

June 9, 2011

DOL Opines on QPAM Issue in Stable Value Context

For the [second time in 2011](#), the U.S. Department of Labor (DOL) has issued an ERISA advisory opinion that considers the [PTE 84-14 qualified professional asset manager \(QPAM\) exemption](#), this time in the stable value context.

PTE 84-14 provides helpful and widely utilized relief for transactions between an “investment fund” (including a portfolio) managed by a QPAM and a party in interest to employee benefit plans invested in that fund. One of the conditions of PTE 84-14 is that the transaction is not with a party in interest that has, with respect to the assets involved in the transaction, the authority to appoint or terminate the QPAM as a manager for the plan or to negotiate on behalf of the plan the terms of the management agreement with the QPAM.

[Advisory Opinion 2011-07A](#) (April 25, 2011) considers the import of that requirement in the context of a conventional stable value structure, where (i) a fixed income manager intended to be a QPAM manages the fixed income fund in the structure and (ii) a stable value manager, which may or may not be the fixed income manager, negotiates the stable value “wrap” agreements with banks or insurance companies. In this structure, the plan engages, and negotiates management agreements with, the fixed income and stable value managers. At issue, however, was whether negotiation of the wrap agreement by the wrap provider and stable value manager, which includes investment parameters for the fixed income fund wrapped by the agreement, was effectively authority to negotiate the terms of the management agreement for the fixed income manager, with the result that PTE 84-14 would be unavailable for securities or other transactions between the fixed income fund and the wrap provider or stable value manager. DOL properly concluded, however, that those parties did not have such authority within the meaning of the exemption, because:

- The plan and the fixed income manager retain broad authority to negotiate the terms for the management of the fixed income fund, including the specific terms on which the assets will be managed within the investment parameters agreed with the wrap provider; and
- As to the wrap provider only, it is acting in the wrap agreement negotiations not on behalf of the plan, but on its own behalf to fix its exposure under the wrap agreement.

DOL’s conclusion, which by its terms applies if the fixed income and stable value managers are the same or different entities, assumes that the managers are independent of the wrap provider and, if different entities, also independent of each other. It also assumes that the investment parameters agreed with the wrap provider leave room for the investment management agreement to provide the fixed income manager sufficient discretion to make fiduciary decisions as contemplated by PTE 84-14.

In a footnote, DOL suggested that a different result would obtain in the context of an insurance company stable value separate account, to the extent that (i) the insurance company/wrap provider makes available, negotiates agreements with, and has the authority to terminate fixed income managers for its separate account, from which the plan chooses, and (ii) while the stable value manager and the plan may discuss and consent to investment guidelines, only the insurance company has the authority to establish

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definitive guidelines. In these circumstances, DOL argued that the insurance company/wrap provider negotiates the terms of the investment management agreement, with the result that PTE 84-14 is unavailable for transactions between the separate account and the insurance company. The exemption remains available for transactions with the stable value manager, if independent of the insurance company.



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