In the *Requirements Related to Surprise Billing; Part II* interim final rule, HHS estimated that a total of 511,748 providers associated with health care facilities, individual physician practitioners, and wholly physician-owned private practices would incur the burden and costs associated with generating a GFE for uninsured (or self-pay) individuals.[32]

- Are there factors that should be considered that might alter the number of providers and facilities that would incur the burden and cost of providing a GFE to plans, issuers, and carriers for covered individuals?

Some states have adopted laws requiring providers and facilities; or plans and issuers; or both providers and facilities and payers, to provide cost estimates to consumers before health care items or services are furnished. These laws vary with respect to the entities covered, the items or services to which requirements apply, how individualized the estimates must be, the format and timing of the estimates, the contents of the estimates, other accompanying requirements, and enforcement of these requirements. The Departments and OPM request feedback on the potential impacts of these policies.

- The Departments and OPM are interested in studies or other evidence related to the implementation and any effects of State laws that require entities to provide expected charges for health care items or services to consumers in advance of receiving these items or services. The Departments and OPM are particularly interested in publicly available studies or evidence.
- Is there other information that the Departments and OPM could find useful for quantifying the benefits of implementing requirements related to AEOB and GFE for covered individuals?

III. Collection of Information Requirements

Please note, this is a request for information (RFI) only. In accordance with the implementing regulations of the Paperwork Reduction Act of 1995 (PRA), specifically 5 CFR 1320.3(h)(4), this general solicitation is exempt from the PRA. Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration, are not generally considered information collections and therefore not subject to the PRA.

This RFI is issued solely for information and planning purposes; it does not constitute a Request for Proposal (RFP), applications, proposal abstracts, or quotations. This RFI does not commit the U.S. Government to contract for any supplies or services or make a grant award. Further, the Departments and OPM are not seeking proposals through this RFI and will not accept unsolicited proposals. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in response to this RFI; all costs associated with responding to this RFI will be solely at the interested party's expense. The Departments and OPM note that not responding to this RFI does not preclude participation in any future procurement, if conducted. It is the responsibility of the potential responders to monitor this RFI announcement for additional information pertaining to this request. In addition, the Departments and OPM will not respond to questions about the policy issues raised in this RFI.

The Departments and OPM will actively consider all input as the Departments and OPM develop future regulatory proposals or future subregulatory policy guidance. The Departments and OPM may or may not choose to contact individual responders. These communications would be for the sole purpose of clarifying statements in the responders' written responses. Contractor support personnel may be used to review responses to this RFI. Responses to this notice are not offers and cannot be accepted by the U.S. Government to form a binding contract or issue a grant. Information obtained as a result of this RFI may be used by the U.S. Government for program planning on a non-attribution basis. Responders should not include any information that might be considered proprietary or confidential. This RFI should not be construed as a commitment or authorization to incur cost for which reimbursement would be required or sought. All submissions become U.S. Government property and will not be returned. In addition, the Departments and OPM may publicly post the public comments received, or a summary of those public comments.

[32] 86 FR 56080 (October 7, 2021).

Signed at Washington DC.

Laurie Bodenheimer,

Associate Director, Healthcare and Insurance, Office of Personnel Management.

Signed at Washington DC.

Rachel D. Levy,

Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) Internal Revenue Service, Department of the Treasury.

Signed at Washington DC.

Carol A. Weiser,

Benefits Tax Counsel, Department of the Treasury.

Signed at Washington DC.

Ali Khawar,

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

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2022–19798 Filed 9–14–22; 4:15 pm]

BILLING CODE 6523–63–P; 4830–01–P; 4510–29–P; 4120–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

[Application No. D–12022]

Z–RIN 1210 ZA07

Initial Regulatory Flexibility Analysis for Proposed Amendment to Prohibited Transaction Class Exemption 84–14 (the QPAM Exemption)

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

ACTION: Notice of Initial Regulatory Flexibility Analysis for the proposed amendment to the QPAM Exemption.

SUMMARY: This document gives notice of the Department's Initial Regulatory Flexibility Analysis for a proposed amendment to prohibited transaction class exemption 84–14 (the QPAM Exemption).

DATES: Written comments must be submitted to the Department by October 11, 2022.

ADDRESSES: All written comments concerning the Initial Regulatory Flexibility Analysis should be sent to the Office of Exemption Determinations through the Federal eRulemaking Portal and identified by Application No. D–12022:

Federal eRulemaking Portal: https://www.regulations.gov at Docket ID

number: EBSA–2022–0008. Follow the instructions for submitting comments.

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

FOR FURTHER INFORMATION CONTACT: James Butikofer, telephone (202) 693–8434, Office of Research and Analysis, Employee Benefits Security Administration, U.S. Department of Labor (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Comment Instructions

All comments must be received by the end of the comment period. In light of the current circumstances surrounding the COVID–19 pandemic, persons are encouraged to submit all comments electronically and not to submit paper copies. The comments may be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW, Washington, DC 20210; however, the Public Disclosure Room may be closed for all or a portion of the comment period due to circumstances surrounding the COVID–19 pandemic. Comments will also be available online at *https://www.regulations.gov,* at Docket ID number: EBSA–2022–0008 and *https://www.dol.gov/ebsa,* at no charge.

Warning: All comments received will be included in the public record without change and will be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or unlisted phone number), or confidential business information that you do not want publicly disclosed. However, 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 it.

