



DALBAR 3(38) CERTIFICATION

PROGRAM DESCRIPTION

January, 2018

Summary

The DALBAR 3(38) Certification Program provides investment managers with a powerful combination of sales tool and compliance disclosures to satisfy the requirements of ERISA section 3(38). The DALBAR 3(38) Certification produces an attractive package of Credentials that includes:

- An independent opinion of the investment manager’s capability to serve as an ERISA 3(38) manager,
- A profile of the manager,
- An authorized testimonial from existing clients,
- A description of the investment theory and principles used by the 3(38) manager,
- Specific services offered by the manager and
- Material disclosures.

The certified 3(38) manager uses these Credentials to promote its services and to give comfort to existing and prospective clients that the manager has been independently examined and found to be qualified and to have the written obligation to act in client’s best interest.

ERISA Fiduciaries use the manager’s Credentials to comply with regulations that require fiduciaries to prudently select and monitor all investment managers they engage. Instead of conducting their own investigation, ERISA Fiduciaries can rely on the manager’s Credentials which have been independently prepared by a recognized expert.

The Certification process and disclosures are compliant with regulations and guidelines from the Securities and Exchange Commission (“SEC”) and Department of Labor (“DoL”). The certification process is entirely voluntary but provides support if/when the manager is challenged by regulators, auditors, by litigation or arbitration.

Certification Cost

	Fee for Firm	Fee per IAR
First Time Cost	\$3,250	\$250
Annual Cost	\$2,500	\$250

Contact Us

E-mail Manager338@DALBAR.com or call 617-723-6400



DALBAR 3(38) Certification Program Description

The 3(38) Manager Advantage

Investment managers that support ERISA Fiduciaries to prudently handle the trillions of dollars in ERISA plans may do so in any one of three capacities... by offering an investment company (mutual fund, etc.)... by advising the ERISA Fiduciary as a 3(21) advisor... as a 3(38) manager.

The typical 3(38) manager has several advantages over the alternatives, such as:

- Providing discretionary investment management for plans and/or participants
- The use of investment models and pre-constructed portfolios
- Relieving ERISA Fiduciary of a large amount of liability
- Qualify investment offering as a QDIA
- May use mutual funds and ETFs but are not burdened by the requirements of registered investment companies

These advantages are amplified by the DALBAR 3(38) Certification.

The Plan Fiduciary Advantage

It is expected that growing numbers of ERISA Fiduciaries will elect to use 3(38) managers so as to transfer the responsibility of selecting and monitoring plan designated investments and the associated liability to professionals.

- As employers become more concerned about their personal liability for losses in their employees' 401(k) plan, there will be increased interest in outsourcing the fiduciary risk to ERISA 3(38) managers. When an employer uses a 3(38) manager properly, any liability for investment losses is transferred from the employer to the 3(38) manager.

There are two "catches" to properly using a 3(38) manager:

- First is that the ERISA Fiduciary loses control of the investments that go into the plan, this is usually the duty of the 3(38) manager.
- Second is that the ERISA Fiduciary must use a prudent process to select the 3(38) manager.

The loss of control means that employee objections and preferences can only be made as suggestions to the 3(38) manager and the employer is powerless to make changes (other than terminating the 3(38) manager and assuming any liability for losses).

The prudent process of selection is aided by the DALBAR ERISA 3(38) Manager Due Diligence. DALBAR conducts the necessary steps and documents the process so that each ERISA Fiduciary can rely on the DALBAR process to meet its obligation.



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Benefits of 3(38) Certification

Certification makes it practical and efficient for the ERISA Fiduciary to comply with the requirement to prudently select and monitor the 3(38) manager.

DALBAR Certified 3(38) managers enjoy a number of critical business benefits:

- Ability to advertise client testimonials (if independently prepared by DALBAR, using SEC guidelines.) The trust, expertise, performance and service that existing clients enjoy are used as a key advantage for winning new clients and securing existing ones.
- Attractive disclosure presentation. The 3(38) manager's credentials are a welcome relief from the traditional client disclosures and rigid structure of form ADV.
- Support due diligence required by ERISA. Certification eliminates most of the complexity and time required for the ERISA Fiduciary to act prudently by providing the basis for sound judgment.
- Credibility of an independent third party expert. DALBAR's history, experience and reputation makes the 3(38) Certification credible for regulators, competitors and clients.
- Personalized Credential Document. The Credentials reflect the specific capabilities and positioning of the 3(38) manager.

Deliverables

In addition to Credentials, successful applicants receive:

- A certificate indicating that the due diligence was successfully completed
- A seal and the rights to use it on printed and electronic materials for one year
- Client feedback from evaluations performed

Credential Document

Credentials include the following:

- Opinion Letter summarizing the candidate's qualification as an ERISA 3(38) manager
- Fact Sheet on the manager and investment team
- List of Services offered by candidate
- Fee Structure used with ERISA 3(38) clients
- Client Rating Recap, testimonial of existing clients
- Disclosures and declarations



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FAQs

How long does the Certification process take?

The process can be completed in 30 days but often takes up to 90 days depending on issues that be uncovered. Typical issues include inadequate client agreements, difficulties in obtaining client ratings and incomplete documentation.

What are the continuing education requirements?

The ERISA 3(38) Certification is a due diligence process, not an education program. Due diligence is repeated annually but there is no continuing education requirement.

How do I use the Certification?

The Certification is most often used to promote the manager's capabilities. It is also used with existing clients to increase loyalty, generate referrals and to obtain additional assets. The first use is often a news release, announcing the award. Managers can also reference the contents of the Credentials in marketing and sales materials.

Can my firm qualify for 3(38) Certification without having actual experience?

