

Which Model Protects Your Plan Best? 3(21) vs. 3(38)

When your plan’s complexity and participant expectations rise, it’s essential to review how your existing management structure is — and is not — fulfilling your needs.

This checklist is designed to support that evaluation.

How to use this worksheet

This document is a structured guide to facilitate discussion of the benefits of a 3(21) fiduciary model versus a 3(38) model, and vice versa. Not every plan needs to make a change, but this exercise will help you feel informed in your decisions.

Throughout this document, we distinguish between the two fiduciary models as follows:

- + **3(21):** a co-fiduciary model where a third-party investment advisor partners with a company fiduciary or the plan sponsor, sharing the responsibility of making investment recommendations. Ultimately, the company’s fiduciary retains decision-making authority and liability for fees and performance
- + **3(38):** a fiduciary model where a company delegates most of the responsibility of a plan, including final decisions on investments, to a third-party manager. This option is often referred to as a “plan fiduciary.”

Create a baseline

For a moment, set aside the practical factors (like time and cost) of choosing a fiduciary model. Without any obstacles, what would your ideal structure look like?

Define your desired level of control

- ☐ Would you prefer to retain final decision-making authority over investment decisions?
- ☐ Are you generally comfortable delegating investment decisions to a third party?

Define your tolerance for risk & liability

- ☐ Are you comfortable sharing liability with your advisor and retaining ultimate responsibility for investment decisions?
- ☐ Do you want to shift fiduciary liability (for investment decisions) to a qualified manager?

Outline your constraints

Which variables are most impactful in choosing a fiduciary model?

Assess internal expertise & resources

- + Does your team currently have enough expertise and time to perform the following as often as you'd like? (Check all that apply)
 - ☐ Evaluate fund performance
 - ☐ Monitor and benchmark investments
 - ☐ Make discretionary changes
 - ☐ Review investment recommendations
 - ☐ Evaluate compliance standards
 - ☐ Provide regular reports and schedule meetings

Cost & size constraints of the plan

- ☐ Does your organization lack investment management experience or the capacity necessary for the size of your plan?
- ☐ Is there a robust process for monitoring recommendations?
- ☐ Do you have criteria for periodic performance and compliance reviews?
- ☐ Is cost a major factor, and are you comfortable managing decisions?
- ☐ Are you facing a substantial risk of litigation?

At a glance

Aspect	3(21) fiduciary	3(38) fiduciary
Decision authority	Advisory only — sponsor retains control	Discretionary authority to make changes
Liability	Shared — sponsor retains ultimate liability	Investment liability shifts to manager
Best for ...	Sponsors with internal expertise & time	Sponsors wanting delegation and risk mitigation
Cost considerations	Lower price, but more administrative burden	Higher price, but less day-to-day responsibility

How IMA can help

Choosing the right fiduciary plan is rarely simple. It's a decision that should be considered from multiple angles, including a company's capacity to manage investment responsibilities in-house, management's risk tolerance, and the budget at its disposal. Ultimately, both options are viable for many plan sponsors, so weighing the pros and cons is even more crucial.

IMA Retirement is a trusted partner for both 3(21) and 3(38) models. We can help you weigh your options and walk you through the next steps.

Our goal is always to remove layers of complexity and to create a framework that makes fiduciary responsibilities more sustainable over time.

This document is intended as an educational resource and does not constitute legal advice. Plan sponsors should consult appropriate professionals regarding their specific fiduciary responsibilities.

Let's Connect



For assistance with your retirement needs, contact an IMA Retirement advisor at retirement@imacorp.com or 877.305.1864.

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