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Retirement Plan Newsletter | Q3 2023

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IS YOUR RETIREMENT PLAN ADVISOR A FIDUCIARY?

Are you a fiduciary? If you make decisions that impact your company's retirement plan, then you are most likely a fiduciary as defined by the Employee Retirement Income Security Act of 1974 (ERISA). It's also a question you should feel comfortable asking your 401(k) advisor, since many employers look to their investment advisor to help shoulder this responsibility.

In general, an [ERISA](#) fiduciary is anyone who exercises discretionary authority over a plan or its assets, or someone who gives investment advice to the plan. A retirement plan advisor that acts as a fiduciary is held to a higher standard of conduct overall and can even share in the fiduciary responsibility that resides with you as an employer.

Typically, a retirement plan advisor will act as either a 3(21) Investment Advisor or a 3(38) Investment Manager. In both cases the advisor will offer similar services, including monitoring a plan's investments, benchmarking fees, and offering employee education. However, there is a distinction between the two titles.

	Educates about Investment Options	Recommends Investment Options	Makes Investment Decisions
3(21) Advisor	✓	✓	
3(38) Manager	✓	✓	✓
Advisor	✓		

A 3(21) Investment Advisor reviews the plan's investments and makes recommendations, but they do not have discretion to make the changes. Ultimately, the responsibility to make investment decisions still rests with the plan sponsor.

A 3(38) Investment Manager reviews the plan's investments and has full discretion to choose and/or replace the investments within the plan. A 3(38) Investment Manager assumes full responsibility for the plan investments and as such, provides a higher degree of fiduciary protection for you as plan sponsor. But remember, the plan sponsor still retains liability in terms of selecting and monitoring the 3(38) Manager.

If you are a decision maker for your company's 401(k) plan, you should ask this question and make sure you have the right type of plan advisor supporting you.

Grimes has a dedicated team that specializes in providing investment advisory services to retirement plan fiduciaries and their employees. We assist clients with investment selection and monitoring, fee benchmarking, plan design and employee education.

401(K) NEWS: SECURE 2.0 ACT ROTH CATCH-UP DELAYED

The SECURE 2.0 Act was signed into law late last year and made significant changes to many of the rules and regulations governing retirement plans starting in 2023 and 2024. There are over 90 new provisions as a part of the legislation, with the overall goal to encourage more people to participate and save for retirement.

One of the more controversial new provisions originally required workers making \$145,000 or more to contribute their catch-up contributions on a Roth basis as opposed to pretax starting January 1, 2024. There was a great deal of confusion as to how to implement this change as it will require new administrative procedures for 401(k) recordkeepers and new coding from employer and payroll companies.

As a result of this, more than 200 entities, including the American Retirement Association, petitioned the U.S. House Ways and Means to delay the Roth catch-up rule for two years, until 2026. As a result, the IRS issued Notice 2023-62, which granted a two year transition period through December 31, 2025 to allow for compliance with this specific provision. So, we now have until 2026 to figure out how to account for this new rule.

IMPORTANT DISCLOSURES:

Sources include eSignal.com, Bureau of Economic Analysis, Bureau of Labor Statistics and FactSet.

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