employee benefits update

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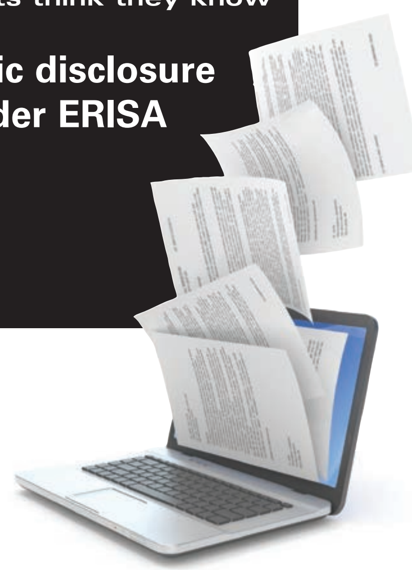

Be careful what you toss

PLAN RECORD RETENTION REQUIREMENTS

As far as the IRS is concerned, you can't save too many retirement plan documents. Plan sponsors, on the other hand, might reasonably feel the need to free up file storage space every now and again by purging documents no longer needed. Where do you draw the line?

The law

The Internal Revenue Code provides that "books or records … must be kept available at all times for inspection by authorized internal revenue officers or employees, and must be retained so long as the contents … may become material in the administration of any internal revenue law."

> *Under Department of Labor regulations, it's acceptable to maintain most records in electronic form.*

Fortunately, those documents don't necessarily have to be maintained in hard copy form. Under Department of Labor regulations, it's acceptable to maintain most records in electronic form, so long as:

- The recordkeeping system has reasonable controls to ensure the integrity, accuracy, authenticity and reliability of the records kept in electronic form,
- The electronic records are maintained in reasonable order, in a safe and accessible place, and in such manner as they may be readily inspected or examined,
- The electronic records can be readily converted into legible paper copies,
- You establish and implement adequate records management practices, and
- The electronic recordkeeping system isn't subject to any agreement or restriction that would compromise a person's ability to comply with any ERISA reporting and disclosure requirement.

Many retirement plan sponsors use third-party administrators (TPAs) for various plan services. According to the IRS, using a TPA for services involving electronic records doesn't relieve the taxpayer (the plan sponsor) of its legal recordkeeping obligations and responsibilities. Even though a properly structured TPA service agreement allows some delegation of this responsibility, remember that final responsibility rests with the sponsor.

What to keep

Here's a list of documents you *should* keep:

Plan documents. These files include the basic plan document, adoption agreement, amendments (if any), IRS determination letters, summary plan descriptions, summary of material modifications, annuity contracts, board and adopting resolutions, and trust records such as investment statements, balance sheets and income statements.

Fiduciary records. These records include plan committee meeting materials for review of fees and investments, fee disclosures, engagement letters, and TPA / service provider contracts.

Participant records. These files include enrollment forms, beneficiary designation forms, census data, account balances, contributions and earnings, qualified domestic relations orders, compensation data, and participant statements and notices. In addition, include distribution documentation, loan records and hardship withdrawal records. (See “Documenting hardship withdrawals and loans” at right.)

Annual filings. Be sure to keep copies of each year’s Form 5500, including required schedules and supporting documents, summary annual reports, independent auditors’ reports (if your plan requires one), records of contribution allocations and required annual testing for coverage and nondiscrimination, and board minutes or similar declarations of the employer contribution amounts. Also maintain copies of any determination letter applications or similar filings (Form 5300 series).

Sponsors should keep these records until six years after terminating the plan and distributing all benefits.

Getting it right

Keeping all your plan records can seem like an overwhelming and daunting task, but it’s better to be safe than sorry. Consult with an ERISA attorney to assure full compliance with all applicable federal record retention requirements.

Documenting hardship withdrawals and loans

The IRS clarified its rules for documentation of hardship withdrawals and participant loans on its website earlier this year. With respect to hardship withdrawals, sponsors must retain:

- Documentation of the hardship request, review and approval,
- Financial information and documentation that substantiates the employee’s immediate and heavy financial need,
- Documentation to support that the hardship distribution was properly made according to applicable plan provisions and the Internal Revenue Code, and
- Proof of the actual distribution made and related Form 1099-R.

According to the IRS, it’s not sufficient for plan participants to keep their own records of hardship distributions. And electronic self-certification isn’t sufficient documentation of the nature of a participant’s hardship.

