PLAN SPONSOR
Digest

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Record retention—the "paper" trail

Plan sponsors need to know ERISA's requirements regarding the retention of plan records.

As plan sponsors are well aware, the pension law (ERISA) includes specific reporting and disclosure obligations with respect to qualified retirement plans. A lesser known fact is that ERISA also has specific requirements regarding the retention of plan records. Below we answer questions you and other plan sponsors may have about retaining records and the importance of a record retention policy.

Why would we need a record retention policy? A retirement plan, by its very nature, generates a large amount of documentation. Some records should be retained indefinitely. Others may be disposed of in time. Having an established document retention system that allows plan records to be reviewed, updated, and preserved or disposed of in an organized fashion fosters good administration and helps the plan comply with pension law. Such a system can also make required documents readily accessible for IRS review, if requested.

Who is responsible for retaining plan records? Under ERISA, the plan administrator—which is often the plan sponsor—is ultimately responsible for maintaining the plan's records.

What records do we need to keep? The list is long. First, you need to keep all records that support the information included in your plan's Form 5500 filings and other reports and disclosures. These supporting documents essentially include whatever records a government auditor might need to verify the accuracy of the original report or disclosure. You also need to keep records used to determine eligibility for plan participation and any plan benefits to which employees and beneficiaries may be entitled. Records include:

- The original signed and dated plan document, plus all original signed and dated plan amendments
- Employee communications, including summary plan descriptions (SPDs), summaries of material modifications (SMMs), and anything else describing the plan that you provide to plan participants
- The determination, advisory, or opinion letter for the plan
- All financial reports
- Copies of Form 5500
- Payroll records used to determine eligibility and contributions, including details supporting any exclusions from participation
- Evidence of the plan's fidelity bond

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- Documentation supporting the trust's ownership of the plan's assets
- Documents relating to plan loans, withdrawals, and distributions
- Nondiscrimination and coverage test results
- Employee personal information, such as name, Social Security number, date of birth, and marital/family status
- Employment history, including hire, termination, and rehire dates (as applicable) and termination details
- Officer and ownership history and familial relationships
- Election forms for deferral amount, investment direction, beneficiary designation, and distribution request
- Transactional history of contributions and distributions

How long do we need to keep the records? Generally, you should keep records used for IRS and DOL filings for at least six years after the filing date. Retain records relevant to the determination of benefit entitlement indefinitely (basically, permanently).

401(k) plan default investments—don't set and forget

Plan sponsors need to review their plan's investment lineup to ensure that their plan's default investment satisfies U.S. Department of Labor standards and remains an appropriate investment vehicle for employees' retirement savings.

Although most 401(k) plans give employees a broad choice of investments, they also provide a default investment for employees who haven't made active investment elections. When reviewing their plan's investment lineup, plan sponsors will want to ensure that their plan's default investment satisfies U.S. Department of Labor (DOL) "qualified default investment alternative" (QDIA) standards and remains an appropriate investment vehicle for employees' retirement savings. Plan sponsors that comply with the investment, notice, and related Fiduciary duties listed in the DOL's QDIA regulation will not be liable for any investment losses that occur as a result of a participant's account being invested in a QDIA.

Use of the default option

Employees who are automatically enrolled in a retirement plan are moved into the plan's QDIA when they fail to make an investment election for their account. In addition to automatic enrollment, other situations that can result in participant accounts being moved into a QDIA include enrollment forms that are incomplete, qualified domestic relations orders, investment option removals, and rollovers.

Earlier this decade, the most common default investment options were money market and stable value funds. At the time, employers regarded these funds as "safe" investments for those employees who had not provided instructions on how their retirement account assets were to be invested. Under current DOL regulations on QDIAs, the focus is primarily on target date funds, professionally managed accounts, and balanced funds.

Notice requirements

Plans that use a QDIA for investments made on behalf of employees and plan beneficiaries who fail to direct the investment of their 401(k) plan account balances must provide a QDIA notice. The notice must be provided at least 30 days before they are eligible to participate in the plan or the first investment in a QDIA is made on their behalf (or on or before the date of eligibility if they have the opportunity to withdraw

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investments from the QDIA within 90 days of the first deposit). They also must receive an annual QDIA notice within a reasonable period of at least 30 days before the beginning of each plan year.

The QDIA notice must explain the employee's rights under the plan to designate how his or her contributions will be invested and, if he or she doesn't make any investment election, how the assets will be invested. The notice also must describe the QDIA, including the investment objectives, risk and return characteristics, and any fees and expenses involved. And it must explain the employee's right to transfer assets invested in the QDIA to other plan investment alternatives, as well as where to obtain information about other plan investments. Employees must be given a reasonable period after receiving the notice and before the beginning of the plan year to make investment choices.

Evaluating the QDIA

As is the case with any other 401(k) plan investment, the plan sponsor, as a plan fiduciary, is obligated to prudently select and monitor the plan's QDIA. For assistance, consult an experienced financial professional.

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