500
Audit (biennial)							
Outside ERISA counsel assist with application	4	20	80	$625.00	$50,000	-	$50,000
Financial professional drafts audit	4	10	40	$187.58	$7,503	$30	$7,533
Senior executive reviews and sign-off	4	5	20	$238.46	$4,769	-	$4,769
Total Gross Cost Savings	-	-	**1,570**	**-**	**$621,450**	**$199**	**$621,649**

TABLE 6. Net Cost Associated with Proposed Class Exemption (10-Year Total)

	Cost
Total Gross Cost Savings	-$621,649
Total Cost Associated with Proposed Exemption	$130,005
Total Net Cost (undiscounted)	-$491,644
Total Net Cost (10-year discounted cost at 7 percent discount rate)[65]	-$345,310

9.5. Summary of Costs and Cost Savings

The Proposed QROAD Class Exemption may create certain compliance costs for affected QPAMs, including costs associated with reviewing the exemption and preparing required notices for the Department and affected clients. At the same time, the proposal may reduce costs currently associated with preparing individual exemption applications following ineligibility events. By establishing defined compliance methods that allow certain QPAMs to remain eligible under specified conditions, the proposal may reduce legal and administrative burdens and support more efficient compliance.

10. Regulatory Alternatives

10.1. No New PTE and Continue Requiring Individual Exemptions

Under this alternative, the Department would not issue a new class exemption and would continue requiring QPAMs that become ineligible under the QPAM Class

[65] The total net cost at the three percent discount rate is -$419,382.

Exemption to seek individual prohibited transaction exemptions. This approach would preserve case-by-case review and would continue the imposition of significant compliance costs on the affected QPAMs. As reflected in the cost analysis, preparing an individual exemption application requires substantial outside ERISA counsel time, internal legal drafting, and external oversight. If that application is successful, compliance with the individual exemption imposes ongoing costs, including to provide training, policies, disclosures and regular audits. These costs are largely fixed per applicant and do not benefit from economies of scale.

In addition to direct compliance costs, reliance on individual exemptions may introduce uncertainty and potential transition costs for Covered Plans relying on QPAM-managed entities. Smaller or mid-sized asset managers may face disproportionate burden relative to larger firms, which could reduce competition in the plan asset management market. While individualized reviews allow tailored conditions, the Department believes this alternative would likely result in higher aggregate administrative costs and greater market disruption relative to a class-based approach.

10.2. Modify PTE 84-14 Section I(g)

The Department considered amending the QPAM Class Exemption by narrowing the scope of Section I(g) regarding what events may make a QPAM ineligible for relief. This would result in fewer QPAMs becoming ineligible under Section I(g) of the QPAM Class Exemption. However, after carefully considering this option, the Department determined that, at the present time, it is not appropriate to narrow the scope of Section I(g) of the QPAM Class Exemption in this way. As noted above, the records supporting several individual exemption requests clearly demonstrate that a misconduct event by a "far flung" affiliate of a QPAM, with no apparent Control over the QPAM, may nonetheless involve numerous personnel spread across the QPAM's organizational structure. The Department continues to believe that the complexity of most criminal

convictions and the behavior associated therewith, particularly those involving prolonged misconduct, warrants the protections described in this proposal. Accordingly, this proposal preserves the scope of Section I(g) of the QPAM Class Exemption and protects Covered Plans by requiring certain determinations by a qualified Independent Fiduciary regarding whether a QPAM is eligible for the relief provided under the Proposed QROAD Class Exemption.

10.3. Propose this exemption with a narrower Section II.

The Department considered publishing this Proposed QROAD Class Exemption but limiting Section II and Section III relief to a total of two Foreign Convictions or instances of Prohibited Misconduct (including NPAs and DPAs). This would ensure the same treatment of all conduct that the Department has identified as raising serious integrity concerns. However, after carefully considering this option, the Department determined that, at the present time, it is appropriate to treat Foreign Convictions and Prohibited Misconduct differently than U.S. Convictions, in recognition of the different systems and processes that result in Foreign Convictions and Prohibited Misconduct. Accordingly, this proposal acknowledges that Foreign Convictions and Prohibited Misconduct are relevant to QPAM integrity and do trigger ineligibility under Section I(g) but allows a QPAM to continue relying on Section II or III despite multiple Foreign Convictions and/or instances of Prohibited Misconduct.

10.4. Propose this exemption with a provision that each Audit Report must be made publicly available.

Section III(e) requires The Reliance QPAM must provide the Audit Report to the Department within forty-five (45) calendar days of completion, and the Department will make the Audit Report available to the public upon request. The Department considered making the Audit Report publicly available as soon as practicable after the Reliance QPAM provides it or requiring the Reliance QPAM itself to make the Audit Report

public. However, the Department tentatively believes this would impose undue burdens on Reliance QPAMs without significant protection for plans and participants.

11. Uncertainty

11.1. Number of Affected QPAMs that May Become Ineligible

There is uncertainty regarding the number of QPAMs that may become ineligible under the QPAM Class Exemption and how many will use the Proposed QROAD Class Exemption. The frequency and distribution of triggering events may vary over time depending on enforcement activity, firm conduct, market conditions, and evolving compliance practices. As a result, the total number of entities that may rely on the proposed modified exemption framework cannot be predicted with complete precision.

If fewer entities are affected than estimated, aggregate compliance cost savings associated with the proposed exemption would be lower than projected. Conversely, if more entities are affected than estimated, the potential cost savings associated with the proposed exemption would increase.

11.2. Frequency of Individual Exemption Applications

There is also uncertainty regarding how frequently affected QPAMs would otherwise seek individual exemptions in the absence of a class-based exemption. Some QPAMs may apply for individual relief, while others may restructure operations, transfer assets, or exit the QPAM market. These behavioral responses affect both direct administrative costs and broader market impacts.

The cost estimates in this RIA assume that QPAMs that historically sought individual exemptions would rely instead on the Proposed QROAD Class Exemption when available. However, actual application behavior may differ depending on firm size, reputational considerations, and the perceived likelihood of approval of an individual exemption. Variations in these assumptions could materially affect the estimated cost differentials across alternatives.

11.3. Impact on Fully Compliant QPAMs

Additionally, there is uncertainty regarding the extent to which this proposal may indirectly affect QPAMs that remain fully compliant. To the extent that fully compliant QPAMs incur additional internal compliance costs, the aggregate burden associated with the proposal could be higher than estimated. At the same time, greater regulatory clarity and more standardized expectations may reduce compliance costs over time.

11.4. Estimates of Burden

Finally, there is uncertainty regarding the estimates of burden. Compliance costs may vary significantly depending on firm size, operational complexity, and the availability of internal legal expertise. The estimates presented in this analysis rely on representative wage rates and assumed labor hours; however, actual costs may differ across firms.

If affected entities rely more heavily on outside counsel than assumed, compliance costs under the individual exemption alternative would increase. Conversely, firms with greater internal compliance capacity may experience lower costs. These variations contribute to uncertainty in the overall magnitude of projected cost savings.

11.5. Sensitivity Analyses of Costs

Given the uncertainty surrounding these cost estimates, particularly due to variation in plan complexity, the Department has conducted a sensitivity analysis to examine how the estimated costs would change if there was a decrease or increase in the hour burden from the baseline assumptions. Please see Table 7 for sensitivity analysis of hour burden estimates.