With respect to plan loans, sponsors must retain:

- Evidence of the loan application, review and approval process,
- An executed plan loan note,
- If applicable, documentation verifying that the loan proceeds were used to purchase or construct a primary residence,
- Evidence of loan repayments, and
- Evidence of collection activities associated with loans in default and the related Forms 1099-R, if applicable.

Plan administrators cannot allow participants to self-certify their eligibility for these loans.

Some in the employee benefits industry have asserted that these clarified instructions are inconsistent with existing regulations, and that the instructions lack the authority of a true regulation. Until the IRS determines the legitimacy of these concerns, sponsors should adhere to the guidance, unless advised otherwise by counsel.

Upcoming compliance deadlines:

10/1 Deadline for setting up a SIMPLE for 2015
10/15 Extended deadline for filing 2014 Form 5500
10/15 Extended deadline for filing 2014 Form 8955-SSA
10/15 Extended deadline for filing 2014 individual tax returns
11/1* 2015 SIMPLE notice due to current participants

** Even though this date falls on a Sunday this year, the notice must be delivered 60 days prior to the start of the plan year.*

Year end notices: Staying on top of the requirements

As the turn of the calendar year nears, annual notices should be on the minds of most plan sponsors. For plans using the calendar year, numerous notices are due to be given in the next few months. Here are some highlights of notices that must be sent to either participants, the IRS or the Department of Labor (DOL) in the next three months.

October to December

Many notices due during this time period deal with safe harbor plans and plans that include automatic enrollment opportunities. They include:

Safe harbor 401(k) plan annual notices. Sponsors of traditional safe harbor 401(k) plans must provide an annual notice to participants describing the safe harbor employer contributions. The notice must also provide details on other plan features, such as withdrawal provisions. You must give the notice at least 30 days, but not more than 90 days, before the first day of the plan year. Thus, for calendar-year plans, notice can be provided as early as October 2, but no later than December 1.

Safe harbor contingent notices. Plans may also have to provide a safe harbor contingent notice if they want to preserve the ability to adopt a 3% qualified nonelective contribution safe harbor design before the end of the plan year. This notice must be given to eligible employees that this action may be taken. The timing of this notice is the same as for the safe harbor 401(k) annual notice.

Automatic contribution arrangement notices. There are three types of automatic contribution arrangements:

1. Automatic contribution arrangements,
2. Qualified automatic contribution arrangements, which contain certain employee and employer contribution requirements that exempt the plan from annual nondiscrimination testing requirements, making it a “safe harbor” plan, and
3. Eligible automatic contribution arrangements, which permit penalty-free distribution of “accidental” automatic deferrals and provide a six-month period to distribute excess contributions and excess aggregate contributions without imposition of a 10% excise tax.

Notices for these arrangements must provide employees with information that enumerates their rights and obligations under the plan, explain the employee's right to elect not to have deferral contributions made or elect a different contribution percentage, and detail the default investment provisions in the absence of an investment election.

Generally, for all three types of automatic contribution plans, you must provide an initial notice of eligibility to the participant generally at least 30 days, but not more than 90 days, from eligibility. Then annually you must give the notice at least 30 days, but not more than 90 days, before the first day of the plan year. Thus, for calendar-year plans, notice can be provided as early as October 2, but no later than December 1.

Savings Incentive Match Plans for Employees (SIMPLE) IRA election notices. When an employer adopts a SIMPLE IRA, it must notify each employee before the beginning of the election period. The notice must explain the employee's opportunity to make or change a salary reduction choice under a SIMPLE IRA, the employer's choice to make either matching contributions or nonelective contributions, a summary description provided by the financial institution, and written notice that the employee's balance can be transferred without cost or penalty if the employer uses a designated financial institution.

The SIMPLE IRA election period is generally the 60-day period immediately before January 1 of a calendar year (November 2 to December 31 of the preceding calendar year). The dates of this period are modified if the employer sets up a SIMPLE IRA midyear or if the 60-day period falls before the first day an employee becomes eligible to participate in the SIMPLE IRA.

Required minimum distributions (RMDs). For employees receiving RMDs, employers must make these by December 31.

Annual participant fee disclosure notice. Employers must provide this notice, sometimes referred to as a Section 404(a)(5) notice, to participants annually within a 12-month period. Many plan sponsors choose to provide this notice with other year end required notices.

