ERISA Roundup

A quarterly recap of recent publications from BDO's ERISA Center of Excellence

Q2 2025

A Note from BDO's ERISA Practice Leaders

Mid-year is a great time to reflect on key accomplishments for the first half of the year and finalize your plans for the second half. To help, we have assembled a set of our most recent insights and resources.

In this edition of our ERISA Roundup, you'll find information on fidelity bonds, explore different filing options, and discover how proper record retention can protect your organization from costly benefit claims and compliance risks.

Staying current on ERISA topics is simplified with BDO: Follow along with our regular insights at our **BDO ERISA Center of Excellence** and our podcast series **BDOTalksERISA**. We welcome your feedback on our content at **BDOTalksERISA@BDO.com**.

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BDO's ERISA Center of Excellence is your source for insights on emerging regulations, industry trends, current topics, and more. Visit us at www.bdo.com/erisa or follow along on Twitter: @BDO_USA and #BDOERISA.

In this Issue

2025 Deadlines and Important Dates

Sponsors of defined benefit and defined contribution retirement plans should keep the following deadlines and other important dates in mind as they work toward ensuring compliance for their plans in 2024. Dates assume a calendar year plan. Some deadlines may not apply, or dates may shift based on the plan sponsor's fiscal year. For additional support, please contact your BDO representative.

DOWNLOAD THE FULL CALENDAR YEAR ▶

JULY

- **14** / **Action:** 401(k) plans with publicly traded employer stock that requested a 15 calendar day extension (SEC Form 12b-25) for the SEC Form 11-K must file the SEC Form 11-K with the Securities and Exchange Commission by July 14.
- **15** / **Fund:** Possible second quarter 2025 contribution due for defined benefit pension plans by July 15.
- **31** / **Action:** File IRS Form 5500, Annual Return/Report of Employee Benefit Plan, and IRS Form 8955-SSA, Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits, for the 2024 plan year by July 31.
- **31** / **Action:** To request an extension of time to file IRS Form 5500, file IRS Form 5558 by July 31.

SEPTEMBER

- **15** / **Fund:** If an extension was filed, September 15 is the deadline to fund employer contributions for Partnerships and S-Corporations.
- **15** / **Fund:** September 15, last date to make 2024 contributions for single and multiemployer defined benefit pension plans.
- **30** / **Action:** September 30, Distribute Summary Annual Report (SAR) to participants if the Form 5500 was filed on July 31.
- **30** / **Action:** File Form 5330 excise tax return for excess 2023 ADP/ACP contributions, if due date was extended by Form 8868.

OCTOBER

- **3** / **Action:** Distribute annual notices to participants no earlier than October 3 and no later than Dec 2, including notices for: 2026 401(k) Plan Safe Harbor Match, Automatic Contribution Arrangement Safe Harbor, Automatic Enrollment and Qualified Default Investment Alternatives (QDIA).
- **15** / **Fund:** Possible third quarter 2025 contribution due for defined benefit pension plans by October 15.
- **15** / **Action:** October 15 is the extended deadline for filing IRS Form 5500 and IRS Form 8955-SSA.
- **15** / **Action:** October 15 is the extended deadline for filing individual and C-Corp tax returns.
- **15** / **Action:** If an extension was filed, October 15 is the deadline to fund defined contribution employer contributions for C-Corporations and Sole Proprietors.
- **15** / **Action:** October 15 to open a Simplified Employee Pension (SEP) plan for extended tax filers.
- **15** / **Action:** Send annual funding notice to participants of single- and multi-employer defined benefit plans with 100 or fewer participants by October 15.
- **15** / **Action:** October 15 , defined benefit plan PBGC Premium filings and payments due.
- **31** / **Action:** Single-employer defined benefit plans that are less than 60% funded or are 80% funded and have benefit restrictions triggered must inform participants by October 31 or 30 days after the benefit restriction applies.

