

**TESTIMONY OF THOMAS NASH PFEIFLE**  
**BEFORE THE**  
**2023 ADVISORY COUNCIL ON EMPLOYEE WELFARE AND PENSION BENEFIT PLANS**  
**REGARDING**  
**“RECORDKEEPING IN THE ELECTRONIC AGE”**  
**JULY 17, 2023**

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My name is Thomas Nash Pfeifle and I am currently a Director of Regulatory Support with Transamerica Retirement Solutions. I lead a team of Regulatory Support Consultants who specialize in the design and administration of qualified and nonqualified retirement benefit programs. I have served in similar capacities with various administrative service providers since 1997. I am a Massachusetts Attorney and North Dakota Certified Public Accountant. My work involves providing practical explanations and recommendations on a wide range of plan administration and design topics, including benefit design, mergers and acquisitions, plan documentation, contribution limits, correction of operational failures, nondiscrimination testing and Form 5500 reporting. My concentration has been in defined contribution recordkeeping but most of this discussion and concepts apply equally to defined benefit plan administration.

The views and conclusions expressed in my testimony are my own. They should not be attributed to, and do not represent the views of my current employer, Transamerica.

Thank you very much for holding this hearing and for providing me the opportunity to testify.

**SUMMARY**

The world has moved into the digital age at an astounding pace. Over my career, I have watched the retirement industry successfully move from a manual paper-based environment to reliance on digital transaction processing and storage of plan and participant information and records. I believe that the move to a digitally-based environment has enhanced the efficiency and reliability of

recordkeeping and record retention. I can remember when records retrieval consisted of requesting boxes of paper forms, statements, calculation spreadsheets and other documents from an offsite storage facility and conducting reviews of sometimes hundreds of documents to obtain the information required. With the transfer of this information to digital storage, the ability to retrieve and review relevant documents and data has become infinitely more efficient and effective. Electronic access to plan account records is safer for Plan Administrators and participants. Recordkeepers can utilize more robust authentication such as multifactor verification versus simply mailing paper documents with personal information to mailing addresses that may be old or fabricated. The development of auditing standards and internal controls has kept pace with the enhancements in digital recordkeeping. The current ERISA fiduciary requirements, along with enhanced auditing rules, are working to keep plan records safe, accurate and accessible.

In my testimony, I would like to briefly discuss four topics.

- ❖ Technologies used in managing and retaining plan records
- ❖ Records maintenance
- ❖ Record retention and transfer of records related to change in recordkeepers and plan merger and acquisition transactions
- ❖ Trends in electronic recordkeeping

## DISCUSSION

### **Technologies used in managing and retaining plan records**

The industry has been developing its ability to obtain, retain, display and act on electronic records for over 25 years. As many will recall, the industry faced major electronic system updates in 2000. For example, date formats across the world were required to be updated from a two digit year reference to a four-digit year reference. The industry reacted timely and the change from 1999 to 2000 was successfully completed without the feared outcome of retirement plan records reverting to 1900. The industry continues to meet the challenges and provide the benefits of electronic recordkeeping through safe, reliable, accessible and accurate systems required by a competitive market. The industry continues to innovate and accept new technologies and safeguards.

The electronic medium has become the core retirement plan recordkeeping service model allowing ready access to accurate plan and participant level records for Plan Administrators, participants, auditors and applicable regulatory authorities without the need for vast storage facilities for paper forms, communications, spreadsheets and other data. Regardless of how data is input in the system, either by direct access through web-based technology (particularly in processing participant and employer contributions), contacting a call center representative or a processor manually inputting the data from a form, the majority of the actual calculations, storage and output is generated electronically. This permits more extensive, accurate and timely responses to requests for information along with plan research and analysis.

The use of electronic recordkeeping by Plan Administrators, employer payroll departments/vendors and recordkeepers has significantly reduced the time needed to validate payroll records. This allows participant contributions to be transferred to the plan trustee more accurately and timely than is possible under a paper-based system.

Participants who interact with their retirement plan online can take immediate action on their accounts and utilize a variety of online tools not available to participants interacting through paper. The ability to immediately act, for example, with respect to deferral rates and investment allocations, better positions participants to achieve retirement readiness. Plan Administrators and employers also can get reports of how many participants are logging into their accounts versus not knowing which participants are opening traditional mailed statements.

