

April 24, 2023

Assistant Secretary Lisa M. Gomez  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

Dear Assistant Secretary Gomez:

I am writing to express my concerns regarding the re-opening and delay of the end of the comment period for the proposed amendment to the Qualified Professional Asset Manager (QPAM) Exemption.<sup>1</sup>

Under the *Employee Retirement Income Security Act* (ERISA), the QPAM status allows financial institutions to manage clients' 401(k)s and other retirement funds that it would otherwise be prohibited from due to self-dealing or conflicts of interest.<sup>2</sup> While financial institutions lose this privilege if they are found guilty of criminal misconduct, the Department of Labor (DOL) has repeatedly granted exemptions to this rule and allowed financial institutions with long records of criminal misconduct – such as Credit Suisse Group AG,<sup>3</sup> Goldman Sachs,<sup>4</sup> Deutsche Bank AG, Citigroup Inc., and JPMorgan Chase<sup>5</sup> – to continue to serve as QPAMs and manage workers' retirement savings.

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<sup>1</sup> Federal Register, "Reopening Comment Period for the Proposed Amendment to Prohibited Transaction Class Exemption 84-14 (the QPAM Exemption)," Employee Benefits Security Administration, March 23, 2023, <https://www.federalregister.gov/documents/2023/03/23/2023-05522/reopening-comment-period-for-the-proposed-amendment-to-prohibited-transaction-class-exemption-84-14>.

<sup>2</sup> Federal Register, "Amendment to Prohibited Transaction Exemption (PTE) 84-14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers," Employee Benefits Security Administration, July 6, 2010, [https://www.federalregister.gov/documents/2010/07/06/2010-16302/amendment-to-prohibited-transaction-exemption-pte-84-14-for-plan-asset-transactions-determined-by-ERISA-section-408\(a\);-Code-section-4975\(c\)\(2\)](https://www.federalregister.gov/documents/2010/07/06/2010-16302/amendment-to-prohibited-transaction-exemption-pte-84-14-for-plan-asset-transactions-determined-by-ERISA-section-408(a);-Code-section-4975(c)(2)).

<sup>3</sup> Federal Register, "Exemption for Certain Prohibited Transaction Restrictions Involving Credit Suisse Group AG (CSG or the Applicant), Located in Zurich, Switzerland," Employee Benefits Security Administration, April 19, 2022, <https://www.federalregister.gov/documents/2022/04/19/2022-08306/exemption-for-certain-prohibited-transaction-restrictions-involving-credit-suisse-group-ag-csg-or>.

<sup>4</sup> Federal Register, "Exemption From Certain Prohibited Transaction Restrictions Involving the Goldman Sachs Group, Inc. (Goldman Sachs or the Application) Located in New York, New York," Employee Benefits Security Administration, May 28, 2021, <https://www.federalregister.gov/documents/2021/05/28/2021-11366/exemption-from-certain-prohibited-transaction-restrictions-involving-the-goldman-sachs-group-inc>.

<sup>5</sup> Federal Register, "Exemptions From Certain Prohibited Transaction Restrictions," Employee Benefits Security Administration, December 22, 2016, <https://www.federalregister.gov/documents/2016/12/22/2016-30566/exemptions-from-certain-prohibited-transaction-restrictions>.

Your proposed amendment to the QPAM Exemption should address these loopholes that have allowed corporate wrongdoers to continue conducting business as usual despite their blatant criminal misdeeds. In a letter of support that Senator Smith and I sent to the Employee Benefits Security Administration (EBSA) in December 2022, we shared our support for strengthening the exemption process and encouraged you to finalize the proposed amendments to the QPAM rule.<sup>6</sup>

Since then, however, EBSA has proposed or granted QPAM Exemption waivers to several more asset managers. JPMorgan Chase<sup>7</sup> and Citigroup<sup>8</sup> received exemptions in January 2023 even after the U.S. Department of Justice charged both companies with rigging bids and offers in the foreign currency exchange market. Two other waivers have been proposed for TT International Asset Management<sup>9</sup> and Pacific Investment Management Company (PIMCO).<sup>10</sup>

