Much of the work is to be completed within the first 15 years. Taken together, these control measures are designed to prevent sewer overflows, prevent bypasses around Elyria's wastewater treatment plant, and mitigate harm from any bypasses that may occur. Under the Decree, Elyria would pay a $100,000 civil penalty to the United States and pay $100,000 into Ohio's Surface Water Improvement Fund.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of Ohio* v. *The City of Elyria, Ohio,* D.J. Ref. No. 90–5–1–1–2155/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $24.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Patricia Mckenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–24898 Filed 11–15–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–12067]

Proposed Exemption for Certain Prohibited Transaction Restrictions Involving Citigroup, Inc. (Citigroup or the Applicant); Located in New York, New York

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed exemption extending the exemptive relief provided by PTE 2017–05 for an additional four (4) years. If this proposed exemption is granted, certain entities with specified relationships to Citigroup (hereinafter, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs, as defined in Sections I(f) and I(g), respectively) would not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the Conviction (defined in Section I(a)), during the Exemption Period (as defined in Section I(d)).

DATES: If granted, this proposed exemption will be in effect for four (4) years from January 10, 2023, through January 9, 2027. Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by January 3, 2023.

ADDRESSES: All written comments and requests for a hearing should be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D–12067 via email to *eOED@dol.gov* or online through *https://www.regulations.gov.* Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Anna Mpras Vaughan of the Department at (202) 693–8565. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Comments

Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

Warning: All comments received will be included in the public record without change and may 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 in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an 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 in the body of your comment. If you send an email directly to EBSA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

The Department is considering granting this proposed four-year exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code), and in accordance with the procedures set forth in the Department's regulations.[1]

Department's Comment: The proposed four-year exemption would provide relief from certain of the restrictions set forth in ERISA Sections 406 and 407. No relief from a violation of any other law would be provided by this exemption, including any criminal conviction described herein.

The Department cautions that the relief in this proposed four-year exemption would terminate immediately if, among other things, an entity within the Citigroup corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the effective period of the exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to propose such an exemption. The terms of this proposed four-year exemption have been designed to permit plans to terminate their relationships with the Citigroup Affiliated QPAMs in an orderly and cost-effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with them.

Summary of Facts and Representations [2]

Background

1. Citigroup is a global diversified financial services holding company headquartered in New York, New York. As of December 31, 2020, Citigroup's investment advisory programs within the United States (the Advisory Business) had over 56,700 customer advisory accounts, with over $113 billion in assets under management, including over 12,700 accounts for ERISA-covered pension plans (ERISA Plans) and individual retirement accounts (IRAs) (collectively, Retirement Accounts), with approximately $4.6 billion in assets under management.[3]

2. As described in more detail below, Citigroup affiliates that manage plan and IRA assets rely on the exemptive relief described in class exemption PTE 84–14 (the Citigroup Affiliated QPAMs).[4]

ERISA and Code Prohibited Transactions and PTE 84–14

3. The rules set forth in ERISA Section 406 and Code section 4975(c)(1) proscribe certain ''prohibited transactions'' between plans and related parties with respect to those plans. Under ERISA, such parties are known as ''parties in interest.'' ERISA Section 3(14) defines the term parties in interest with respect to a plan to include, among others, (i) the plan fiduciary, (ii) a sponsoring employer of the plan, (iii) a union whose members are covered by the plan, service providers with respect to the plan, and (iv) certain of their affiliates.[5] The prohibited transaction provisions under ERISA Section 406(a) and Code Section 4975(c)(1) prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), as well as the use of plan assets by or for the benefit of a party in interest or a transfer of plan assets to a party in interest.[6]

4. ERISA Section 408(a) and Code section 4975(c)(2) grant the Department with the authority to issue exemptions for such prohibited transactions if the Department finds that an exemption is (i) administratively feasible, (ii) in the interests of the plan and of its participants and beneficiaries, and (iii) protective of the rights of participants and beneficiaries. The Department has codified its procedures for filing and granting such exemptions in 29 CFR part 2570, subpart B.[7]

5. PTE 84–14 exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) in which a plan has an interest if the fund's investment manager satisfies the definition of ''qualified professional asset manager'' (QPAM) and additional exemption conditions. PTE 84–14 was developed and granted based on the essential premise that broad relief from the prohibited transaction provisions could be provided for all types of transactions in which a plan engages with parties in interest only if the commitments and the investments of plan assets, and the negotiations leading thereto, are the sole responsibility of an independent, discretionary, manager.[8]

6. Section I(g) of PTE 84–14 prevents an entity that may otherwise meet requirements of the QPAM definition from utilizing the exemptive relief provided by PTE 84–14 for itself and its client plans if that entity, an ''affiliate'' thereof, or any direct or indirect owner of a five percent or more interest in the QPAM has been either convicted or released from imprisonment within 10 years immediately preceding the transaction, whichever is later, as a result of criminal activity described in that section. The Department included Section I(g) in PTE 84–14, in part, based on its expectation that QPAMs will maintain a high standard of integrity to justify the broad relief the exemption provides. This expectation extends not only to the QPAM itself but also to parties that may be positioned to influence the QPAM's policies.

[1] 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). For purposes of this proposed four-year exemption, references to section 406 of Title I of ERISA, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975.

[2] The Summary of Facts and Representations is based on the representations the Applicant provided in its exemption application and does not reflect factual findings or opinions of the Department, unless indicated otherwise. The Department notes that availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in Application D–12067 are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a fact or representation described in the application, the exemption will cease to apply as of the date of such change.

[3] Citigroup's advisory programs within the United States are offered primarily by Citi Global Wealth Investments (CGWI). CGWI is comprised of various businesses formerly within Citi Private Bank (CPB) and Citigroup's Consumer Wealth businesses, acting through Citigroup Global Markets Inc. (CGMI) or through Citibank, N.A. (Citibank) and Citi Private Advisory, LLC (CPA).

[4] Certain entities that are owed 5% or more by Citigroup but are not ''controlled by, or under common control with'' Citigroup may also manage plan assets and rely on the QPAM Exemption. These entities are not ''affiliates'' of Citigroup, as defined under Part VI(d) of PTE 84–14. They are referred to as ''Citigroup Related QPAMs''.

[5] Under the Code, such parties, or similar parties, are referred to as ''disqualified persons.''

[6] The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA Section 406(b). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries.

[7] (76 FR 66637, 66644, October 27, 2011).

[8] See 75 FR 38837, 38839 (July 6, 2010).

2017 Conviction of Citigroup and PTE 84–14 Ineligibility

7. The U.S. Department of Justice (DOJ) investigated certain conduct and practices of Citigroup and other financial services firms in the foreign exchange (FX) spot market. As a result of the DOJ's investigation, Citicorp, a Delaware corporation that is a financial services holding company and the direct parent company of Citibank, entered into a plea agreement with the DOJ (the Plea Agreement) pursuant to which Citicorp pleaded guilty to one count of an antitrust violation of the Sherman Antitrust Act (15 U.S.C. 1). The plea agreement was approved by the U.S. District Court for the District of Connecticut (the District Court) on January 10, 2017 (Case Number 3:15–cr–78–SRU).

8. As set forth in the Plea Agreement, from at least December 2007 until at least January 2013, Citicorp, through one London-based Euro/U.S. dollar (EUR/USD) trader employed by Citibank and other traders at unrelated financial services firms acting as dealers in the FX spot market, entered into and engaged in a conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere (the Criminal Misconduct). The Criminal Misconduct included almost daily conversations, some of which were in code, in an exclusive electronic chat room used by certain EUR/USD traders, including the EUR/USD trader employed by Citibank. The Criminal Misconduct forms the basis for the DOJ's antitrust charge that Citicorp violated 15 U.S.C. 1.

9. Under the terms of the Plea Agreement, the DOJ and Citicorp agreed that the District Court should impose a sentence requiring Citicorp to pay a criminal fine of $925 million. The Plea Agreement also provided for a three-year term of probation that required, among other things, Citigroup's continued implementation of a compliance program designed to prevent and detect the Criminal Misconduct throughout its operations and the strengthening of its compliance program and internal controls as required by other regulatory or enforcement agencies that have addressed the Criminal Misconduct. Such agencies include:

- the U.S. Commodity Futures Trading Commission, pursuant to its settlement with Citibank on November 11, 2014, that required Citibank to implement remedial measures to strengthen the control framework governing Citigroup's FX trading business;
- the U.S. Office of the Comptroller of the Currency pursuant to its settlement with Citibank on November 11, 2014, that required Citibank to impose remedial measures to improve the control framework governing Citigroup's wholesale trading and benchmark activities;
- the U.K. Financial Conduct Authority, pursuant to its settlement with Citibank on November 11, 2014; and
- the U.S. Board of Governors of the Federal Reserve System, pursuant to its settlement with Citigroup that was entered into concurrently with the DOJ resolution and required Citibank to implement remedial measures to improve controls for its FX trading and activities involving commodities and interest rate products.