January and beyond

Starting in January, plan sponsors have several IRS filings to be aware of:

IRS Form 1099-R. Plans use this form to report distributions, including direct rollovers, from qualified plans or 403(b) plans. You must provide it to plan participants by January 31 of the year following the calendar year in which the distribution was made. Plans will then have to file the form with the IRS by February 28 (or March 31 if filed electronically) of the year following the calendar year in which the distribution was made.

IRS Form 945. This form reports income tax withheld from distributions made from qualified plans and 403(b) plans. It must also be provided to participants by January 31 of the year following the calendar year in which the distributions were made. You can extend the filing deadline by 10 days if tax payments were made on time and in full.

Get noticed

These are just some of the annual notices and reports that employee benefit plans must provide each year. For a comprehensive list for your specific plan, contact your benefits specialist.

Survey says …

POLL HIGHLIGHTS WHAT PARTICIPANTS THINK THEY KNOW

It's no secret that a large percentage of Americans don't fully comprehend basic financial topics. The results of the Retirement Income Literacy Survey conducted online last year for the American College weren't heartening.

Key results

According to the survey results, 80% of respondents couldn't answer more than six out of 10 questions correctly. Even more startling, nearly three-fourths (71%) failed to answer at least four out of 10 correctly.

The study found that respondents had a high level of "false confidence" in their financial knowledge.

The study also found that respondents had a high level of "false confidence" in their financial knowledge. This in turn created an obstacle to effective retirement planning. What can be done to narrow this knowledge gap? Plan sponsors may want to consider surveying plan participants about their retirement literacy.

Areas of deficiencies

The survey found three top areas of deficiency:

1. Steps to take before retirement to improve financial security in retirement. Mistakes before retirement can greatly affect decisions during retirement. For example, is it more effective to work two years longer than the normal retirement age, defer Social Security, or increase contributions by 3% for five years before retirement? Just 30% correctly answered that working longer or deferring Social Security was the better choice.

2. Investment products. As the study suggests, poor investment decisions affect the accumulation of retirement savings. And without correct knowledge, participants are more likely to make poor investment decisions. For example, just 39% correctly answered that increased interest rates decrease the value of bond funds. In addition, the survey found that 31% understood that fees will be lower in exchange-traded funds than in actively managed mutual funds.

3. How to preserve assets in retirement. To start, more than half of those responding underestimated the life expectancy of a 65-year-old man. If participants don't know how long they might live, it's hard to realistically predict how long their assets will need to last.

Other literacy confusion

In addition to the three key areas of concern previously discussed, the survey found other areas that retirement plan participants may not fully understand. For example, while family members generally pay the bulk of long-term care costs, just 35% of those surveyed knew this.

Other survey areas covered Social Security benefits, tax strategies that maximize retirement savings and how to use annuities as part of a retirement income strategy. And in each area, again, participants felt confident about what they knew, yet survey results indicated this confidence was misplaced.

Education is key

As the study's authors conclude, financial literacy is urgent. Life expectancy has increased, and Social Security income will most definitely decrease. But armed with the survey results, plan sponsors can tailor educational efforts accordingly.

When electronic disclosure isn't enough under ERISA

ERISA's disclosure rules require plan administrators to inform participants of circumstances that may cause a loss of benefits. But just what counts as a disclosure? This question was recently litigated in the U.S. District Court for the Eastern District of New York. The case involved the denial of a payout from a group life insurance policy after an employee died without completing a waiver of premium request.

The plaintiff was the beneficiary of his sister's two group life policies provided by her employer. The sister later ceased working because of disability and stopped paying premiums. She never returned to work and ultimately died in 2008.

The insurance policies' summary plan description (SPD) provided that a waiver-of-premium option was available for employees who became disabled, but they had to submit proof of their disability status within a set time period, which the sister failed to do. The plaintiff stated that his sister had never received information explaining the waiver of premium standard.

The employer countered that it had disclosed the information by posting the SPD — along with hundreds of other pages of information regarding various benefits — on the company's intranet site. Because of the large amount of information on the intranet site, a benefits administrator testified that employees rarely read every page of the information available and rely on benefit summaries.

The court noted that ERISA requires more than simply making the SPD available — the delivery method must be reasonably calculated to ensure actual receipt. Based on this information, the judge found that the sister hadn't been adequately informed of the eligibility requirements for the premium waiver.

This verdict may add some clarity to what "disclosure" actually means in a real world setting. Bottom line: Don't count on an intranet posting to satisfy a disclosure requirement for an SPD.