



3(38) or 3(21): Which Fiduciary Service is Right for You?

Looking to reduce your fiduciary risk as a plan sponsor? A little outside help can yield big reductions in risk, provide the best for the people on your company's payroll, and help you feel good about your qualified retirement plan. Remember though, what's good for the plan participants isn't always best for the company - and as the plan sponsor, the company takes on substantial legal and financial liabilities. If you're listed as the plan administrator, some of those liabilities accrue to you as well. Best practices suggests that any plan sponsor who doesn't possess the technical knowledge and experience to manage investments consider hiring an advisor – and your choice of advisor can significantly lower your fiduciary risk.

Why hire a fiduciary?

Hiring an outside fiduciary can reduce some or most of that liability by putting the plan in the hands of a professional that affirmatively accepts fiduciary responsibility in section 3(21) and 3(38) of the Employee Retirement Income Security Act of 1974 (ERISA). These 3(21) and 3(38) fiduciaries are not stockbrokers; instead of taking commissions on investments purchased for your plan, they're compensated by a stated fee. This helps reduce potential conflicts of interest in constructing and managing your plan's investments.

What's the difference between a 3(38) Fiduciary and a 3(21) Fiduciary?

There are two types of fiduciaries recognized under ERISA standards. A 3(21) fiduciary advises and makes recommendations, but as the plan sponsor still have ultimate responsibility for the legal operation of the plan and making

plan-level investment choices. A 3(38) fiduciary takes over management of plan investments, makes investment choices, executes investments and monitors their performance. The 3(38) advisor is solely authorized to make (and is responsible for) those decisions. Because they have this responsibility, they can often be in a position to act more quickly in terms of making any changes to the plan, since such decisions need not go through the plan sponsor's committee for any approval process. A 3(38) fiduciary may also be advantageous for smaller firms with fewer resources in their benefits department. Hiring a 3(21) fiduciary relieves the plan sponsor of part of the labor and part of the investment fiduciary responsibility, and provides the plan fiduciary a professional opinion in decision-making. A 3(38) fiduciary relieves the vast majority of the labor and almost all of the responsibilities. In short, whereas a 3(21) fiduciary advises and assists; a 3(38) fiduciary can function in a broader role for plan sponsors.

Remember - even if you hire a fiduciary, you're still involved.

With a 3(38) fiduciary, the sponsor is still required to provide oversight of the fiduciary. Also, hiring a 3(38) fiduciary doesn't relieve the sponsor from liability for poor investment decisions made by participants. However, ERISA Section 404(c) does create a "safe harbor" for plan sponsors if they meet specific requirements that include stipulations regarding investment selection, plan administration and certain disclosures.

What about Full Service Fiduciaries?

Firms that offer both 3(21) and 3(38) fiduciary services may also provide professional investment advice through staff or partnerships along with educational services to help meet the section 404(c) safe harbor standards. With the help of these outside professionals, you can lower your fiduciary risk by doing right by your employees while addressing all applicable regulations.

For more information about hiring a fiduciary, or questions regarding 3(21) or 3(38) fiduciaries, reach out to your plan advisor.

The Impact of Auto-Enrollment into Retirement Plans



Americans are saving more for retirement, according to a survey released by the Plan Sponsor Council of America.¹ In fact, employees put 6.8 percent of their paychecks into 401(k) and profit-sharing plans in 2018 compared to 6.2 percent of their salaries in 2010. Why the increase? One reason may be that 57.5 percent of retirement plan sponsors have included an automatic enrollment feature in their plans.

An automatic enrollment feature in a retirement plan allows employers to enroll eligible employees in their retirement plans unless the employee chooses to opt out of the plan. It's often used for 401(k) plans, but can also be included in 403(b) plans, 457(b) plans for government employees, Salary Reduction Simplified Employee Pension plans (SARSEPs), and Savings Incentive Match Plans for Employees (SIMPLE) IRA plans. Automatic enrollment clearly boosts retirement plan participation.

Automatic enrollment taps into a basic psychological trait, inertia. The field of behavioral finance suggests that people tend to resist change and don't always take action even when the action is clearly beneficial. However, behavioral finance can turn that weakness into a strength. Retirement plan sponsors that use automatic enrollment are taking action for their employees, and then that same inertia keeps employees from opting out of the retirement plan.

1. https://www.psc.org/PR_2018_60thAS

Four Ways to Increase Employee Retirement Contribution Participation

As a retirement plan sponsor how can you encourage your employees to save and save more? Improving both employee participation and their saving rates is easy when you're prepared. Here are four simple ways you can help your employees start building a confident retirement.

1. Boost employee participation with automatic enrollment.

Choosing to automatically enroll all new employees in your retirement plan can dramatically improve your participation rates. According to the Center for Retirement Research (CRR) at Boston College, in one study of automatic enrollment, participation increased by 50 percent, with the largest gains among younger and lower-paid employees. While auto-enrolled employees are allowed to opt out of the retirement plan, most generally stay enrolled.



2. Set the initial default contribution rate higher.

Many companies who use auto-enrollment set their default contribution rate relatively low at three percent, according to the CRR, which is lower than the typical employer match rate of six percent. Workers who might have contributed more to their savings passively accept the lower default rate, which means they're sacrificing employer matching funds along with saving less of their own pay.

3. Adopt auto-escalation.

Plans that use auto-escalation automatically increase their participants' contribution rate every year, typically by one percent. Over time, that can significantly improve savings rates among workers. The CRR cites a 2013 study of Danish workers that the majority of workers who experienced automatic increases simply accepted them, and savings rates dramatically increased.

4. Automate investment decisions with target-date investment products.

Investing is complicated, and many employees don't want to take the time to learn how to manage their portfolios. Target-date strategies automatically adjust an employee's investment allocations over time, shifting them to a more conservative asset mix as the target date (typically retirement) approaches. The ease of use of target-date funds means their popularity is increasing. The CRR notes that in 2014, nearly 20 percent of all 401(k) assets were in target-date funds, and about half of plan participants used target-date funds.

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