The Applicant represents that Citicorp fulfilled all of these obligations during the three-year term of probation, and that neither the DOJ nor any of the regulators described above notified the Applicant to the contrary.

As a result of the Conviction, the Citigroup Affiliated QPAMS and Citigroup Related QPAMs (throughout this proposal and only when applicable, these entities may collectively be referred to as the ''Citigroup QPAMs'') would be ineligible to rely on the relief provided in PTE 84–14 as of the January 10, 2017 sentencing date without an administrative individual exemption issued by the Department that would allow it to continue relying on such relief. The Citigroup Affiliated QPAMs applied for and received the administrative individual exemptions described below.

Prior and Existing Exemptions

10. Following the Conviction, the Citigroup Affiliated QPAMs submitted an exemption application to the Department that would allow their continued reliance on the relief provided in PTE 84–14 following the Conviction. The Citigroup Affiliated QPAMs supported their application by representing to the Department that Covered Plans [9] could incur significant costs and other harm if the Citigroup Affiliated QPAMs became ineligible to rely on the relief provided in PTE 84–14 as of the date of the Conviction.[10] The Applicant asserted that approximately 20,000 of Citigroup's existing Covered Plan clients could be compelled to terminate their advisory relationship with Citigroup if the Department denies the individual exemption request and would incur expenses related to: (a) consultant fees and other due diligence expenses for identifying new managers; (b) transaction costs associated with a change in investment manager, including the sale and purchase of portfolio investments to accommodate the investment policies and strategy of the new manager, and the cost of entering into new custodial arrangements; and (c) lost investment opportunities as a result of the change in investment managers.[11]

The Department granted the Applicants an exemption that would allow the Citigroup QPAMs to continue relying on the relief provided in PTE 84–14 for 12 months on December 22, 2016,[12] and for five years on December 29, 2017.[13] This five-year exemption expires on January 9, 2023.

11. PTE 2017–05 contains conditions that subject the Citigroup Affiliated QPAMs to biennial audits with a one-year look-back period and annual certifications that must be submitted to the Department and made available to the public. Under PTE 2017–05, a qualified, independent auditor, currently Fiduciary Counselors, Inc. (FCI), is responsible for: (a) determining whether each Citigroup Affiliated QPAM has developed, implemented, maintained and followed written policies and procedures in accordance with the exemption conditions and developed and implemented the training program in accordance with the exemption conditions; (b) testing whether each of the Citigroup Affiliated QPAMs is compliant with these policies and training; and (c) issuing a written audit report [14] summarizing its findings

[9] The term ''Covered Plan'' means a plan subject to Part 4 of Title 1 of ERISA (ERISA-covered plan) or a plan subject to Section 4975 of the Code (IRA) with respect to which a Citigroup Affiliated QPAM relies on PTE 84–14, or with respect to which a Citigroup Affiliated QPAM (or any Citigroup affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14).

[10] A description of the potential costs and harm to Covered Plans is provided below.

[11] In PTE 2017–05, the Department noted that, if a five-year exemption were granted, compliance with the condition in Section I(j) of the exemption would require the Citigroup Affiliated QPAMs to hold their plan customers harmless for any actual losses attributable to, among other things, any prohibited transactions or violations of the duty of prudence and loyalty.

[12] PTE 2016–14, 81 FR 94034.

[13] PTE 2017–05, 82 FR 61864.

[14] The audit reports required under PTE 2017–05 (the Reports) and this proposed exemption, if granted, comprise a part of the record supporting PTE 2017–05 and this proposed exemption. Therefore, copies of the Reports can be requested

and recommendations with respect to each Citigroup Affiliated QPAM.[15]

Findings of the Auditor—the First Audit Period

12. On January 6, 2020, FCI issued a written Audit Report (the First Audit Report) covering the twelve-month period from July 10, 2018, through July 9, 2019 (the First Audit Period). On January 24, 2020, Citigroup provided the Department with a copy of the certifications related to the Audit Report.[16]

13. *Policies.* FCI reported that by July 9, 2018, the Citigroup Affiliated QPAMs developed, implemented, maintained, and followed written policies and procedures (Policies) reasonably designed to ensure the following:

Section I(h)(l)(i). Asset management decisions of the Citigroup Affiliated QPAMs are conducted independently of the corporate management and business activities of Citigroup.

To make this finding FCI, among other things, reviewed minutes of investment committee meetings, Information Barriers Policies and Procedures, and held discussions with employees of the Citigroup Affiliated QPAMs.[17] FCI states that there were 112 instances in which a Citi Private Bank (CPB) employee and six instances in which a Global Consumer Bank (GCB) employee ''wall-crossed.[18]'' FCI notes that in these instances, established notification procedures were followed that require employees to alert Citigroup's compliance teams when they come into contact with material nonpublic information, indicating that the Information Barriers Policies and Procedures were complied with. FCI states that employees of the Citigroup Affiliated QPAMs were involved in three of these 118 incidents, which all were resolved in accordance with established procedures.

Section I(h)(l)(ii). The Citigroup Affiliated QPAMs fully complied with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, and did not knowingly participate in any violation of these duties with respect to Covered Plans.

In making this finding FCI, among other things, reviewed several trade management systems used to support the Citigroup Affiliated QPAMs investment compliance and trading process. In its review of trade management systems, FCI reviewed the restrictions contained in those systems to avoid prohibited transactions, oversight procedures, complaint logs, trade error logs, overdraft reports and relevant policies and procedures. FCI also reviewed CPB and GCB records of employee disciplinary actions in order to determine whether employees had committed violations of Title I of ERISA with respect to Covered Plans. In this regard, FCI reviewed approximately 82 disciplinary actions related to personal trading/trade issues, encryption issues, use of personal email address in communicating with a client, Mystery Shopper non-disclosures, investment concentration, failure to escalate and altered documentation. These violations resulted in a range of disciplinary actions including letters of education, letters of reprimand, and final written warnings.

FCI represented that its review of the foregoing information enabled it to determine that the mechanisms Citigroup has in place, including relevant policies, procedures and training, were designed to ensure that the Citigroup Affiliated QPAMs complied with ERISA and the Code's prohibited transaction provisions.

Section I(h)(1)(iii). The Citigroup Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans.

FCI reviewed records of client complaint escalations (including completed complaint logs, sample written/email and oral complaints, and trade error logs and resolution reports). Based on its review, FCI determined that the Citigroup Affiliated QPAMs complied with the requirements of Section I(h)(1)(iii).

Section I(h)(1)(iv). Any filings or statements made by the Citigroup Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete to the best of such QPAM's knowledge at the time.

FCI planned to review excise tax filings and associated incident reports. However, FCI notes that no prohibited transaction excise tax filings were submitted to the IRS during the First Audit Period. FCI states that it reviewed the Form ADVs filed by the Citigroup Affiliated QPAMs, which confirmed the Citigroup Affiliated QPAMs discretionary assets under management and confirmed that the Citigroup Affiliated QPAMs were registered investment advisers.

The Department notes that ''*filings or statements made by the Citigroup Affiliated QPAM to regulators . . . on behalf of or in relation to Covered Plans,*'' should be interpreted broadly. In this regard, the Department's view is that relevant filings or statements under this condition may include, among other things, filings made by the Citigroup Affiliated QPAMs for pooled funds on behalf of Covered Plans such as Forms 5500, statements made by a Citigroup Affiliated QPAM in response to regulatory inquiries related to proprietary vehicles in which Covered Plans invest, such as target-date funds managed by such QPAM, statements made in response to regulatory inquiries regarding abandoned plans or missing participants, and similar information.[19]

Moreover, the Department expects that FCI should request for its review (in addition to the information described above) any policies specifically addressing the Citigroup Affiliated QPAMs' government filings or responses to regulatory inquiries, including any review processes to ensure accuracy and any corrective mechanisms if a deficiency is noted.

In the absence of any of the above-described information, FCI should contact the Department in order to determine the course of action FCI should take to complete its audit of compliance with Section I(h)(1)(iv).

by the public by contacting the EBSA Public Disclosure Room.

[15] The Department notes that the Independent Auditor's methods of testing for compliance with the conditions of the exemption described herein are specifically tailored to the Applicant's facts underlying the Criminal Misconduct, as well as the Applicant's corporate organization, business lines, compliance regimes, etc. As such, the Department would expect the Independent Auditor to develop its audit plan based on the Applicant's specific facts.

[16] The following Citigroup QPAM executive officers made certifications: Robert Cole, Chief Compliance Officer for CPB, CGMI and CPA; Mary McNiff, Chief Executive Officer of Citibank; Daniel Keegan, Chief Executive Officer of CGMI; and Daniel O'Donnell, Chief Executive Officer of CPA.

