

ERISA Advisory Council

2023 Advisory Council on Employee Welfare and Pension Benefit Plans

Recordkeeping in the Electronic Age

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ERISA requires the maintenance of certain plan records, such as the documents under which a plan has been established and operated, government filings, and individual records used to determine benefit eligibility and amounts. Further, plans need to maintain records for other purposes, such as a plan's independent financial audit. Plans also may be subject to record retention requirements under other laws, including the Internal Revenue Code and the Health Insurance Portability and Accountability Act (HIPAA). To meet these requirements, plan sponsors, fiduciaries, and their service providers commonly maintain electronic and digital records; however, underlying source documentation does not always exist or may not be maintained.

The 2023 Advisory Council will examine the implications of employee benefit plans' shift to electronic/digital recordkeeping for compliance with ERISA's record retention requirements and related matters. The Council will examine the tools and technologies used by plan administrators and third-party service providers to manage and retain plan records electronically, and will identify recent trends in electronic recordkeeping systems, potentially including the use of artificial intelligence. The Council intends to explore the authenticity, accuracy, and completeness of the electronic recordkeeping, the long-term availability and retention of plan records, and the disclosures and controls in place to ensure the reliability of electronic records.

The Council also intends to investigate the transfer of records when plan-level transactions occur, such as recordkeeper transitions, spin-offs, plan terminations, orphaned plans, and pension risk transfers. The Council's exploration of plan-level transactions will include the fiduciary responsibilities of named and other fiduciaries, as well as the duties of service providers (e.g., recordkeeping and payroll) during times of transition. In addition, it will look into whether the contracts and service level agreements in place between plan sponsors or plans and recordkeeping and payroll service providers adequately address the wide range of potential outcomes associated with plan-level transactions. Additionally, the Council will consider the availability of historical plan records when plan sponsors or plan fiduciaries change service providers, and the length of time electronic records should remain accessible after a change in service provider.

The Council intends to determine if guidance would be beneficial with respect to records retention, the authenticity and reliability of the electronic records, the data security of electronic records, or other issues that the Council believes the Department

should consider.

Two prior ERISA Advisory Councils addressed cybersecurity issues affecting employee benefit plans but did not focus on other issues that arise with electronic recordkeeping. The 2022 Council studied two cybersecurity topics: cybersecurity issues affecting health benefit plans and the role that cybersecurity insurance plays in addressing cybersecurity risks for all employee benefit plans. The 2016 Council studied cybersecurity considerations as they related to pension and welfare benefit plans, including existing cybersecurity frameworks and approaches to managing cybersecurity risks. The 2023 Council's examination of electronic recordkeeping will not include a focus on cybersecurity issues, although there may be overlapping issues.