

August 19, 2022

Assistant Secretary Ali Khawar
Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: EBSA-2022-0008

Dear Assistant Secretary Khawar,

We request a 60-day extension to the time to comment on the Department's Proposed Amendment to Prohibited Transaction Class Exemption 84-14 (the Proposed Amendment). The Proposed Amendment was issued on July 28, 2022 and comments are due on September 26, 2022. The Proposed Amendment is beyond technical corrections, and the plan sponsor and investment manager community requires additional time to comment to educate and understand how the many different entities will be impacted by the Proposed Amendment.

The Proposed Amendment would have significant costs to plans, participants and providers that the Department may not have fully considered. If the Proposed Amendment is adopted as currently proposed, virtually all ERISA plan and IRA investment managers relying on the QPAM Exemption would need to draft and send out amendments to their current agreements, which would require plans to have consultations with each manager, along with costs for consultant and legal review. Larger plans could have to interface with hundreds of managers of separate accounts and pooled funds.

The Proposed Amendment's expansion of disqualifications to not only include foreign crimes, but also deferred prosecution agreements and non-prosecution agreements, would take time to analyze and would require consultation with foreign criminal lawyers to understand the complexities. We would also need to discuss with plan sponsors the extreme repercussions of the expanded grounds for immediate disqualification of a QPAM. The one-year winding down period does not provide help to plan sponsors since a QPAM cannot enter into any new transactions during this period.

The Proposed Amendment also makes a significant change to section I(c) of PTE 84-14 that would have far-reaching and, we believe, unintended negative effects on plans' and IRAs' access to the markets. For example, it is not uncommon for third parties, such as broker-dealers, to bring investment strategies, new issues, and other securities or investment ideas to a plan fiduciary's attention. Because some broker-dealers might be concerned that such activities could run afoul of amended section I(c), which makes the QPAM Exemption unavailable for transactions with parties in interest who "initiate" a transaction, retirement investors could lose access to important market information that would be available to all other investors. Potential

unintended consequences like this need to be identified and quantified so that the Department can appropriately adjust the Proposed Amendment before it becomes final.

The Proposed Amendment significantly expands the Department's reach and overhauls the relationship between plan sponsors and their chosen advisors. Ultimately, financial institution, plan sponsor, and investment adviser groups will need to work together to fully understand the negative impacts of the Proposed Amendment and their costs, and 60 days simply is not enough time to coordinate these groups and do the work necessary to comment thoughtfully on the Proposed Amendment.¹ We urge you to extend the comment period by an additional 60 days.

Sincerely,

American Bankers Association

American Benefits Council

Bank Policy Institute

Investment Adviser Association

Investment Company Institute

National Coordinating Committee for Multiemployer Plans

Securities Industry Financial Markets Association

U.S. Chamber of Commerce

¹ The economic analysis in the Proposed Amendment significantly underestimates the number of asset managers affected and the number of plans each manager has. The preamble calculates that these new provisions will take each asset manager one hour to familiarize itself with the Proposed Amendment, which given the breadth of changes, is a significant underestimation. It also ignores the costs and realities plans will incur in understanding the new amendments to the QPAM Exemption, the need for amendments to the agreements, and the use of the exemption by each of their managers. For example, with respect to the proposed requirement to add a written management agreement, the Department states that the asset manager would likely be able to prepare a single standard form with identical language and then send it to each client. The Department estimates it will take one hour of in-house legal professional time to update all current agreements and two minutes of clerical time to prepare and mail a one-page addition. The reality is that each asset manager will need to update and negotiate each existing contract separately, and this drafting and negotiating will take hours of time from not just the asset manager, but also the plan sponsors. These are highly sophisticated contracts that plan sponsors will need to review and negotiate.