TABLE 7. Sensitivity Analysis

	Total Gross Cost	**Total Gross Cost Savings**	**Total Net Cost**
25 Percent of Primary Scenario	$32,501	$155,412	-$122,911
50 Percent of Primary Scenario	$65,003	$310,825	-$245,822

Primary Scenario	***$130,005***	***$621,649***	***-$491,644***
150 Percent of Primary Scenario	$195,008	$932,474	-$737,466
200 Percent of Primary Scenario	$260,010	$1,243,298	-$983,288

Paperwork Reduction Act - Department of Labor

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to allow the general public and Federal agencies to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA).[66] This helps to ensure that: the public understands the Department's collection instructions; respondents can provide the requested data in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the Department can properly assess the impact of collection requirements on respondents.

Currently, the Department is soliciting comments concerning the proposed information collection request (ICR) included in the *Proposed QPAM Re-eligibility Options After Disqualification (QROAD) Class Exemption.* To obtain a copy of the ICR, contact the PRA addressee shown below or go to https://www.RegInfo.gov and reference OMB control number 1210-0128.

The Department has submitted a copy of the proposed exemption to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden for the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

[66] 44 U.S.C. 3506(c)(2)(A) (1995).

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronically delivered responses).

Commenters may send their views on the Department's PRA analysis in the same way they send comments in response to the proposed exemption (for example, through the www.regulations.gov website), including as part of a comment responding to the broader NPRM.

PRA Addressee: Address requests for copies of the ICR to PRA Clearance Officer, Office of Research and Analysis, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N-5718, Washington, DC 20210; ebsa.opr@dol.gov (https://www.reginfo.gov/public/do/PRAMain).

For a full discussion of this information collection please see the supporting statement which is part of the ICR available at https://www.reginfo.gov/public/do/PRAMain.

1. Proposed Exemption

As discussed in the Cost section of this RIA, the Proposed QROAD Class Exemption creates information collection requirements subject to the PRA. These requirements arise from the notifications, certifications, and audit requirements under the proposed exemption. The burden for these requirements is similar to the burden in the QPAM Class Exemption, so as QPAMs utilize the Proposed QROAD Class Exemption there will be little new burden related to the information collection.

Under the proposal, affected QPAMs must prepare and distribute a written notice to client plans and, where applicable, to the Department. The notice must describe the triggering event, identify the applicable compliance method, and confirm adherence to

the required conditions. The hour burden associated with additional burden from the Proposed QROAD Class Exemption requirements is summarized in Table 8 and detailed in the Cost section above.

TABLE 8. Summary of Hour Burden

Activity	Average Annual Cost Using Proposed Class Exemption
Preparation of Notices (Hour Burden)	13

The summary below represents the combined burden of the Proposed QROAD Class Exemption and DOL's QPAM Class Exemption. The information collection for both class exemptions will be included in OMB control number, 1210-0128.

Agency: Employee Benefits Security Administration, Departments of Labor

Title: QPAM Class Exemptions.

Type of Review: Revised.

OMB Control Number: 1210-0128.

Affected Public: Business or other for-profit.

Respondents: 1,067.

Responses: 2,916.

Estimated Total Burden Hours: 2,578.

Estimated Total Costs: $1,252,823.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[67] imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of 5 U.S.C. 553(b).[68] Under 5 U.S.C. 603, agencies must submit an initial regulatory flexibility

[67] 5 U.S.C. 601–612.
[68] 5 U.S.C. 601(2), 603(a).

analysis (IRFA) of a proposal that is likely to have a significant economic impact on a substantial number of small entities, such as small businesses, organizations, and governmental jurisdictions.

The Department has prepared this initial regulatory flexibility analysis (IRFA) and requests data or other information that would prevent it from certifying that a final class exemption would not have a significant impact on a substantial number of small entities.

1. Need for the Proposed Exemption

As discussed above, the Proposed QROAD Class Exemption would revise and standardize the framework governing ineligibility events under the QPAM Class Exemption. Under current regulatory conditions, QPAMs that become ineligible due to violations of Section I(g) of the QPAM Class Exemption must apply for individual exemptions if they intend to continue to rely on the QPAM Class Exemption. The process of applying for individual exemptions can be time-consuming and costly. This proposal establishes two structured compliance methods designed to clarify eligibility standards and reduce reliance on individualized applications.

2. Affected Small Entities

The Proposed QROAD Class Exemption would affect QPAMs. Under Small Business Administration (SBA) size standards, the relevant threshold for investment advisers registered under the Advisers Act and similar entities is $47 million in annual receipts.[69] The relevant NAICS codes include Investment Banking and Securities Dealing (523150), Insurance Carriers (524113), and Portfolio Management (523940).

The QPAM Class Exemption was premised on the QPAM being an entity of sufficient size to withstand undue influence from parties in interest. These size standards

[69] SBA, *Table of Size Standards*, (2023), https://www.sba.gov/sites/default/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf.

would limit the number of small entities that would be impacted. For example, the preamble to the 1982 proposal of the QPAM Class Exemption stated:

> "The minimum capital and funds-undermanagement standards of the proposed exemption are intended to assure that the eligible fiduciaries managing the accounts or funds ("investment funds"), consisting of the assets of one or more plans, are established institutions which are large enough to discourage the exercise of undue influence upon their decision-making processes by parties in interest."[70]

Additionally, the Department has sought revenue information on the parent companies of QPAMs that have obtained individual exemptions in the past. The parent companies for whom the Department could identify revenues have annual revenues in the billions or hundreds of billions of dollars. While the Department does not have complete data on all QPAMs that could use the Proposed QROAD Class Exemption, it expects that few would fall below SBA's revenue threshold of $47 million.

The QPAM Class Exemption sets size thresholds a firm must meet in order to be a QPAM. The minimum capital and funds-under-management standards are intended to ensure that the eligible fiduciaries managing the accounts or investment funds are established institutions which are large enough to discourage the exercise of undue influence upon their decision-making processes by parties in interest. Therefore, the Department believes that this proposal would not affect a significant number of small entities. If a QPAM did meet the SBA definition of a small entity, the per-entity cost for the Section II and Section III compliance methods are both $3,125,[71] which are less than 0.01 percent of the SBA revenue threshold of $47 million. The Section II compliance cost of $3,125 would represent 1 percent of annual revenue for an entity with approximately

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[70] 47 FR 56945, 56947 (Dec. 21, 1982).

[71] This is based on the per-entity cost estimates in Table 3, which is calculated using the hour burden and hourly wage rate.

$312,500 in annual revenue. There are also per-entity cost-savings of $37,075 for both compliance methods.

3. Cost of Proposed Exemption

The Proposed QROAD Class Exemption establishes two structured compliance methods designed to clarify eligibility standards and reduce reliance on individualized applications. Under the proposal, Reliance QPAMs must prepare notices to clients and the Department, and meet other requirements such as certifications or audits, to utilize the exemption. The proposal may reduce reliance on costly individual exemption applications, and the need for or frequency of audits. Increased compliance costs related to the notice and certification are expected to be modest relative to the revenues of affected entities.

To provide context for the magnitude of these costs, the Department compares the estimated per-entity compliance cost to the SBA size standard for Investment Banking and Securities Dealing (523150), Insurance Carriers (524113), and Portfolio Management (523940) which is $47 million in annual revenue. As shown in Tables 9 and 10, the estimated per-entity cost for the Section II and Section III compliance methods are both $3,125, which represents a very small share of revenues. A cost of $3,125 would represent 1 percent of annual revenue for an entity with approximately $312,500 in annual revenue.

