

# How Keeping Good Records Can Minimize A Retirement Plan Sponsor's Liability

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Besides being a religious text, the Bible is essentially a history book detailing major religious events like the Exodus from Egypt. A history book is a record of events that can be passed down from generation to generation. Recordkeeping is like preserving history and while it's not the same as a Bible, a plan sponsor would be wise to keep good records. While it's not going to be treated on the same level as Moses parting the Red Sea, keeping good records will help plan sponsors limit their liability as plan fiduciaries. This article is about how plan sponsors can limit their liability by keeping good plan records.

## Plan Documents

While most plan records can be thrown out after about seven years, a plan sponsor can never throw away any plan documents, ever. Retirement plan documents and the ancillary tack on amendments are proof that the retirement plan in question was drafted to comply with the Internal Revenue Code and be considered qualified for tax deductions for contributions made and deferral of income for the contributions received by plan participants. While plan documents have to be fully restated every 6-7 years, that's no reason to chuck the previous batch of documents. First, the Internal Revenue Service (IRS) or Department of Labor (DOL) may ask for it on a plan audit, especially if a former plan participant accuses the plan

sponsor of not providing past benefits. In addition, over the years, mistakes can be made in the plan documents. So having the entire record of plan documents and amendments can decipher what the intent was behind plan provisions and mistakes can be detected that way. Plan sponsors should never forget that retirement plan documents are legal documents, legally

turn for the retirement plan. Once filed, it is subject to a three-year period in which the IRS and the DOL can audit the Plan. If it's never filed, there is no statute of limitation. So it's important that a plan sponsor keeps a copy of the Form 5500 as well as the receipt for e-filing, just to make sure if someone questions whether it was filed. So many times, the DOL may ask where a 5500 is even though it was properly filed.



## Valuation Reports

Annually, a retirement plan sponsor will receive an annual valuation report from their third party administrator (TPA). The valuation report is basically an annual report of the plan. It will include an employee census, a report of contributions, and the plan's compliance testing for that year. When a plan is audited by the IRS, one of the first things they look for is the annual valuation report because so much of what they are check-

ing is to ensure that the compliance testing was done correctly. In addition, when changing TPAs, the new TPA will always ask for a copy of the annual valuation report. So it always makes sense for the plan sponsor to keep a copy when it's needed.

enforceable like contracts. So the very last place they belong is in the garbage. In addition, plan sponsors should make sure that all contracts are properly signed and dated. If a plan sponsor does not have a specific plan document or amendment signed and dated, the IRS treats as if it was never done at all. So a plan sponsor must make sure they have all their plan documents, as well as making sure they are signed and dated.

## Form 5500

The Form 5500 is the annual financial re-

ports

## Contracts with Plan Vendors

Any contract with a retirement plan provider such as a financial advisor, ERISA attorney, TPA, or auditor is something that should be kept. It will define the contractual relationship, the provider's fiduciary sta-

tus (if any), fees, and most importantly when it's time to change providers, how to proceed with contract termination and the costs involved. Not having the contract with a bundled provider when a plan sponsor wants to make a change of platforms can be a problem when the sponsor is clueless about any surrender charges that can certainly impact a change. A contract can also be a plan provider manifest, so a plan sponsor can determine whether the plan provider is actually performing the services promised.

#### Fee Disclosures

In connection with providing plan services to a plan sponsor, a retirement plan provider has to provide fee disclosures that quantify how much direct and indirect compensation that a plan provider is receiving from plan assets. Fee disclosures are something that must be retained and reviewed because plan sponsors have the fiduciary duty to determine whether the fees they pay are reasonable and the only way to do it is to look at those fee disclosures and benchmark fees. Fee disclosures are just something else than belongs in the plan records folder.

#### The Fiduciary Process

The fiduciary process is one of the biggest "engines" of a retirement plan and can lead to quite a bit of litigation. Good recordkeeping can go a long way to minimizing threats of liability. First off, the plan sponsor needs to have a financial advisor that is clearly on top of their game when it comes to helping manage the fiduciary process. Every meeting with the financial advisor should be treated as if it is some sort of proceeding. That means good note-taking of who was there, what was discussed, and what was decided. It's a good record to show that the plan sponsor was an engaged participant in the choosing of investments under the Plan. That also means that a plan sponsor should make sure they have an



investment policy statement (IPS) and the criteria set by the IPS is actually used when selecting and replacing investments. What's worse than having no IPS? Having one that is not being followed. In addition, copies of any materials given to plan participants during an investment education meeting should be kept, as well as the meeting sign-in sheet and the forms of advertising used to draw attention about the meeting. This is a great opportunity to indicate that plan participants received enough information to make investment decisions if they direct their own investments under the Plan.

#### Any Distribution Forms and Checks

They may ask for them on an audit, but for plan records, it's always important to have copies of all distributions and methods of payment. That includes loans and all types of distributions. You will be surprised how many people go to the DOL complaining they didn't receive their plan benefit when they did.

#### Everything Else to Record

There are so many records associated with the day-to-day administration of a retirement plan that a plan sponsor should keep. Any records of contribution pay-

ments (whether they are salary deferrals or employer contributions) should be kept. Any process to select or replace retirement plan providers should be documented as well including the providers that were interviewed and the reasoning behind the one the plan sponsor chose.

#### No excuses not to keep it

Besides the legal and fiduciary responsibility in keeping plan records, technology allows for easier storage of plan records. A plan sponsor should invest in a good scanner and a computer system that allows for the storage

of these files. It's a lot easier to manage than those old clunky file cabinets. We are in the 21st century and paper records are so 20th. We remember the times that file cabinets could take up space, but a directory of plan records in pdf don't. Despite scanning all plan files into pdf files for easy storage, I recommend that plan sponsor still keep copies of original signed and dated plan documents and amendments.

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