

As an advisor in the 401(k) space, it is important for you to understand the difference between a 3(38) and a 3(21) advisor in determining the services you will offer to plan sponsors.

3(38) vs. 3(21) Advisor - What is the Difference?

There has been much discussion in recent years about 3(38) and 3(21) advisors. There are varying opinions about which type of plan advisor is best for a plan sponsor to use. The answer will vary based on the circumstances of each sponsor and what they are looking for from the plan's financial advisor.

As an advisor in the 401(k) space, it is important for you to understand the difference between a 3(38) and a 3(21) advisor in determining the services you will offer to plan sponsors.

What is a 3(21) advisor?

A 3(21) advisor provides advice to the plan sponsor but doesn't make the final decisions regarding the plan's investment lineup. A plan sponsor who hires a 3(21) advisor is typically looking for outside investment expertise but wants to retain final discretion over the plan.

A 3(21) advisor will typically draft the plan's investment policy statement (IPS) or review and revise an existing IPS. The IPS outlines the types of investments offered by the plan as well as the process for monitoring and if needed replacing investments offered by the plan. Based on the IPS criteria, the 3(21) advisor will monitor the plan's investments and suggest replacements to investment options if needed based on their review.

The 3(21) advisor will typically participate in periodic review meetings with the sponsor's investment committee to present their review of the plan's investments and any suggestions they might have regarding changes to the lineup. The plan sponsor would then make the final decision as to whether to implement those recommendations.

A 3(21) advisor typically is considered a co-fiduciary of the plan.

What is a 3(38) advisor?

While a 3(21) advisor acts as an investment advisor, a 3(38) advisor functions as the investment manager for the plan. A plan sponsor who hires a 3(38) advisor is delegating the authority to make changes in the investment lineup to them.

A 3(38) advisor does all of the same types of review, monitoring and analysis of the plan's investments that a 3(21) advisor does. The difference is that the 3(38) advisor then takes things a step further and implements any changes they deem appropriate to the plan's investment lineup.

The 3(38) advisor is considered a plan fiduciary.

Delegation not abdication

When a plan sponsor engages the services of a 3(38) fiduciary advisor, they are delegating management of the plan's investments to them. Delegating this responsibility does not mean that they can abdicate their ultimate fiduciary responsibility for the plan's investments.

A plan sponsor should review the performance of the 3(38) fiduciary periodically to ensure that they are performing their duties in line with the expectations they had when they hired the advisor. In fact the plan sponsor should establish a set of criteria by which to evaluate the 3(38) advisor and then perform a review of their performance against those criteria on a regular basis, generally at least annually.

3(38) advisor versus 3(21) advisor – a summary

Here is a brief summary of the main differences between a 3(38) and a 3(21) advisor.

	3(21) ADVISOR	3(38) ADVISOR
ROLE	INVESTMENT ADVISOR	INVESTMENT MANAGER
Responsibilities	<ul style="list-style-type: none"> » Analyzes and monitors the plan’s investment lineup. » Makes recommendations on any adjustments to the plan’s investment lineup to the plan sponsor’s investment committee. » The final decision as to whether to implement these recommendations remains with the plan sponsor. » Analyzes and monitors the plan’s investment lineup. » Has the authority to implement any changes in the plan’s investment lineup that they feel are warranted based upon their review and analysis. 	<ul style="list-style-type: none"> » Analyzes and monitors the plan’s investment lineup. » Has the authority to implement any changes in the plan’s investment lineup that they feel are warranted based upon their review and analysis.

Should a financial advisor working with 401(k) plan sponsors focus on offering 3(21) services, 3(38) services or both? The answer will vary by the advisor, but there is a demand for both types of advisory services among plan sponsors.

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