The proposal also may generate cost savings by reducing reliance on individual exemption applications and a reduction in the need for, or frequency of, audits. As shown in Tables 9 and 10, the estimated gross cost savings from forgoing an audit and an application for an individual exemption for QPAMs using the Section II or Section III compliance methods is $37,075, which represents a larger share of revenues than the estimated compliance costs across all revenue levels examined. Accordingly, the Department expects that the proposed exemption could result in net cost savings for

affected entities in circumstances where firms would otherwise seek an individual exemption. In addition, relatively few QPAMs are expected to experience ineligibility events in any given year and therefore few would need to rely on the structured compliance methods established by the proposal.

TABLE 9. Cost and Cost Savings of Proposed Class Exemption Relative to SBA Size Threshold for Section II Compliance Method

Revenue Level (Relative to SBA Threshold)	Annual Revenue	Cost per Entity	Cost as Percent Revenue	Cost Savings per Entity	Cost Savings as Percent Revenue
	(A)	(B)	(C) = (B/A)	(D)	(E) = (D/A)
100 Percent of SBA Threshold	$47,000,000	$3,125	0.01%	$37,075	0.08%
75 Percent of SBA Threshold	$35,250,000	$3,125	0.01%	$37,075	0.11%
50 Percent of SBA Threshold	$23,500,000	$3,125	0.01%	$37,075	0.16%
25 Percent of SBA Threshold	$11,750,000	$3,125	0.03%	$37,075	0.32%
Note: These gross cost savings represent the cost savings of foregoing an audit and an application for an individual exemption. Not all QPAMs will experience this scenario.					

TABLE 10. Cost and Cost Savings of Proposed Class Exemption Relative to SBA Size Threshold for Section III Compliance Method

Revenue Level (Relative to SBA Threshold)	Annual Revenue	Cost per Entity	Cost as Percent Revenue	Cost Savings per Entity	Cost Savings as Percent Revenue
	(A)	(B)	(C) = (B/A)	(D)	(E) = (D/A)
100 Percent of SBA Threshold	$47,000,000	$3,125	0.01%	$37,075	0.08%
75 Percent of SBA Threshold	$35,250,000	$3,125	0.01%	$37,075	0.11%
50 Percent of SBA Threshold	$23,500,000	$3,125	0.01%	$37,075	0.16%
25 Percent of SBA Threshold	$11,750,000	$3,125	0.03%	$37,075	0.32%
Note: These gross cost savings represent the cost savings of foregoing an audit and an application for an individual exemption. Not all QPAMs will experience this scenario.					

4. Alternative

As an alternative, the Department considered taking no action and continuing to require QPAMs that experience ineligibility events to apply for individual exemptions. However, the individual exemption process can be time-consuming and costly for

affected entities and may create uncertainty for QPAMs and their affiliated entities during the review period. The proposed exemption is intended to provide clearer standards and reduce reliance on individualized applications while maintaining appropriate safeguards.

5. Duplicate, Overlapping, or Relevant Federal Rules

There are no duplicate, overlapping, or relevant Federal rules.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector.[72] For purposes of the UMRA, this rulemaking is not expected to have such an impact on the private sector.

C. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have "substantial direct effects" on the States, the relationship between the Federal Government and States, or on the distribution of power and responsibilities among the various levels of government.[73] Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the proposed exemption.

The proposed exemption does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national

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[72] 2 U.S.C. 1501 *et seq*. (1995).
[73] Federalism, 64 FR 153 (Aug. 4, 1999).

government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) and Code Section 4975(c)(2) does not relieve an ERISA fiduciary, or other party in interest or disqualified person with respect to a Plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404 which require, among other things, that an ERISA fiduciary act prudently and discharge their duties respecting the Plan solely in the interests of the participants and beneficiaries of the Plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of Code Section 401(a) that the Plan must operate for the exclusive benefit of the employees of the employer maintaining the Plan and their beneficiaries.

(2) Before the exemption may be granted under ERISA Section 408(a) and Code Section 4975(c)(2), the Department must find that it is administratively feasible; in the interests of Plans, their participants and beneficiaries, and IRA owners; and protective of the rights of participants and beneficiaries of Plans and IRA owners.

(3) If granted, the exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption.

(4) The proposed exemption, if granted, is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative

exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Proposed Class Exemption

The Department is proposing this exemption on its own motion under the authority of ERISA Section 408(a) and Code Section 4975(c)(2) in accordance with the Department's exemption procedures regulation.[74] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

Section I – Definitions

(a) The term **"Affiliate"** means "Affiliate" as defined in Section VI(d) of the QPAM Class Exemption. Therefore, an "Affiliate" of a person means—

(1) Any person directly or indirectly through one or more intermediaries, Controlling, Controlled by, or Under Common Control with the person;

(2) Any director of, Relative of, or partner in, any such person;

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a five percent or more partner or owner; and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in Code Section 4975(e)(2)(H) or officer (earning ten (10) percent or more of the yearly wages of such person); or

[74] 29 CFR part 2570, subpart B (89 FR 4662, Jan. 24, 2024). For purposes of this proposed exemption, references to ERISA Section 406, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code Section 4975.

(B) Has direct or indirect authority, responsibility, or control regarding the custody, management or disposition of Plan assets.

(b) The term **"Affiliated QPAM"** means, with respect to a Misconduct Entity, an Affiliate that meets the definition of "QPAM," but that is not a **"Related QPAM."**

(c) The terms **"Control," "Controlling," "Controlled by," and "Controls"** mean the power to exercise a controlling influence over the management or policies of a person other than an individual, and the term **"Under Common Control"** refers to two or more entities that are directly or indirectly subject to the Control of the same entity.

(d) The term **"Covered Plan"** means a plan or Investment Fund subject to Part 4 of Title I of ERISA (an "ERISA-covered plan") or a plan or Investment Fund subject to Code Section 4975 (an "IRA"), in each case, with respect to which the QPAM relies on the QPAM Class Exemption, or with respect to which the QPAM has expressly represented that the manager qualifies as a QPAM or relies on the QPAM Class Exemption. A Covered Plan does not include an ERISA-covered plan or IRA to the extent that the QPAM has expressly disclaimed reliance on QPAM status or the QPAM Class Exemption in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA. Notwithstanding the above, a QPAM may disclaim reliance on the QPAM Class Exemption in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the QPAM will not represent that it is a QPAM and will not rely on the relief described in the QPAM Class Exemption.

(e) The term **"Criminal Conviction"** means a "Criminal Conviction" as defined in Section VI(r) of the QPAM Class Exemption, except that, for purposes of this exemption, a "Criminal Conviction" includes all Criminal Convictions that arise from the

same incident in that they are based on the same underlying facts, circumstances and conduct. A "Criminal Conviction" includes "U.S. Convictions" and "Foreign Convictions," as those terms are described below.

(f) The term **"Exemption Period"** means the 10-year period beginning on the most recent Ineligibility Date.

(g) The term **"Ineligibility Date"** means "Ineligibility Date" as defined in Section I(h) of the QPAM Class Exemption.

(h) The term **"Independent Fiduciary"** has the same meaning as "qualified independent fiduciary" in 29 CFR 2570.31(j).

(i) The term **"Investment Fund"** means "Investment Fund" as defined in Section VI(b) of the QPAM Class Exemption.

(j) The term **"Misconduct Entity"** means an entity that is the subject of a Criminal Conviction or Prohibited Misconduct. Except as expressly allowed below, relief in this exemption does not extend to any Criminal Conviction or Prohibited Misconduct involving a "Misconduct Entity" that was a QPAM during the period of time beginning on the date the misconduct began that gave rise to Criminal Conviction or Prohibited Misconduct through the end of the most recent Exemption Period.

