

Both Section 3(21) and Section 3(38) advisors accept fiduciary responsibility and accept the duties of serving solely in the interest of plan participants and meeting the dictates of the “prudent person” standard of care outlined in ERISA section 404(a).

A fiduciary under ERISA Section 3(21) is anyone who exercises any authority or control over the management of a plan or the management of its assets, renders investment advice for a fee, has any discretionary responsibility in the administration of the plan or, is named in plan documents. Although Section 3(21) fiduciaries provide advice, they do not take control of plan assets so, the plan sponsor or plan committee retains decision-making ability in how plan assets are handled.

In addition to the fiduciary responsibilities listed above, a Section 3(38) “investment manager” has discretion, authority and control of plan assets. Under ERISA regulations, a plan sponsor or committee can delegate the job of selecting, monitoring and replacing plan investments to a Section 3(38) investment manager. However, the plan sponsor retains liability for the selection and monitoring of the Section 3(38) investment manager. The plan sponsor or committee also retains the ultimate fiduciary liability for the plan.

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

Hargrave Fiduciary Advisors can act as a Section 3(21) investment advisor or, as a Section 3(38) investment manager.