[17] Citigroup's ''Code of Conduct'' provides that ''Information barriers [are used to] Prevent confidential information from being shared with individuals who are not authorized to know such information, [and] Address actual or potential conflicts of interest among business activities.'' See *www.citigroup.com/citi/investor/data/codeconduct_en.pdf,* Page 35.

[18] Wall crossing generally may occur when individuals inadvertently gain access to ''insider'' or confidential information. Asset management firms have compliance regimes to manage wall-crossing events, which generally require the execution of non-disclosure agreements by the individual that received such information and a range of remedial actions to prevent such disclosures from re-occurring.

[19] It is the Department's view that FCI is empowered under the terms of PTE 2017–05 and Section III(i)(2) of this proposed exemption, if granted, to request such materials. FCI should contact the Department if the Applicant is unwilling to grant such request.

Section I(h)(1)(v). To the best of the Citigroup Affiliated QPAM's knowledge at the time, the Citigroup Affiliated QPAM does not make material misrepresentations or omit material information in its communications with the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation with respect to Covered Plans or make material misrepresentations or omit material information in its communications with Covered Plans.

In making this finding, FCI reviewed, among other things, regulatory filings, billing and performance reports, marketing materials, certain other incident reports (including Form ADV omissions), client complaints, trade error logs and complaint logs. During its review, FCI specifically noted the three following incident reports:

(1) Missing documentation for rollovers required for compliance with the now-vacated Department of Labor's Fiduciary Rule. CPB oversaw efforts to obtain documentation for the accounts where the information was not on file and to train personnel on the documentation requirement. Once the Fiduciary Rule was vacated by the Fifth Circuit Court of Appeals, no further action was taken to recover the missing rollover information, as the requirement to retain the rollover information was no longer necessary to comply with ERISA.

(2) Form ADV omissions involved certain multi-asset investment sub-accounts with approximately $310 million in assets under management that were inadvertently omitted from the Form ADV filed in March 2018. The Form ADV was updated on June 20, 2018, with corrected data. CPB Advisory Operations, a unit of CPB, conducted a detailed review to determine if any other sub-accounts could have been left off the March ADV filing. The registration associated with the omitted accounts was corrected in the system and CPB Operations scheduled training on the revised procedures.

(3) A technical issue resulted in the firm's website not displaying the Summary of QPAM Policies and Procedures. The issue was remediated in 24 hours and a quarterly monitoring routine was incepted to ensure that the website links remain active and accurate.

Section I(h)(1)(vi). The Citigroup Affiliated QPAMs comply with the terms of PTE 2017–05, including compliance with the conditions of Class PTE 84–14.

FCI reviewed whether each condition of PTE 2017–05 was met, including conditions related to timing and adequacy of notices required under the exemption; whether training was held in a timely manner; and whether the Citigroup Affiliated QPAMs complied with the additional contractual undertakings requirements described in Section I(j). Specifically, FCI reviewed sample Citigroup investment management agreements, assets under management tables with data on a per client basis, trading restrictions in Citigroup trade management systems, financial statements demonstrating equity capital and shareholder equity, Form ADVs, and copies of notices to interested persons.

14. *Correction of Policy Violations.* FCI determined that any violations of, or failure to comply with an item in subparagraphs (ii) though (iv) of Section I(h)(1) were corrected as soon as reasonably possible upon discovery or as soon after the QPAM reasonably should have known of the noncompliance, and that any violations or failures not so corrected were reported in writing to the head of compliance and the General Counsel (or the functional equivalent) of the relevant line of business that engaged in the violation or failure.

FCI reviewed, among other things, policies applicable to the Citigroup Affiliated QPAMs, including the Information Barriers Policy, Restricted Trading List Policy, Escalation Policy, Complaint Policy and Procedures, Error Standard for Managed Accounts, Personal Trading and Investment Policy, Fiduciary Code of Ethics Standard, the Citigroup Code of Conduct, and the Gifts and Entertainment Standard.

Further, FCI was able to conclude that any violations of items in subparagraphs (ii) through (iv) of Section I(h)(1) were corrected in compliance with Section I(h)(1)(vii) of PTE 2017–05 through its review of certain documents and spreadsheets provided by Citigroup to FCI. These documents and spreadsheets included a description of the violation or other action, how it was corrected or addressed, and the date or dates that action was undertaken. In this regard, FCI reviewed incident reports, if any, employee trading violations, employee disciplinary actions taken, overdraft reports, and errors and complaints.

15. *Training.* FCI determined that the Citigroup Affiliated QPAMs developed an annual training program (Training) by July 9, 2018, and completed the first Training by July 9, 2019, for all relevant Citigroup Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel:

Section I(h)(2)(i). The Training, at a minimum, covers the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences of not complying with the conditions of PTE 2017–05 (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.

In making this finding, FCI reviewed a copy of the 2018 ERISA Fiduciary Training, proof of training sessions provided by Citigroup (including spreadsheets detailing each QPAM employee who took the training), conducted interviews with portfolio managers and QPAM employees regarding the training, and reviewed the training system and process of assigning courses to employees (and governing the completion of training).

16. *Annual Compliance Review.* FCI reviewed the most recent annual review (Annual Review) conducted by a senior compliance officer designated by Citigroup (Compliance Officer) in accordance with Section I(m) of PTE 2017–05 and specifically validated the adequacy of the Annual Review and Citigroup's compliance with Section I(m) of PTE 2017–05.[20]

FCI determined that Citigroup timely appointed the Compliance Officer, who prepared a combined annual report for all Citigroup Affiliated QPAMs (Annual Report) that complied with the requirement of Section I(m)(2)(ii). Based on its review of the Annual Report, FCI concluded that Citigroup developed a robust monitoring program with several compliance routines that address relevant compliance issues under PTE 2017–05 and established committees and meetings that address ERISA compliance issues as they arise.

Findings of the Auditor—the Second Audit Period

17. On January 6, 2022, FCI issued a written Audit Report covering the twelve-month period from July 10, 2020, through July 9, 2021 (the Second Audit Period). On January 31, 2022, on behalf of each Citigroup Affiliated QPAM, Citigroup provided the Department with a copy of the certifications related to the Audit Report.[21]

[20] Pursuant to Section I(m) of PTE 2017–05, the Compliance Officer must conduct an Annual Review for each annual period beginning on January 10, 2018. The Annual Review must be completed with respect to the annual periods ending January 9, 2019; January 9, 2020; January 9, 2021; January 9, 2022; and January 9, 2023. The Applicant represents that Citigroup has performed all annual reviews required by Section I(m) of PTE 2017–05 to date, including during the periods not under audit by FCI. The Department notes that in the future, FCI will verify that Citigroup performed its annual reviews during off-audit year periods.

[21] The following Citigroup QPAM executive officers made certifications: Daniel Keegan, Chief

18. *Policies.* FCI reported that the Citigroup Affiliated QPAMs timely developed, implemented, maintained, and followed written policies and procedures (Policies) reasonably designed to ensure the following:

Section I(h)(l)(i). Asset management decisions of the Citigroup Affiliated QPAMs are conducted independently of the corporate management and business activities of Citigroup.

FCI based its conclusions on reviews of marketing materials made available to Covered Plans, interviews with portfolio managers, investment committee members' affiliations, minutes of investment committee meetings, Information Barriers Policies and Procedures, restricted trading list policies and procedures, and discussions with applicable Citigroup Affiliated QPAM employees. FCI reviewed reports of approximately 200 ''wall-crossing [22]'' incidents. In this regard, FCI states that there were 169 instances in which a Citi Private Bank (CPB) employee and 21 instances in which a Global Consumer Bank (GCB) employee ''wall-crossed.'' The reports describe the incident and the remedial activity taken that indicate compliance with the Information Barriers Policies and Procedures. FCI states that employees of Citigroup Affiliated QPAMs were involved in three of these approximately 200 incidents, which were resolved pursuant to established procedures.

Section I(h)(l)(ii). The Citigroup Affiliated QPAMs fully comply with ERISA's fiduciary duties (as more fully described above).

FCI reviewed the trade management systems used to support the Citigroup Affiliated QPAMs' investment compliance and trading process. FCI reviewed the restrictions contained in those systems to avoid prohibited transactions, oversight procedures, complaint logs, trade error logs, overdraft reports and relevant policies and procedures. FCI also reviewed, among other things, policies and procedures regarding client complaints, errors, overdrafts, affiliated broker and/or dealer compliance; trading systems hardcoding related to compliance with affiliated broker/dealers and cross-trading and block-trading compliance; and policies for handling breaches of investment guidelines and ERISA restrictions in trading systems. FCI specifically reviewed reports of actual instances of breaches of the aforementioned policies and procedures and how such breaches were remediated. FCI also reviewed records of CPB and GCB employee disciplinary actions in order to determine whether employees had committed violations of Title I of ERISA with respect to Covered Plans. In this regard, FCI reviewed records of approximately 30 disciplinary actions related primarily to personal trading issues, failure to obtain preapproval for a gift, Mystery Shopper non-disclosures, failure to identify customer complaints, personal use of a corporate credit card and altered documentation.

