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Where are the plan records?

Recordkeeping in the Electronic Age

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Plan Sponsor Responsibilities

- Operate the plan in accordance with plan instruments and compliance requirements (applicable laws and regulations)
- Adhere to *Records Retention Requirements*
- Monitor plan activities outsourced to, and information provided by, service providers (includes review of type 2 SOC 1 reports and implementation of complementary user controls)
- Maintain effective payroll and HR data systems
- Complete financial accounting and reporting requirements (e.g., Form 5500)
- Meet audit requirements

Responsible for the operation and administration of a plan.

Plan Records – Plan Sponsor Responsibilities

Records Retention Requirements

ERISA requires plan sponsors to retain broad categories of records related to meeting its fiduciary responsibilities. ERISA Sections 107 and 209 establish the requirements for record retention by the sponsor.

Section 107 of ERISA includes requirements for the retention of records used to support plan filings.

Section 209 addresses maintaining participant records used to determine benefits.

Records may be maintained by the employer or third-party administrators and outside service organizations, such as trustees, insurance companies, consulting actuaries, and contract administrators.

Plan Sponsor Responsibilities – Records Retention Requirements

Section 107 of ERISA requires those plan records used to support filings, including, but not limited to the following, to be retained for at least six years from the filing date:

- Copies of the Form 5500 (including all required schedules and attachments);
- Nondiscrimination and coverage test results;
- Required employee communications;
- Financial reports and supporting documentation;
- Evidence of Plan's fidelity bond;
- Corporate income-tax returns (to reconcile deductions)

ERISA Section 107 provides general record retention requirements for employee benefit plans.

Plan Sponsor Responsibilities – Records Retention Requirements

Section 209 of ERISA states that an employer must “maintain benefit records, *in accordance with such regulations as required by the DOL*, with respect to each of [its] employees sufficient to determine the benefits due or which may become due to such employees.”

- Plan documents, and items related to the plan document including, adoption agreements, amendments, summaries of material modifications (SMMs), summary plan descriptions (SPDs), the most recent IRS determination letter, etc.
- Census data and support for such information including records that are used to determine eligibility, vesting, and calculated benefits (such as rates of pay, hours worked, deferral elections; employer contribution calculations)

Section 209 of ERISA
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benefit reporting.

Plan Sponsor Responsibilities – Records Retention Requirements

Section 209 of ERISA states that an employer must “maintain benefit records, *in accordance with such regulations as required by the DOL*, with respect to each of [its] employees sufficient to determine the benefits due or which may become due to such employees.” **(continued)**

- Participant account records and actuarial accrued benefit records
- Support and documentation relating to plan loans, withdrawals and distributions
- Board or administrative committee minutes and resolutions
- Trust documents

Section 209 of ERISA requires the maintenance of records by employers relating to individual benefit reporting.

Plan Sponsor Responsibilities – Use of electronic media

DOL Rule 29 CFR § 2520.107-1, *Use of electronic media for maintenance and retention of records*, provides guidance on the retention of plan information through electronic format, as follows:

- The electronic recordkeeping system has reasonable controls to ensure the integrity, accuracy, authenticity and reliability of the records kept in electronic form;
- The electronic records are maintained in reasonable order and in a safe and accessible place, and in such manner as they may be readily inspected or examined;
- The electronic records are readily convertible into legible and readable paper copy as may be needed to satisfy reporting and disclosure requirements or any other obligation under Title I of ERISA;

Plan Sponsor Responsibilities – Use of electronic media

DOL Rule 29 CFR § 2520.107-1, *Use of electronic media for maintenance and retention of records*, provides guidance on the retention of plan information through electronic format, as follows (**continued**):

- The electronic recordkeeping system is not subject, in whole or in part, to any agreement or restriction that would, directly or indirectly, compromise or limit a person's ability to comply with any reporting and disclosure requirement or any other obligation under Title I of ERISA; and
- Adequate records management practices are established and implemented
- All electronic records must be legible and readable.

