STONEBRIDGE
FINANCIAL GROUP

3(21) VS. 3(38) FIDUCIARY

A retirement plan adviser can serve in either a 3(21) or 3(38)fiduciary capacity, and insome cases, both capacities. The needs and desires of the plan sponsor typically dictate the specific arrangements, 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 plan's investment menus. Others want to shift the fiduciary responsibilities to a third party due to their lack of expertise, and ultimately, fear of exposure to liability.

3(21)	3(38)
State in writing co-fiduciary status	State in writing co-fiduciary status
Assists in drafting IPS	Drafts IPS Builds initial fund menu
Helps design initial fund menu	Monitors menu Makes changes
Provides monitoring	Determines mapping strategies
Recommends changes	Provides documentation
Recommends mapping strategies	
Provides documentation	

SIMILARITIES

Both 3(21) and 3(38) advisers accept fiduciary responsibility and adhere to ERISA 404(a)'s duty to serve solely in the interest of plan participants, and both have to meet the "prudent man" standard of care. Plan sponsors retain the responsibility to select and monitor the adviser, regardless of their adviser's fiduciary status.

DIFFERENCES

Any individual is a fiduciary under Section 3(21) if he or she exercises any authority or control over the management of the plan or the management or disposition of its assets, if he or she renders investment advice for a fee (or has any authority or responsibility to do so), or if he or she has any discretionary responsibility in the administration of the retirement plan.

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