DECEMBER

- 1 / **Action:** Distribute annual participant notices no later than December 2 for the 2026 upcoming calendar year plan year. These include notices for: 401(k) Plan Safe Harbor Match, Automatic Contribution Arrangement Safe Harbor, Automatic Enrollment and Qualified Default Investment Alternatives (QDIA).
- 15 / **Action:** December 15 is the extended deadline to distribute Summary Annual Report (SAR) when the Form 5500 was filed on October 15.
- 31 / **Action:** December 31 is the final deadline to process corrective distributions for failed ADP/ACP testing; a 10% excise tax may apply.
- 31 / **Action:** Ongoing required minimum distributions (RMDs) for 5% business owners and terminated participants must be completed by December 31.
- 31 / **Action:** Amendments to change traditional 401(k) to safe harbor design, remove safe harbor feature or change certain discretionary modifications must be completed by December 31. Amendments to change to safe harbor nonelective design must be completed by Dec 1 of given plan year for 3% or by Dec 31 of the following year for 4% contribution level.
- 31 / **Action:** Plan sponsors must amend plan documents by December 31 for any discretionary changes made during the year.

WEBINARS ON DEMAND

Accounting, Audit, and Regulatory Updates Impacting Retirement Plans

Presented by:

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Join BDO and our thought leaders who will provide an update on key developments in Accounting, Audit, and Regulatory Guidance pertaining to retirement plans.

At the end of this session, participants will be able to:

- Identify impact of recent accounting developments on retirement plans.
- Discuss newly effective auditing standards on retirement plans.
- Demonstrate knowledge of legislative and regulatory changes impacting retirement plans.

WATCH THE RECORDING ▶

ERISA Fidelity Bonds: Myth Busting Five Common Misconceptions

In the complex world of employee benefit plans, fidelity bonds serve as a crucial safeguard against losses caused by financial malfeasance. Given the costs and vagaries of litigation, plan sponsors and participants may have no recourse when plan assets are stolen except for fidelity bonds that cover first dollar losses with no deductible. In fact, the Employee Retirement Income Security Act (ERISA) requires most retirement plans to have such coverage regardless of the number of participants or the value of plan assets.

However, misconceptions and confusion surrounding these bonds can often lead to compliance pitfalls for plan sponsors. This article aims to provide clarity by "busting" common myths and misunderstandings about ERISA fidelity bonds and leading sponsors on a path to compliance.

FIDELITY BOND FACTS

Gaining a basic understanding of fidelity bonds can aid in uncovering the truth about them:

General

- Bonds are mandatory for most retirement plans, with exceptions for unfunded plans and those not subject to ERISA Title I, such as some government and church plans.
- Form 5500, which is signed under penalty of perjury, asks whether the plan has a fidelity bond.
- Bonds may be standalone or included in an insurance policy.
- Plan sponsors must obtain bonds from a company approved by the **Department of the Treasury's Listing of Approved Sureties**. The company name does not need to include the word "fidelity."

Bond Amounts

- As mandated by ERISA, generally, fidelity bonds must cover 10% of fund assets (determined as of the last day of the prior year) up to a certain dollar amount limit.
- The minimum required amount is $1,000. The maximum required for most plans is $500,000, but the maximum required for plans that include employer securities (e.g., ESOPs and KSOPs) is $1,000,000.

Coverage

- Fidelity bonds must cover anyone who handles the funds or property of an employee benefit plan, including but not limited to fiduciaries and some third-party service providers.
- The bond must cover the handling of all plan assets, regardless of type or location.
- ERISA fidelity bonds must provide first dollar coverage with no deductible to the plan.

Armed with this basic knowledge, common myths can be tackled.

MYTH #1: FIDELITY BONDS VS. FIDUCIARY INSURANCE COVERAGE

"My company's fiduciary insurance covers the plan's ERISA fidelity bond requirement."

Fiduciary insurance and fidelity bonds serve entirely different purposes.

A plan's fiduciary liability insurance protects it against a fiduciary's breach of duty. For example, an individual trusted to manage plan assets may breach their duties by engaging in risky transactions that reduce plan assets. This person's breach of fiduciary duty potentially would be covered by the plan's fiduciary liability insurance coverage.

In another scenario, though, someone with access to payroll deductions — not limited to fiduciaries — could divert funds to a phantom account. The plan's fidelity bond could cover the loss, up to the maximum amount of the bond.