Based on its review of the foregoing information, FCI confirmed that the mechanisms Citigroup has in place, including relevant policies, procedures and training, were designed to ensure that the Citigroup Affiliated QPAMs comply with ERISA and the Code's prohibited transaction provisions.

Section I(h)(1)(iii). The Citigroup Affiliated QPAMs do not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans.

FCI reviewed Citigroup's ''Escalation Policy,'' which was revised effective December 11, 2020. Under the policy, employees must escalate violations or potential violations of law, regulation, rule, or breaches of policy, procedure or the Code of Conduct and other relevant standards of conduct. The policy also sets forth responsibilities of managers involved in the escalation. FCI reviewed records of client complaint escalations and error handling (including completed complaint logs, sample written/email and oral complaints, and trade error logs and resolution reports) and confirmed that Citigroup complied with the requirements of Section I(h)(1)(iii).

Section I(h)(1)(iv). Any filings or statements made by the Citigroup Affiliated QPAMs to regulators are materially accurate and complete (as more fully described above). FCI's determination of compliance with this Section was to be based on a review of excise tax filings and associated incident reports. No excise tax filings for prohibited transactions were submitted to the IRS during the Second Audit Period. FCI states that it reviewed the Form ADV for the Citigroup Affiliated QPAM's discretionary assets under management and to confirm that the Citigroup Affiliated QPAM is a registered investment adviser.

As noted above, the Department expects that FCI should request for its review of any policies specifically addressing a QPAM's government filings or responses to regulatory inquiries, including any review processes to ensure accuracy and any corrective mechanisms if a deficiency is noted. Further, the Department notes that ''*filings or statements made by the Citigroup Affiliated QPAM to regulators . . . on behalf of or in relation to Covered Plans,*'' should be interpreted broadly.[23] If FCI cannot identify any such information to review, FCI should contact the Department to determine how to complete its audit for compliance with Section I(h)(1)(iv).

Section I(h)(1)(v). The Citigroup Affiliated QPAMs do not make material misrepresentations or omit material information (as more fully described above). FCI reviewed performance reports, marketing materials, sample investment management agreements, certain incident reports (including a late update to a notice required by ERISA Section 408(b)(2) and tax withholding errors), and client complaints. The late ERISA Section 408(b)(2) notice update involved a description of the firm's gift and entertainment disclosure related to brokerage offering that was updated three days after the deadline. The tax withholding error involved Citigroup's inadvertent failure to withhold Federal and state taxes on several customers' IRA accounts but did not impact the accounts' required minimum distributions under Code section 401(a)(9) due to IRS rules applicable during the COVID–19 pandemic. FCI also notes that during an update of Citi Private Bank's public facing website on April 26, 2021, a technical issue resulted in the entity's Form ADV showing as not found when entered in a particular format on the website. According to the incident report reviewed by FCI, the issue was identified on the same day and remediated within 48 hours of discovery.

Section I(h)(1)(vi). The Citigroup Affiliated QPAMs comply with the terms of PTE 2017–05, including compliance with the conditions of Class PTE 84–14.

FCI reviewed whether each condition of PTE 2017–05 was met, including

Executive Officer of CGMI; Robert Cole, Chief Compliance Officer for CPB, CGMI, and Citi Private Advisory, LLC (CPA); Sunil Garg, Chief Executive Officer of Citibank N.A.; and Daniel O'Donnell, Chief Executive Officer of CPA.

[22] Wall crossing generally may occur when individuals inadvertently gain access to ''insider'' or confidential information. Asset management firms have compliance regimes to manage wall-crossing events, which generally require the execution of non-disclosure agreements by the individual that received such information and a range of remedial actions to prevent such disclosures from re-occurring.

[23] It is the Department's view that FCI is empowered under the terms of PTE 2017–05 and Section III(i)(2) of this proposed exemption, if granted, to request such materials. FCI should contact the Department if the Applicant is unwilling to grant such request.

conditions related to timing and adequacy of notices required under the exemption, whether the Training was held in a timely manner, and whether the QPAMs complied with the additional contractual undertakings requirements described in Section I(j) of PTE 2017–05. Specifically, FCI reviewed sample Citigroup investment management agreements, assets under management tables with data on a per client basis, trading restrictions in Citigroup trade management systems, financial statements demonstrating equity capital and shareholder equity, Form ADVs, and copies of notices to interested persons.

19. *Correction of Policy Violations.* FCI determined that any violations of, or failure to comply with an item in subparagraphs (ii) though (iv) of Section I(h)(1) of PTE 2017–05 were corrected as soon as reasonably possible upon discovery or as soon after the QPAM reasonably should have known of the noncompliance; and that any violations or failures not so corrected were reported in writing to the head of compliance and the General Counsel (or the functional equivalent) of the relevant line of business that engaged in the violation or failure.

In making its determination, FCI reviewed, among other things, policies applicable to the Citigroup Affiliated QPAMs, including the Information Barriers Policy, Restricted Trading List Policy, Escalation Policy, Complaint Policy and Procedures, Error Standard for Managed Accounts, Personal Trading and Investment Policy, Fiduciary Code of Ethics Standard, the Citigroup Code of Conduct, and the Gifts and Entertainment Standard.

Further, FCI was able to conclude that any violations of items in subparagraphs (ii) through (iv) of Section I(h)(1) were corrected in compliance with Section I(h)(1)(vii) of PTE 2017–05 through its review of certain documents and spreadsheets provided by Citigroup to FCI. These documents and spreadsheets included a description of the violation or other action, how it was corrected or addressed, and the date or dates that action was undertaken. In this regard, FCI reviewed incident reports, if any, employee trading violations, employee disciplinary actions taken, overdraft reports, and errors and complaints.

20. *Training.* FCI determined that the Citigroup Affiliated QPAMs developed Training:

Section I(h)(2)(i). The Training, at a minimum, covers the Policies, ERISA and Code compliance, ethical conduct, the consequences of not complying with the conditions of PTE 2017–05, and prompt reporting of wrongdoing (as more fully described above).

FCI reviewed a copy of the annual 2020 Citigroup ERISA Fiduciary Training and other annual trainings provided to new and current employees throughout the year and proof of such trainings (including spreadsheets detailing each QPAM employee who took the training); conducted interviews with portfolio managers regarding the training; reviewed the training system and process of assigning courses to employees (and governing the completion of training); and specifically interviewed Citigroup Affiliated QPAM employees as to the training system and governance process.

21. *Annual Compliance Review.* FCI reviewed the most recent annual review (Annual Review) conducted by a senior compliance officer designated by Citigroup (Compliance Officer) in accordance with Section I(m) of PTE 2017–05 and specifically validated the adequacy of the Annual Review and Citigroup's compliance with Section I(m) of PTE 2017–05.[24]

FCI determined that Citigroup timely appointed the Compliance Officer, who prepared a combined annual report for all Citigroup Affiliated QPAMs (Annual Report) that complies with the requirement of Section I(m)(2)(ii). Similar to its findings under the First Audit Period, FCI found that the Compliance Officer's Annual Report reviewed during the Second Audit Period includes a separate review of the information barriers for each Citigroup Affiliated QPAM. The Annual Report also includes a review of any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or other relevant parties during the Second Audit Period, any material changes to the relevant business activities of the Citigroup Affiliated QPAMs, and any changes to ERISA, the Code, or regulations, related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the Citigroup Affiliated QPAMs.

FCI found that the Annual Report summarizes the Compliance Officer's material activities during the Annual Review; sets forth any instances of noncompliance discovered during the Annual Review, and any related corrective action; details any change to the Policies or Training; and makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems; and describes management's actions taken in response to such recommendations.

Based on its above review of the Compliance Officer's Annual Review, FCI concluded that Citigroup developed a robust monitoring program with several routines that address relevant compliance issues under PTE 2017–05 and established committees and meetings that address ERISA compliance issues as they arise.

Current Exemption Request

22. The Applicant now seeks a four-year exemption that would allow the Citigroup QPAMs to continue to rely on PTE 84–14 until the end of the ten-year disqualification period in Section I(g). The requested exemption is substantially similar to PTE 2017–05.