(k) The terms **"Participate In," "Participates In," "Participating In," "Participated In," and "Participation In"** mean "Participate In," "Participates In," "Participating In," "Participated In," and "Participation In" as those terms are defined in Section VI(t) of the QPAM Class Exemption.

(l) The term **"Prohibited Misconduct"** means "Prohibited Misconduct" as defined in Section VI(s) of the QPAM Class Exemption.

(m) The term **"Plan"** means "Plan" as defined in Section VI(n) of the QPAM Class Exemption.

(n) The term **"QPAM Class Exemption"** means Prohibited Transaction Class

Exemption 84-14 for Transactions Determined by Independent Qualified Professional Asset Managers (49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (Oct. 10, 1985), as amended at 70 FR 49305 (Aug. 23, 2005), as amended at 75 FR 38837 (July 6, 2010), as amended at 89 FR 23090 (April 3, 2024), and as corrected at 89 FR 65779 (Aug. 13, 2024));

(o) The term **"Qualified Professional Asset Manager"** or **"QPAM"** means a "Qualified Professional Asset Manager" or "QPAM," as defined in Section VI(a) of the QPAM Class Exemption.

(p) The term **"Related QPAM"** means an entity that meets the definition of QPAM and that relies on this exemption, and with respect to which a Misconduct Entity owns a direct or indirect five (5) percent or more interest, but where the Misconduct Entity does not **"Control"** the Related QPAM.

(q) The term **"Relative"** means a relative as that term is defined in ERISA Section 3(15), or a brother, a sister, or a spouse of a brother or sister.

(r) The term **"Reliance Date"** means the date on which a QPAM first relies on this exemption with respect to a Criminal Conviction or Prohibited Misconduct. The Reliance Date may not be earlier than the associated Ineligibility Date.

(s) The term **"Reliance QPAM"** means any QPAM that is relying on the relief in this exemption. One corporate organizational structure might have multiple Affiliated and Related QPAMs that seek to rely on the relief herein, all of which are Reliance QPAMs if qualified under the conditions set forth herein.

Section II – Exemptive Relief Where No Control Relationship Exists Between the Reliance QPAM and the Misconduct Entity

(a) Covered Transactions

A Reliance QPAM may continue to rely on the QPAM Class Exemption during the Exemption Period notwithstanding:

(1) A single Criminal Conviction described in Section VI(r)(1) of the QPAM Class Exemption (a U.S. Conviction) of a Misconduct Entity, where the Misconduct Entity is not a QPAM and, at any time, neither Controls nor is Controlled by the Reliance QPAM; and/or

(2) One or more Criminal Convictions described in Section VI(r)(2) of the QPAM Class Exemption (Foreign Convictions) by one or more Misconduct Entities, where, in each instance, the Misconduct Entity is not a QPAM and, at any time, neither Controls nor is Controlled by the Reliance QPAM; and/or

(3) One or more instances of Prohibited Misconduct by one or more Misconduct Entities, where, in each instance, the Misconduct Entity is not a QPAM and, at any time, neither Controls nor is Controlled by the Reliance QPAM.

(b) Eligibility

(1) As of the Reliance Date, no officer, director, agent (other than the Misconduct Entity), or employee of the Reliance QPAM knew of or had reason to know of, or Participated In, the conduct that is the subject of the Criminal Conviction or Prohibited Misconduct, during the time the conduct was ongoing. Further, as of the Reliance Date, no officer, director, agent (other than the Misconduct Entity) or employee of a party engaged on behalf of the Reliance QPAM, who has responsibility for, or exercises authority in connection with, the management of Covered Plan assets, knew of or had reason to know of, or Participated In the conduct that was the subject of the Criminal Conviction or Prohibited Misconduct, during the time the conduct was ongoing;

(2) As of the Reliance Date, no officer, director, agent (other than the Misconduct Entity) or employee of the Reliance QPAM received direct compensation, or knowingly received indirect compensation, in connection with the conduct that underlies the

Criminal Conviction or Prohibited Misconduct. Further, as of the Reliance Date, no officer, director, agent (other than the Misconduct Entity) or employee of a party engaged on behalf of the Reliance QPAM who had responsibility for, or exercised authority in connection with, the management of plan assets, received direct compensation, or knowingly received indirect compensation, in connection with the conduct that is the subject of the Criminal Conviction or Prohibited Misconduct;

(3) The Reliance QPAM (and any other Related QPAMs and Affiliated QPAMs of the Misconduct Entity) did not exercise authority over the assets of any Investment Fund or plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or Code Section 4975 (an IRA) in a manner that it knew, or should have known, would further the conduct that is the subject of the Criminal Conviction or Prohibited Misconduct, or cause the Reliance QPAM (or its Affiliates or any officers, employees or partners) to directly or indirectly profit from the conduct that is the subject of the Criminal Conviction or Prohibited Misconduct;

(4) As of the Reliance Date, the Reliance QPAM will not use its authority or influence to direct an Investment Fund that is subject to ERISA or the Code and managed by such QPAM with respect to one or more Covered Plans to enter into any transaction with a Misconduct Entity or to engage a Misconduct Entity to provide any service to such Investment Fund for a direct or indirect fee borne by such Investment Fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(5) As of the Reliance Date, the asset management decisions of the Reliance QPAM are conducted independently of the management and business activities of the Misconduct Entity;

(6) As of the Reliance Date, no Misconduct Entity will act as an ERISA fiduciary within the meaning of ERISA Section 3(21)(A) or Code Section 4975(e)(3) with respect

to ERISA-covered Plan and IRA assets, except that each may act as such an ERISA fiduciary with respect to employee benefit plans sponsored for its own employees or employees of an Affiliate;

(7) The conduct that is the subject of the Criminal Conviction or Prohibited Misconduct did not involve assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975;

(8) The Reliance QPAM complies with each applicable condition of this exemption and with each condition of the QPAM Class Exemption, except for the Criminal Conviction or Prohibited Misconduct that necessitated reliance on this exemption. Subject to the QROAD Phase Out Period described in Section IV below, relief under this exemption terminates immediately at the time a Reliance QPAM fails to comply with any condition applicable to its relief under this exemption;

(c) Policies and Training

(1) Within 60 days of the Reliance Date, the Reliance QPAM implements, maintains (or continues to maintain), adjusts (to the extent necessary), and follows written policies requiring and reasonably designed to ensure compliance with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, the QPAM Class Exemption, and this exemption (the Policies). The Policies must be designed to ensure that:

(A) The asset management decisions of the Reliance QPAM are conducted: (i) independently of the management and business activities of the Misconduct Entity; and (ii) without considering any fee a related local sub-custodian may receive from those decisions. This condition does not preclude a Reliance QPAM from receiving publicly available research and other widely available information from an Affiliate of the Misconduct Entity;

(B) The Reliance QPAM fully complies with ERISA's fiduciary duties and with the prohibited transaction provisions under ERISA and the Code as applicable with respect to each Covered Plan and does not knowingly participate in any violations of these duties and provisions with respect to any Plan for which it provides asset management services;

(C) The Reliance QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to any Plan;

(D) Any filings or statements made by the Reliance QPAM to regulators, including but not limited to the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans are materially accurate and complete to the best of such QPAM's knowledge at that time;

(E) To the best of the Reliance QPAM's knowledge at the time, such QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans;

(F) The Reliance QPAM complies with the terms of this exemption;

(G) The Reliance QPAM conducts the Training as described in (c)(2); and

(H) Any violation of, or failure to comply with, an item that is the subject of a policy required by this paragraph (c) is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the Reliance QPAM, and an appropriate ERISA fiduciary of any affected Covered Plan where such ERISA fiduciary is independent of the Reliance QPAM and the Misconduct Entity.