The decision to first extend the initial comment period for the proposed amendments in September 2022 at the request of the American Bankers Association and the American Retirement Association<sup>11</sup> and then re-open an additional comment period last month at the request of the American Benefits Council and the Coalition of Collective Investment Trusts<sup>12</sup> raises additional concerns. The delay appears to be inconsistent with EBSA's proposed amendment that should hold big banks accountable for their actions. Instead, I am troubled that EBSA may be continuing to grant favors to the financial industry – which provided no adequate rationale for their requests – by extending the comment period to allow for the special consideration of corporate interests in the rule-making process.

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<sup>6</sup> Letter from Senators Warren and Smith to the U.S. Department of Labor, Employee Benefits Security Administration, December 8, 2022, <https://www.warren.senate.gov/download/20221208-letter-to-dol-re-proposed-amendments-to-qpam-exemption>.

<sup>7</sup> Federal Register, “Exemption From Certain Prohibited Transaction Restrictions Involving JPMorgan Chase Co.,” Employee Benefits Security Administration, January 10, 2023, <https://www.federalregister.gov/documents/2023/01/10/2023-00282/exemption-from-certain-prohibited-transaction-restrictions-involving-jpmorgan-chase-co>.

<sup>8</sup> Federal Register, “Exemption for Certain Prohibited Transaction Restrictions Involving Citigroup, Inc. (Citigroup or the Applicant), Located in New York, New York,” Employee Benefits Security Administration, January 23, 2023, <https://www.federalregister.gov/documents/2023/01/23/2023-01332/exemption-for-certain-prohibited-transaction-restrictions-involving-citigroup-inc-citigroup-or-the>.

<sup>9</sup> Federal Register, “Proposed Exemption for Certain Prohibited Transaction Restrictions: TT International Asset Management Ltd.,” Employee Benefits Security Administration, January 10, 2023, <https://www.federalregister.gov/documents/2023/01/10/2023-00341/proposed-exemption-for-certain-prohibited-transaction-restrictions-tt-international-asset-management>.

<sup>10</sup> Federal Register, “Proposed Exemption for Certain Prohibited Transaction Restrictions Pacific Investment Management Company LLC, Newport Beach, California,” Employee Benefits Security Administration, March 28, 2023, <https://www.federalregister.gov/documents/2023/03/28/2023-06346/proposed-exemption-for-certain-prohibited-transaction-restrictions-pacific-investment-management>.

<sup>11</sup> Federal Register, “Reopening Comment Period for the Proposed Amendment to Prohibited Transaction Class Exemption 84-14 (the QPAM Exemption),” Employee Benefits Security Administration, March 23, 2023, <https://www.federalregister.gov/documents/2023/03/23/2023-05522/reopening-comment-period-for-the-proposed-amendment-to-prohibited-transaction-class-exemption-84-14>; Letter from American Bankers Association et al. to the Employee Benefits Security Administration, August 19, 2022, <https://www.regulations.gov/comment/EBSA-2022-0008-0003>; Letter from American Retirement Association to Employee Benefits Security Administration, September 2, 2022, <https://www.regulations.gov/comment/EBSA-2022-0008-0004>.

<sup>12</sup> Letter from Employee Benefits Security Administration to American Benefits Council, March 24, 2023, <https://www.regulations.gov/document/EBSA-2022-0008-0203>.

Finalizing this amendment is an opportunity to send a clear message that powerful financial institutions should not be granted special favors and allowed to manage workers' retirement accounts if they engage in criminal actions. I urge you to act quickly to finalize the proposed amendment to the QPAM Exemption and put in place strong protections to prevent corporate recidivism.

Thank you for your attention to this important matter.

Sincerely,



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Elizabeth Warren  
United States Senator