Reason for the Supplemental Initial Regulatory Flexibility Analysis

The Department published a proposed amendment to PTE 84–14 (the QPAM Exemption) on July 27, 2022 (the Proposed QPAM Amendment).[1] The Department originally provided a 60-day comment period in the Proposed QPAM Amendment, which was scheduled to expire on September 26, 2022. The Department then extended this initial comment period until October 11, 2022, in a **Federal Register** notice published on September 7, 2022.[2] In the same notice, the Department announced that it is scheduling a virtual public hearing regarding the Proposed Amendment on November 17, 2022 (and if necessary, November 18, 2022). In connection with the hearing, the Department will also provide a supplementary comment period that will end approximately 14 days after the hearing transcript is posted on EBSA's website.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA),[3] the Acting Assistant Secretary of the Employee Benefits Security Administration certified that the Proposed QPAM amendment would not have a significant economic impact on a substantial number of small entities. After consulting with the Small Business Administration's Office of Advocacy, however, the Department has decided to publish this Initial Regulatory Flexibility Analysis (IRFA) explaining its possible impact on small entities. The Department requests comments by October 11, 2022, the same deadline as the extended comment period for the Proposed QPAM amendment. Although the Department is aligning the deadlines for comments regarding the supplemental IRFA and the Proposed QPAM amendment, the Department will provide additional time for public input on all aspects of the Proposed QPAM Amendment (including the supplemental IRFA) when the comment period reopens on the hearing date.

Regulatory Flexibility Act (RFA)

The RFA imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and are likely to have a significant economic impact on a substantial number of small entities.[4] Unless an agency determines that a proposal is not expected to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an IRFA of the Proposed QPAM Amendment.

The Department emphasizes that the QPAM Exemption has always been premised on the QPAM being an entity of sufficient size to withstand undue influence from parties in interest. The Department clearly stated this position in the preamble to the initial proposal in 1982:

> The minimum capital and funds-under-management standards of the proposed exemption are intended to [ensure] that the eligible fiduciaries managing the accounts or funds (''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.[5]

When the exemption was granted in 1984, the Department declined to reduce or delete the minimum asset and equity thresholds as requested by some commenters.[6] Furthermore, when the Department raised the thresholds for investment advisers in 2005, it stated that the thresholds had ''not been revised since 1984 and may no longer provide significant protections for plans in the current financial marketplace.''[7]

Despite the importance of a QPAM being sufficiently large to withstand undue influence from parties in interest, in an abundance of caution, the Department is issuing this supplemental IRFA, which analyzes and seeks public comment on potential economic impacts of the Proposed QPAM Amendment on small entities.

Need for and Objectives of the Proposed QPAM Amendment

As noted in the preamble of the Proposed QPAM Amendment, substantial changes have occurred in the financial services industry since the Department granted the QPAM Exemption in 1984. These changes include industry consolidation caused by a variety of factors and an increasingly global reach for financial services institutions, both in their affiliations and in their investment strategies, including those for Plan assets.

An amendment to the QPAM Exemption is needed to address ambiguity as to whether foreign convictions are included in the scope of the ineligibility provision under Section I(g). QPAMs today often have corporate

[1] 87 FR 45204.

[2] 87 FR 54715.

[3] 5 U.S.C. 601 *et seq.* (1980).

[4] 5 U.S.C. 551 *et seq.* (1946).

[5] 47 FR 56945, 56947 (Dec. 21, 1982).

[6] *See* 49 FR 9494, 9502 (Mar. 13, 1984).

[7] *See* Proposed QPAM Amendment, 68 FR 52419, 52423 (Sept. 3, 2003).

or relationship ties to a broad range of entities, some of which are located internationally. Additionally, some global financial service institutions are headquartered or have parent entities that reside in foreign jurisdictions. These entities may have significant control and influence over the operation and management of all entities within a large financial institution's organizational structure, including those operating as QPAMs for some Plans. Additionally, the international ties of QPAMs come not just from their affiliations and parent entities, but also their investment strategies, including those involving Plan assets.

The Department is also concerned about corporate families and entities that engage in significant misconduct of a similar type and quality as the conduct that might lead to a Criminal Conviction,[8] but which ultimately does not result in a conviction. The amendment is needed to ensure that QPAMs are not able to avoid the conditions related to integrity and ineligibility under Section I(g) simply by entering into non-prosecution and deferred prosecution agreements with prosecutors to side-step the consequences that otherwise would result from a Criminal Conviction. Plans may suffer significant harm if they are exposed to serious misconduct committed by unscrupulous firms or individuals that ultimately results in a deferred or non-prosecution agreement rather than Criminal Conviction and consequent ineligibility under Section I(g). Likewise, intentionally or systematically violating the conditions of the exemption exposes Plans to significant potential harm at the hands of those with influence or control over their assets. In the Department's view, QPAMs and those in a position to influence or control a QPAM's policies that repeatedly engage in these types of serious misconduct do not display the requisite standards of integrity necessary to provide the protection intended for Plans under the exemption.

Through its administration of the individual exemption program, the Department also determined that certain aspects of the QPAM Exemption would benefit from a focus on mitigating potential costs and disruption to Plans when a QPAM becomes ineligible for the exemptive relief because of a conviction under Section I(g). Two major ways in which the amendment would reduce the harmful impact on Plans is by requiring penalty-free withdrawal and indemnification terms to be included in the QPAM's Written Management Agreement with its client Plans and including a one-year winding-down period to avoid unnecessary disruptions to Plans upon a Criminal Conviction or receipt of an Ineligibility Notice due to other Prohibited Misconduct.[9] The winding-down period would help bridge the gap between the QPAM Exemption and the Department's administration of its individual exemption program in connection with Section I(g) ineligibility.

The Proposed QPAM Amendment is also needed to update asset management and equity thresholds to current values in the definition of ''QPAM'' in Section VI(a). Some of the thresholds that establish the requisite independence upon which the QPAM Exemption is based have not been updated since 1984, and the thresholds for registered investment advisers have not been updated since 2005. The Proposed QPAM Amendment would standardize all the thresholds to current values using the Bureau of Labor Statistics Consumer Price Index.

Finally, the QPAM Exemption currently lacks a recordkeeping requirement which the Department generally includes in its administrative exemptions. The Proposed QPAM Amendment would add a recordkeeping requirement to ensure QPAMs would be able to demonstrate, and the Department would be able to verify, compliance with the exemption conditions.

Together, the Department believes these updates are necessary to ensure the QPAM Exemption remains in the interest of and protective of the rights of Plans, their participants and beneficiaries, and individual retirement account (IRA) owners as required by section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) and section 4975(c)(2) of the Internal Revenue Code (Code).