However, with respect to any Covered Plan sponsored by an Affiliate of the Misconduct Entity or beneficially owned by an employee of the Misconduct Entity or its Affiliates, such ERISA fiduciaries do not need to be independent of the Misconduct Entity. A Reliance QPAM will not be treated as having failed to develop, implement, maintain, or follow its Policies, provided that it corrects any instance of noncompliance when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (H).

(2) The Reliance QPAM implements a program of training, conducted at least annually, with the first training completed within 12 months of the Reliance Date, for all relevant asset/portfolio management, trading, legal, compliance, and internal audit personnel (the Training), as follows:

(A) The Training is conducted by a professional who has been prudently selected and who has appropriate training and proficiency with ERISA and the Code to perform the tasks required by this exemption and may be conducted in-person, electronically or via a website; and

(B) The Training must be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing (including resources on how to report suspected wrongdoing within the Reliance QPAM and to EBSA and other relevant Federal oversight agencies).

(d) Independent Fiduciary

(1) The Reliance QPAM must prudently select an Independent Fiduciary with appropriate technical training and proficiency with ERISA and the Code, to determine the

Reliance QPAM's compliance with Sections II(a) and II(b)(1)-(7), and that the Policies under Section II(c) have been established. The Independent Fiduciary must be granted unfettered access to all the information and documents it deems necessary in its sole discretion to make its required findings.

(2) Within 90 days of the Reliance Date, the Independent Fiduciary must submit a written report to the Reliance QPAM's head of compliance and general counsel (or their functional equivalent) that contains a detailed description of the Independent Fiduciary's processes and procedures. The written report must also contain a certification as to whether, to the best of the Independent Fiduciary's knowledge and belief: all of the representations made in such report are true and correct; all of the conditions in Section II(a) and (b)(1)-(7) have been met; and all of the Policies in Section II(c) have been established. The Independent Fiduciary's report must contain:

(A) An express statement confirming that, to the best of the Independent Fiduciary's knowledge, no person who knew or had reason to know of the misconduct that gave rise to a violation of Section I(g) of the QPAM Class Exemption currently works at the Reliance QPAM or any party engaged on behalf of the Reliance QPAM; and

(B) A certification by the head of compliance of the Reliance QPAM stating that, to the best of their knowledge and belief: such head of compliance has diligently investigated the misconduct that gave rise to the violation of Section I(g); shared all material information regarding that investigation with the Independent Fiduciary; and the Independent Fiduciary's report is accurate and complete.

The Independent Fiduciary's written report must be made available on the Reliance QPAM's website upon completion.

(e) Notice to the Department and Covered Plan Fiduciaries

(1) Within 90 days of the Reliance Date, the Reliance QPAM provides written notice to the Department and each sponsor and beneficial owner of a Covered Plan that

has entered into a written management agreement with the Reliance QPAM. All Covered Plan clients that enter into a written management agreement with the Reliance QPAM after the Reliance date, but less than 90 days after the Reliance Date, must receive a copy of the written notice within 90 days of engagement. All Covered Plan clients that enter into a written management agreement with the Reliance QPAM (including a participation or subscription agreement in a pooled fund managed by the Reliance QPAM) 90 or more days after the Reliance Date must receive a copy of the written notice prior to, or contemporaneously with, the client's receipt of a written management agreement from the Reliance QPAM. Disclosures required under this paragraph may be delivered electronically (including by an email that has a link to this exemption as published in the *Federal Register*). The written notice must contain:

(A) A certification from the Reliance QPAM's head of compliance and general counsel (or their functional equivalent) that, to the best of their knowledge and belief: the Independent Fiduciary's report is accurate, complete and correct; the Reliance QPAM is in compliance with the requirements of Section II(a) and (b); and the Reliance QPAM has established the requisite Policies and Training pursuant to Section II(c);

(B) A detailed description of the circumstances, conduct, and entities that Participated In the Criminal Conviction and/or the Prohibited Misconduct, and that the Criminal Conviction or Prohibited Misconduct results in a failure to meet a condition in the QPAM Class Exemption;

(C) A copy of this exemption as published in the *Federal Register*.

(D) Instructions on how to retrieve a copy of the certified written report of the Independent Fiduciary required by Section II(d) from the Reliance QPAM's website; and

(E) Instructions on how to retrieve the Policies required by Section II(c) or a description (Summary Policies) which accurately summarizes key components of such

Reliance QPAM's Policies from the Reliance QPAM's website. If the Reliance QPAM changes its Policies, each Covered Plan client must receive a new disclosure within 180 days following the end of the calendar year during which the Policies were changed. If the Reliance QPAM meets this disclosure requirement through Summary Policies, changes to the Policies will not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan;

(2) The Reliance QPAM sends the notices described in (1) to the Department via email to QPAM@dol.gov, and to each Covered Plan client of the Reliance QPAM in a manner ensuring receipt by an ERISA fiduciary of each Covered Plan. The notices must be sent for any new Criminal Convictions or instances of Prohibited Misconduct that are eligible for relief under this Section II and will be available for public disclosure.

(f) Subsequent Covered Criminal Convictions or Prohibited Misconduct Events.

The Reliance QPAM must comply with the definitions in Section I and each Section II condition with respect to each ineligibility event that otherwise qualifies for relief under Section II. The timeframe for compliance for each ineligibility event begins on the Reliance Date related to such event.

(g) Special Rule for Related QPAMs

Notwithstanding the above, if the Reliance QPAM is a Related QPAM, then the Reliance QPAM may rely on the QPAM Class Exemption during the Exemption Period for a covered transaction described in Section II(a) and III(a) if the conditions in Section II(b)(1)-(8) and (f) are satisfied. Related QPAMs are not otherwise required to satisfy the conditions in Section II(c), (d) and (e).

Section III – Exemptive Relief Under a Control Relationship Between the Reliance QPAM and the Misconduct Entity

(a) Covered Transactions

A Reliance QPAM may continue to rely on the QPAM Class Exemption during the Exemption Period, notwithstanding:

(1)(A) A single U.S. Conviction of a Misconduct Entity, where the Misconduct Entity is not a QPAM, at any time, either Controls or is Controlled by the Reliance QPAM; or

(B) Collectively, up to two U.S. Convictions by one or more Misconduct Entities, where in each instance, the Misconduct Entity is not a QPAM and no more than one U.S. Conviction involves a Misconduct Entity is not a QPAM that, at any time, either Controls or is Controlled by Reliance QPAM; and/or

(2) One or more Foreign Convictions by one or more Misconduct Entities, where any Misconduct Entity, at any time, either Controls or is Controlled by the Reliance QPAM including where any Misconduct Entity is a QPAM; and/or

(3) One or more instances of Prohibited Misconduct by one or more Misconduct Entities, where any Misconduct Entity, at any time, either Controls or is Controlled by the Reliance QPAM including where any Misconduct Entity is a QPAM.

(b) Eligibility

(1) To qualify for relief under Section III, the conditions in Section II(b) and Section III of this exemption must be satisfied.

