

# Maintaining Retirement Plan Records



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4/1/2024

Employers who sponsor a retirement plan are required by law to keep books and records available for the Internal Revenue Service (IRS) to review. Having these records available is also helpful when determining participant benefits. Records may be kept in either paper or electronic format, as long as they can be readily retrieved.

What records should you keep and how long must they be retained? ERISA requires that some records be kept for a six-year period, while other records must be kept indefinitely (especially if there is the possibility that the records might be needed to determine participant benefits). In addition to the fact that there are legal requirements for maintaining documents, there is also the concern that the records could be necessary for the employer's defense in the case of future litigation. So even though some records may lawfully be destroyed after six years, certain records should be preserved longer, if they might be critical in potential future litigation.

Below is a listing of the records that should be kept and best practice tips on how long these records should be retained.

**Plan Documents:** The plan and trust documents; loan policy (if applicable); all amendments; corporation/partnership actions and resolutions; determination and approval letters; annuity contracts; and collective bargaining agreements should be kept indefinitely. Make sure that documents are signed and dated. Copies of all communications to employees should be kept indefinitely - including the Summary Plan Description and any Summaries of Material Modification. Included with these records should also be service provider contracts and 408(b)(2) fee disclosures. In short, no legal documents related to the plan should ever be destroyed.

**Records regarding plan benefits:** ERISA requires every employer to maintain records necessary to determine benefits due or that may become due to each employee "for as long as the possibility exists that they might be relevant to a determination of the benefit entitlements of a participant or beneficiary". In other words, these records should be maintained indefinitely. Employees have been known to come back 20 years or more after leaving an employer, claiming that they are due a benefit from the plan. Examples of the types of records that might be used to determine benefits are eligibility records (something that can be used to substantiate plan eligibility, like census records that show when employees were hired/terminated and how many hours they worked); time cards; and any records related to distributions, including Forms 1099R (in the event an employer needs to defend against a claim by an employee that he was never paid a benefit to which he was entitled). Census records should include information on ALL employees who worked during each year, not just the employees who were eligible for the plan. Any documents related to plan loans should also be included with records that are maintained indefinitely.

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**Records that support information reported on Form 5500:** Records that verify or explain information on the Form 5500 should be kept for six years after the filing date of the Form. Examples of these records are worksheets; receipts; journals; ledgers; checks; invoices; bank statements; trust financial statements; contracts; payroll records; evidence of the plan's fidelity bond; and contribution registers. Obviously, copies of the Form 5500, the Summary Annual Report (SAR), and any schedules and audit reports should be kept for at least six years as well. Results of any nondiscrimination and coverage testing should also be maintained for six years.

**Participant Records:** Deferral election forms; investment forms; beneficiary forms; and any Qualified Domestic Relations Orders (QDROs) should be kept indefinitely in the participant's personnel files. For any employee who declines to participate in the plan, we believe it is best practice to have a signed and dated election form on file that shows a *zero election*, so that the employee can't come back later and make a claim that the employer owes him money because it failed to implement his deferral election. It is also advisable to keep a file that contains copies of any notices that were given to employees (safe harbor notices, automatic enrollment notices, fee disclosures, Qualified Default Investment Alternative (QDRO) Notices, etc.) with a date stamp on the notice to show when it was provided.

Preservation of plan records is important not only from the standpoint of complying with ERISA records retention rules, but also because the IRS has been known to request records from employers that go back 10 years or more in the case of a plan termination. And there have been several court cases where employees have claimed that they weren't allowed into the plan when they should have been - or that they weren't paid benefits they were due from the plan - and the burden of proof has been placed on the employer to demonstrate that the employee never met the plan's eligibility requirements or wasn't due a benefit or was previously paid the benefit. If an employer cannot produce the records to defend itself against such allegations, it is very likely that the employee will prevail in a lawsuit. By contrast, employers that can produce records that contradict an employee's claim will have a much stronger legal position.