MYTH #2: OBTAINING RETROACTIVE COVERAGE

"Retroactive fidelity bonds are easy to get."

Plan audits often reveal that a plan has been operating without a fidelity bond. In such cases, the Department of Labor (DOL) will require the plan sponsor to obtain coverage and may ask that the coverage should be obtained for all years where a bond was not in place. However, retroactive fidelity bonds may be unavailable because insurers are typically prohibited by state law from issuing retroactive coverage. Instead, a plan sponsor can work with the DOL to document its attempts to comply with the fidelity bonding requirement and can maintain proper coverage going forward.

MYTH #3: FIDELITY BOND VS. PLAN AUDIT REQUIREMENT

"We don't need a fidelity bond because our plan doesn't meet plan audit requirements."

This myth is fairly easy to debunk. It's true that ERISA does contain provisions about both fidelity bonds and plan audit requirements; the size of the company matters with plan audits but not with fidelity bonds. ERISA specifically requires fidelity bonds for most plans, regardless of the number of employees or the size of the plan. The plan audit requirements typically apply to plans with 100 or more participants. A plan can be exempt from the audit requirements yet still be required to have a fidelity bond.

MYTH #4: AUTOMATIC COVERAGE

"Our D&O insurance coverage automatically covers fidelity bonds."

A directors and officers (D&O) insurance policy may include a general fidelity bond, which may or may not satisfy the requirements for ERISA fidelity bonds. However, such inclusion is generally not mandatory. Because coverage varies from policy to policy, the person or group responsible for maintaining insurance coverage should review all policies to determine whether a separate fidelity bond is included and whether the bond meets all ERISA requirements. For example, like many other insurance policies, D&O coverage often includes a deductible; however, ERISA requires fidelity bonds that carry no deductible. Maintaining fidelity bonds and insurance policies requires a periodic review of both.

MYTH #5: FIDELITY BONDS AND CYBERSECURITY CONCERNS

"Our ERISA fidelity bond covers theft through cyber means."

While fidelity bonds might cover cybersecurity issues, it is best not to assume that such protection exists. As with D&O insurance, reviewing the terms of any fidelity bond can help clarify the bond's stance toward cyber issues. Plan sponsors can voluntarily obtain combination policies that combine fidelity bond coverage with cybersecurity coverage, as long as the bond meets all other ERISA requirements.

Because of cyber risks to employee retirement plans, the **DOL has issued guidance** for plan sponsors that emphasizes the need for separate protection against cyber threats.

DOES YOUR PLAN FULLY COMPLY WITH ERISA AND OTHER LAWS?

How well is your employee retirement plan protected from theft and fraud? Before falling victim to any myths mentioned in this article, consider asking our **Employee Benefit Plan Audit** team to review your plan.

Why ESOPs Are Becoming More Popular Among Architecture and Engineering Firms

Every year, the National Center for Employee Ownership (NCEO) **publishes a list of the nation's 100 largest employee-owned companies**.* In 2024, architecture and engineering (A&E) firms accounted for 24 of these companies making these sectors some of the most prominent on the list. Of the A&E firms on the list, 100% utilize an employee stock ownership plan (ESOP) rather than other employee ownership options, such as worker cooperatives, to achieve broad employee ownership. An ESOP is a unique ownership transition tool that allocates a firm's stock to employees over time, capturing value attributable to future growth, motivating employees, and empowering them to think like owners.

ESOPs are qualified retirement plans, regulated under the Employee Retirement Income Security Act of 1974 (ERISA), that allocate shares to employees over time, typically as a percentage of total compensation. Using an ESOP as a succession planning strategy can help clearly define a firm's ethos, especially for A&E firms that thrive on reputation, legacy, and employee morale.

MAINTAINING REPUTATION AND CULTURE

A&E firms are typically founded by a few practitioners who build a reputation that is tied directly to the founders' names and core principles. As founding shareholders approach retirement, maintaining their longstanding reputation in the community becomes one of their primary goals. A founder's legacy may be at risk with a **typical outside sale**. For example, a financial buyer will be driven to achieve a certain return and, therefore, may look to reduce overhead and other fringe benefits, and a strategic buyer may bring in an entirely different culture, to the detriment of current employees. ESOPs can create a flexible path for shareholders to transition ownership at fair market value while preserving the legacy and culture of the business.