Affected Small Entities

Qualified Professional Asset Managers (QPAMs)

The following entities generally qualify or would qualify for the relief set out in the QPAM Exemption and Proposed QPAM Amendment:

(1) *Banks*—as defined in section 202(a)(2) of the Investment Advisers Act of 1940, with equity capital in excess of $1,000,000 (proposed increase to $2,720,000);

(2) *Savings and loan associations*—the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, with equity capital or net worth in excess of $1,000,000 (proposed increase to $2,720,000);

(3) *Insurance companies*—subject to supervision under state law, with net worth in excess of $1,000,000 (proposed increase to $2,720,000); and

(4) *Investment advisers*—registered under the Investment Advisers Act of 1940 with total client assets under management in excess of $85,000,000 (proposed increase to $135,870,00) and either (1) shareholders' or partners' equity in excess of $1,000,000 (proposed increase to $2,040,000) or (2) payment of liabilities guaranteed by an affiliate, another entity that could qualify as a QPAM, or a broker-dealer with net worth of more than $1,000,000 (proposed increase to $2,040,000).

The Proposed QPAM Amendment also provides that the Department would make subsequent annual inflation adjustments to these thresholds, rounded to the nearest $10,000, no later than January 31 of each year and announce the increased thresholds in a **Federal Register** notice.

Estimates of QPAMs

The Department estimates that there are 616 potential QPAMs by approximating the total number of service providers who in 2019 provided ''Investment Management'' and ''Named Fiduciary'' services simultaneously to at least one plan as reported on Schedule C of the 2019 Form 5500, and whose

[8] The Proposed QPAM Amendment defines ''Criminal Conviction'' to mean the person or entity: (1) is convicted 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 or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or a crime identified in ERISA section 411; or (2) is convicted by a foreign court of competent jurisdiction 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 (1), above. *See* 87 FR 45204, 45231–32.

[9] The Proposed QPAM Amendment defines ''Prohibited Misconduct'' to mean: (1) any conduct that forms the basis for a non-prosecution or deferred prosecution agreement that, if successfully prosecuted, would have constituted a crime described in Section VI(r); (2) any conduct that forms the basis for an agreement, however denominated by the laws of the relevant foreign government, that is substantially equivalent to a non-prosecution agreement or deferred prosecution agreement described in (1); (3) engaging in a systematic pattern or practice of violating the conditions of this exemption in connection with otherwise non-exempt prohibited transactions; (4) intentionally violating the conditions of this exemption in connection with otherwise non-exempt prohibited transactions; or (5) providing materially misleading information to the Department in connection with the conditions of the exemption. *See* 87 FR at 45232.

North American Industry Classification System (NAICS) codes start with the 2-digit 52, which corresponds to Finance and Insurance Institutions.[10] There are about 234,440 small firms that report a NAICS code of 52.[11] Because the SBA's small entity definitions are generally based upon revenues and not asset management or equity thresholds, the Department does not know how many QPAMs fit the SBA's small entity definitions for the finance and insurance sector nor how many of those would be affected by the Proposed QPAM Amendment. However, the Department acknowledges that it is possible that some small entities that meet the SBA's definitions could be significantly impacted by the Proposed QPAM Amendment.

The Department expects that small entities remaining eligible to rely upon the amended exemption as proposed should expect to be impacted the same as entities described in the Department's Regulatory Impact Analysis for the Proposed QPAM Amendment, which begins at 87 FR 45214. However, due to the proposed increases to asset management and equity thresholds in the definition of ''QPAM'' in Section VI(a) of the amendment, if finalized, some entities may not satisfy this definition. In that case, they would no longer be able to rely upon the QPAM Exemption. Those entities may fall within the SBA's small entity definitions. Additionally, to the extent plans that are small entities are more likely to hire a QPAM that is a small entity, the Proposed QPAM Amendment could also impact them. The Department requests comments regarding how likely this is to occur.

Plans With Assets in an Investment Fund Managed by a QPAM

The Proposed QPAM Amendment would affect Plans whose assets are held by an Investment Fund that is managed by a QPAM. The Department does not collect data on Plans that use QPAMs to manage their assets. Nevertheless, the Department estimates that on average, a single QPAM services 32 client Plans.[12] Therefore, the Department estimates that there are 19,712 client Plans (616 QPAMs * 32 client Plans per QPAM) in total. The Department also estimates there could be approximately 60.4 million participants in plans serviced by potential QPAMs, with most being in large plans.[13]

The Department estimates that three percent of client Plans are small.[14] The Department does not view this as a substantial number of small plans. For purposes of this IRFA, the Department considers a small entity to be an employee benefit plan with fewer than 100 participants.[15] The basis of this definition is found in ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans.[16] While some large employers may have small plans, in general small employers maintain small plans. Thus, EBSA believes that assessing the impact of the Proposed QPAM Amendment on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA)[17] pursuant to the Small Business Act.[18]

The Department requests comment on the number of plans that may need to find an alternative asset manager or investment fund(s) as a result of the proposed increased thresholds and other amendments.

Impacts of the Exemption

All QPAMs must acknowledge that they are fiduciaries within the meaning of Title I of ERISA and/or the Code with respect to each Plan that has retained the QPAM. In analyzing compliance costs associated with the Proposed QPAM Amendment, the Department considers the regulatory baseline that QPAMs already are required to comply with—primarily ERISA's fiduciary duty requirements (to the extent applicable), the other existing conditions in the QPAM Exemption, and the individual exemption process as well as related individual exemptions granted in connection with Section I(g) ineligibility. The Department does not expect the Proposed QPAM Amendment to increase, more than marginally, existing costs associated with QPAM ineligibility and individual exemption requests related to Criminal Convictions. The Department is uncertain, however, regarding the number of QPAMs that would become ineligible under the proposed expansion of the ineligibility provision related to participating in Prohibited Misconduct. The Department is also uncertain about the extent to which the proposed changes in asset management and equity thresholds would give rise to new costs because some QPAMs that meet the current thresholds no longer would be able to rely on the exemption if they do not meet the proposed increased thresholds.