The accounting rules, as embodied in the Generally Accepted Account Principles/GAAP, applicable to retirement plans, as well as ERISA and the Department of Labor (“Department”) regulations and guidance regarding record retention apply equally to paper, electronic or digital recordkeeping. The core concepts are the same; the format of the information is simply different. In addition, Section 2502.107-1 of the Department’s regulations provides a framework for using electronic recordkeeping.<sup>1</sup> This framework allows the industry to innovate and adapt to those innovations.

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<sup>1</sup> Department Regulation Section 2502.107-1 **Use of electronic media for maintenance and retention of records.** (a) *Scope and purpose.* Sections 107 and 209 of the Employee Retirement Income Security Act of 1974, as amended

Like many industries, retirement plan recordkeepers utilize either proprietary recordkeeping systems or those provided by third-party vendors. Those using third-party vendors enter into contracts requiring the vendor to provide scheduled system updates and enhancements. In addition, recordkeepers may also build specific custom processes to meet the needs of their clients and the industry. Recordkeepers who have developed proprietary systems perform these functions in-house utilizing their information technology/IT resources that are both internal and external.

I have experience in working with both models (proprietary recordkeeping systems and systems provided by third-party vendors). Each model requires continuous updating and monitoring for both changes in the law and regulations applicable to retirement plans and maintaining the security

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(ERISA), contain certain requirements relating to the maintenance of records for reporting and disclosure purposes and for determining the pension benefits to which participants and beneficiaries are or may become entitled. This section provides standards applicable to both pension and welfare plans concerning the use of electronic media for the maintenance and retention of records required to be kept under sections 107 and 209 of ERISA.

(b) General requirements. The record maintenance and retention requirements of sections 107 and 209 of ERISA are satisfied when using electronic media if:

- (1) The electronic recordkeeping system has reasonable controls to ensure the integrity, accuracy, authenticity and reliability of the records kept in electronic form;
- (2) 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 (for example, the recordkeeping system should be capable of indexing, retaining, preserving, retrieving and reproducing the electronic records);
- (3) 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;
- (4) 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
- (5) Adequate records management practices are established and implemented (for example, following procedures for labeling of electronically maintained or retained records, providing a secure storage environment, creating back-up electronic copies and selecting an off-site storage location, observing a quality assurance program evidenced by regular evaluations of the electronic recordkeeping system including periodic checks of electronically maintained or retained records, and retaining paper copies of records that cannot be clearly, accurately or completely transferred to an electronic recordkeeping system).

(c) Legibility and readability. All electronic records must exhibit a high degree of legibility and readability when displayed on a video display terminal or other method of electronic transmission and when reproduced in paper form. The term "legibility" means the observer must be able to identify all letters and numerals positively and quickly to the exclusion of all other letters or numerals. The term "readability" means that the observer must be able to recognize a group of letters or numerals as words or complete numbers.

(d) Disposal of original paper records. Original paper records may be disposed of any time after they are transferred to an electronic recordkeeping system that complies with the requirements of this section, except such original records may not be discarded if the electronic record would not constitute a duplicate or substitute record under the terms of the plan and applicable federal or state law.

and reliability of the system. In developing these updates, recordkeepers combine expertise in the Internal Revenue Code's ("Code") tax qualification rules, ERISA, retirement plan administration and IT to maintain compliant processes and systems. To remain competitive in the industry and to meet the auditing requirements described below, recordkeepers take these responsibilities seriously with periodic scheduled system updates and enhancements, generally, no less than three to four a year.

### **Records maintenance**

The industry recognizes the essential principle that participants, Plan Administrators, plan auditors and regulatory examiners have reasonable access to accurate and reliable plan records. In order to provide reliable financial information, the American Institute of Certified Public Accountants ("AICPA") has created Generally Accepted Auditing Standards ("GAAS") for monitoring recordkeeping systems and plan financial systems. The standards for auditing electronic plan recordkeeping systems have been developing over the last several decades.

These standards are contained in the System and Organizational Controls ("SOC") and the independent audit required for large plan filers. The SOC provides a framework for regular, independent assessments of a recordkeeper's controls mitigating information-related risk. An independent audit provides the framework for regular, independent assessments of the reliability of a large plan's financial statements.

