

**Record Retention** - the following was taken from the Spring 2009 edition of Retirement News for Employers. If you do not already subscribe, you might want to consider subscribing.

[http://www.irs.gov/pub/irs-tege/rne\\_spr09.pdf](http://www.irs.gov/pub/irs-tege/rne_spr09.pdf)

#### EP Team Audit (EPTA) Program - Taxpayer Documentation Guide - [Why Retain Records?](#)

The Internal Revenue Code and Income Tax Regulations require that every person liable for any tax imposed by the Internal Revenue Code keep books and records available at all times for inspection by IRS. In addition, under the Employee Retirement Income Security Act of 1974, as amended, (ERISA) employers are required to keep records sufficient to determine benefits due or which may become due. Finally, Revenue Procedure 98-25 provides the basic requirements for recordkeeping when a taxpayer maintains records in an automatic data processing system. Thus, plan records must be retained to meet the requirements of the Internal Revenue Code, the Income Tax Regulations, and ERISA.

#### [How Long Should Records be Retained?](#)

Retirement plans, whether they are defined benefit or defined contribution plans, are designed to be long-term. Participants build up benefits or accounts over time. As a result, the records of transactions for the plans may cover many, many years. The IRS and Income Tax Regulations require that records be retained so long as their contents may become material in the administration of any internal revenue law. As a result, records for retirement plans should be kept until all benefits have been paid, the trust has been dissolved and sufficient time has passed such that the plan will not be the subject of an audit.

#### [What Records Should be Preserved for Access During an Audit?](#)

Complimenting the responsibility to retain records is the responsibility to preserve the ability to access, retrieve and deliver those records in response to a request during audit. The most common obstacle the employer has to manage where the records exist in an electronic form is preserving access to the necessary systems to access, retrieve and deliver those records.

Revenue Procedure 98-25 details the basic requirements that the IRS considers essential in cases where a taxpayer maintains records within an ADP system, and specifically includes employee plans matters. All machine-sensible records required to be retained by Rev. Proc. 98-25 must be made available to the Service upon request and must be capable of being processed. "Capable of being processed" is defined to mean, "...the ability to retrieve, manipulate, print on paper (hardcopy), and produce output on electronic media..."

Similarly, Department of Labor regulations (29 C.F.R. § 2520.107-1(b)) provide for the maintenance and retention of records using electronic media, it is required that the electronic records be maintained in reasonable order and in a safe and accessible place, and in such manner as they may be readily inspected or examined (for example, the recordkeeping system should be capable of indexing, retaining, preserving, retrieving and reproducing the electronic records).

Both Rev. Proc 98-25 and ERISA regulations are specific in directing employers as to how to maintain and retain its records using electronic media. Therefore, when an employer chooses to use electronic means by which to maintain and retain records, the employer has the duty to ensure those records can be accessed and retrieved, and that they are capable of producing such records to the IRS upon request. It is the taxpayer's responsibility to work with its vendor to satisfy this requirement. If the taxpayer fails to comply with the applicable requirements, the IRS may issue a Notice of Inadequate Records and/or pursue other available legal remedies.

Note: the links are active as of the date of issue.