

# Maintaining Plan Records

## A Segment in Our Retirement Rescue Series

In our 401(k) and 403(b) Rescue Series, we discuss how many of the common errors found in these plan types could be prevented by maintaining complete, accurate plan records. These records are necessary in determining participant benefits and crucial if the plan is audited or a claim arises regarding plan operation or compliance. Record maintenance requirements have not changed in decades, but technology has evolved affording Plan Sponsors new methods to store plan information.

### Maintaining Plan Records

Plan Sponsors are required by law to maintain employee benefit plan records. Records should include, but are not limited to:

- Signed, Original Plan Documents and Amendments
- Determination and Opinion Letters
- Participant Notices including delivery method and date of delivery
- Participant information including census data, elections, loan documentation, distributions, etc.
- Recordkeeping and Valuation Reports
- Form 5500 Filings including all schedules and attachments

### Requirements under ERISA

Two sections of the Employee Retirement Income Security Act (ERISA) focus on record retention. Section 107 requires that anyone subject to a requirement to file an employee benefit plan report, such as a Form 5500, must maintain all records which include information or data necessary to verify the filing for a minimum of six years after the date of the filing.<sup>1</sup> However, Section 209 imposes an additional obligation that employee benefit plan records be retained as long as a necessary to properly determine benefits that are or may be due to each employee. While this is rather vague, in 1980, the DOL interpreted this Section to state that records must be retained “as long as a possibility exists that they might be relevant to a determination of the benefit entitlements of a participant or beneficiary”.<sup>2</sup>

### IRS Statute of Limitations

Generally, the IRS statute of limitations is three years from the filing date of the Form 5500 meaning that the plan could be audited regarding that information for up to three years. However, if pertinent information was not disclosed on the Form 5500, it may be audited for up to six years.

### Storage Solutions

The amount of information that must be maintained can be overwhelming. Plan Sponsors may choose electronic storage solutions to meet their needs but should consider the following:

- Records contain very sensitive information including social security numbers, birth dates, and home addresses. Information security should be a top priority.
- Technology is constantly evolving. Ensure that electronic storage and record retention policies are updated as often as needed to properly maintain records.
- Some records, such as Plan Documents & Amendments, notarized documents, or contracts, should be maintained in their original format with “wet signatures”.

Record Retention. Benefit Insights. The Retirement Plan Company, LLC. October 2010.

Record Retention Guidelines. McKay Hochman Consulting. Email Alert 2013-18. 01 November 2013.

<sup>1</sup> Full text of 29 U.S. Code § 1027 - Retention of records can be found at <https://www.law.cornell.edu/uscode/text/29/1027>

<sup>2</sup> Full text of 29 U.S. Code § 1059 - Recordkeeping and reporting requirements can be found at <https://www.law.cornell.edu/uscode/text/29/1027>