

STATEMENT OF DAVID P. DORSEY, CPA AND AARON D. SLAUGHTER, CPA
ON BEHALF OF
WITHUMSMITH+BROWN, PC
TESTIMONY TO
THE 2023 ADVISORY COUNCIL ON EMPLOYEE WELFARE AND PENSION BENEFIT PLANS
MATTER: RECORDKEEPING IN THE ELECTRONIC AGE
SEPTEMBER 21, 2023

As the 2023 Advisory Council on Employee Welfare and Pension Benefit Plans (the “Council”) examines various issues facing the industry with respect to the maintenance, retention, and preservation of electronic and digital plan records, WithumSmith+Brown, PC (“we”, “us”, “our”, or “Withum”) has been asked to provide commentary pertaining to these matters. Withum is a national firm that has been auditing and servicing ERISA employee benefit plans for 50 years. While we are certainly qualified to comment on these matters, our testimony is a collection of our collective experiences, and our experiences alone.

We have identified factors that the Council should consider as their investigation progresses; these include: the readiness of organizations transitioning to electronic records, the interests and focal points of external auditors, the advantages of having electronic records, the challenges surrounding the usage of electronic records, the transmission of data as a whole, and best practices for the management and maintenance of electronic and digital records.

Readiness of organizations transitioning to electronic records:

IBM has published results from surveys conducted post-COVID-19, and the statistics revealed that roughly 59% of organizations surveyed admitted that COVID-19 accelerated their timeline for a shift to digital recordkeeping. 64% of surveyed organizations noted their shift to cloud-based operations post-COVID-19. In our role as a multiemployer benefit plan service provider, we have seen the entire gamut of client preparedness for electronic recordkeeping from leaders to laggards. A recognition that not all organizations are created equal with respect to the ability to shift to a digital world, the cost of making such a shift, and the effort (both workforce and time commitments) involved in making a transition to electronic recordkeeping, cannot be overlooked. Organizations performing a cost-benefit analysis will pit the hidden costs associated with a transition to digital records with the costs of the proper up-keep and storage and/or destruction of applicable paper documents pursuant to a record retention program.

Before the global pandemic, the desire for conversion from paper to electronic records primarily rested with those plans which were progressive and forward-thinking. The global pandemic highlighted the responsibility to, at the very least, maintain an electronic copy of plan records. As plans consider reducing their office footprint and overhead costs by decreasing their office and storage square-footage or the amount of time employees are required to frequent the office, the urgency of organizations converting to electronic records will increase at a rapid pace.

COVID-19 created a situation where, in the case of many self-administered plans and plans supported by a third-party administrator, certain plan employees could not physically access records that were crucial to operations because of the requirements to stay home imposed by many state, local and city governments. When conducting audits of employee benefit plans in that scenario, we experienced significant client delays obtaining requested support that ultimately impacted the overall pace of the audit. We have also observed clients, traditionally adept with technology, experience a smoother transition from paper records to digital records compared to plans that had not previously either considered the conversion from paper to electronic records or whose resources limited their ability to convert. Whereas many plans in the single-employer defined contribution space were either already electronic, had previously converted to electronic records or had taken significant steps to begin the conversion process to electronic records, many multiemployer plans had not. This is due in large part because these plans (mostly 401(k) plans) are often serviced by large nationally known administrators or investment firms with strong administrative capabilities. Multiemployer plans are much more complex than single employer plans and fewer rely on the services of these national firms for administration and/or recordkeeping. Instead, many, but not all, rely on smaller offices with administrative functions that have been slower to adopt to fully electronic recordkeeping. It should be noted that in other circumstances, multiemployer plans are administered by third party administrators who generally have a higher level of technologically preparedness.

Interest and focal points of external auditors:

The purpose of an external audit is to provide a professional opinion as to whether or not a client's financial statements are free of material misstatement. Our professional opinion is based and rooted in the quality of the audit evidence that can be obtained in order to formulate our professional opinion. Our professional auditing standards provide guidance as to what could be considered audit evidence. Reconciliations, invoices, bank statements, remittance reports, and the like often originate as electronic documents and schedules. We have found that clients adding an extra step to print and store records which already exist in a digital format, must also develop protocols for how to catalogue and properly account for paper documentation. The result of these extra procedures is the potential for an additional point of failure, as there are new opportunities for lost records. The inability to produce a requested record during an audit leads to unnecessary delays, additional costs and could have an unfavorable impact on the audit opinion. We encourage our clients to avoid scenarios where the plan is susceptible to exposure, albeit from a compliance standpoint or the potential loss/misplacement of records.

Auditor judgment is a tool that allows for the creativity and latitude essential in adapting to the type of records maintained by a plan. Aside from our audit test work, we must also assess the quality and appropriateness of audit evidence that can be obtained. While supporting documentation will not be the exact same amongst different plans, the quality of evidence should be held to the same standard of sufficiency across all plans. With employees spending less and less time in person, there is a concern surrounding the quality of paper records. For those clients who have not yet embraced electronic recordkeeping, performing the same level of quality assurance that existed before COVID-19 has become a tedious process with employees working from home or abroad. Some of our clients have shared their post-COVID-19 protocols for replicating the review process, which includes certain paper documents being couriered from one employee to another for the purpose of obtaining proper signature authority or review. With these added unconventional practices, we have noted that some fraud and control-override risks have been heightened.