EMPLOYEE RETENTION

A&E professionals are highly sought after, with many A&E firms facing the ongoing challenge of qualified talent shortages. In fact, according to a report from **BCG and SAE International**, every year, the U.S. needs about 400,000 new engineers to meet demand — but a third of those roles may go unfilled, a trend that could continue through 2030. This demand leads to competing firms poaching top talent by offering higher salaries and/or better benefits.

An ESOP is an effective tool to both attract and retain talent that provides year-over-year value to professionals, especially those with the longest tenure. An employee that is an ESOP participant would need to consider the "switching cost" or opportunity cost before moving to another firm. From a recruitment perspective, an ESOP may make attracting young and qualified professionals easier by enticing them with an immediate opportunity to build equity in the business, and could be a key differentiator, not only because of the financial benefits but also due to the culture of the business.

There have been cases where established A&E firms have a group of key managers that are ready to become owners but do not have the financial resources to buy out the current shareholders. This creates a dilemma for A&E firms that would like to retain their most senior and key employees that are seeking ownership but do not have a mechanism to provide meaningful ownership in the firm. An ESOP can be an attractive option for these firms.

TAX BENEFITS

ESOPs can provide a range of tax benefits to the sellers and the firm, including potential deferral of capital gains for the seller on the sale of the business, a reduction or elimination of the income tax burden to the firm, deductibility of ESOP contributions, and an opportunity for tax-deferred growth on the retirement benefit to employees.

If the firm transacts as a C corporation, Section 1042 of the Internal Revenue Code provides that the sellers may be able to indefinitely defer paying tax on capital gains derived from the sale. When the seller passes away, the estate receives a step-up in basis, making the deferral permanent. If following the sale, the ESOP-owned firm is an S corporation, all income attributable to the ESOP shares is passed through to an income tax-exempt qualified retirement plan, making that income exempt from federal income taxes and most state income taxes. This creates a cash flow advantage for the firm, with the extra cash available to be used to pay off debt created by the leveraged ESOP sooner and grow the business in a more efficient and effective manner.

In the case of a legacy C corporation transaction where a seller elects Section 1042 treatment, in some circumstances, the firm can immediately convert to an S corporation following the transaction, enabling both capital gains tax deferral for the seller and an income tax exemption for the firm. If the firm chooses to convert from an S corporation to a C corporation for the transaction, the firm must remain a C corporation for five taxable years. Thereafter, the firm can make an "S" election and benefit from an income tax exemption. As an employee-owned C corporation, the firm realizes a tax benefit through the deductibility of ESOP contributions and optional dividends to the ESOP. Finally, since the ESOP is a qualified retirement plan, much like a 401(k) plan, participants benefit from tax-deferred growth, paying ordinary income tax when distributed from the plan, usually when the employee retires. There are clear tax advantages for all parties in an ESOP transaction, making the ESOP structure a win-win scenario for all.

ESOP ISSUES UNIQUE TO A&E FIRMS

The A&E professions are highly regulated, demanding a proactive approach to compliance and posing significant challenges with respect to the sale of stock in an A&E corporation. Each state has unique requirements and restrictions on corporate structure, ownership, nomenclature, and supervisory functions. These requirements can vary by type of license—architecture, landscape architecture, engineering, surveyor, geologist, etc. Any transaction will directly affect corporate structure and ownership. In most cases, entity type will not prevent an A&E firm from doing business, but it is important to confirm that the transaction structure follows the relevant rules in each state.

With respect to an ESOP transaction, close attention should be paid to ownership restrictions in each state in which the firm does business or plans to conduct business. In an ESOP structure, a trust becomes the direct owner of the shares, while the employees are considered beneficial owners once vested. When applying ownership rules, states may look at the trustee(s) of the ESOP, the beneficial ownership of the participants, or neither.