The following analysis considers the impact on all QPAMs, except that the analysis of the cost of the winding-down provision is only considered for ineligible QPAMs. Although the Department has provided a cost analysis below, the heightened standards proposed in the Proposed QPAM Amendment may result in entities being more careful about ensuring that their compliance programs are sufficiently robust to prevent Prohibited Misconduct or Convictions from occurring. In this respect, the proposed exemption would provide clear guardrails that would make the costs associated with QPAMs becoming ineligible clearly avoidable.

[10] Using 2019 Form 5500 data, the Department counted in total 1390 service providers who provided services of ''Investment Management'' and ''Named Fiduciary,'' of which only 765 reported their business code. Out of these 765 providers, 339 reported their business code starting with the 2-digit NAICS code 52, yielding a ratio of 0.44 of potential QPAMs to other providers. Therefore, the Department estimates that there were 0.44 * 1390 = 616 potential QPAMs in 2019.

[11] Source: Small Business Administration calculations of the number of firms reporting a NAICS code of 52 from the 2017 Statistics of U.S. Businesses.

[12] Although the Department estimates there are 616 QPAMs, it can only observe and count the number of client Plans corresponding to 339 QPAMs. The Department counted 10,719 Plans served by these 339 observable QPAMs, yielding an average of 32 client Plans per QPAM in 2019. The Department acknowledges that these entities do not necessarily act as QPAMs to their client Plans, and, therefore, considers this average as an upper limit for the number of client Plans served by a QPAM.

[13] The Department estimated an average of 3,151 participants per plan among the 10,719 Plans served by the 339 observable potential QPAMs. Applying this average to all estimated 19,712 client plans leads to 60.4 million participants in affected plans (19,712 client Plans * 3,151 participants per client Plan).

[14] Using the 2019 Form 5500 the Department estimates that only three percent of the 10,719 Plans served by the 339 observable potential QPAMs are small plans, having less than 100 participants.

[15] The Department consulted with the Small Business Administration's Office of Advocacy before making this determination, as required by 5 U.S.C. 603(c) and 13 CFR 121.903(c). Memorandum received from the U.S. Small Business Administration, Office of Advocacy on July 10, 2020.

[16] *See* 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46, and 2520.104b–10. Such plans include unfunded or insured welfare plans covering fewer than 100 participants and satisfying certain other requirements.

[17] 13 CFR 121.201.

[18] 15 U.S.C. 631 *et seq.*

Reporting Reliance on the QPAM Exemption—Subsection I(g)(1)

The Department believes that the one-time requirement to report reliance on the QPAM Exemption via email to *QPAM@dol.gov* would result in a minor additional clerical cost. The information required under subsection I(g)(1) is limited to the legal name of the entity relying upon the exemption and any name the QPAM may be operating under.

This notification would occur only once for most QPAMs. Therefore, the Department expects it would take 15 minutes, on average, for each QPAM to prepare and send this electronic notification. This cost is estimated to be approximately $14 per entity.[19] The Department requests comments on this estimate.

Written Management Agreement—Subsection I(g)(2)

The Department believes that the cost associated with adding the required terms under subsection I(g)(2) to a QPAM's Written Management Agreement only would impose costs related to updating existing management agreements. QPAMs would need to send the update to each of their client Plans, but the QPAM likely would be able to prepare a single standard form with identical language and then send it to each client Plan. For each QPAM, the Department estimates it would take one hour of in-house legal professional time to update and supplement their existent standard management agreements, and two minutes of clerical time to prepare and mail a one-page addition to the agreement to each client Plan. Including mailing costs, the total estimated cost of this requirement amounts to approximately $220 per entity.[20]

Ineligibility Due to Foreign Convictions—Subsection I(g)(3)(A) and Subsection VI(r)(2)

The Department and QPAMs have treated foreign convictions as causing ineligibility under Section I(g) since at least 2000.[21] Therefore, the Department believes that the clarifying reference that includes foreign convictions within the scope of Section I(g) would not change the costs of the exemption as compared to the current costs.

Mandatory One-Year Winding-Down Period—Section I(j)

The Department estimated that eight QPAMs each year would be subject to the one-year winding-down period after a Criminal Conviction. The number of QPAMs affected in any given year is a function of the number of convictions covered by Section I(g) and the number of entities within a corporate family operating as QPAMs. Therefore, in some years, the number of affected QPAMs impacted by ineligibility due to a Criminal Conviction could be higher than eight, and in other years it could be lower. The Department's proposed expansion of the ineligibility provision to include Prohibited Misconduct that leads to an Ineligibility Notice likely would increase the number of QPAMs that become ineligible due to Section I(g). Although the Department does not have the data to determine the exact number of QPAMs that would become ineligible due to this proposed expansion, the Department has assumed the additional number of ineligible QPAMs to be equal to the eight QPAMs that experience ineligibility due to a conviction under current Section I(g), resulting in a total of 16 ineligible QPAMs. The Department requests comments on this assumption and data or other information that would allow the Department to more precisely estimate the number of QPAMs that would lose eligibility due to this proposed expansion.

Because the conditions of the winding-down provision borrow from the conditions included in the Department's existing individual Section I(g) exemptions, the Department does not believe there would be any added cost with respect to the proposed winding-down period for QPAMs that become ineligible due to a Criminal Conviction relative to the current baseline of obtaining an individual exemption covering this same time period. However, an additional eight QPAMs, on average, may become ineligible each year for participating in Prohibited Misconduct, implicating the winding-down period and the conditions related to proposed provisions that are required to be included in the Written Management Agreement. As a result, QPAMs would possibly have to bear the costs associated with indemnifying their client Plans for losses that would occur if they move to a new asset manager. The Department lacks sufficient data at this time to estimate these costs associated with the winding-down period and requests comments regarding these costs. The Department welcomes comments that would provide data to assist in calculating an estimate. The Department also lacks data to estimate the number of ineligible QPAMs that would be small entities, and requests comments regarding this number.