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**Plan Fiduciary Records:** Plan fiduciaries must perform their duties with care, skill, prudence and diligence. In effect, they must be able to demonstrate that they carried out their duties as if they were a "reasonable expert". For many fiduciaries, part of that responsibility includes hiring outside advisors and consultants to assist with the plan. Records should be maintained that substantiate what considerations and steps were taken when evaluating and hiring outside providers (RFP responses, for example). The fiduciary must demonstrate that there was an analytical process used to make decisions related to the plan's administration. If there is a plan committee, meetings should be held regularly and meeting notes should be retained indefinitely to document what was discussed and decided with respect to the plan. Finally, regarding plan investments and plan fees, records that demonstrate the review and monitoring of investments and a determination of fee reasonableness need to be maintained indefinitely. The vast majority of recent high-profile lawsuits brought against plan sponsors have been related to the subject of investments and fees, so it is critical to have a documented process in place with the plan's financial advisor where these items are being regularly reviewed.

**Electronic Media:** Records may be stored electronically, but it is advisable that original signed documents be kept in paper format, especially if they cannot be converted to a legible electronic file. As we all know, storage media is constantly changing, so it is important to keep electronic records in a format that can be easily accessed with today's technology. Plan sponsors who still have files saved on CDs, for example, may want to convert them to newer technology. And make sure that if anything has been saved in a password protected file, that you know the password or can easily obtain it to retrieve the data.

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**Employee Retirement Income Security Act of 1974 (ERISA) Record Retention Requirements**

Section 107 of ERISA states that Plan Administrators must keep plan records for at least six years after filing ERISA returns or reports. ERISA also requires Plan Administrators to keep these documents in an easily accessible format. All documents that support your employee benefits plan disclosures and annual reporting must also be retained. Ultimately, the Plan Administrator is responsible for meeting all ERISA record retention requirements. The Plan Administrator will be held legally liable for all actions regarding the plan. Below is a checklist that may be helpful for record retention compliance. Please note that this is not an exhaustive list.

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**BASIC PLAN DOCUMENTS – KEEP INDEFINITELY**

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| <input type="checkbox"/> Plan information, including, executed plan documents, amendments, restatements, and IRS opinion letters | <input type="checkbox"/> Board resolutions or company minutes supporting the adoption of the plan, amendments or restatements, and confirming contributions (if required based on design) |
| <input type="checkbox"/> Trust agreements  | <input type="checkbox"/> Communications to employees, including, SPD/SMM and other required notices   |
| <input type="checkbox"/> Service provider contracts  | <input type="checkbox"/> IRS/DOL correspondence   |
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**PARTICIPANT INFORMATION CLAIM FOR BENEFITS – KEEP INDEFINITELY**

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| <input type="checkbox"/> Personal details, including, name, SSN, date of birth, date of hire, and marital/family status | <input type="checkbox"/> Employment history, including, hours worked used to determine vesting and eligibility |
| <input type="checkbox"/> Transaction history of distributions   | <input type="checkbox"/> Completed beneficiary designation form  |
| <input type="checkbox"/> Copies of Forms 1099R supporting payouts   | <input type="checkbox"/> Loan repayment history/QDRO payments  |
| <input type="checkbox"/> Proof of employee elections for deferral amounts and distribution requests                     |  |
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**DOCUMENT RETENTION FOR 6 YEARS**

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|---|---|
| <input type="checkbox"/> Forms 5500 and 8955-SSA filings and summary annual reports   | <input type="checkbox"/> Compliance testing results   |
| <input type="checkbox"/> Certified audits if the plan is required to perform an audit   | <input type="checkbox"/> Officer and ownership history, including, family relations   |
| <input type="checkbox"/> Participant compensation and hours history used to determine eligibility and calculate contributions | <input type="checkbox"/> Transactional history of contributions, distributions, earnings, fees, loans, and any other transactions |
| <input type="checkbox"/> Proof of employee elections for investments  | <input type="checkbox"/> Certified appraisals for hard to value assets, such as, real estate, art, and stock                      |

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