Here are several examples of differences in state licensing and ownership rules:

- **Arizona:** The voting shares of a professional corporation may be held only by licensed individuals, certain partnerships, other persons if total ownership of other persons does not exceed 49%, and ESOPs. In the case of an ESOP, all voting trustees of the plan are required to be licensed in Arizona and the ownership interest must be directly owned by the employee stock ownership trust or licensed professionals.
- **Iowa:** There are no specific ownership restrictions for architecture or engineering firms, but professional services are limited to firms that regularly employ one or more licensed professionals who directly control and service any professional work.
- **North Carolina:** Professional corporations that practice architecture or engineering must be at least two-thirds-owned by licensed professionals in the relevant profession and at least one licensee must be a North Carolina licensee, as well as an officer, director, or shareholder. IRC Section 401(a) qualified defined contribution plans, such as an ESOP, are considered "licensed" if the trustee or trustees of the plan are licensees. To further add to the complexities, North Carolina does not allow business entities to be owners in a professional corporation, which can limit the transaction structure possibilities in any M&A transaction.
- **Ohio:** Architecture firms must be owned 50% or more by licensed professionals. In the case of an ESOP, 50% of the trustees must be licensed in the relevant profession. There are no specific requirements for engineering firms; however, each firm must designate one or more owners or directors as responsible for and in charge of professional activities.

These examples clearly illustrate that understanding and navigating state licensing and ownership requirements is challenging and requires experience. In any transaction, extensive state-by-state due diligence should be performed.

Case Study: Navigating State-Specific ESOP Challenges

A civil engineering firm decided to pursue an ESOP using BDO Capital's ESOP Advisory Services team as their exclusive financial advisor to the transaction. The firm was founded over 60 years ago, is headquartered in the mid-Atlantic, and offers a variety of engineering services to a diverse group of markets in the public and private sectors. At the time of the transaction, the firm conducted business in seven states, including North Carolina, and had plans to expand into four additional states in the immediate future. While most of these 11 states did not present any challenges to the ESOP structure, North Carolina's ownership restrictions created a significant transaction hurdle. As described above, North Carolina requires that at least two-thirds of the owners be licensed professionals. A look through to the trustee(s) or participants is not acceptable.

The firm then assessed the North Carolina ownership requirement. Engineering firms doing business in North Carolina as corporations or limited liability corporations that were permitted by law to practice engineering before June 5, 1969, may be exempt from the ownership requirement. These "pre-1969" entities must apply to the North Carolina Board of Examiners for Engineers and Surveyors for the exemption. However, architecture firms must have applied for this exemption from the North Carolina Board of Architects before October 1, 1979.

Having advised on the structuring of several ESOP transactions for A&E firms across the country, BDO was able to guide the owners through key financial and operational considerations, including coordinating with legal counsel where appropriate. BDO successfully facilitated the firm's transition to a 100% employee-owned company, allowing it to realize many of the benefits outlined above.

HOW BDO CAN HELP YOUR A&E FIRM

If your organization is eager to drive growth and boost employee recruitment, retention, and engagement, BDO Capital's team of **ESOP Advisory professionals** will work closely with your business's accounting and legal teams to help meet your unique ESOP needs. Whether you are ready to start planning your transition or want to determine if an ESOP is right for your A&E organization and its employees, BDO can offer support.

What makes a company a good candidate for an ESOP? Explore our insight on **common characteristics for structuring a successful ESOP**.

ERISA Record Retention: What Every Plan Sponsor Needs to Know

Missing ERISA plan documents can significantly increase costs and long-term risk for employers and plan sponsors. For example, a former employee or their heirs may file a claim for benefits they mistakenly believe are due. Here, the burden falls on the plan to provide records that prove the distribution was previously made to the employee — sometimes decades ago — or pay the claim. This scenario highlights the critical role of records retention policies.

Plan sponsors and other fiduciaries must understand their roles in preserving and maintaining plan records that help avoid duplicate distributions and ensure compliance with their fiduciary obligations. And, given that retirement plans are long-term commitments spanning many years of a participant's work life, they inevitably generate extensive supporting documentation for plan sponsors to store and manage.

Read on to learn more about ERISA plan records retention guidelines, unusual circumstances that may complicate the plan sponsor's role, and best practices for preserving and maintaining crucial records.

WHAT RULES APPLY TO ERISA RECORDS RETENTION?

