

in the previous two years but are no longer registered.

Section 3(38)(B) of Title I of ERISA was also amended to reflect the above-described changes to the investment adviser registration requirements under the Advisers Act.⁵ Specifically, section 3(38)(B) of ERISA requires that, to be an investment manager under Title I, an investment adviser must: (i) be registered with the SEC under the Advisers Act of 1940, or (ii) if not registered under such Act by reason of paragraph (1) of section 203A(a) of such Act, be registered as an investment adviser under the laws of the state in which it maintains its principal office and place of business and, at the time the investment adviser last filed the registration form it most recently filed with such state in order to maintain its registration under the laws of such state, it also filed a copy of such form with the Secretary of Labor.

To implement the filing requirements in section 3(38)(B)(ii) of ERISA, the Department announced on January 14, 1998, that state-registered investment advisers seeking to qualify, or remain qualified, as investment managers must file a copy of their most recent state registration form for the state in which it maintains its principal office and place of business with the Department prior to November 10, 1998, and thereafter file with the Department copies of any subsequent filings with that state. The ongoing obligation to file copies with the Department was, however, to be temporary in nature and remain in effect until a centralized database containing the state registration forms, or substantially similar information, was available to the Department.⁶

The current requirement to file with the Department copies of state registration filings already accessible to the Department and the general public via the IAPD Web site places an unnecessary administrative burden on the regulated community. The requirement also results in the Department allocating resources to receive, sort, and store paper copies of information readily available in electronic form. It is the Department's view that use of the IARD as a centralized electronic database would

improve the ability of the Department, plan fiduciaries, and plan participants and beneficiaries to readily access registration information regarding investment advisers eligible to be investment managers of ERISA-covered plans. As noted above, not only does the SEC require electronic filing through the IARD for registration under the Advisers Act, but most states also require IARD filing for compliance with state investment adviser registration requirements. While a few states do not make electronic filing through the IARD mandatory, as noted above, all states permit investment advisers to use the IARD to satisfy registration requirements. As described more fully below, the Department believes the majority of investment managers of ERISA-covered plans already file registration forms electronically through the IARD under the Advisers Act or under applicable state securities laws. In the Department's view, the benefits to plan trustees, plan participants and beneficiaries, and the Department of this proposed regulation outweigh the relatively small incremental cost that some investment managers may incur to file state registration filings through the IARD.

B. Summary of the Proposed Regulation

The proposed regulation would add § 2510.3–38 to title 29 of the Code of Federal Regulations. Section 2510.3–38(a) would describe the general filing requirement with the Secretary set forth in section 3(38)(B)(ii) applicable to state-registered investment advisers seeking to become or remain investment managers under Title I of ERISA. The regulation would also make clear that its purpose is to establish the exclusive means to satisfy that filing obligation. Section 2510.3–38(b) would provide that, for a state-registered investment adviser to satisfy the filing requirement in section 3(38)(B)(ii) of ERISA, it must electronically file the required registration forms through the IARD. Section 2510.3–38(b) would also provide that submitting a copy of state registration forms to the Secretary does not constitute compliance with section 3(38)(B)(ii) of ERISA. Section 2510.3–38(c) would define the term “Investment Adviser Registration Depository” and “IARD” for purposes of the regulation as the centralized electronic depository described in 17 CFR 275.203–1. Finally, § 2510.3–38(d) would provide a cross-reference to the SEC Internet site at <http://www.sec.gov/iard> for information on filing investment advisor registration forms with the IARD.

C. Effective Date and Interim Reliance

This regulation is proposed to be effective 60 days after publication of a final rule in the **Federal Register**. If adopted, the proposed regulation would be applicable to investment adviser registration filings due after the effective date of the final regulation. Until the effective date of the final regulation, investment advisers seeking to obtain or maintain investment manager status under Title I of ERISA will be treated as having met the filing obligations with the Secretary of Labor described in section 3(38)(B)(ii) of ERISA for any registration filing due on or after the date the proposed regulation is published in the **Federal Register** if they satisfy the conditions of the proposed regulation.

D. Regulatory Impact Analysis

Summary

The Department has undertaken this proposed rulemaking for the purpose of establishing a single and readily accessible source of consistent information about the registration of investment advisers that are investment managers by virtue of meeting the requirements of section 3(38)(B)(ii) of ERISA. The Department believes the regulation, if implemented as proposed, would benefit plan fiduciaries, investment advisers, and ultimately the participants and beneficiaries of employee benefit plans. Although the anticipated benefits of the proposal are not quantified here, they are expected to more than justify its relatively modest estimated cost.

The estimated cost of the implementation of electronic registration through the IARD for approximately 500 advisers that submitted copies of their state registrations to the Secretary of Labor, and that currently register in only those states that do not mandate IARD filing, is just under \$400,000. Ongoing annual costs are estimated at \$50,000. These costs will be offset by efficiency gains for plan fiduciaries and for investment advisers that wish to be appointed by plan fiduciaries. As a result of the electronic registration requirement, plan fiduciaries will be able to access a single source of registration information regardless of the size or location of the adviser, and advisers may more readily demonstrate their eligibility to be investment managers in order to gain appointments by plan fiduciaries. Over time, these investment managers may also reduce the handling of paper and the time required to complete the Form ADV, which is the joint SEC and state registration form that is also currently

⁵ See sec. 308(b)(1) of Title III of NSMIA and Act of November 10, 1997, Sec. 1, Pub. L. 105–72, 111 Stat. 1457.

⁶ Pub. L. 105–72 provided that a fiduciary shall be treated as meeting the requirement for filing a copy of the required state registration form with the Secretary if a copy of the form (or substantially similar information) is available to the Secretary from a centralized electronic or other record-keeping database. See Act of November 10, 1997, Sec. 1(b), Pub. L. 105–72, 111 Stat. 1457.