

Record Retention and Your Fiduciary Responsibilities

ERISA imposes obligations on Plan Administrators to retain plan-related records for certain periods of time, depending on the nature and subject matter of the records. It is important that you understand your record retention obligations under the law, so you can properly maintain your plan's records and fulfill your fiduciary obligations.

Information relevant to the Form 5500 filing must be retained by the Plan Administrator for 6 years after the Form 5500 is filed. This translates to retaining records for a given plan year for approximately 8 years, including the plan year at issue. For example, for the 2010 plan year, the Form 5500 could be filed as late as October 15, 2011. Therefore, the records would need to be retained until at least October 15, 2017, nearly 8 years from the first day of the 2010 plan year.

There are many documents that qualify as "information relevant to the Form 5500 filing," including documents you might not think of. For example, if you file a Schedule C with your Form 5500, you need to retain service provider contracts and agreements, and statements showing the fees paid by the plan to service providers, both directly and indirectly. (Documents for fees paid by the plan sponsor need not be retained for the 8-year period.) Statements from investment providers, showing the plan's assets, contributions, earnings and expenses, also need to be retained to support the information reported on the Form 5500. Investment provider statements may need to be retained even longer because they impact the benefit payable under the plan (see the discussion below).

Participant loan promissory notes and amortization schedules relate to information reported on the Form 5500 because the amount of participant loans outstanding at any time is reported on Form 5500. Thus, these documents should be retained for 8 years after the loan is paid off.

In addition to the Form 5500-related record retention obligation, the law requires that every employer retain records for each employee sufficient to determine pension benefits due or that may become due. In 1980, the Department of Labor issued proposed regulations that required that individual benefit records 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." In 1993, the Department of Labor issued a notice indicating that it anticipated withdrawing the proposed regulations and publishing revised guidance that allowed for reasonable time limits on record retention. However, no such guidance has been published. Thus, at the present time, the record retention period under this provision of the law is, as a practical matter, indefinite.

Plan documents, (such as Adoption Agreements, Summary Plan Descriptions, etc.), benefit election forms, payment requests and other correspondence related to benefit payments, and enrollment and beneficiary designation forms determine what pension benefits are due or may become due, and to whom they are to be paid. So do payroll records showing deferrals withdrawn from participants' pay and census data, which may, determine who became eligible for the plan when. Therefore, these records should be retained indefinitely.

If your plan is a defined benefit plan covered by the Pension Benefit Guaranty Corporation (PBGC), the PBGC requires that records related to a plan termination be retained for 6 years after the date on which the post-distribution certification is filed with the PBGC.

Keep in mind that, under Department of Labor guidance, destruction of records by a third party prior to the end of the record retention period does not excuse the Plan Administrator from having the records available for the record retention period. Depending on the facts and circumstances, the Plan Administrator may be required to reconstruct the destroyed records, and the Plan Administrator could be personally liable for the cost incurred in reconstructing the records. The record retention requirement cannot be avoided by contract, delegation or otherwise. This means the Plan Administrator remains liable for record retention, even if the records are in the custody of a third party, such as Employee Benefit Resources.

It is permissible to retain records in electronic, rather than paper, form if certain, very detailed requirements are met.

If you would like more information on your record retention obligations and/or Employee Benefit Resources' record retention policies, please contact your account manager.



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