

TRISTAR PENSION CONSULTING

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Keeping Plan Records

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Every so often, a pension consultant is asked the following question by a client: "How long do we have to keep documents and other records for our retirement plan?" A really safe answer might be "until every participant and all of their immediate family members pass away." On the other hand, a more common reply would be "for seven years." However, for most plan records, the prudent response lies somewhere in between.

Employers who sponsor qualified retirement plans may be subjected to a random audit from time to time by the Internal Revenue Service (IRS) or the Department of Labor (DOL). During such audits, the employer will be required to furnish numerous documents to prove that the plan has been administered in a qualified manner. Failure to produce the necessary documents could result in penalties, loss of tax deductions for plan contributions or disqualification of the entire plan. This is just one of a number of reasons why good record keeping habits are essential for the proper administration of a qualified plan.

This article will discuss the plan records that a plan sponsor should maintain, the length of time they should be kept and the reasons why such records are so important.

PLAN DOCUMENTS

A retirement plan is officially adopted when the employer executes a plan document which contains the governing provisions of all aspects of the plan. It may include provisions for the establishment of a trust to hold plan assets, or a separate trust agreement may be executed.

A corporate or partnership resolution is usually required, authorizing the plan adoption by such entities. A copy of the resolution, or an officer/partner's certification that the resolution was adopted, should be kept along with the plan documents in the plan's permanent files.

A summary plan description (SPD) must be distributed to each participant summarizing the significant features of the plan. It is not intended to carry the legal weight of the plan document itself, and may even include a disclaimer that the document will prevail where a conflict exists with statements made in the SPD. Nevertheless, courts have increasingly given legal significance to language provided in the SPD, especially where employees have relied on it to their detriment. Consequently, much care should be given in the preparation of the SPD.

From time to time a plan may be partially amended or completely restated, either at the discretion of the employer or as required by changes in the law. Such amendments/restatements and their corresponding adopting resolutions should be kept with the original plan documents. A summary of material modifications (SMM) or a revised SPD must be prepared and distributed to participants explaining the nature of the changes.

A new or revised document may be submitted to the IRS requesting a determination letter (ruling) that the plan satisfies the relevant provisions of the Internal Revenue Code (IRC). A plan is usually not required to obtain a letter, but any letter that is obtained should be kept in the plan document file so that it can be shown to an agent during an audit. This includes the IRS letter that is issued to a pre-approved document.

Other documents that should be kept in the plan's permanent files may include a union contract, insurance policies, evidence of the purchase of a fidelity bond, loan procedures, QDRO (qualified domestic relations order) procedures and notices to interested parties.

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PLAN ADMINISTRATION

Records must be kept that relate to the determination of participants' benefits under the plan. In addition, certain compliance testing must be done each year to insure that the plan does not exceed any limitations or violate the nondiscrimination requirements of the IRC.

At least one valuation date must be established each plan year, which is normally the last day of the plan year. Some plans have quarterly or semi-annual valuations, where participants are provided with benefit statements at such intervals. Many self-directed plans have daily valuation of account values that can be obtained on the Internet or by contacting the trustee or custodian.

Although frequent valuations are helpful in providing participants with more current account values, the limitation and nondiscrimination testing only needs to be performed once a year.

Following is a description of the information that is needed for annual plan administration purposes:

CENSUS INFORMATION

The employer must prepare a full census report at the end of each plan year. The census includes the name, social security number, birth date, hire date, termination date (if applicable), hours worked and total compensation of every employee. This information will be used to determine eligibility, contribution allocations and limitations, vesting and nondiscrimination testing.

ASSETS AND TRANSACTIONS

The trustee or custodian of the plan must provide the plan administrator with periodic statements showing the market value of plan assets as well as financial transactions that have taken place. Such statements are usually provided on a monthly or quarterly basis, although for some investments annual statements may be sufficient.

VALUATION REPORT

The annual valuation report, usually prepared by the plan's third party administrator, may include the following items:

- Census information upon which it is based
- List of plan assets
- Summary of transactions
- Account balances and account activity (defined contribution plans)
- Projected and accrued benefits (defined benefit plans)
- Actuarial report (defined benefit plans)
- Vesting percentages
- Top heavy test
- Annual additions test
- Deferral and contribution nondiscrimination tests (401(k) plans)
- Minimum participation and coverage tests
- Participant benefit statements

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DISTRIBUTIONS AND PLAN LOANS

Distribution election forms, notices and calculations should be maintained as well as applications and documentation related to participant loans.