Notice to Plans—Subsection I(j)(1)

Within 30 days after the conviction date, the QPAM must provide notice to the Department at *QPAM@dol.gov* and each of its client Plans stating (i) its failure to satisfy subsection I(g)(3); and (ii) that it agrees, as required by subsection I(g)(2), not to restrict the ability of a client Plan to terminate or withdraw from its arrangement with the QPAM. QPAMs that violate Section I(g) under the current QPAM Exemption are required to provide this type of notice when they obtain an individual exemption, so no incremental burden is attributed to this requirement for QPAMs that become ineligible due to a Criminal Conviction. However, due to the expanded proposed scope of ineligibility, QPAMs that become ineligible after receiving an Ineligibility Notice due to participating in Prohibited Misconduct would incur the cost of sending notices to their client Plans for the first time. The Department estimates that total incremental cost related to ineligibility after receiving an

[19] The cost is based upon the expenditure of 0.25 hours for each QPAM: To calculate the cost, an hourly labor rate of $55.23 is used for a clerical worker. Therefore, the total cost amounts to: (0.25 hours * $55.23) = $14 (rounded). The Department estimates of labor costs by occupation reflect estimates of total compensation and overhead costs. Estimates for total compensation are based on mean hourly wages by occupation from the 2020 Occupational Employment Statistics and estimates of wages and salaries as a percentage of total compensation by occupation from the 2020 National Compensation Survey's Employee Cost for Employee Compensation. Estimates for overhead costs for services are imputed from the 2017 Service Annual Survey. To estimate overhead cost on an occupational basis, the Office of Research and Analysis allocates total industry overhead cost to unique occupations using a matrix of detailed occupational employment for each NAICS industry. All values are presented in 2020 dollars.

[20] This cost is based upon the expenditure of one hour of a legal professional for each QPAM using an hourly labor rate of $140.96. As specified in the PRA section, the Department estimates each QPAM serves 32 client Plans on average. The Department also expects each QPAM would have to append one page to their existing management agreements and that it would take each QPAM two minutes of clerical time to prepare and mail this one-page addition to each client Plan. This labor cost is then estimated as (32 client Plans * (2/60) hours * $55.23) = $58.90 for clerical time (rounded). The Department estimates that the costs of printing and mailing one page are $0.05 and $0.58, respectively. Therefore, adding one page to all management agreements amounts the total printing and mailing cost to 32 client per Plans * 1 page * ($0.05 + $0.58) = $ 20 (rounded). The estimated total cost of the provision is therefore $141 + $58.90 + $20 = $220 (rounded).

[21] *See, e.g.,* Prohibited Transaction Exemption (PTE) 2020–01, 85 FR 8020 (Feb. 12, 2020); PTE 2019–01, 84 FR 6163 (Feb. 26, 2019); PTE 2016–11, 81 FR 75150 (Oct. 28, 2016); PTE 2016–10, 81 FR 75147 (Oct. 28, 2016); PTE 2012–08, 77 FR 19344 (March 30, 2012); PTE 2004–13, 69 FR 54812 (Sept. 10, 2004); and PTE 96–62 (''EXPRO'') Final Authorization Numbers 2003–10E, 2001–02E, and 2000–30E, available at *https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/exemptions/expro-exemptions-under-pte-96-62.*

Ineligibility Notice is $135 per entity (including mailing expenses).[22]

The Department believes the cost of sending this notice to the Department would be negligible because the QPAM would have already prepared and sent the notice to client Plans and the notice to the Department is required to be sent electronically.

Warning and Opportunity To Be Heard in Connection With Prohibited Misconduct—Section I(i)

As described above, the Department estimates eight QPAMs could experience ineligibility due to participating in Prohibited Misconduct. Before QPAMs become ineligible, they would be provided with a written warning and an opportunity to be heard under Section I(i). As a result, QPAMs would possibly have to bear the costs associated with this process. The Department estimates that this process would occur twice each year, with each process covering four QPAMs that are part of the same corporate family. The Department estimates that preparing a response to the ineligibility notice and for a conference with the Department would require 10 in-house legal professional hours (two preparations * 10 hours) resulting in 20 total hours at an equivalent cost of approximately $352.[23] The Department estimates that preparing a response and preparing for the conference would also require two total outside legal professional hours for each QPAM resulting in a cost of $988.[24] Thus, the total labor cost of preparing a response and preparing for a conference amounts to $1,340 per entity. The Department requests comment on this cost estimate.

Requesting an Individual Exemption—Section I(k)

Proposed new Section I(k) provides that a QPAM that is ineligible or anticipates that it would become ineligible due to an actual or possible Criminal Conviction may apply for an individual exemption from the Department to continue to rely on the relief provided in the QPAM Exemption for a longer period than the one-year winding-down period. In such an event, the exemption provides that an applicant should review the Department's most recently granted individual exemptions involving Section I(g) ineligibility. If an applicant requests the Department to exclude any term or condition from its exemption that is included in a recently granted individual exemption, the applicant must include a detailed statement with its exemption application explaining the reason(s) why the proposed variation is necessary and in the interest and protective of affected Plans, their participants and beneficiaries, and IRA owners. Such applicants also should provide detailed information in their applications quantifying the specific cost in dollar amounts, if any, of any harm its client Plans would suffer if a QPAM could not rely on the exemption after the winding-down period, including the specific dollar amounts of investment losses resulting from foregone investment opportunities and any evidence supporting the proposition that investment opportunities would only be available to Plans on less advantageous terms.

Due to the proposed expansion of the scope of ineligibility to include participating in Prohibited Misconduct, the Department estimates that two additional applicants each year would apply for an individual exemption, each covering four ineligible QPAMs. The Department estimates that each of these two new applicants would spend 12 hours of in-house legal professional and 13 hours of in-house clerical time preparing the required documentation for the application that would be used by an outside legal professional. The Department estimates the per entity cost associated with document preparation for the application at approximately $2,410.[25] Further, the Department estimates that, on average, 25 hours of outside legal professional time would be spent preparing the documentation for the application per QPAM application, with a labor rate for outside legal professionals averaging $494.00 per hour resulting in a total of $12,350 in outside legal costs per application.[26] Thus, the total labor cost of each application preparation amounts to nearly $15,000.