Plan sponsors adhere to specific rules pertaining to record retention but may overlook some significant nuances. The following rules apply:

- **ERISA Section 107** requires that plans retain records in an easily accessible format for **six (6) years** from the date of filing (including supporting documentation).
- The **IRS requires most ERISA plans** to keep records for **three (3) years** from the plan's Form 5500 filing date.

However, ERISA Section 209 provides a more rigorous guideline, one that is key but often overlooked: Plan sponsors must **keep plan records until all benefits have been paid out** and the time for auditing the plan has passed. It is the plan sponsor's responsibility to demonstrate that all due benefits have been paid to employees, as the burden of proof lies with them.

WHAT IS FORM 8955-SSA, AND WHY THE URGENCY?

Plan sponsors send a Form 8955-SSA to the Social Security Administration (SSA) when an employee leaves a job without taking their vested ERISA retirement plan benefit. When the employee reaches the plan's normal retirement age (typically 65), sometimes decades after they accrued that benefit, the SSA will notify the employee that benefits may be available based on the Form 8955-SSA. The employee can then approach their former employer with a government letter indicating that money may be owed to them. The plan sponsor must then review plan records to answer the claim and pay the benefits unless the employer can prove that the money was already distributed.

The rules surrounding record retention and Form 8955-SSA have not changed; the circumstances have. An upcoming wave of baby boomer retirements could trigger a corresponding rise in benefit claims, leaving plan sponsors searching for records that may no longer exist.

WHO IS RESPONSIBLE FOR MAINTAINING ERISA BENEFIT PLAN RECORDS?

The responsibility for maintaining all plan records falls on the plan sponsor, whether the employer or a third-party administrator (TPA) stores them. Records of plan distributions may be the first line of defense against claims for benefits, but the following types of documents should also be kept for future reference:

- Plan document, adoption agreement, IRS letter, amendments, summary plan description, summary of material modification, trust documents, service agreements, and loan policies
- Records supporting eligibility, vesting and benefits (census records for all employees)
- Support and documentation for loans and distributions
- Board resolutions and committee minutes related to the ERISA plan
- Service agreements with service providers

Keeping track of records for decades remains a challenge for plan sponsors, especially considering common business events such as:

Implementation of Standard Record Retention Policies

Most companies develop record retention policies, and employees may follow them with the best of intentions. But, as noted above, ERISA benefit plan records need special handling and longer storage. Companies may unintentionally destroy the records needed to prove length of service, benefits accrued, and benefits paid from retirement plans to employees. Fixing this problem could be as simple as amending standard record retention policies to include specific guidance for benefit plan records.

Execution of Business Transactions Such as Sales, M&As, and Closures

Due diligence should reveal ERISA benefit plans that pass from company to company during transactions and should be addressed. Occasionally, plan details don't make it into the contracts, but it is more likely for records to be lost or destroyed after the transaction closes. These situations do not absolve the plan sponsor of its responsibility to retain plan records.

Termination of TPA Contracts

Employers may transfer their business from one TPA to another or the provider may go out of business; either situation leaves the plan records vulnerable to loss or destruction. Unless the contract contained specific language regarding storage of the plan's records, the TPA is not required to continue holding plan records. Here, again, the plan sponsor is responsible for the records whether they are housed with a TPA or with the employer's HR department.

Protection of Data

System migrations and conversions controlled by the employer, TPA, or other entity can result in data loss. Whether records were destroyed because an employee zealously followed the company's record retention policy or were lost due to a glitch in an IT system is generally immaterial. As noted above, if the employer cannot prove that benefits were paid to a participant, the employer may have to pay even if it believes benefits were already distributed (including if the benefits were earned while the individual was employed at a previous entity that was acquired by the current plan sponsor).

What can plan sponsors do to protect and maintain ERISA plan records to mitigate these risks?