*The SOC 1 Audit.* The SOC provides a framework developed by the AICPA for regular, independent assessments of a recordkeeper's controls mitigating information-related risk. The SOC is contained in the Statement on Standards of Attestation Engagements No. 18 ("SSAE 18"), which is part of the GAAS. GAAS is developed and monitored by the AICPA Auditing Standards Board ("ASB"). This provides independent auditing rules by which Plan Administrators and regulators can assess the reliability of a recordkeeper's system controls and reliability. The primary assessment of controls and reliability is referred to as the SOC-1.

The SOC-1 covers a recordkeeper's processes and controls that are relevant to the plan sponsor's Internal Controls over Financial Reporting (ICFR). Obtaining and reviewing a recordkeeper's SOC-1 is a critical piece of any retirement plan (*e.g.*, Form 5500) audit. Retirement plan auditors

consider both the impact of deviations and the sufficiency of controls to support a controls reliance approach within their own audit. The review of a recordkeeper's SOC-1 reporting by a wide range of audit firms, and the need for controls reliance to complete an efficient retirement plan audit, subject the SOC-1 report to inherent continuing review that recordkeepers must address in the interest of delivering superior customer service.

The SOC-1 reporting is performed in accordance with applicable AICPA standards (SSAE 18 and AT-C 320). The AICPA has provided indicative objectives which help drive both comparability between recordkeeper reports and reduce the risk that critical processes are not included. The report is structured around objectives which link to key business processes (e.g., setting up new plans, making distribution payments to participants, trade processing and reconciliation). Within those objectives, the SOC-1 auditor gains an understanding of the methods used to execute the business process (e.g., a participant can request a distribution electronically through a participant website, on a hardcopy paper form or through the call center) and considers risks related to both authentication and the accurate and timely completion of what was instructed. The auditors understand that different controls, and different types of evidence, will be required based on the method requested by the participant, but the expectation of control coverage and burden of proof (audit evidence) remains the same. As an example, in testing participant distributions, the SOC-1 auditor might require the following indicative evidence:

- Requested via hardcopy paper form: The form was submitted by the participant with their signature
- Requested via call center: A recording of the participant's making the request including proper authentication steps completed by the call center representative (e.g., challenge questions)
- Requested via participant website: Log data from the participant's web session showing the participant's ID keyed the request that initiated the payment and general login controls for the associated website

Regardless of whether activity is initiated via paper or an electronic mechanism, the expectation of proper controls and the "burden of evidence" is the same.

Currently, in my experience, recordkeepers have established digital functionality, and it is very much the expectation of auditors that this functionality exists and must be tested with the same rigor as paper based/manual processes. The shift from paper forms to a digital format is seen as less of a new frontier (where proper control expectations may not be established) and more of the continuation of trends dating back over more than two decades.

Retaining the same level of evidence for electronic activity as for paper-based activity is also operationally critical in the event of a dispute with a plan or participant. In many ways, the nature of electronic activity makes the storage of this information more efficient and secure. Data is often easier to protect in highly secured logs that can quickly and easily be searched rather than in hard-copy or as files on a drive (*e.g.*, PDF).

It is important to recognize the benefit of digitally-focused processes and controls in improving outcomes in retirement plan recordkeeping. As an example, a paper distribution request may be submitted “Not in Good Order” due to missing or invalid data or it could be keyed to the recordkeeping system inaccurately by the processor. An electronic request is stopped at the point of entry if data is missing or invalid, and it is written into the recordkeeping system via standard programming instead of being keyed by an individual processor, minimizing the risk of “Not in Good Order” transactions and also reducing the risk of manual keying errors.

*Independent Plan Audit.* As stated above, in addition to the SOC-1, the AICPA and the independent accounting firms required to audit large plan files (“Independent Auditors”) have updated retirement plan auditing procedures to review and approve the plan audited financial statements in an electronic recordkeeping environment effectively and accurately. The ASB actively reviews and renews auditing standards in response to electronic developments in the industry.

During retirement plan audits, Independent Auditors request a sample selection of withdrawals, loans, rollovers, participant benefit statements and other plan transaction materials to validate information is being correctly processed. As part of this sample selection, electronically requested and processed transactions are included. Auditors can determine that these transactions were processed correctly by receiving a full list of electronic transaction activity that can be compared

to a certified statement summary. Additionally, electronic copies of confirmations, checks, loan amortization schedules and participant statements assist with this determination.

