

3(21) and 3(38) fiduciary services

Plan sponsors are required by ERISA to provide an investment lineup for participants that has been prudently selected and monitored to minimize and control risk. To ease this burden, a retirement plan advisor may act as an ERISA 3(21) investment fiduciary with regards to the selection, monitoring and replacement of plan investments or as an ERISA 3(38) fiduciary with full discretion regarding the selection, monitoring and replacement of plan investments.

A Raymond James retirement plan advisor can serve in a 3(21) nondiscretionary fiduciary capacity, or alternatively Raymond James can serve as the discretionary 3(38) fiduciary. The needs and desires of the plan sponsor typically dictate the specific arrangement, which is predicated upon the subject of risk mitigation versus risk avoidance. Some plan sponsors want assistance with their fiduciary responsibilities but want to maintain discretion and control of their plans' investment menus. Others want to shift responsibilities to a third-party fiduciary due to their lack of expertise, and ultimately, fear of exposure to liability.

DIFFERENCES

3(21) SERVICES

Any individual is a fiduciary under Section 3(21) if they exercise any authority or control over the management of the plan or disposition of its assets; if they render investment advice for a fee (or have any authority or responsibility to do so); or if they have any discretionary responsibility in the administration of the retirement plan.

3(38) SERVICES

Section 3(38) defines "investment manager" as a fiduciary due to their responsibility to manage the plan's assets. ERISA provides that a plan sponsor can delegate the responsibility (and thus, likely the liability) of selecting, monitoring and replacing investments to a 3(38) investment manager/fiduciary. A 3(38) fiduciary may only be a bank, an insurance company or a registered investment adviser subject to the Investment Advisers Act of 1940.

SIMILARITIES

A fiduciary is determined not only by title, but by actions as well. Both 3(21) and 3(38) advisors accept fiduciary responsibility and adhere to ERISA 404(a)'s duty to serve solely in the interest of plan participants. In addition, both have to meet the "prudent expert" standard of care. Plan sponsors retain the responsibility to select and monitor the advisor or other third-party fiduciary regardless of fiduciary status. Plan sponsors should consider the advisor's experience, skill and level of expertise, in addition to their desire to take on exposure to potential liability.

3(21) SERVICES

- States in writing fiduciary status
- Follows IPS to build an approved fund menu*
- Provides a list of approved funds
- Assists with monitoring of approved fund menu
- Makes recommendations for changes to approved fund menu
- Recommends mapping guidelines
- Provides investment-related documentation

3(38) SERVICES

- States in writing fiduciary status
- Drafts and follows the IPS to build the fund menu
- Builds fund lineup**
- Monitors fund lineup
- Makes changes to fund lineup
- Determines mapping strategies
- Provides investment-related documentation

*Plan sponsor has the final discretion over fund selection or changes.

**The 3(38) investment manager will build, monitor and make the necessary changes to the fund lineup for a plan.

For more information on available fiduciary services and programs,
please contact your Raymond James advisor.

All investments are subject to risk, including loss. There is no guarantee that any strategy will be successful. Any liability regarding investment selection and monitoring will be set forth in, and subject to, the applicable agreements.

RAYMOND JAMES®

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