This proposed exemption requires each Citigroup Affiliated QPAM to continue to maintain, implement and follow written policies and procedures (Policies) that are reasonably designed to ensure the following, among other things: the asset management decisions of the Citigroup Affiliated QPAM are conducted independently of the corporate management and business activities of Citigroup; the Citigroup Affiliated QPAMs fully comply with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan; any filings or statements made by Citigroup Affiliated QPAMs to regulators, on behalf of Covered plans, are materially accurate and complete; and the Citigroup Affiliated QPAMs comply with the terms of the proposed exemption, if granted. Further, any violation of, or failure to comply with the Policies must be corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected must be reported, upon the discovering of the failure to promptly correct, in writing, to the head of compliance and the General Counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure, and the independent auditor response for reviewing compliance with the Policies.

This proposed exemption requires each Citigroup Affiliated QPAM to implement or maintain a training

[24] As mentioned above, pursuant to Section I(m) of PTE 2017–05, the Compliance Officer must conduct an Annual Review for each annual period beginning on January 10, 2018. The Annual Review must be completed with respect to the annual periods ending January 9, 2019; January 9, 2020; January 9, 2021; January 9, 2022; and January 9, 2023. The Applicant represents that Citigroup has performed all annual reviews required by Section I(m) of PTE 2017–05 to date, including during the periods not under audit by FCI. The Department notes that in the future, FCI will verify that Citigroup performed its annual reviews during off-audit year periods.

program (the Training) to be conducted at least annually by a prudently selected professional, that covers the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the conditions of the exemption, and the duty to promptly report wrongdoing; and submit to a biennial compliance audit conducted by a prudently-selected independent auditor (the Auditor), to evaluate the adequacy of, and the Citigroup Affiliated QPAM's compliance with, the Policies and Training requirements of the exemption. The Auditor must issue a written report (the Audit Report) to Citigroup and the Citigroup Affiliated QPAM to which such audit applies that describes the procedures performed during the Audit. In its Audit Report, the Auditor must assess the adequacy of the Citigroup Affiliated QPAM's Policies and Training Program; the Citigroup Affiliated QPAM's compliance with the Policies and Training Program; the need, if any to strengthen the Policies and Training Program; and any instance of noncompliance.

The proposed exemption requires certain senior Citigroup personnel to review the Audit Report and make certain certifications and take various corrective actions. In this regard, the General Counsel or one of the three most senior executive officers of the Citigroup Affiliated QPAM to which the report applies must certify in writing and under penalty of perjury that such officer has reviewed the Audit Report, addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training Program are adequate to ensure compliance with the requirements of the exemption and applicable provisions of ERISA and the Code. The Audit Report must also be provided to the Department's Office of Exemption Determinations.

The proposed exemption requires each Citigroup Affiliated QPAM to agree and warrant to each Covered Plan client that they will comply with ERISA and the Code, refrain from engaging in non-exempt prohibited transactions (and will promptly correct any non-exempt prohibited transactions), and comply with standards of prudence and loyalty set forth in ERISA Section 404 for the duration of the Exemption. The proposed exemption also requires the Citigroup Affiliated QPAM to agree and warrant to indemnify and hold their Covered Plan clients harmless for any actual losses resulting directly from the QPAM's violation of these rules or failure to qualify for relief under PTE 84–14 as a result of any other criminal convictions, and that it will not require the Covered Plan to waive, limit, or qualify its liability for violating ERISA or the Code or engaging in non-exempt prohibited transactions. The proposed exemption also prohibits the Citigroup Affiliated QPAM from restricting the ability of Covered Plan clients to terminate their investment management arrangement with such QPAM or from imposing fees, penalties, or other charges upon the client for doing so, except for certain reasonable restrictions specifically designed to ensure equitable treatment of all investors in a pooled fund.

The proposed exemption contains extensive notice requirements that obligate the Citigroup Affiliated QPAMs to provide Covered Plan clients regarding the grant of the exemption and the QPAM's obligations thereunder, including a separate summary describing the facts that led to the Conviction, within specified time periods.

The proposed exemption also requires Citigroup to continue to designate a senior compliance officer (the Compliance Officer) to conduct an annual review (the Annual Review) of the adequacy and effectiveness of the implementation of the Policies and Training Program, and prepare a written report for each Annual Review that, among other things, summarizes their material activities during the preceding year; and sets forth any instance of noncompliance discovered during the preceding year and any related corrective action.

The proposed exemption requires Citigroup to inform its Covered Plan Clients of their right to obtain a copy or summary description of the Policies and provided with updated disclosures following any changes.[25]

The proposed exemption also requires Citigroup to immediately disclose to the Department any Deferred Prosecution Agreement or Non-Prosecution Agreement it enters into with the U.S. Department of Justice in connection with conduct described in Section I(g) of PTE 84–14 or ERISA Section 411 of ERISA. Under this condition, the Applicant must notify the Department if and when it or any of its affiliates enter into a DPA or NPA with the U.S. Department of Justice for conduct described in section I(g) of PTE 84–14 or ERISA Section 411 and immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. The Department will review the information provided and may seek additional information from the Department of Justice, in order to determine whether the conduct described in the DPA or NPA raises questions about the Citigroup Affiliated QPAMs' ability to act with a high standard of integrity. The Department retains the right to propose a withdrawal of the exemption pursuant to its procedures contained at 29 CFR 2570.50, should the circumstances warrant such action.

Department's Request for Comment: The Department requests comments whether the Applicant should be required to provide information regarding adverse regulatory actions (*e.g.,* fines, censures, penalties, civil lawsuits, settlements of civil or criminal lawsuits), that are taken by other regulators against Citigroup and its affiliates. Should the Applicant be required to provide information regarding actions taken by certain regulators (*e.g.,* IRS, SEC, OCC, UK FCA), and is there an appropriate type of information or class of regulatory actions that are relevant or irrelevant to the Department's determination whether under PTE 84–14 should continue to be permitted notwithstanding the Conviction?

Modifications of Conditions for the Proposed Exemption From Those of PTE 2017–05

23. The Department is proposing to modify the terms of PTE 2017–05 in the proposed exemption, based on the Applicant's request, to reflect the following terms the Department has included in recently granted individual exemptions providing relief from a violation of Section I(g) of PTE 84–14:

- Allow the Training to be conducted electronically.

Department's Request for Comment Regarding Training: The Department views the Training obligation under this exemption as a key protection of Covered Plans and expects that Citigroup Affiliated QPAMs and their personnel will complete their obligations in good faith. The Department requests comments regarding whether the Citigroup Affiliated QPAMs should be required to validate the efficacy of Training that is provided electronically, through methods such as in-training knowledge checks, ''graduation'' tests, and other technological tools designed to confirm that personnel fully and in good faith participate in the Training.

[25] Citigroup maintains a summary of the policies on its website, at: *https://www.privatebank.citibank.com/pdf/Summary-QPAM-Policies-and-Procedures.pdf.*

• Allow the certifications described in Section I(i)(7) of PTE 2017–05 that are required to be made by the General Counsel or one of the three most senior executive officers of the Citigroup Affiliated QPAM to which an Audit Report applies,[26] to be made ''to the best of such officer's knowledge at the time.'' Similarly, the certification by the designated compliance officer as to the accuracy of the written report on each Annual Review and certain other matters (including the correction of any ''known'' instance of noncompliance) in Section I(m)(2)(iii) of PTE 2017–05 may be made to the compliance officer's ''best knowledge.''

Department's Comment Regarding ''Best Knowledge'' Standard: The Department intends for the ''Best Knowledge'' standard described in the exemption to require the certifying senior executive to perform its due diligence required under the exemption to determine whether the information such executive is certifying is complete and accurate in all respects.

• Allow the certified Audit Report to be delivered no later than 45 days after completion of the report.

24. *Other Conforming Changes.* The Department has updated the operative language of the proposed exemption to more accurately reflect the factual record and the operative language of similar, recently granted exemptions. The Department notes further that it has made minor formatting changes in the proposed exemption, so that certain operative language that is identical or parallel to language in PTE 2017–05 is now located in different sections of the proposed exemption.[27]

25. *Department's Comment Regarding Audit Timing.* The Department notes that PTE 2017–05 requires the Independent Auditor to conduct biennial audits covering the periods from July 10, 2018, through July 9, 2019, (which must be completed by January 9, 2020); from July 10, 2020, through July 9, 2021 (which must be completed by January 9, 2022); and from July 10, 2022, through July 9, 2023 (which must be completed by January 9, 2024). As such, the last audit period under PTE 2017–05 will extend into this proposed exemption's Exemption Period.

In order to avoid confusion regarding the audit periods under this proposed exemption, the Department provides the following clarification: The first audit under this proposed four-year exemption (the fourth audit under the totality of exemptive relief) would cover the period from July 10, 2024 through July 9, 2025, (and must be completed by January 9, 2026); and the second audit (the fifth audit under the totality of exemptive relief) would cover the period from July 10, 2026, through January 9, 2027, (must be completed by July 9, 2027).