RECORDS RETENTION PRACTICE TIPS FOR PLAN SPONSORS

Using the following best practices can help plan sponsors retain and maintain plan records essential to proving the status of a participant's claim:

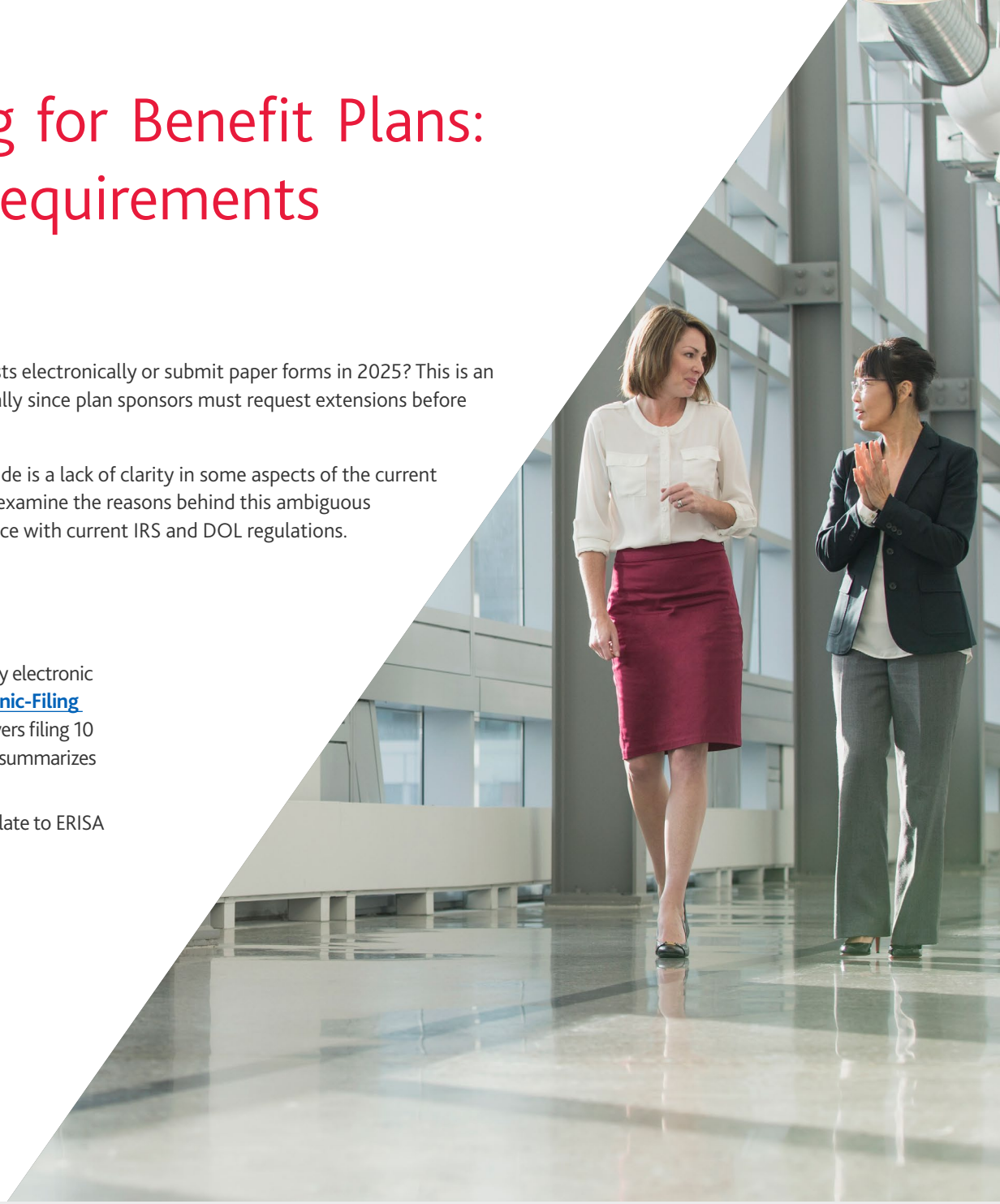
- Verify that all documents are the executed versions (signed and dated), including evidence of electronic signature if signed electronically.
- Implement a written record retention statement for plans that rely on electronic records and do not maintain original paper records.
- Check TPA service contracts for language about records retention.
- Retain all ERISA plan documents when changing recordkeepers or payroll providers, including records that are typically unavailable to plan sponsors.
- Store and back up records, ensuring that other fiduciaries are aware of their location and can access them.
- Verify that plan records are securely stored on current technology and protected from unauthorized use or loss.
- Update the Form 8955-SSA when distributions have been made to plan participants.

