



AMERICAN BENEFITS
COUNCIL

December 31, 2014

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Lyssa Hall
Director, Office of Exemption Determinations
Employee Benefits Security Administration
Room N-5700
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

RE: Prohibited Transaction Application D-11837

Dear Director Hall:

I write on behalf of the American Benefits Council (the "Council") to comment on a proposed prohibited transaction exemption currently pending for certain entities associated with Credit Suisse AG that serve as asset managers of ERISA-governed plan assets. Our comments do not relate to the merits of this proposed exemption, but rather express our views on the importance of the qualified professional asset manager ("QPAM") exemption and the process the Department undertakes for individual exemptions modeled after QPAM.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans. Our members and their service providers routinely rely on the QPAM exemption.

QPAM - and individual exemptions modeled on QPAM - are critical to employee benefit plans. ERISA prohibits a vast array of transactions between a plan and its parties-in-interest. To deal with inadvertent prohibited transactions that pose little risk of harm to plans and their participants and beneficiaries, the Department has

promulgated Prohibited Transaction Class Exemption 84-14, known as the “QPAM” exemption, which provides relief for transactions engaged in by professional asset managers meeting detailed conditions. Without the QPAM exemption, it would be difficult for plans to engage professional asset managers, and plans would be severely limited in the investments that could be held in their portfolios and the counterparties with whom they could trade.

One condition of the QPAM exemption is that neither the asset manager nor its affiliates has been convicted, in the preceding 10 years, of certain felonies. Since a class exemption does not require an individual entity to apply to the Department, this condition serves to protect plans. Occasionally a large multinational financial services company will be convicted of a crime in a part of its business completely unrelated to the plan asset management business. In that case, the Department routinely entertains individual exemption requests allowing the asset manager to continue to rely on the QPAM exemption provided no employee or officer involved in the criminal conduct manages ERISA plan assets and the entity agrees to a series of detailed additional conditions, including the development of new policies and procedures and an independent audit. Additional conditions are entirely appropriate and we support them. Granting an individual exemption, where ERISA’s standards are met, ensures plans are not unnecessarily limited in the service providers available to them, and avoids unnecessary and costly disruption, because large plans cannot quickly change asset managers and forced changes may require plans to realize losses. The due diligence required to switch asset managers often entails many months of work by plan fiduciaries.¹

The Department should focus on ERISA’s standards and its normal exemption process. As stated earlier, the Council has no comments on the merits of this particular exemption request. We write to support the Department in focusing solely on the standards that Congress set in ERISA for the granting of an exemption – that it is (a) administratively feasible, (b) in the interests of the plan and of its participants and beneficiaries, and (c) protective of the rights of participants and beneficiaries.² Other considerations, such as goals pursued by other government agencies against an asset manager’s affiliates, are not material to the Department’s determination.

The Department has detailed procedures for applications for exemptions.³ The process is transparent and ensures ERISA’s full consideration of ERISA’s statutory conditions. In this exemption, as well as any other, we strongly urge the Department to focus on the interests of plans and their participants (and no other interests) and ensure

¹ We applaud the Department for acting quickly to publish a temporary exemption to avoid unnecessary disruption for plans and their participants and beneficiaries.

² ERISA § 408(a).

³ 29 C.F.R. part 2570, Subpart B.

that any conditions *both* protect participants and beneficiaries *and* are administratively feasible.

* * *

Thank you for the opportunity to comment on the proposed exemption. If you have any questions or would like to discuss these comments further, please contact me at (202) 289-6700.

Sincerely,

A handwritten signature in black ink that reads "Lynn D. Dudley". The signature is written in a cursive, flowing style with a large initial "L".

Lynn D. Dudley
Senior Vice President,
Global Retirement and Compensation Policy