As described above, the fifth audit period is truncated, so that it expires with the expiration of the Exemption Period. However, the Department expects the audit report for the fifth audit period to be completed and delivered timely to the Department. The failure to receive such report would impede Citigroup's ability to claim relief under this proposed exemption for transactions entered into during the Exemption Period.

Hardship to Covered Plans

26. *Inability to Engage in Transactions that are in the Interest of Plans.* The Applicant states that it would be difficult for Citigroup to engage in a variety of routine transactions on behalf of a Retirement Account with counterparties, without the ability to use PTE 84–14, because virtually every counterparty may be a service provider to that Retirement Account. The Applicant states that because counterparties are familiar and comfortable with PTE 84–14, it is generally the most-commonly used prohibited transaction exemption. In addition, the Applicant states that market participants, both clients and counterparties, routinely expect an investment adviser or manager of Retirement Accounts to represent that it qualifies as a QPAM, even if such a representation is not technically required in a particular circumstance.

27. The Applicant represents that disqualification would deprive Covered Plans clients of the Citigroup Affiliated QPAMs from receiving advisory or sub-advisory services that fiduciaries of the Covered Plans have determined to be in the best interests of the Covered Plans. According to the Applicant, this would be an undesirable result that would extend to asset managers selected by fiduciaries that Citigroup does not control and in which it has a non-controlling investment (collectively, the Citigroup Related QPAMs).

28. The Applicant represents that PTE 84–14 is used for investment transactions such as the purchase and sale of debt and equity securities, both foreign and domestic that are either registered or sold under Rule 144A, the purchase and sale of commodities, futures, swaps, real estate, foreign exchange and other investments in the U.S. and internationally, and the hedging of risk through a variety of investment instruments and strategies. The Applicant states that it is very difficult for a manager of ERISA assets to manage such assets effectively without the ability to rely on PTE 84–14. Therefore, the Applicant represents that if the Department does not grant the exemption, fiduciaries that otherwise decided to retain Citigroup's advisory services pursuant to a prudent process would have to seek an alternative service provider.

29. Alternatively, the Applicant states that fiduciaries of Covered Plans have been clearly informed and will, in keeping with their fiduciary duties, be able to make their own individualized decisions about continuing to utilize Citigroup as an advisor to their plans' assets. In this regard, the Applicant states that the Plea Agreement has been well-publicized and made readily available. Further, the Applicant states that the Plea Agreement is disclosed in Citigroup's Form ADVs and is the subject of notice to Covered Plan clients pursuant to PTEs 2016–14 and 2017–05 (and will be further disclosed as required by this proposed exemption, if granted).

30. *Retirement Accounts Would Incur Significant Costs in Transitioning Managers.* The Applicant states that any Retirement Account that transitions away from a Citigroup Affiliated QPAM if the requested exemption is denied would incur quantifiable financial costs that fall into three categories:(i) Trading and market impact costs, (ii) consultant costs associated with identifying new investment managers, and (iii) legal costs, are summarized below.[28] These categories are discussed below.

31. *Trading and Market Risk Costs.* The Applicant states that trading-related costs consist of brokerage commissions, bid-ask spreads of assets traded on a principal basis, and ''market impact''

[26] Section I(i)(7) of PTE 2017–05 provides that ''. . . the General Counsel, or one of the three most senior executive officers of the Citigroup Affiliated QPAM to which [an] Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that such Citigroup Affiliated QPAM has addressed, corrected or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report . . . .''

[27] For example, in the proposed exemption, the definitions are now located in Section I, the covered transactions are now located in Section II, and the conditions for relief are located in Section III.

[28] The Applicant is not including certain costs in its summary, such as those incurred to replace custodians, prepare employee communications and implement new record-keeping procedures, because they depend on a Covered Plan's current service arrangements and may vary widely. In addition, the Applicant states that estimates below are based on experience with employee pension plans, so the costs described may differ for IRAs.

costs based on the effects of trading on the price of the particular assets.[29]

The Applicant estimates that the trading and market risk costs of transitioning a hypothetical $1 billion investment portfolio, categorized by asset class and assuming an index-based portfolio, are as follows:[30]

Asset class	Notional	Explicit fees		Implicit costs	Total trading-related costs	Risk cost (daily volatility)[31]
		Commissions*	Stamp and exchange fees	Bid ask spread and market impact[32]		
US Large Cap Equity	1,000,000,000	50,334	5,100	560,000	615,434	13,802,002
US Small Cap Equity	1,000,000,000	253,897	5,100	1,801,403	2,060,400	15,871,433
ACWI -Ex US Equity	1,000,000,000	568,156	1,050,138	1,030,495	2,648,789	9,713,042
Emerging Markets Equity	1,000,000,000	741,785	1,029,998	2,702,068	4,473,851	10,323,360
US Agg Index Fixed income	1,000,000,000	358,576	.....	2,273,556	2,632,131	6,299,407

Commission rates	
US Equities	0.5 cents per share.

32. *Investment Consultant Costs.* The costs for Pension plans that use an investment consultant to advise on selecting a new investment manager (including administering the request-for-proposal process) may include:[33]

- $10,000–$50,000 for replacement of an individual manager or a single investment option for a defined contribution plan.
- $30,000–$100,000 for replacement of a ''manager of managers'' that chooses all investment managers for the plan, such as an outsourced chief investment officer.

33. *Legal Costs.* The Applicant estimates that the cost of outside counsel for a manager transition by a single employer plan is in the range of $15,000 to $28,000. As noted above, plans may use a transition manager to minimize transaction costs in moving assets to the new manager. The Applicant states that the legal work retain a transition manager could range from $5,000 to $10,000.

Statutory Findings

34. ERISA Section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. The Department's findings under these criteria are discussed below.

35. ''*Administratively Feasible.*'' The Department has tentatively determined that the proposal is administratively feasible because, among other things, a qualified independent auditor would be required to perform an in-depth audit covering each Citigroup Affiliated QPAMs' compliance with the terms of the exemption, and a corresponding written audit report would be provided to the Department and made available to the public.

The independent audit would help to ensure that the continued compliance with the terms of the exemption and ethical behavior of the Applicant is subject to on-going oversight by an independent third party reporting its findings to the Department.

36. ''*In the Interests of.*'' The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of the Covered Plans.

The primary reason the Department is proposing to provide the Applicant with four additional years of exemptive relief, is to prevent Covered Plans from incurring the costs and expenses that they would not otherwise incur, in the event the Citigroup Affiliated QPAMs lose exemptive relief under PTE 84–14, and Covered Plans terminate their advisory relationships with Citigroup. As mentioned above, as of December 31, 2020, Citigroup's advisory businesses had over 12,700 Retirement Accounts with approximately $4.6 billion of assets under management.

The Applicant states that it made certain assumptions to quantify the specific costs to Retirement Accounts if the exemption request were denied, including the portion of those assets would transition away from Citigroup if it were to not eligible to rely on the QPAM Exemption. The Applicant states that making this assumption depends on such factors as the type of account and investment strategy, because it may be possible to substantially implement certain investment strategies without relying on the QPAM Exemption (although there may be clients that nevertheless view ineligibility to rely on the QPAM Exemption as a reason to change asset managers).

The Applicant estimates that if 10% of such assets ($460 million) representing 5% of such accounts (635) were to transition away from Citigroup as a result of a denial of the exemption, the Quantifiable Costs to Retirement Investors, assuming the midpoint level of such costs for each category of Quantifiable Costs, would total $36.3 million.[34]

The Applicant also represents that any manager transition will cause Plans to incur costs in time and attention, which are not able to be quantified, but no less disruptive in terms of resources that would need to be re-directed away from activities that are otherwise necessary for the functioning of a Plan.

37. ''*Protective of.*'' The Department has tentatively determined that the proposed exemption is protective of the interests of the participants and beneficiaries of affected Covered Plans.

[29] Market impact costs are generally a function of the size of the trade and the liquidity of the particular asset.

[30] Estimates are based on Citigroup's own transition management services that are offered to transitioning pension plans.

[31] Risk costs measure the potential loss from a portfolio being uninvested and ''out of the market'' during the transition, which is a function of the daily volatility in the particular assets. However, if clients employ a ''transition manager'' to move assets from Citigroup into a new target portfolio with a different manager, the plan could avoid the full Risk Costs.

[32] A portfolio that is not based on an index would likely be expected to have higher Bid/Ask Spread and Market Impact costs.

[33] The Applicant states that these estimates could vary depending on the specific circumstances of the particular plan and RFP.