(c) Policies and Training

(1) Within 60 days of the Reliance Date, the Reliance QPAM implements, maintains (or continues to maintain), adjusts (to the extent necessary), and follows the Policies as set out in Section II(c)(1)(A)–(H) above.

(2) The Reliance QPAM implements the Training, conducted in accordance with

the requirements in Section II(c)(2)(A) - (B) above.

(d) Independent Fiduciary

(1) The Reliance QPAM must prudently appoint an Independent Fiduciary with appropriate technical training and proficiency with ERISA and the Code, to determine the Reliance QPAM's compliance with Sections II(b)(1)-(7), III(a), and that the Policies required under Section III(c) have been established. The Independent Fiduciary must be granted unfettered access to all the information and documents it deems necessary in its sole discretion to make its required findings.

(2) Within 90 days of the Reliance Date, the Independent Fiduciary must submit a written report to the Reliance QPAM's head of compliance and general counsel (or their functional equivalent) that contains a detailed description of the Independent Fiduciary's processes and procedures. The written report must also contain a certification as to whether, to the best of the Independent Fiduciary's knowledge and belief: all of the representations made in such report are true and correct; all of the conditions in Sections II(b)(1)-(7), III(a) have been met; and all of the Policies required under Section III(c) have been established. The Independent Fiduciary's report must contain:

(A) An express statement confirming that, to the best of the Independent Fiduciary's knowledge, no person who knew or had reason to know of the misconduct that gave rise to a violation of Section I(g) of the QPAM Class Exemption currently works at the Reliance QPAM or any party engaged on behalf of the Reliance QPAM; and

(B) A certification by the head of compliance of the Reliance QPAM, stating that to the best of their knowledge and belief: such head of compliance has diligently investigated the misconduct that gave rise to the violation of Section I(g); shared all material information regarding that investigation with the Independent Fiduciary; and the Independent Fiduciary's report is accurate and complete.

The Independent Fiduciary's written report must be made available on the

Reliance QPAM's website upon completion.

(e) Audit

(1) The Reliance QPAM undergoes an audit by an independent auditor who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to evaluate the adequacy of and the Reliance QPAM's compliance with the Policies and Training conditions in Section III(c) and the eligibility conditions in Section III(a) and (b). The audit requirement must be incorporated into the Policies. Each audit must cover twelve (12) consecutive months. The first audit must cover the 12-month period beginning on the earlier of the start date of the One Year Transition under Section I(i) of the QPAM Class Exemption (if applicable), or the Reliance Date. The audit must be completed within 6 months of the end of the 12-month period to which it relates. The audit must be completed within 6 months of the end of the twelve-month period to which it relates. Each successive biennial audit must cover a one-year period that begins 12 months after the end of the most recent audit period, and must be completed within 6 months of the end of the audit period;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, the Reliance QPAM and any applicable Affiliates will grant the auditor unfettered access to its businesses, including, but not limited to its computer systems, business records, transactional data, workplace locations, training materials, and personnel. Such access must be provided only to the extent that it is not prevented by State or Federal statute or does not involve communications subject to attorney client privilege, and may be limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether the Reliance QPAM has developed, implemented, maintained, and followed the

Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test the QPAM's operational compliance with the Policies and Training conditions. In this regard, the auditor must test a sample of the Reliance QPAM's transactions involving Covered Plans. The sample must include transactions that are sufficient in size, number and nature to afford the auditor a reasonable basis to determine the extent of the Reliance QPAM's operational compliance with the Policies and Training conditions. The auditor also must review each Compliance Report issued by the Compliance Officer as described in Section III(h) since the previous Audit Report was issued;

(5) On or before the end of the relevant period for completing each audit, the auditor must issue a written report (the Audit Report) to the Reliance QPAM that describes the procedures performed by the auditor during its examination. At its discretion, the auditor may issue a single consolidated Audit Report that covers all Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(A) the adequacy of the Reliance QPAM's Policies and Training; the Reliance QPAM's compliance with this exemption; the need, if any, to strengthen the Policies and Training required by Section III(c); and any instance of the Reliance QPAM's noncompliance with the Policies and Training. The Reliance QPAM must promptly address any noncompliance by preparing a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training. Any plan of action or action taken by the Reliance QPAM must be identified in an addendum to the Audit Report (and such addendum must be completed before the certification described in Section III(e)(7) below). In the event a plan of action to address

the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time the Audit Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the Reliance QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. Any finding that the Reliance QPAM has complied with the requirements under this subparagraph must be based on evidence that the Reliance QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the Compliance Officer, as described below, as the basis for its conclusions in lieu of independently making the determinations and testing as required herein; and

(B) The adequacy of each Exemption Review and Exemption Report described in Section III(h) issued since the previous Audit Report was issued;

(6) The auditor must notify the Reliance QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) For each Audit Report, the general counsel of the Reliance QPAM (or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the Reliance QPAM, with respect to which the Audit Report applies) must certify in writing that they have reviewed the Audit Report and this exemption and that to the best of their knowledge and belief at the time, the Reliance QPAM has addressed, corrected, or remedied any noncompliance and inadequacy, or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. The certification must also include the signatory's

determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) The Reliance QPAM provides its certified Audit Report to the Department via email to QPAM@dol.gov, no later than forty-five (45) days following completion of the Audit Report. The Audit Report will be made available to the public upon request. Further, the Reliance QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any ERISA fiduciary of a Covered Plan;

(9) The Reliance QPAM and the auditor must submit to the Department via email to QPAM@dol.gov any executed auditor engagement agreement(s) under this exemption no later than 60 days after the execution of any such engagement agreement;

(10) The auditor must provide the Department, upon request, access to all the workpapers it created and utilized in the course of the audit, for inspection and review, provided such access and inspection is otherwise permitted by law;

(11) The Reliance QPAM must notify the Department of a change in the independent auditor no later than 60 days after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and the Reliance QPAM; and

(12) At the Department's request, the Reliance QPAM and the auditor must provide the Department with updates about the progress of the audit.

(f) Warranties

As of the Reliance Date, with respect to any arrangement, agreement, or contract between a Reliance QPAM and a Covered Plan, the Reliance QPAM agrees and

warrants:

(1) To comply with ERISA and the Code, as applicable, with respect to the Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions in accordance with applicable rules under ERISA and the Code); and to comply with the standards of prudence and loyalty set forth in ERISA Section 404 with respect to the Covered Plan, to the extent that section is applicable;

(2)(A) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from: the Reliance QPAM's violation of the conditions of this exemption; loss of QPAM relief due to failure to satisfy Section I(g); prohibited transactions or ERISA fiduciary breaches connected to the misconduct that gave rise to reliance on this exemption. The term "actual losses" includes, but is not limited to, losses and related costs arising from prudently unwinding transactions with third parties and from prudently transitioning Plan assets to an alternative asset manager as well as costs associated with exposure to excise taxes under Code Section 4975 as a result of the Reliance QPAM's inability to rely on the relief in the QPAM Class Exemption; and

(B) To develop and maintain written processes that clearly describe: (i) how the Reliance QPAM identifies and quantifies "actual losses" for purposes of Section III(f)(2)(A); and (ii) how Covered Plans may recover or avoid incurring the losses that the Reliance QPAM must indemnify or hold Covered Plans harmless from incurring pursuant to Section III(f)(2)(A);

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the Reliance QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the Reliance QPAM with respect to any investment in a separately

managed account or pooled fund subject to ERISA and managed by the Reliance QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a separately managed account or pooled fund, in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangement involving investments in pooled funds subject to ERISA entered into after the Ineligibility Date, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and such restrictions must be applicable to all such investors in the pooled fund on equal terms and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund, in the event the withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting the liability of the Reliance QPAM for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of an ERISA plan fiduciary or other party hired by the ERISA plan fiduciary who is independent of the Reliance QPAM and its Affiliates, officers, employees or partners, or damages arising from acts outside the control of the Reliance QPAM; and

(7) Within 60 days after the Reliance Date, the Reliance QPAM must provide a

notice of its obligations under this Section III(f) to each Covered Plan, including a copy of the processes developed to identify, quantify, and recover "actual losses" as provided in clause (2) above (the Reliance QPAM must send an updated notice to each Covered Plan within 30 days of a subsequent material change to the "actual losses" process). For Covered Plans that enter into a written management agreement with the Reliance QPAM after the Reliance Date, but less than 60 days after the Reliance Date, the Reliance QPAM must provide a notice of its obligations and "actual losses" process within 60 days of engagement. For Covered Plans that enter into a written management agreement with a Reliance QPAM on or after 60 days from the Reliance Date, the Reliance QPAM must agree to its obligations under this Section III(f) in the written asset or investment management agreement.