PARTICIPANT NOTICES

Each participant must be given a copy of the summary annual report each year, which summarizes form 5500. Certain plans, such as safe harbor 401(k) plans and SIMPLE plans, must provide a notice to employees prior to the start of each plan year concerning the contributions provided under the plan.

GOVERNMENT REPORTING

Certain annual returns are required to be filed with the IRS, DOL or PBGC (Pension Benefit Guaranty Corporation) on behalf of a qualified plan. They include the following:

- Form 5500 – Annual Report
- Form 1099-R – Reportable distributions
- Form 945 – Reporting tax withholding
- Form 5330 – Excise tax on prohibited transactions, underfunding, etc.
- PBGC Form 1 – Premium payment for federal insurance program (defined benefit plans)

In addition, forms 5300, 5307 and 5310 may be filed with the IRS requesting a determination letter for the establishment, amendment or termination of a plan. Form 5310-A may be filed notifying the IRS of a plan merger. All forms filed with a government entity should be kept in the plan's permanent files.

HOW LONG MUST FILES BE KEPT?

There really is no definitive time period for which plan records must be kept. But there are good reasons for keeping certain documents over an extended period of time. One reason is to be able to confirm the value of each participant's benefit. Another reason, as stated above, is the possibility of a plan audit.

The IRS and DOL perform random audits of qualified plans. An audit may also be triggered by a reportable violation, an unusual entry on form 5500 or a complaint filed by a participant with the DOL. An agent will normally make an appointment to visit the employer's office, requesting to see almost all of the documents described above that relate to a particular plan year or years. With an IRS audit, the following additional items must also be provided:

- Employer's federal tax return
- Employer's quarterly federal and state returns
- Employer's W-2 and 1099-MISC forms
- Copies of cancelled contribution checks

An audit by the DOL would likely focus on fiduciary issues, prohibited transactions and participant disclosure information.

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Documents that are only required for a plan audit, such as cancelled contribution checks, need only be kept for about seven years. Plan audits rarely go back beyond that period and the statute of limitations for many plan violations expires after six years. But other plan records should be kept longer. Consider the following example:

Bill Smith was a participant in the ABC Profit Sharing Plan. He terminated employment in 1990 at age 50, and received a lump sum distribution of \$25,000. Since the plan did not have an annuity option, no spousal consent was required. In 2004 Bill passed away at age 64. His wife, Jane Smith, found his last benefit statement from the ABC plan dated 1990. Not remembering (or not knowing) that Bill previously received a distribution of \$25,000, she contacts the ABC Company, claiming that she should be entitled to Bill's plan benefit as his beneficiary. The plan administrator is now in the position of trying to prove that Bill's benefit was previously distributed to him. With files that go back to 1990, this would be easy to do.

Here is a suggested timeframe for keeping various types of plan records:

Type of Record	Suggested Holding Period
Original plan document, restatements, amendments, SPDs, corporate resolutions, union contracts, plan procedures, employee notifications	Plan inception until seven years after plan termination
Valuation reports, census information distribution and plan documentation	Seven years after plan termination
Asset statements, benefit statements	Seven years
Final defined benefit valuation report	Life of the employer*
All forms filed with government agencies	Seven years after plan termination
Employer's federal and state returns, payroll records, cancelled checks, etc.	Seven years
*A new defined benefit plan might have to consider benefits accrued under prior defined benefit plans.	

CONCLUSION

Record keeping is an essential component of the administration of a qualified retirement plan. A plan sponsor may be required to produce certain documents during an audit by the IRS or DOL, or confirm benefit calculations to participants. Without these documents the employer's tax deduction and the entire qualification of the plan might be in jeopardy.

While some plan records can be safely discarded after approximately seven years, others should probably be kept much longer. An employer never knows when a question might arise pertaining to a prior plan year, and it's better to be safe than sorry.

This newsletter is intended to provide general information on matters of interest in the area of qualified retirement plans and is distributed with the understanding that the publisher and distributor are not rendering legal, tax or other professional advice. Readers should not act or rely on any information in this newsletter without first seeking the advice of an independent tax advisor such as an attorney or CPA.

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