For applications that reach the stage of publication of a proposed exemption in the **Federal Register**, a notice must be prepared and distributed to interested parties. If both applications are published annually, approximately 256 notices would be distributed (this corresponds to 32 client Plans per each of the eight QPAMs affected by two applications). Similarly, if the proposed exemptions are ultimately granted, each of these eight QPAMs would be required to send an objective description of the facts and circumstances upon which the misconduct is based to each client Plan. The Department estimates that the distribution for notices and objective descriptions would require 10 minutes for each of the 32 plans the QPAM serves, totaling approximately 10.67 hours at a cost of approximately $295.[27] In addition, material and mailing costs for these notices totals approximately $55 per QPAM.[28] Therefore, the Department estimates that the total costs per QPAM associated with notice distribution would be approximately $350.

The Department anticipates that few small entities would be impacted by the ineligibility provision based on its past applicants. Additionally, the Department expects that a small entity would be more likely to fall below the average of 32 client Plans. Therefore, the expected cost to small entity QPAMs would be lower than the estimated average cost.

Additional Requirement for QPAMs Requesting an Individual Exemption

If an applicant requests the Department to exclude any term or condition from its exemption that is included in a recently granted individual exemption, the applicant must include a detailed statement with its exemption application explaining the reason(s) why the proposed variation is necessary and in the interest and protective of affected Plans, their participants and beneficiaries, and IRA

[22] The burden is estimated assuming each QPAM services (on average) 32 plans. Notice preparation and distribution is estimated to require 0.5 hours of professional legal time and roughly 0.85 hours of clerical time. The Department also assumes that 80 percent of all notices would be delivered by regular mail and would consist of two pages. Therefore, the total per entity cost associated with this requirement is (0.5 hours legal professional labor rate of $140.96) + (0.85 hours * clerical labor rate of $55.23) + [80% mailed * (2 pages * $0.05 per page + $0.58 postage)] = $135 (rounded). Any discrepancies in the calculations are a result of rounding.

[23] This cost is based upon an hourly labor rate of $140.96 for an in-house legal professional. 2020 National Compensation Survey's Employee Cost for Employee Compensation.

[24] The outside legal professional labor rate is a composite weighted average of the Laffey Matrix for Wage Rates (*http://www.laffeymatrix.com/see.html,* Year: 6/01/21–5/31/22): ($381 * 0.4) + ($468 * 0.35) + ($676 * 0.15) + ($764 * 0.1) = $494.

[25] 12 in-house legal professional hours at $140.96 per hour yields $1,692 (rounded), and the 13 in-house clerical hours are estimated to cost $718 (rounded). This totals to $2,410 (rounded). Any discrepancies in the calculations are a result of rounding.

[26] *See supra,* note 24.

[27] The total cost is calculated as: [(10/60) hours * 32 interested parties * $55.23 hourly clerical rate] = $295 (rounded).

[28] The Department estimates that 80% (26) of these notices, would be delivered by regular mail. The Department further assumes that notices and the descriptions of facts and circumstances would be delivered separately, comprising 15 and 5 pages, respectively. Therefore, with a printing cost of $0.05 per page and a mailing cost of $0.58 per notice, the Department estimates the total mailing cost as (26 * (15 * $0.05) + $0.58) + (26 * (5 * $0.05) + $0.58) = $55 (rounded).

owners. In these applications, detailed information would be required quantifying the specific cost to Plans, in dollar amounts, of the harm its client Plans would suffer if a QPAM could not rely on the exemption after the winding-down period. This should include dollar amounts of investment losses resulting from foregone investment opportunities and any evidence supporting the proposition that investment opportunities would only be available to Plans on less advantageous terms.

The Department assumes the eight QPAMs that are estimated to become ineligible due to the receipt of a written Ineligibility Notice would incur incremental costs due to the cost quantification requirement described above and also the requirement to review the Department's most recently granted individual exemptions involving Section I(g) ineligibility. To satisfy the requirement to review the Department's most recently granted individual exemptions, the Department estimates that it would require three hours of outside legal professional time to review past individual exemptions and draft this addition to the individual exemption application. Therefore, the Department estimates the cost associated with the additional requirement totals $2,144 per application, or roughly $536 per affected QPAM.[29]

The eight QPAMs that would become ineligible due to a Criminal Conviction would only incur an incremental cost to ensure they include in their exemption applications the specific dollar amounts of investment losses resulting from foregone investment opportunities and any evidence supporting the proposition that investment opportunities would only be available to client Plans on less advantageous terms. For this requirement, the Department assumes it would require four hours of a financial professional's time to prepare such a report. Therefore, each of two applications covering the eight ineligible QPAMs due to a Criminal Conviction is estimated to cost $662, which amounts to $165 per affected QPAM.[30]

The impact could be less as the Department anticipates that few small entities would be impacted by the ineligibility provision based on its past applicants. Additionally, the Department expects that a small entity would be more likely to fall below the average of 32 client Plans.

Involvement in Investment Decisions by Parties in Interest—Section I(c)

The Department anticipates that the modifications to Section I(c) would not change the costs of the exemption as compared to the cost of the current QPAM Exemption because the types of transactions that were intended to be excluded by current Section I(c) are the same types of transactions intended to be excluded by modified Section I(c).

Asset Management and Equity Thresholds—Section VI(a)

As a result of the proposed adjustments to the asset management and equity thresholds to the QPAM definition in Section VI(a), the Department acknowledges some QPAMs may not meet the new threshold requirements, and, consequently, would no longer be able to rely on the QPAM Exemption. The Department expects QPAMs and Plans that utilize these QPAMs to incur costs due to this transition but lacks strong data to estimate the impact.[31] The Department has requested similar data in connection with individual applications for exemptions following convictions covered by Section I(g), but the data provided by applicants has been limited, as have been the costs identified by the applicants. The Department seeks comments and data on the number of QPAMs, including those that meet the SBA definitions of a small entity, who would potentially become unable to rely upon the exemption (along with the number of Plans and value of Plan assets) that would be impacted by the increase in asset management and equity thresholds.