[34] The Applicant states that this calculation is based on conservative assumptions, so the actual costs could be higher. Further, the Applicant states that the calculation is limited to the costs it was able to quantify so the actual costs could be higher. The assumptions include the following:

- Trading and Market Risk Costs—averaging the figures described above (leaving out Emerging Markets Equity, which tends to constitute a smaller portion of investment portfolios) and adjusting for an aggregate portfolio of $460 million in assets = $6,168,903.
- Investment Consultant Costs—using $30,000, the midpoint of the above figures for a single manager search, times 635 accounts = $19,050,000.
- Legal Costs—using $17,500, the midpoint of the above figures for a manager search (assuming either no transition manager or a transition manager already in place), times 127 accounts = $11,112,500.

The conditions, which are described in more detail above and in PTE 2017–05, require continued oversight of Citigroup's compliance with the terms and conditions of PTE 2017–05 by the Independent Auditor and a robust audit to be completed by the auditor that is reviewed by the Department.

As demonstrated by the Audit Reports for the First and Second Audit Periods, the Independent Audit is an important tool to test Citigroup's adherence to the conditions of PTE 2017–05 and this proposed exemption (if granted), and the audit reports provide transparency and accountability to the Department and interested persons regarding Citigroup's efforts to maintain a culture of compliance.

In addition to oversight by an Independent Auditor, the proposed exemption is subject to protective conditions that include but not limited to: (a) the development and maintenance of the Policies; (b) the implementation of the Training Program; (c) the requirement for the Citigroup Affiliated QPAMs to make certain agreements and warranties to Covered Plan clients; (d) specific notice and disclosure requirements concerning the circumstances necessitating the need for exemptive relief and the Citigroup Affiliated QPAMs' obligations under this proposed exemption; and (e) the designation of a Compliance Officer with responsibility to ensure compliance with the Policies and Training requirements under this proposed exemption, and the Compliance Officer's completion of an Annual Review and corresponding Annual Report.

Summary

38. Based on the representations of the Applicant, the substance of the Audit Reports, and Citigroup's required continued compliance with a robust set of conditions, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements for a four-year exemption under section 408(a) of ERISA.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within fifteen (15) days of the publication of the notice of proposed four-year exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner described in Section III(k)(1) of this proposed four-year exemption and will contain the documents described therein and a supplemental statement required by 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty-five (45) days of the date of publication of this proposed exemption in the **Federal Register** and will be made available to the public. The notice may be provided by first-class mail, hand delivery or through electronic means, including by an email that has a link to the notice documents on Citigroup's website that Covered Plan clients with an internet connection can access at any time (except for any periods when the website is temporarily unavailable because it is undergoing routine maintenance).

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) and/or Code Section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting an ERISA-covered plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion as required by ERISA Section 404(a)(1)(B); nor does it affect the requirement of Code Section 401(a), which require a plan to operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted, ERISA Section 408(a) and/or Code Section 4975(c)(2) require the Department to find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, would be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, would be subject to the express condition that the material facts and representations contained in the application are true and complete at all times, and that the application accurately describes all material terms of the transactions which are the subject of the exemption.

Proposed Exemption

The Department is considering granting a four-year exemption under the authority of ERISA Section 408(a) and Code section 4975(c)(2), and in accordance with the procedures set forth in exemption procedure regulation.[35]

Section I: Definitions

(a) The term ''Citicorp'' means Citicorp, a financial services holding company organized and existing under the laws of Delaware and does not include any subsidiaries or other affiliates.

(b) The term ''Citigroup Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in section VI(a)[36] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which Citigroup is a current or future ''affiliate'' (as defined in section VI(d)(1) of PTE 84–14). The term ''Citigroup Affiliated QPAM'' excludes Citicorp, the entity implicated in the criminal conduct that is the subject of the Conviction.

(c) The term ''Citigroup Related QPAM'' means any current or future ''qualified professional asset manager'' (as defined in section VI(a) of PTE 84–

[35] 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

[36] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

14) that relies on the relief provided by PTE 84–14, and with respect to which Citigroup owns a direct or indirect five percent or more interest, but with respect to which Citigroup is not an ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14).

(d) The term ''Conviction'' means the judgment of conviction against Citigroup for violation of the Sherman Antitrust Act (15 U.S.C. 1), entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15–cr–78–SRU). For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses the conduct described in Paragraph 4(g)–(i) of the Plea Agreement filed in the District Court in Case Number 3:15–cr–78–SRU.

(e) The term ''Covered Plan'' means a plan subject to Part 4 of Title I of ERISA (ERISA-covered plan) or a plan subject to Section 4975 of the Code (IRA) with respect to which a Citigroup Affiliated QPAM relies on PTE 84–14, or with respect to which a Citigroup Affiliated QPAM (or any Citigroup affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the Citigroup affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(f) The term ''Exemption Period'' means January 10, 2023, through January 9, 2027.

Section II: Covered Transactions

If the proposed four-year exemption is granted, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (as defined in Sections I(b) and I(c), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),[37] notwithstanding the Conviction, as defined in Section I(d)), during the Exemption Period, provided that the conditions in Section III below are satisfied.

Section III: Conditions

(a) Other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services business, and who had no responsibility for and exercised no authority in connection with the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, agents other than Citicorp, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in the criminal conduct that is the subject of the Conviction. For purposes of this paragraph (a), ''participate in'' means the knowing approval of the misconduct underlying the Conviction;

(b) Other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services business and who had no responsibility for and exercised no authority in connection with the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, and agents other than Citicorp, and employees of such Citigroup QPAMs) did not receive direct compensation or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction;

(c) The Citigroup Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction. For the purposes of this paragraph (c), ''participated in'' includes the knowing approval of the misconduct underlying Conviction;

(d) At all times during the Exemption Period, no Citigroup Affiliated QPAM will use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such Citigroup Affiliated QPAM in reliance on PTE 84–14, or with respect to which a Citigroup Affiliated QPAM has expressly represented to an ERISA-covered plan or IRA with assets invested in such ''investment fund'' that it qualifies as a QPAM or relies on PTE 84–14, to enter into any transaction with Citicorp, or to engage Citicorp to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a Citigroup Affiliated QPAM or a Citigroup Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) A Citigroup Affiliated QPAM or a Citigroup Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the Citigroup Affiliated QPAM, the Citigroup Related QPAM or their affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, Citicorp will not act as a fiduciary within the meaning of section 3(2l)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, that Citicorp will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(2l)(A)(ii) or section 4975(e)(3)(B) of the Code;

(h)(1) Each Citigroup Affiliated QPAM must continue to maintain, adjust (to the extent necessary), implement and follow written policies and procedures (the Policies). The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of the Citigroup Affiliated QPAM are conducted independently of the corporate management and business activities of Citigroup;

(ii) The Citigroup Affiliated QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The Citigroup Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the Citigroup Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete to the best of such QPAM's knowledge at the time;

(v) To the best of the Citigroup Affiliated QPAM's knowledge at the time, the Citigroup Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered

[37] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

Plans, or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) The Citigroup Affiliated QPAM complies with the terms of this exemption; and

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance, and the General Counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A Citigroup Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each Citigroup Affiliated QPAM must maintain, adjust (to the extent necessary), and implement a program of training (the Training) to be conducted at least annually for all relevant Citigroup Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this four-year exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code; and

(iii) Be conducted in-person, electronically or via a website;

(i)(1) Each Citigroup Affiliated QPAM, which Citigroup identifies in a certificate signed by the officer who will review and certify the Audit Report (as defined in Section I(i)(5)) pursuant to Section I(i)(8), submits to an audit conducted every two years by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, each Citigroup Affiliated QPAM's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated in the Policies. The last audit period under PTE 2017–05 will extend into the Exemption Period under this proposed exemption; therefore, the audit periods under PTE 2017–05 and this proposed exemption are as follows:

(i) Under PTE 2017–05, the first audit covers the period from July 10, 2018 through July 9, 2019 (and must be completed by January 9, 2020); the second audit covers the period from July 10, 2020 through July 9, 2021 (and must be completed by January 9, 2022); and the third audit covers the period from July 10, 2022 through July 9, 2023 (and must be completed by January 9, 2024).

(ii) The first audit under this proposed four-year exemption (the fourth audit under the totality of exemptive relief) covers the period from July 10, 2024 through July 9, 2025 (and must be completed by January 9, 2026); and the second audit (the fifth audit under the totality of exemptive relief) covers the period from July 10, 2026 through January 9, 2027 (must be completed by July 9, 2027). As described above, the fifth audit period is truncated, so that it expires concurrently with the expiration of the Exemption Period. However, the audit report for the fifth audit period must be completed and delivered timely and despite such report being due to the Department after the expiration of the Exemption Period, the failure to receive such report could impact negatively on Citigroup's ability to claim relief under this exemption during the Exemption Period, if granted.

