

Plan Sponsor Resource · Investment Fiduciary Decision Tool

3(21) vs. 3(38)

Comparison Matrix & Decision Tool

A practical framework to compare investment fiduciary structures, committee responsibilities, oversight expectations, and delegation considerations.

Plan Name:

Date:

Completed by:

Overview: What This Tool Is Designed to Do

Retirement plan committees are often asked to evaluate whether the plan's investment oversight structure still fits how the committee actually works. Some committees prefer to remain directly involved in investment decisions, while others prefer to delegate discretionary authority to an outside investment manager.

Core question

Do we know where investment authority actually sits, and does that structure match our committee's capacity, expertise, and documentation process?

This tool is designed to help plan sponsors and retirement plan committees compare how responsibilities, oversight expectations, documentation obligations, and decision-making authority differ under 3(21) and 3(38) fiduciary arrangements.

Side-by-Side Fiduciary Structure Comparison 01

Why this matters

The label alone does not tell the full story. The practical issue is who recommends, who decides, who implements, and who monitors over time.

Oversight Area	3(21) Investment Fiduciary	3(38) Investment Manager
Investment recommendations	Provides recommendations to the committee	Makes discretionary investment decisions
Final investment authority	Retained by the committee	Delegated to the 3(38) manager
Fund selection responsibility	Committee approves selections	3(38) manager selects investments
Fund replacement responsibility	Committee approves changes	3(38) manager implements changes
Committee involvement level	High	Moderate
Investment decision documentation	Committee documents decisions	Committee documents provider oversight
Provider monitoring obligation	Committee monitors adviser	Committee monitors 3(38) manager

Committee Self-Assessment Questions 02

Why this matters

A committee may have the right provider structure on paper but still struggle if meetings, documentation, or investment reviews are inconsistent in practice.

Use the following questions to evaluate whether your current investment oversight structure aligns with how the committee actually functions.

Committee oversight and governance

- Does the committee meet consistently enough to actively review investment recommendations?
- Are investment discussions clearly documented in committee minutes?
- Is there a structured process for reviewing investment performance?
- Does the committee feel comfortable evaluating investment recommendations independently?
- Are investment decisions occasionally delayed because meetings are postponed or agendas are too full?

Internal expertise and operational capacity

- Does the committee have members with meaningful investment oversight experience?
- Has committee turnover made investment oversight more difficult?
- Does the committee have sufficient time to actively manage investment decisions?
- Is the committee comfortable making final investment decisions directly?

Delegation considerations

- Would the committee benefit from clearer separation between oversight and investment management?
- Would delegated investment authority improve operational consistency?
- Is the committee looking to reduce the administrative burden of ongoing investment reviews?
- Would faster implementation of investment changes improve the plan's oversight process?

Governance Considerations 03

Why this matters

Neither structure is automatically right for every plan. The stronger structure is usually the one that fits the committee’s capacity, expertise, and oversight process.

A 3(21) structure may be more appropriate when:

- The committee wants to remain directly involved in investment decisions
- The committee has sufficient time and expertise to review recommendations regularly
- Investment oversight responsibilities are clearly documented and consistently followed
- The organization prefers a collaborative decision-making structure
- The committee is comfortable approving investment changes directly

A 3(38) structure may be more appropriate when:

- The committee prefers to delegate discretionary investment authority
- Internal investment expertise is limited
- Committee turnover creates oversight inconsistency
- Investment monitoring has become operationally difficult to maintain
- The organization wants clearer separation between oversight and investment management responsibilities

Notes / observations:

Provider Evaluation Questions 04

Why this matters

Provider conversations should clarify practical responsibilities, not just service descriptions. The committee should understand what the provider does, what the committee retains, and how the relationship will be documented.

When evaluating either a 3(21) or 3(38) provider relationship, committees may want to discuss:

- How are investment decisions documented?
- How frequently are investment reviews performed?
- How are investment changes communicated to the committee?
- What reporting does the committee receive?
- How does the provider monitor investment policy statement compliance?
- What fiduciary responsibilities remain with the committee?
- How are investment replacement decisions handled?
- What happens if investment performance concerns develop between meetings?
- How does the provider support committee documentation and governance processes?

Practical Committee Discussion Framework 05

Why this matters

This section turns the comparison into a committee discussion. The goal is to document how the committee thinks about authority, capacity, delegation, and oversight before making or changing a provider decision.

Use the prompts below during a committee meeting, annual review, or provider evaluation process.

Discussion Area	Committee Notes
How actively involved does the committee want to remain in investment decisions?	
Does the committee currently have sufficient time for ongoing investment oversight?	
Are investment decisions being documented consistently?	
Would delegation improve governance consistency?	
What responsibilities does the committee want to retain directly?	
Are committee members comfortable evaluating investment recommendations independently?	
Does the current structure align with how oversight actually functions in practice?	

Important Governance Reminder 06

Why this matters

Delegating investment authority can change who makes investment decisions, but it does not remove the committee's responsibility to prudently select and monitor the provider.

Hiring either a 3(21) fiduciary adviser or a 3(38) investment manager does not eliminate the committee's obligation to prudently select and monitor service providers under ERISA.

A well-structured fiduciary process generally includes:

- Clearly assigned responsibilities
- Consistent committee oversight
- Documented decision-making
- Regular provider reviews
- Ongoing governance monitoring

Review Support

Many plan sponsors find it helpful to walk through this worksheet with an experienced team, especially when responsibility feels unclear or execution gaps repeat over time.

A brief review can help:

- Confirm where fiduciary responsibility and oversight sit today
- Highlight the highest-risk gaps
- Clarify practical next steps without adding more work

To schedule a review [click here](#) or call (206) 625-1800.

About First Hill Trust

First Hill Trust is a retirement plan solution provider that delivers a comprehensive employee benefits back office for plan sponsors who want clearer accountability, stronger governance, and fewer operational handoffs. Our work is grounded in helping sponsors understand and strengthen the oversight of their plan. We focus on clarifying where responsibility sits, how decisions are executed, and how oversight functions in practice, not just on paper

We work behind the scenes to support plans that value clarity, consistency, and confidence in how they are managed. If you'd like more information or a high-level review of how your retirement plan is governed today, click the link to schedule a brief review, or contact us (206)-625-1800.



[Schedule a Brief Review](#)

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