Plan Sponsor Challenges – Use of electronic media

- The electronic recordkeeping system has reasonable controls to ensure the integrity, accuracy, authenticity and reliability of the records kept in electronic form;
 - Insufficient monitoring of the plan’s service organizations, including review of relevant SOC 1 reports
 - Inadequate complimentary user entity controls (CUECs)
 - Qualified SOC 1 reports
 - Maintaining effective payroll and HR data (internal) systems

DOL Rule 29 CFR §
2520.107-1, *Use of
electronic media for
maintenance and
retention of records*

Plan Sponsor Challenges – Use of electronic media

- The electronic records are maintained in reasonable order and in a safe and accessible place, and in such manner as they may be readily inspected or examined;
- Logical access control deficiencies at the service organization
- Cybersecurity incidents
- Accessible records in a change in service provider
- Accessible records in a plan merger/spin-off/transfer

DOL Rule 29 CFR §
2520.107-1, *Use of
electronic media for
maintenance and
retention of records*

Plan Sponsor Challenges – Use of electronic media

- The electronic recordkeeping system is not subject, in whole or in part, to any agreement or restriction that would, directly or indirectly, compromise or limit a person's ability to comply with any reporting and disclosure requirement or any other obligation under Title I of ERISA; and
 - Nondisclosure agreements

DOL Rule 29 CFR §
2520.107-1, *Use of
electronic media for
maintenance and
retention of records*

Plan Sponsor Challenges – Use of electronic media

- Adequate records management practices are established and implemented
 - The only data available is at the service provider; there are no source documents.
 - Data to recalculate an accrued benefit is not available
 - Only a system screen shot is available
 - Records of merging in plans is not obtained or retained.
 - Change in service provider at 12/31 – there are no records at the predecessor nor at the successor

DOL Rule 29 CFR §
2520.107-1, *Use of
electronic media for
maintenance and
retention of records*

Plan Sponsor Challenges – Understanding the auditable requirements and evidence

SAS No. 145, Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement addresses the auditor's responsibilities to identify and assess the risks of material misstatement in the financial statements through understanding the entity and its environment.

Paragraphs .15–.25 of AU-C section 315A describe the five components of internal control:

- a. Control environment
- b. The entity's risk assessment process
- c. The information system, including the related business processes relevant to financial reporting and communication
- d. Control activities relevant to the audit
- e. Monitoring of controls

Plan Sponsor Challenges – Understanding the auditable requirements and evidence

Statement on Auditing Standards (SAS) 142, *Audit Evidence*, explains what constitutes audit evidence in an audit of financial statements and sets out attributes of information that are taken into account by the auditor when evaluating information to be used as audit evidence.

The reliability of information to be used as audit evidence is affected to varying degrees by the following attributes, individually or in combination:

- Accuracy
- Completeness
- Authenticity
- Susceptibility to management bias

Recommendations

Recommendations – Record Retention

- Provide further guidance on what records need to be retained and the length of time records need to be maintained
 - include guidance on procedures to perform and records to be maintained when a plan merger, spin-off, transfer or change occurs
 - include guidance related to records needed by the auditor to audit the plan's financial statements
 - include considerations to adhere to ERISA and DOL regulations
- Set requirements to establish and implement records management practices
 - require a written record retention policy governing how the organization periodically reviews, updates, preserves, and discards documents related to plan administration
 - require documentation on sufficiency of historical information and benefit amounts
 - ERISA Counsel and those charged with governance to review in accordance with ERISA requirements

Recommendations – Data Protection

- Provide guidance on policies and procedures to ensure electronic recordkeeping system has reasonable controls to ensure the integrity, accuracy, authenticity and reliability of the records kept in electronic form;
 - practices to include monitoring of service organizations (e.g., plan activities outsourced and related reporting) and implementation of complimentary user entity controls
 - includes review of type 2 SOC 1 reports and identification of complementary user entity controls
 - includes evaluating/addressing qualified SOC 1 reports
- Provide guidance on policies and procedures to ensure electronic records are maintained in reasonable order and in a safe and accessible place
 - includes maintaining effective payroll and HR data systems (input, change & maintenance controls)
 - includes evaluating/addressing qualified SOC 1 reports

Recommendations – Nondisclosure Agreements

Educate plan sponsors and service organizations on ERISA requirements and Audit Standards

- The electronic recordkeeping system may not be subject, in whole or in part, to any agreement or restriction that would, directly or indirectly, compromise or limit a person's ability to comply with any reporting and disclosure requirement or any other obligation under Title I of ERISA
- Plan sponsors should be aware of agreements, terms and requirements being presented and the associated restrictions and conflicts with ERISA and Auditing Standards
- Auditors should not be entering into any form of a contractual agreement with a vendor to a client to conduct an audit (impairs independence and violates standards)
- In accordance with standards, auditors should have unfettered access to the information needed to conduct an audit
- Auditors are bound by the terms of our audit engagement letter and contract with the client, indicating they will keep client confidential information, confidential – such agreement extends to information provided by third party providers
- The terms are intended for an individual user and not for use by an auditor



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