One significant focus of external auditors is obtaining accurate supporting documentation that corroborates the financial information provided by the plan. Electronic records tend to be more precise and equipped with features that allow auditors to search documents and save time when compared to physically sifting through paper files and records. Electronic documents also allow for the ability to use electronic applications to verify mathematical accuracy, query formulas, and perform data mining on large datasets. These added bonuses make for a more efficient audit, which ultimately saves both the plan and auditing firm time and money. Additionally, our tax clients who submit electronic records make for a smooth and automated data entry process into tax preparation applications, which reduces the element of human error, simplifies record retention and reduces the time to prepare and complete a tax filing.

Advantages of having electronic records:

There are multiple advantages to ERISA employee benefit plans transitioning to electronic recordkeeping. The access and availability of data in a digital world, from the perspective of both participants and service providers, present a powerful argument in favor of electronic recordkeeping. Maintaining digital records is also an integral component in a successful disaster recovery program. Having backup documents in an electronic format decreases the possibility of a natural disaster destroying a plan's sole source for paper records. Lastly, geographical limitations are removed from plans' service provider selections when data exists in a cloud-based environment, so plans have more choices when it comes to who will provide services to the plan and at what cost. Often, the cost of travel to perform an audit in a client's office, for example, is billed to the plan. Digital records allow auditing firms located outside the geographical location of the plan to become potential service providers to a plan because the records are now maintained electronically and accessible from anywhere.

Clients who have embraced an electronic work environment and digital recordkeeping have attributed their ability to remain responsive to participants, organized, and retain key employees to the adaptivity that electronic recordkeeping brings. Because most of their plan records originate in an electronic format, plans that were able to leverage the e-World shared success stories like creating participant-facing applications, where participants had the ability to view earnings and contributions history, check eligibility statuses, and request pension estimates, or simply having a level of transparency with their plan's administration that had never existed before. There is a valid concern about those participants that do not have access to technology that would allow them to access relevant plan information and consideration should be given to this situation.

We would be remiss if we broached the topic of electronic recordkeeping without mentioning the tools that provide assistance in the monitoring of information and records. Services like “Certify” and “Oracle” provide for a mechanism to review and approve documents (regardless of physical presence of the reviewer/approver), retain invoices and supporting documentation, and preserve an audit trail. Other cloud-based services, like “Box.com” or “Sharefile.com,” provide a platform to store and transfer important documents safely and securely.

Challenges surrounding the usage of electronic records:

There are some challenges created by plans adopting a digital recordkeeping system. Preserving the authenticity and integrity of records is paramount in an electronic world. With the introduction of artificial intelligence and software that can edit data (create, delete and change), plans have a higher bar to obtain to verify that records have remained unaltered for the end user(s). As cyberattacks become more prevalent, and increasingly more complicated, it is the responsibility of plan management to protect sensitive data more than ever. This is a constant challenge for recordkeepers. Vigilance and diligence, coupled with the use of constantly evolving enhancements, may not be enough to protect the plan and its participants, not only from unauthorized access to information, but also from the ability to completely shut down the processing and payment of medical claims and retirement benefits. Further, unauthorized access can lead to plan data being stolen, held hostage for ransom from bad actors looking for a quick pay-day or simply looking to create chaos and/or create distrust in the system used to provide benefits to participants.

Transmission of data as a whole:

The manner in which data flows back and forth between plans and service providers and between service providers has been under much scrutiny in recent years. Extra attention has been placed upon avoiding cyber-breaches by all parties associated with plan records. There has been a conscious effort to shift away from the inclusion of sensitive personal identifying information whenever documents are being shared. With the electronic transfer of data, social security numbers can be replaced with other identification numbers and later deciphered by the intended recipient(s), as one example. For some plans who have maintained robust electronic recordkeeping systems, auditors can be granted access into a specific portion of the electronic systems in order to view pertinent audit support as a means to reduce the amount of data being transferred at all.

With the introduction of blockchain and other cutting-edge technological advances, the accounting industry is on the cusp of evolving the manner in which audit and tax requests are made. Conversion to electronic recordkeeping positions plans to be proactive rather than reactive. Getting in front of the evolution allows for the avoidance and creation of bad habits by plans.

Best practices for management and maintenance of electronic and digital records:

The Council may want to offer parameters surrounding the management and maintenance for digital recordkeeping. As plans contemplate their future states, it would be immensely helpful if there were a set of guidelines or best practices that could be accepted as industry standard. Similar to the DOL’s published cyber-security guidelines, there is a significant need for a universal set of guidelines regarding how electronic recordkeeping is to be received, used, stored and otherwise handled. When we put ourselves in the shoes of the participants, certain assurances are assumed of the plan no differently than when we are participating in online banking or making online purchases. A set of guidelines would help close the expectation gap between plans and their participants.

While we understand that technology is an ever-evolving creature, developing a starting point for plans is an attainable feat that can be accomplished. Because employee benefit plans vary both in size and complexity, a baseline of directives or objectives that are appropriate for all plans, regardless of size would be valuable. Multiemployer plans tend to be larger and have more complicated records, so this unique difference should be considered when establishing any such guidelines for these plans.

In conclusion, we understand the Council's task and its difficulties. The above-mentioned commentary is provided to support the Council's efforts in their decision-making. We have outlined the advantages, challenges, and additional considerations for the Council, and we appreciate the Council's time and the opportunity to be of service.

Very truly yours,

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