Change in Revenue Due to Adjustments to the Asset Management and Equity Thresholds

If an asset manager is no longer eligible for relief under the QPAM Exemption (*i.e.,* because it no longer satisfies the asset management and equity thresholds), its client plans may choose to transfer assets and the related revenue away from the asset manager to its competitors. From the Plan's perspective, the reduction in assets entrusted to the original asset manager (and associated revenue reduction) are offset by the increase in assets managed by another asset manager or managers (and associated revenue increase). Even if the impact of the switch is minimal or neutral from the plan's perspective, it may lead to lost revenue for small QPAMs if plans move assets away from a small QPAM or lead to revenue gains if a small QPAM received some of these assets that are moved.[32]

The Department does not have sufficient data to quantify the likely size of such asset and revenue changes or the number of impacted small QPAMs. These revenue changes could have a significant impact on small QPAMs experiencing revenue gains or losses from assets that are moved. The Department also does not have sufficient data to estimate whether the assets being transferred away from small QPAMs will be transferred to large entities or to other small entities that are able to meet the proposed increases to asset management and equity thresholds. However, this proposed requirement would promote the protective nature of the exemption by ensuring a QPAM is of a sufficient size to resist undue influence from parties in interest (*i.e.,* maintain independence).

The Department is interested in receiving comments addressing whether a QPAM's client Plans would be likely to move all or some their assets to an alternative asset manager if the QPAM that manages their assets no longer meets the asset management and equity thresholds.

[29] At an hourly rate of $165.45 for financial professional time, the cost associated with the cost quantification requirement is estimated as: (4 hours * $165.45 financial professional rate) = $662 (rounded). For the cost associated with the review of past exemptions, a composite wage rate is used for the outside legal professional by employing a weighted average of the legal fees reported in the Laffey Matrix for Wage Rates (*http://www.laffeymatrix.com/see.html,* Year: 6/01/21- 5/31/22): ($381 * 0.4) + ($468 * 0.35) + ($676 * 0.15) + ($764 * 0.1) = $494. The total cost associated with reviewing past exemptions is estimated as (3 hours * $494 outside legal professional rate) = $1,482 (rounded). Therefore, the total cost associated with the additional requirement for QPAMs ineligible due to receiving a written Ineligibility Notice is ($662 + $1,482) = $2,144 (rounded).

[30] At an hourly rate of $165.45 for financial professional time, the cost per application is estimated as: (4 hours * $165.45 financial professional rate) = $662 (rounded). Assuming each application covers 4 QPAMs yields 165 ($662/4 = $165).

[31] Some QPAMs have suggested in the past that there could be costs associated with unwinding transactions that relied on the QPAM Exemption and reinvesting assets in other ways. The loss of QPAM status could also require an asset manager to keep lists of parties in interest to its client Plans to ensure the asset manager does not engage in prohibited transactions. However, even without the QPAM Exemption, a wide variety of investments are available that do not involve non-exempt prohibited transactions.

[32] Although a QPAM's client Plans could be expected to move some or all of its assets to another asset manager if the QPAM that manages their assets is convicted of an enumerated crime, this discussion does not address these transfers. The Department has long viewed both domestic and foreign convictions as causing ineligibility under the existing exemption. Consequently, the regulatory baseline already includes the impact of such convictions.

Recordkeeping—Section VI(t)

The Proposed QPAM Amendment would also add a new recordkeeping provision that would apply to all QPAMs. Due to the fiduciary status of QPAMs and the existing regulatory environment, the Department assumes that QPAMs already maintain such records as part of their regular business practices. In addition, the recordkeeping requirements correspond to the six-year period in ERISA sections 107 and 413. Therefore, the Department expects that the recordkeeping requirement would impose a negligible burden. The Department welcomes comments regarding the burden associated with the recordkeeping requirement.

If a QPAM refuses to disclose information to any of the parties listed in Section VI(t), on the basis that information is exempt from disclosure, the QPAM must provide a written notice advising the requestor of the reason for the refusal and that the Department may request such information. The Department does not have data on how often such a refusal is likely to occur; however, the Department believes such instances would be rare. As a result, the Department believes this requirement would impose negligible cost. The Department requests comments about whether this may happen more frequently and the possible costs.

Rule Familiarization Costs

The Department estimates that it would take 60 minutes, on average, for each QPAM to become familiar with the Proposed QPAM Amendment. The familiarization cost is estimated to be approximately $494 per QPAM.[33] The Department seeks comment on this estimate.

Summary of Quantified Costs

The total, per entity, quantified annual costs associated with the Proposed QPAM Amendment would be $728 in the first year and $220 in subsequent years for plans in compliance with the exemption. Table 1 summarizes the per entity costs for each requirement and the estimated annual costs associated with the amendment for QPAMs in compliance with the exemption, QPAMs with prohibited misconduct, and QPAMs with convictions.

TABLE 1—INCREMENTAL COSTS ASSOCIATED WITH PROPOSED QPAM AMENDMENT, PER ENTITY

Requirement	Cost for QPAMs in compliance with exemption	Cost for QPAMs with prohibited misconduct (estimated 8 per year)	Cost for QPAMS with a conviction (estimated 8 per year)
Reporting Reliance on the QPAM Exemption	$14	$14	$14
Written Management Agreement	220	220	220
Notice to Plans		135	
Written Warning and Opportunity to be Heard		1,340	
Requesting an Individual Exemption Costs:			
Preparation Labor Cost			
Notices Distribution		350	
Additional Requirement-Criminal Conviction QPAMs			165
Additional Requirement-Prohibited Misconduct QPAMs		536	
Rule Familiarization Costs	494	494	494
First Year Total Estimated Annual Cost	728	3,089	893
Subsequent Years Total Estimated Annual Cost [1]	0	2,361	165

Notes: Only quantifiable costs are displayed.
Additionally, two individual exemption applications associated with ineligible QPAMs (caused by either prohibited misconduct or a conviction) are estimated each year at an estimated cost of approximately $15,000 per entity.
[1] Excludes rule familiarization and the initial reporting reliance costs.