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by State or Federal statute, or involves communications subject to attorney client privilege, each Citigroup Affiliated QPAM and, if applicable, Citigroup, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each Citigroup Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each Citigroup Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each QPAM, a sample of such QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section III(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to Citigroup and the Citigroup Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the Citigroup Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each Citigroup Affiliated QPAM's Policies and Training; each Citigroup Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective Citigroup Affiliated QPAM's noncompliance with the written Policies and Training described in Section III(h) above.

The Citigroup Affiliated QPAM must promptly address any noncompliance and promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Citigroup Affiliated QPAM. Any action taken, or the plan of action to be taken, by the respective Citigroup Affiliated QPAM must be included in an addendum to the Audit Report (and such addendum must be completed before the certification described in Section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time the Audit

Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective Citigroup Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a Citigroup Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular Citigroup Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not rely solely on the Annual Report created by the compliance officer (the Compliance Officer) as described in Section III(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section III(i)(3) and (4) above; and

(ii) The adequacy of the most recent Annual Review described in Section III(m);

(6) The auditor must notify the respective Citigroup Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers, of the line of business engaged in discretionary asset management services through the Citigroup Affiliated QPAM with respect to which the Audit Report applies, must certify in writing, under penalty of perjury, that such signatory has reviewed the Audit Report and this exemption; and that, to the best of such signatory's knowledge at the time, such Citigroup Affiliated QPAM has addressed, corrected, or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that, to the best of such signatory's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed exemption, and with the applicable provisions of ERISA and the Code;

(8) The Risk Management Committee of Citigroup's Board of Directors is provided a copy of each Audit Report; and a senior executive officer of Citigroup or one of its affiliates who reports directly to, or reports to another executive who reports directly to, the highest-ranking compliance officer of Citigroup must review the Audit Report for each Citigroup Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each Citigroup Affiliated QPAM provides its certified Audit Report by electronic mail to: *e-oed@dol.gov;* or by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW Suite 400, Washington DC 20210; or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109. This delivery must take place no later than forty-five (45) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each Citigroup Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each Citigroup Affiliated QPAM and the auditor must submit to OED by electronic mail to: *e-oed@dol.gov:* Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and utilized in the course of the audit, provided such access and inspection is otherwise permitted by law; and

(12) Citigroup must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor, and Citigroup;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a Citigroup Affiliated QPAM and a Covered Plan, the Citigroup Affiliated QPAM agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any non-exempt prohibited transactions in accordance with applicable rules under ERISA and the Code); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such Covered Plan to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a Citigroup Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such Citigroup Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction. This condition applies only to actual losses caused by the Citigroup Affiliated QPAM's violations. Actual losses include losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the Citigroup Affiliated QPAM for violating ERISA or the Code or engaging in non-exempt prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any of these arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and such restrictions must be applicable to all investors in the pooled fund on equal terms and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or

withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Citigroup Affiliated QPAM for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Citigroup, and its affiliates, or damages arising from acts outside the control of the Citigroup Affiliated QPAM; and

(7) Each Citigroup Affiliated QPAM must provide a notice of its obligations under this Section III(j) to each Covered Plan. For all other prospective Covered Plans, the Citigroup Affiliated QPAM will agree to its obligations under this Section III(j) in an updated investment management agreement between the Citigroup Affiliated QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–14 or PTE 2017–05 that meets the terms of this condition. This condition will also be met where the Citigroup Affiliated QPAM has already agreed to the same obligations required by this Section III(j) in an updated investment management agreement between the Citigroup Affiliated QPAM and a Covered Plan. Notwithstanding the above, a Citigroup Affiliated QPAM will not violate the condition solely because a Covered Plan client refuses to sign an updated investment management agreement;

(k) *Notice to ERISA-covered plan and IRA clients.* Within ninety (90) days after the effective date of this exemption, each Citigroup Affiliated QPAM provides notice of the exemption as published in the **Federal Register** along with a separate summary describing the facts that led to the Conviction (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a Citigroup Affiliated QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests.

All prospective Covered Plan clients that enter into a written asset or investment management agreement with a Citigroup Affiliated QPAM (including a participation or subscription agreement in a pooled fund managed by a Citigroup Affiliated QPAM) after the date that is ninety (90) days after the effective date of this exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the Citigroup Affiliated QPAM (for avoidance of doubt, all Covered Plan clients of a Citigroup Affiliated QPAM during the Exemption Period must receive the disclosures described in this Section by the later of (i) 90 days after the effective date of the exemption or (ii) the date that a Covered Plan client enters into a written asset or investment management agreement with a Citigroup Affiliated QPAM). Disclosures required under this paragraph (k) may be delivered electronically (including by an email that has a link to this exemption);

(l) The Citigroup Affiliated QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction;

(m)(1) Citigroup designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review for each annual period beginning on January 10, 2023 (the Annual Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must be a senior compliance officer of Citigroup Inc. or one of its affiliates who reports directly to (or reports to another compliance officer who reports directly to) Citigroup Inc.'s highest ranking compliance officer (whose title is currently Global Chief Compliance Officer of Citigroup Inc.);

(2) With respect to each Annual Review, the following conditions must be met:

(i) The Annual Review includes a review of the Citigroup Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent Audit Report issued pursuant to this exemption (or pursuant to PTE 2017–05 if no audit report has been issued under this exemption); any material change in the relevant business activities of the Citigroup Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the Citigroup Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for each Annual Review (each, an Annual Report) that: (A) summarizes their material activities during the preceding year; (B) sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In each Annual Report, the Compliance Officer must certify in writing that to the best of their knowledge at the time: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Report; and (D) the Citigroup Affiliated QPAMs have complied with the Policies and Training and/or corrected (or is correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) Each Annual Report must be provided to: (A) the person or persons who certify as to the current or most recent preceding Audit Report provided pursuant to Section III(i)(7) above, and (B) the head of compliance and the

General Counsel (or their functional equivalent) of the relevant Citigroup Affiliated QPAM; and must be made unconditionally available to the independent auditor described in Section III(i) above;

(v) Each Annual Review, including the Compliance Officer's written Annual Report, must be completed within three (3) months following the end of the period to which it relates;

(n) Citigroup imposes its internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the Conviction;

(o) Citigroup complies in all material respects with the requirements imposed by a U.S. regulatory authority in connection with the Conviction;

(p) Each Citigroup Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which such Citigroup Affiliated QPAM relies upon the relief in the exemption;

(q) During the Exemption Period, Citigroup:

(1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by Citigroup or any of its affiliates in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and

(2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Each Citigroup Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, clearly and prominently informs Covered Plan clients of the Covered Plan's right to obtain a copy of the Policies or a description (Summary Policies), which accurately summarizes key components of the QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed. If the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or the Summary Policies is clearly and prominently disclosed to each Covered Plan;

(s) A Citigroup Affiliated QPAM or a Citigroup Related QPAM will not fail to meet the terms of this exemption, solely because a different Citigroup Affiliated QPAM or Citigroup Related QPAM fails to satisfy a condition for relief described in Sections III(c), (d), (h), (i), (j), (k), (l), (p) and (r); or if the independent auditor described in Section III(i) fails to comply with a provision of the exemption, other than the requirement described in Section III(i)(11), provided that such failure did not result from any actions or inactions of Citigroup or its affiliates; and

(t) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

Effective Date: This proposed four-year exemption, will be effective from January 10, 2023, through January 9, 2027.

Signed at Washington, DC.

George Christopher Cosby,

Director, Office of Exemption, Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2022–25039 Filed 11–15–22; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Proposed Renewal of the Approval of Information Collection Requirements; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). The program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Federal Contract Compliance Programs (OFCCP) is soliciting comments concerning its proposal to obtain approval from the Office of Management and Budget (OMB) to renew the following information collections: ''Vietnam Era Veterans' Readjustment Assistance Act, as Amended'' (OMB Control No. 1250–0004) and ''Section 503 of the Rehabilitation Act of 1973, as Amended'' (OMB Control No. 1250–0005). The current OMB approvals for these information collections expire on April 30, 2023 and May 31, 2023, respectively. A copy of the proposed information collection requests can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice or by accessing it at *www.regulations.gov.*

DATES: Written comments must be submitted using one of the methods listed in the addresses section below on or before January 17, 2023.

ADDRESSES: You may submit comments by any of the following methods:

Electronic comments: The Federal eRulemaking portal at *www.regulations.gov.* Follow the instructions found on that website for submitting comments.

Mail, Hand Delivery, Courier: Addressed to Tina T. Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. For faster submission, we encourage commenters to transmit their comment electronically via the *www.regulations.gov* website. Comments that are mailed to the address provided above must be postmarked before the close of the comment period. All submissions must include OFCCP's name for identification. Comments submitted in response to the notice, including any personal information provided, become a matter of public record and will be posted on *www.regulations.gov.* Comments will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Tina T. Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210. Telephone: (202) 693–0103 or toll free at 1–800–397–6251. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services. Copies of this notice may be obtained in