(g) Notice to the Department and Covered Plan Fiduciaries

(1) Within 90 days of the Reliance Date, the Reliance QPAM provides written notice to the Department and each sponsor and beneficial owner of a Covered Plan that has entered into a written management agreement with the Reliance QPAM. All Covered Plan clients that enter into a written management agreement with the Reliance QPAM after the Reliance date, but less than 90 days after the Reliance Date must receive a copy of the written notice within 90 days of engagement. All Covered Plan clients that enter into a written management agreement with the Reliance QPAM (including a participation or subscription agreement in a pooled fund managed by the Reliance QPAM) 90 or more days after the Reliance Date must receive a copy of the written notice prior to, or contemporaneously with, the client's receipt of a written management agreement from the Reliance QPAM. Disclosures required under this paragraph may be delivered electronically (including by an email that has a link to this exemption as published in the *Federal Register*). The written notice must contain:

(A) A certification from the Reliance QPAM's head of compliance and general

counsel (or their functional equivalent) that, to the best of their knowledge and belief: the Independent Fiduciary's report is accurate, complete and correct; the Reliance QPAM is in compliance with the requirements of Section III(a) and (b); and the Reliance QPAM has established the requisite Policies and Training pursuant to Section III(c);

(B) A detailed description of the circumstances, conduct, and entities that Participated In the Criminal Conviction and/or the Prohibited Misconduct, and that the Criminal Conviction or Prohibited Misconduct results in a failure to meet a condition in the QPAM Class Exemption;

(C) A copy of this exemption as published in the *Federal Register*;

(D) Instructions on how to retrieve a copy of the certified written report of the Independent Fiduciary required by Section III(d) from the Reliance QPAM's website; and

(E) Instructions on how to retrieve the Policies required by Section III(c) or a description (Summary Policies) which accurately summarizes key components of such Reliance QPAM's Policies from the Reliance QPAM's website. If the Reliance QPAM changes its Policies, each Covered Plan client receives a new disclosure within 180 days following the end of the calendar year during which the Policies were changed. If the Reliance QPAM meets this disclosure requirement through Summary Policies, changes to the Policies will not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(2) The Reliance QPAM sends the notices described in (1) to the Department via email to QPAM@dol.gov, and to each Covered Plan client of the Reliance QPAM in a manner ensuring receipt by an ERISA fiduciary of each Covered Plan. The notices must

be sent for any new Criminal Convictions or instances of Prohibited Misconduct that are eligible for relief under this Section III and will be available for public disclosure.

(h) Compliance Officer

(1) Within 60 days after the Reliance Date, the Reliance QPAM designates a senior compliance officer (the Compliance Officer) to be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct a review of each twelve-month period comprising the Exemption Period (each, an Exemption Review), to determine the adequacy and effectiveness of the Reliance QPAM's implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(A) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(B) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management; and

(2) With respect to the Exemption Review, the following conditions must be met:

(A) The Exemption Review must include a review of the Reliance QPAM's compliance with and the effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the 12-month period under review; the most recent Audit Report issued pursuant to this exemption; any material change in the relevant business activities of the Reliance QPAM; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the Reliance QPAM;

(B) The Compliance Officer must prepare a written report for the Exemption Review (an Exemption Report) that (i) summarizes their material activities during the 12-month period under review; (ii) sets forth any instance of noncompliance discovered during the twelve-month period under review, and any related corrective action; (iii) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (iv) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions in response to such recommendations;

(C) In the Exemption Report, the Compliance Officer must certify in writing that to the best of their knowledge at the time that: (i) the report is accurate; (ii) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (iii) any known instance of noncompliance during the 12-month period under review and any prior period, and any related correction taken to date, has been identified in the Exemption Report; and (iv) the Reliance QPAM complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(D) The Exemption Report must be provided to appropriate corporate officers of the Reliance QPAM; the head of compliance and the general counsel (or their functional equivalent) of the Reliance QPAM; and must be made unconditionally available to the independent auditor described above; and

(E) The Exemption Review, including the Compliance Officer's written Report, must be completed within 90 days following the end of the period to which it relates.

(i) Subsequent Covered Criminal Convictions or Prohibited Misconduct Events.

The Reliance QPAM must comply with the definitions in Section I and each condition in this Section III for each ineligibility event that otherwise qualifies for relief under Section III. Compliance for each ineligibility event begins on the Reliance Date of such event.

Section IV - Phase Out Period Due to Noncompliance

A Reliance QPAM that relies on the relief in Section II or III but subsequently fails to comply with a condition in this exemption may rely on the relief in this Section IV and continue to rely on the relief in Section II or III of this exemption, as applicable, for up to one year (the QROAD Phase Out Period) following the date the Reliance QPAM knew of or should have reasonably known of the noncompliance (Noncompliance Date). Relief is available only with respect to the Reliance QPAM's Covered Plans that had a pre-existing written management agreement with the Reliance QPAM, as required under QPAM Class Exemption Section VI(a), as of the Noncompliance Date. A Reliance QPAM must manage Covered Plan assets prudently and loyally during the QROAD Phase Out Period. During the QROAD Phase Out Period, the QPAM must comply with the conditions of Section II or III of this exemption and the following conditions:

Within 60 days after the Noncompliance Date, the Reliance QPAM must provide notice to the Department via email at QPAM@dol.gov, and to each of its Covered Plans, stating:

(1) Its failure to satisfy the terms of this exemption and the starting date of the QROAD Phase Out Period; and

(2) That during the QROAD Phase Out Period, the Reliance QPAM:

(A) Agrees not to restrict the ability of a Covered Plan to terminate or withdraw from its arrangement with the Reliance QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that 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. In connection with any of these arrangements involving investments in pooled funds subject to ERISA, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and such restrictions must be applicable to all investors in the pooled fund on equal terms and effective no longer than reasonably necessary to avoid the adverse consequences;

(B) Will not impose any fees, penalties, or charges on Covered Plans in connection with the process of terminating or withdrawing from an Investment Fund managed by the Reliance QPAM except for reasonable fees, appropriately disclosed in advance, that are specifically designed to: (i) prevent generally recognized abusive investment practices, or (ii) 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, provided that such fees are applied consistently and in a like manner to all such investors; and

(C) Agrees 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 any Criminal Conviction or Prohibited Misconduct causing reliance on this exemption. Actual losses specifically include losses and costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code Section 4975 as a result of a Reliance QPAM's inability to rely upon the relief in the QPAM Class Exemption.