Yes. The required experience is as an investment manager, so it is not necessary to have experience as a 3(38) manager. On the other hand, candidates must have a minimum of five years of experience as an investment manager or adviser.

How does 3(38) Certification differ from GIPS?

GIPS is an important certification for the reliability of investment reporting. As a 3(38) manager, the GIPS standard is a valuable attribute but is unrelated to compliance with ERISA regulations. The basic difference is that GIPS addresses performance reporting while 3(38) Certification addresses ERISA compliance and due diligence.

What do I need to qualify for 3(38) Certification?

Any number of circumstances could cause a firm to be disqualified as a 3(38) candidate. There are some basic requirements that will cause immediate disqualification:

- At least one manager at the firm must have more than five years of experience as an investment manager or adviser.
- None of the firm's investment managers can have a serious regulatory violation in the last five years.
- The candidate must release a complete list of its retail and institutional clients for the purpose of conducting a client evaluation of the firm.

If in doubt, the best course of action is to file an application since there is no cost if there is immediate disqualification.



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May I advertise my firm's client rating?

Yes. The SEC allows you to use your DALBAR rating in advertising, promotion and marketing, subject to certain disclosures. These disclosures are included in the credentials that you receive upon Certification.

Why do I have to release my client list?

A direct evaluation by clients is a requirement for Certification. Firms that object to releasing their clients cannot have the independent certification and cannot advertise a rating.

How do I avoid privacy violations by releasing the names of my clients?

Privacy provisions of the Gramm-Leach-Bliley Act permit the release of client information to a third party for purposes such as client rating. Your firm cannot qualify for Certification if its own privacy prohibits such a release. In order to qualify for Certification, the firm's privacy policy must be changed to permit such a release.



APPENDIX A

DoL/DALBAR DUE DILIGENCE

The Department of Labor has defined minimum requirements for prudent selection and monitoring of ERISA advisers who act as fiduciaries and explicitly invited standards that further protect participants. The following table summarizes the DoL minimum requirements as well as standards used by DALBAR to further protect participants.

Due Diligence Requirements	DALBAR
DoL Minimum Selection Requirements	
Objective process to assess:	✓
• Adviser qualifications	✓
• Quality of services offered	✓
• Reasonableness of fees charged for the service	✓
• Avoidance of self dealing	✓
• Avoidance of conflicts of interest	✓
• Avoidance of other improper influence	✓
Process will take into account:	
• Experience and qualifications of the investment adviser	✓
• Adviser’s registration in accordance with applicable federal and/or state securities law	✓
• Willingness of adviser to assume fiduciary status and responsibility under ERISA	✓
• Use of generally accepted investment theories	✓
DoL Minimum Monitoring Requirements	
Periodically review:	
• Changes in information that served as the basis for the initial selection	✓
• Whether the adviser continues to meet applicable federal and state securities law requirements	✓
• Adviser is complying with the contractual provisions of the engagement	✓
• Utilization of services in relation to the cost of the services to the plan	✓



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Due Diligence Requirements	DALBAR
Additional DALBAR Standards	
Background Check	✓
Record of investment results for clients	✓
Client trust and opinion of adviser	✓
Alignment of contract terms with services offered	✓
Un-tethered to any single practice standard or protocol	✓
Compliance with SEC No-Action Letter permitting advertising of DALBAR Rating	✓



APPENDIX B

CERTIFICATION PROCESS

Certification process consists of the following eight steps:

	Step	Candidate Actions	DALBAR Actions
1.0	Apply	Complete application, attach required documents and submit to DALBAR.	Review application and make preliminary determination if candidate is qualified. Notify candidate if not qualified.
2.0	Verify Application	Supply any additional information as needed.	Independently verify information provided with application. Notify candidate if there is a problem.
3.0	Check background	None	Perform background check and notify candidate if there is a problem.
4.0	Process Payment	Remit payment if invoiced.	Charge credit card or submit invoice.
5.0	Client Evaluation	Supply complete list of retail and institutional clients and notify clients that Dalbar may be requesting that they evaluate candidate.	Perform client evaluation in conformance with SEC No Action Letter.
6.0	DALBAR Evaluation	Answer questions that may arise.	Evaluate information gathered and client ratings and prepare preliminary version of Credentials document.
7.0	Review Results	Examine preliminary version of Credentials document and raise any issues or concerns.	Consider issues and concerns and make appropriate amendments.
8.0	Issue certification	Announce Certification and deliver Credentials to existing and prospective clients.	Issue Certification.



APPENDIX C DOCUMENTS

The candidate provides the following documents required by the certification process:

	Document	Use
1.0	Application	Basis for due diligence process
1.2	Declarations	Evidence of commitment to fiduciary standards
1.2	Conflicts of interest disclosure	Evaluate and disclose as required in Credentials
1.3	Services	Compare to client agreement and other sources prior to publishing in Credentials
1.4	Fees	Fee disclosure in Credentials
1.5	Investment Theory	Evaluate if theory is generally accepted, as required by regulations.
2.0	Form ADV	If updated, replaces publically available ADV
3.0	Client agreement	Determine if services and terms are consistent with ERISA 3(38) and that document is understandable without bias against client
4.0	Brochures, etc.	Determine what candidate is promoting and how offers are presented
5.0	Website	Review the public image that candidate has created
6.0	Insurance certificate	Determine if requirement for insurance are met and in force
7.0	List of clients	Obtain client rating and determine if there are potential issues
8.0	Due diligence and performance reports	Determine if basic tool are available to perform as 3(38) manager
9.0	Privacy policy	Summarize in Credentials
10.0	Other certifications (such as GIPS)	Include in manager profile and feature in Credentials