As part of an audit, Independent Auditors also request a complaints log. This log would show if a participant disputed a transaction that may have been processed incorrectly. As stated above, a SOC-1 Report is also included which Independent Auditors review for information on the recordkeeper's electronic system security features.

Many tens of thousands of plans perform an independent audit each year as part of their Form 5500 filing (there were 86,744 large filer defined contribution plans in 2020<sup>2</sup>). Most of these Independent Audits are deemed "Unqualified," meaning the Independent Auditor has determined that the plan's financial statements are fairly and appropriately presented, without any identified exceptions, and in compliance with GAAP. Where plans are provided an Opinion other than Unqualified (e.g., Qualified, Disclaimer, or Adverse), it is rarely if ever due to transactions being keyed electronically versus paper, but instead due to issues or risks that have occurred without regard to whether transactions were processed in a paper or electronic environment. In short, Independent Auditors have well-developed audit procedures designed to work in an electronic environment.

### **Record retention and transfer of records related to change in recordkeepers and plan merger and acquisition transactions**

I am most familiar with record retention policies allowing the Plan Administrator access to plan records retained by an administrative service provider for a period of 7 years following the termination of the administrative service provider's relationship with the plan (noting that records are kept indefinitely while the plan has an active relationship with an administrative service provider). In my experience, this provides both participants and Plan Administrators with reasonable access to records for a reasonable period of time in order to respond to records requests from plan and regulatory auditors and examiners, successor administrative service providers, or participants (e.g., in the case of a Qualified Domestic Relations Order that may require balance

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<sup>2</sup> Private Pension Plan Bulletin: Abstract of 2020 Form 550 Annual Reports; October 2022)



information from dates in the past). It also complies with Section 107 of ERISA<sup>3</sup>, along with allowing compliance under Section 209(a) of ERISA.<sup>4</sup>

Record retention pertains to all records transferred to an administrative service provider, e.g., most commonly, the plan's recordkeeper, at the beginning of the relationship between the plan and the administrative service provider and those records that are accumulated through the relationship. At the beginning of a relationship, and as part of plan transfer, spin-off, merger or other plan transfer transaction, the recordkeeper will obtain the information needed for ongoing plan recordkeeping from the plan's former recordkeeper. This includes the data needed to determine years of service for eligibility and vesting, withdrawal and distribution history, participant demographics and other pertinent information. Specific past history is retained by the former

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<sup>3</sup> ERISA Section 107. Every person subject to a requirement to file any report (including the documents described in subparagraphs (E) through (I) of section 1021(k) of this title) or to certify any information therefor under this subchapter or who would be subject to such a requirement but for an exemption or simplified reporting requirement under section 1024(a)(2) or (3) of this title shall maintain a copy of such report and records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than six years after the filing date of the documents based on the information which they contain, or six years after the date on which such documents would have been filed but for an exemption or simplified reporting requirement under section 1024(a)(2) or (3) of this title.

<sup>4</sup> ERISA Section 209(a)(1) Except as provided by paragraph (2) every employer shall, in accordance with such regulations as the Secretary may prescribe, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees. The plan administrator shall make a report, in such manner and at such time as may be provided in regulations prescribed by the Secretary, to each employee who is a participant under the plan and who—

- (A) requests such report, in such manner and at such time as may be provided in such regulations,
- (B) terminates his service with the employer, or
- (C) has a 1-year break in service (as defined in section 1053(b)(3)(A) of this title).

The employer shall furnish to the plan administrator the information necessary for the administrator to make the reports required by the preceding sentence. Not more than one report shall be required under subparagraph (A) in any 12-month period. Not more than one report shall be required under subparagraph (C) with respect to consecutive 1-year breaks in service. The report required under this paragraph shall be in the same form, and contain the same information, as periodic benefit statements under section 1025(a) of this title.

(2) If more than one employer adopts a plan, each such employer shall furnish to the plan administrator the information necessary for the administrator to maintain the records, and make the reports, required by paragraph (1). Such administrator shall maintain the records, and make the reports, required by paragraph (1).

recordkeeper and includes past participant benefit statements, withdrawal and distribution forms and authorizations, tax reporting and other information not needed for ongoing administration..