Section V- Recordkeeping

(a) The Reliance QPAM maintains the records necessary to enable the persons described in subsection (a)(2) below to determine whether the conditions of this exemption have been met with respect to a transaction for a period of six years from the date of the transaction in a manner that is reasonably accessible for examination. No prohibited transaction will be considered to have occurred solely due to the unavailability of such records if they are lost or destroyed due to circumstances beyond the control of the QPAM before the end of the six-year period.

(1) No party, other than the QPAM responsible for complying with this Section V(a), will be subject to the civil penalty that may be assessed under ERISA Section 502(i) or the excise tax imposed by Code Section 4975(a) and (b), if applicable, if the records are not maintained or available for examination as required by this Section V(a) .

(2) Except as provided in subsection (a)(3) below, or precluded by 12 U.S.C. 484 (regarding limitations on visitorial powers for national banks), and notwithstanding any provisions of ERISA Section 504(a)(2) and (b), the records are reasonably available at their customary location during normal business hours for examination by:

(A) Any authorized employee of the Department or the Internal Revenue Service or another State or Federal regulator,

(B) Any ERISA fiduciary of a Covered Plan,

(C) Any contributing employer and any employee organization whose members are covered by a Covered Plan, or

(D) Any participant or beneficiary of a Covered Plan.

(3) None of the persons described in subsection (2)(B) through (D) of this section are authorized to examine records regarding a Covered Plan that they are not a participant in or beneficiary or fiduciary of, privileged trade secrets or privileged commercial or financial information of the Reliance QPAM, or information identifying other individuals.

(4) Should the Reliance QPAM refuse to disclose information to a person described in subsection (2)(A) through (D) of this section on the basis that the information is exempt from disclosure, the Reliance QPAM must provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information by the close of the thirtieth (30th) day following the request.

(5) A Reliance QPAM's failure to maintain the records necessary to determine whether the conditions of this exemption have been met will result in the loss of the relief provided under this exemption only for the transaction or transactions for which such records are missing or have not been maintained. Such failure does not affect the relief for other transactions if the Reliance QPAM maintains required records for such transactions in compliance with this Section V(a).

(b) The Reliance QPAM must provide the Department with the records necessary to demonstrate that each condition, as applicable, of this exemption has been met within 30 days of a request by the Department.

Section VI – Effective Date

(a) This exemption will be effective 60 calendar days after publication of the final exemption in the *Federal Register*.

(b) QPAMs that are currently relying on individual exemptions to continue relying on the QPAM Class Exemption must continue to comply with those individual exemptions and instead may rely on the relief in this exemption only as of the date they are in compliance with all applicable conditions of this exemption.

(c) If a QPAM is acquired (in whole or in part) by the Misconduct Entity or a subsidiary or Affiliate of the Misconduct Entity (a newly-acquired QPAM), the newly-acquired QPAM must satisfy all applicable conditions of this exemption within 6 months of the acquisition. To that end, the newly-acquired QPAM must initially submit to an

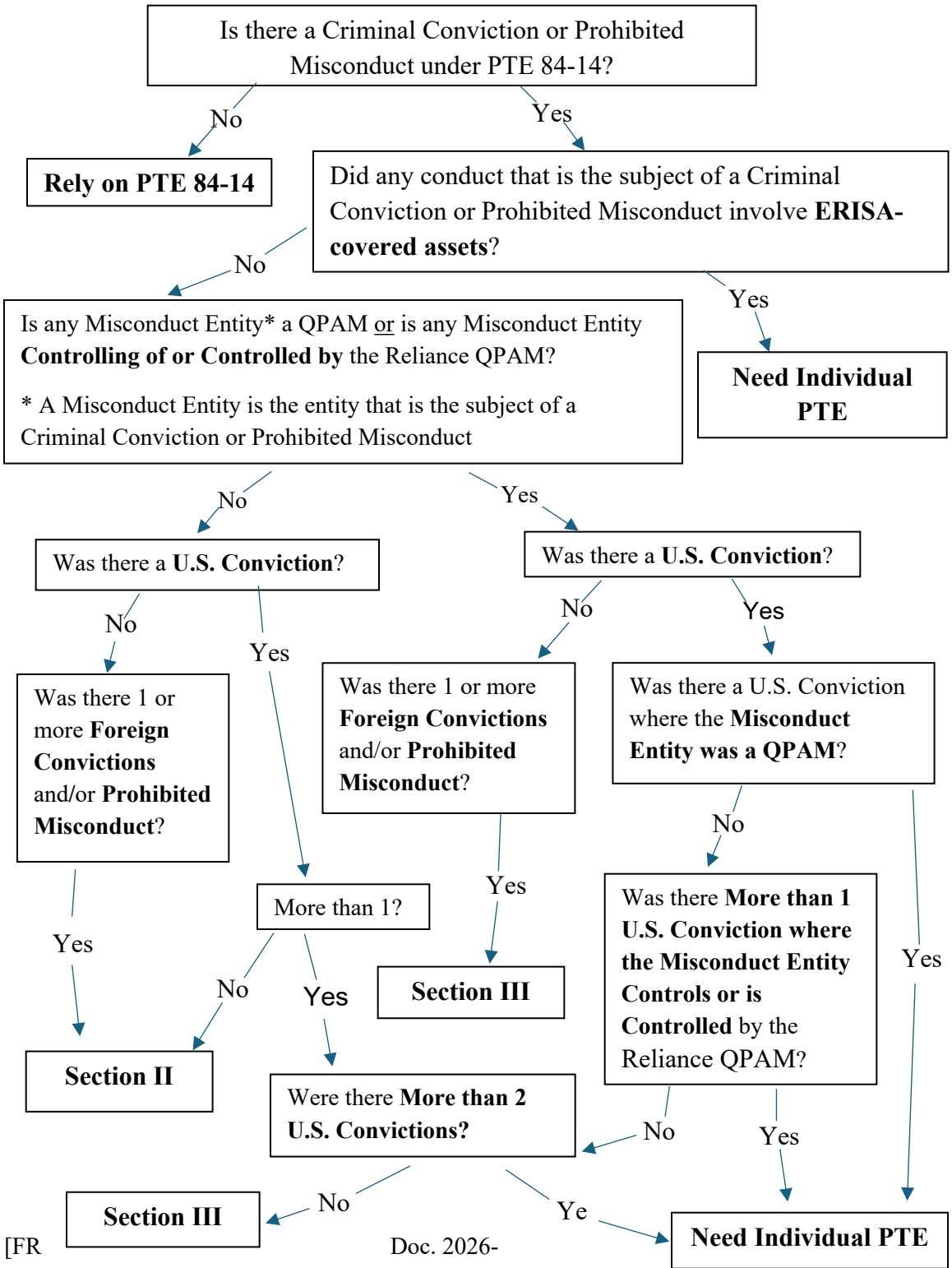
audit, if applicable, pursuant to this exemption. The period covered by the first audit of the newly-acquired QPAM must begin on a date that is not later than six months after the acquisition.

Signed at Washington, DC, this 3rd day of November 2026.

Daniel Aronowitz,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

Appendix A – Proposed QROAD Class Exemption – Decision Flow [75]



[FR Doc. 2026-23465 Filed: 11/17/2026 8:45 am; Publication Date: 11/18/2026]

[75] This flow chart is meant to assist the reader only as a supplemental guide, and in no way or manner supersedes or replaces the operative language of the QROAD Class Exemption, if granted.