Alternatives

In order to make the statutory findings for issuing exemptions dictated by ERISA section 408(a) and Code section 4975(c)(2), the Department must find that an exemption is in the interest of and protective of the rights of plans, their participants and beneficiaries, and IRA owners. Therefore, the Department provides alternatives, as discussed below, that were considered in connection with the statutorily mandated exemption requirements.

Phase-In and Incremental Increases to Asset Management and Equity Thresholds Over Longer Period

The Department considered a longer phase-in period and incremental increases for the proposed updates to the asset management and equity thresholds. This alternative could reduce the likelihood that a small entity QPAM would no longer be able to satisfy the definition of QPAM and lose the corresponding ability to rely upon the exemption.[34]

The Department determined that a significant lag in updating the thresholds to current CPI-adjusted values had the potential to deprive Plans of the important protective nature of these aspects of the QPAM definition. The Department requests comments on alternative effective dates for the increases and/or appropriately protective incremental increases and time periods for such increases.

[33] The cost is based upon the expenditure of 1.0 hours for each QPAM to become familiar with the Proposed QPAM Amendment. To calculate the cost a composite wage rate is used by employing a weighted average of the legal fees reported in the Laffey Matrix for Wage Rates. (*http://www.laffeymatrix.com/see.html,* Year: 6/01/21–5/31/22): ($381 * 0.4) + ($468 * 0.35) + ($676 * 0.15) + ($764 * 0.1) = $494. This amounts to: (1 hour * $494) = $494. Note that QPAMs likely rely on outside specialized legal counsel to help keep them in compliance with the QPAM Exemption. The specialized outside legal counsel likely would review the amendment and present updates to their clients, which means that the costs would be spread out over multiple clients.

[34] For instance, an incremental increase over a longer period might allow a small entity to increase the size of its business in tandem with the increases to the asset management and equity thresholds.

Amend the QPAM Exemption To Remove Asset Management and Equity Thresholds

As an alternative to updating the asset management and equity thresholds, the Department revisited whether such thresholds could be removed entirely from the exemption. Doing so could have avoided any cost impact or revenue loss to small entities associated with losing eligibility to rely on the QPAM exemption due to the increased thresholds.

The Department determined that this approach would be inconsistent with one of the core concepts upon which the QPAM Exemption was based (*i.e.,* independence of the QPAM). As the Department noted in the preamble of the Proposed QPAM Amendment, the QPAM Exemption was originally granted, in part, on the premise that *large* financial institutions would be able to withstand undue influence from parties in interest.[35] Some of the thresholds that establish the requisite independence upon which the QPAM Exemption is based have not been updated since 1984, and the thresholds for registered investment advisers have not been updated since 2005.[36]

In the absence of an appropriate alternative ensuring that a QPAM would remain an independent decision-maker, free from influence of other insiders to the Plan and Plan sponsor, the Department is unable to justify the removal of the thresholds. The Department requests comments on alternatives that could minimize the potential impact of the Proposed QPAM Amendment on small entities, especially with respect to the increased asset management and equity thresholds.

Duplicate, Overlapping, or Relevant Federal Rules

The Department has attempted to avoid duplication of requirements. The required policies and procedures and exemption audit are unique to the circumstances of the particular transactions covered by the exemption and do not replicate any other requirements by state or Federal regulations.[37] The exemption permits respondents to satisfy the requirements for written guidelines between the QPAM and a property manager with documents that are already in existence due to ordinary and customary business practices, provided such documents contain the required disclosures.[38]

Signed at Washington, DC, this 13th day of September, 2022.

Ali Khawar,

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

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[35] *See* the Proposed QPAM Amendment, 87 FR 45213 (emphasis added).

[36] *Id.* at 45215.

[37] *See* Section V of the current QPAM Exemption. The requirements of Section V were not discussed in this IRFA because the Proposed QPAM Amendment would not change the existing requirements of Section V.

[38] *See* Section I(c) of the current QPAM Exemption and Proposed QPAM Amendment. The amendment would not modify this aspect of Section I(c).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0325; FRL–10118–03–R3]

Air Plan Approval; Maryland; Clean Data Determination and Approval of Select Attainment Plan Elements for the Anne Arundel County and Baltimore County, Maryland Sulfur Dioxide Nonattainment Area; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On August 19, 2022, the U.S. Environmental Protection Agency (EPA) published a proposed rule determining that the Anne Arundel County and Baltimore County, Maryland sulfur dioxide (SO_2) nonattainment area attained the 2010 primary SO_2 national ambient air quality standard (2010 SO_2 NAAQS) under EPA's Clean Data Policy using a clean data determination (CDD). EPA simultaneously proposed to approve certain elements of the attainment plan contained in Maryland's state implementation plan (SIP) revision for the Anne Arundel County and Baltimore County SO_2 nonattainment area, submitted to EPA on January 31, 2020. Additionally, EPA proposed to approve as SIP strengthening measures certain emission limit requirements on large SO_2 emission sources that were submitted as part of Maryland's attainment plan for the nonattainment area. EPA inadvertently failed to upload the supporting and related materials in the docket simultaneously with the publication of the notice of proposed rulemaking (NPRM) on August 19, 2022 (87 FR 51006). The supporting and related materials were added to the docket on August 29, 2022. To ensure that the public has adequate time and information to submit comments, EPA is extending the comment period for ten days to September 29, 2022. This action is being taken under the Clean Air Act (CAA).

DATES: The public comment period for the proposal published in the **Federal Register** on August 19, 2022 (87 FR 51006) is extended from September 19, 2022 to September 29, 2022. Written comments must be received on or before September 29, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2020–0325 at *www.regulations.gov,* or via email to *gordon.mike@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the For Further Information Contact section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Brian Rehn, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2176. Mr. Rehn can also be reached via electronic mail at *rehn.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

On August 19, 2022, the EPA published a proposed rule taking several actions (87 FR 51006). First, the EPA proposed under its Clean Data Policy to determine that the Anne Arundel County and Baltimore County, Maryland SO_2 nonattainment area has