When a Plan Administrator determines that it is in the plan's and participants' best interests to terminate the relationship with an existing administrative service provider, such as the plan's recordkeeper, and move to another administrative service provider, the existing administrative service provider is typically subject to a clause in its services agreement to use best efforts to assist the Plan Administrator in developing a strategy for the orderly transition of plan data and assets to the new administrative service provider. Transition services are subject to review and approval by the Plan Administrator in accordance with the rules and requirements of Section 408(b)(2) of ERISA, Section 2550.408b-2 of the Department's Regulations and relevant guidance. The relevant facts and circumstances of the transfer must be reviewed and analyzed to determine the scope of work, fees and processes involved that will assist the Plan Administration to smoothly transition services.

As a result, the successor administrative service provider can administer the plan on an ongoing basis, and the Plan Administrator will retain the ability to access historical plan records for a reasonable period of time.

### **Trends in electronic recordkeeping**

Besides the constant vigilance in protecting the integrity of recordkeeping systems, major trends and developments include the use of "Cloud" storage & computing and exploration of the capabilities of Artificial Intelligent (AI).

Recordkeeping, along with the rest of the world, is migrating to the Cloud. Cloud computing provides the retirement industry with a more cost-effective, resilient and secure solution, when compared to each administrative service provider building their own individual data centers. In essence, Cloud computing is renting computer space from mega-data center providers, such as Microsoft, Amazon and Google, who specialize in data security, controls, back up resiliency and other data center functions. They also offer sophisticated automation and diagnostic tools for security and risk management. The retirement industry will continue to move to Cloud computing in order to meet participant and Plan Administrator demands for ready access and connectivity to

secure information. The demand today is not for more laptop and computer connectivity, but for tablet and smartphone applications allowing access to plan accounts and information in a mobile environment. The demand is also for more secure web-based and mobile-based applications that respond to requests for information and transactions effectively, efficiently and quickly. This includes the full life cycle of the retirement plan experience, including plan document generation, payroll and contribution processing, participant communications and notices, and participant-requested transactions (loans, withdrawals and distributions). It has also become more cost effective for the industry to outsource/rent data storage and computing in the Cloud from specialists than attempt to duplicate this capability on an individual administrative service provider level. This, in turn, allows recordkeepers to reduce plan fees. Use of Cloud computing is already protected by the regulatory rules and oversight provided by ERISA and the Department.

AI has been around for many years in one form or another. Current programs and models used for financial guidance and customer experience, which are already subject to DOL regulations and guidance, can be defined as a traditional form of AI or Machine Learning, designed to take specific input and produce results in a specific format. As with other industries, the retirement industry is reviewing new interactive applications of generative AI tools which are driven by large language models such as ChatGPT to unlock new potential for recordkeepers. These tools enable dynamic open-ended interaction through a user-friendly interface, democratizing their use by the average person—who can get responses to simple and straightforward general questions. While not replacing the need for human judgment, Generative AI tools can provide useful outputs that expedite the creative process for review by qualified professionals. The retirement industry is in the early stages of exploring potential uses for these tools and developing policies to ensure their ethical and responsible application.

## **Conclusion**

We are seeing an incredibly rapid pace in the development of digital interaction and electronic recordkeeping. The retirement industry has already demonstrated its ability to sift through the applications and issues related to the unavoidable move into the digital recordkeeping age, a process that began in the late 1990s. Innovation needs to be nurtured in order to provide the best and safest experience for Plan Administrators and participants. This naturally leads to the

conclusion that fiduciary standards for electronic recordkeeping should continue to be based on a facts and circumstances analysis. Tomorrow's electronic recordkeeping environment may be quite different from today. The current fiduciary rules and procedures, rigorous independent audit standards, and the industry's proven ability to successfully adapt to the digital environment very appropriately and effectively provide the guard rails necessary to allow the industry to take full advantage of electronic recordkeeping. Specific best practice guidance from the Department at this point would become outdated quickly. As such, it appears that the EAC would not need to recommend such guidance.

Thank you again for allowing me to testify and I would be happy to answer any questions or provide any additional information you may need.