When benefit claims arrive, robust records retention policies can help ensure that employees receive the benefits they deserve while avoiding overpayments.

RECORDS RETENTION IS AN ONGOING PROCESS.

Will a comprehensive review of your plan's recordkeeping reveal missing documents or gaps in your retention protocols? Please consider asking our **Employee Benefit Plan Audit** team to review your plan and offer advice on how to improve your plan's record management.

Electronic vs. Paper Filing for Benefit Plans: Navigating 2025 Filing Requirements



Should employee benefit plans file information returns and extension requests electronically or submit paper forms in 2025? This is an important question that requires prompt, informed decision-making, especially since plan sponsors must request extensions before deadlines have passed.

Electronic filing offers the advantage of immediate confirmation. The downside is a lack of clarity in some aspects of the current process, which could create uncertainty for plan sponsors. In this article, we examine the reasons behind this ambiguous situation, offering insight to help plan sponsors ease their way into compliance with current IRS and DOL regulations.

THE IRS ELECTRONIC FILING MANDATE

On February 23, 2023, the IRS issued a final regulation that expanded mandatory electronic filing requirements for certain information returns. This regulation, titled **Electronic-Filing Requirements for Specified Returns and Other Documents**, applies to taxpayers filing 10 or more returns on or after January 1, 2024. A previously published **BDO article** summarizes the new electronic filing mandate.

While this expansion applies to a number of forms, we will focus on three that relate to ERISA benefit plans.

FORM 5558, APPLICATION FOR EXTENSION OF TIME TO FILE CERTAIN EMPLOYEE PLAN RETURNS

As of January 1, 2025, employee benefit plans were able to file **Form 5558 electronically using EFAST2**.

Plan sponsors requesting more time to file their Form 5500 (due by the last day of the seventh month following the end of the plan year, such as July 31 for calendar year plans) must determine whether electronic filing of their **Form 5558** is mandatory under the updated IRS mandatory electronic filing rules. If so, are they prepared to comply?

FORM 5330 AND FORM 8868

The question of whether electronic filing is mandatory or voluntary also arises when filing two other forms: Form 5330 and Form 8868.

FORM 5330, RETURN OF EXCISE TAXES RELATED TO EMPLOYEE BENEFIT PLANS

To fix a late deposit, plans must file Form 5330 and pay any excise tax that is due. The IRS requires that taxpayers who meet the 10-return threshold file Form 5330 electronically for tax years ending on or after December 31, 2023. In fact, the IRS has stated it will **disregard paper returns submitted by filers** who are required to file electronically; the plan will be treated as if it had failed to submit any return.

However, due to an initial lack of approved electronic filing vendors, the IRS granted a reprieve for the 2024 tax year returns. At this time, the IRS has not announced whether the grace period has been extended to cover 2025 filings.

FORM 8868, APPLICATION FOR EXTENSION OF TIME TO FILE AN EXEMPT ORGANIZATION RETURN OR EXCISE TAXES RELATED TO EMPLOYEE BENEFIT PLANS

For filings related to the 2024 tax year, plan sponsors must use Form 8868 — not Form 5558 — to request an extension to file Form 5330. Remember that extension requests must be submitted before the filing deadline, and the plan must pay any taxes due simultaneously with the request.

Electronic filing offers a more efficient way to file required forms, especially for plans required to file multiple returns. But because it is a new process for many plan sponsors, preparation is key.

BEST PRACTICES FOR ELECTRONIC FILING OF BENEFIT PLAN FORMS

How can plan sponsors achieve and maintain compliance with electronic filing requirements?

- Determine whether the mandatory filing regulations apply to their employee benefit plan. Currently, taxpayers who file more than 10 returns of any type during the tax year are required to file electronically.
- Review and update all internal policies and procedures related to preparation and filing of all tax returns, not just employee benefit plan tax returns. Tax and benefit teams should be ready to commence electronic filing.
- Make sure vendors and service providers have the necessary systems to comply with IRS mandatory electronic filing regulations.
- Read notices from the IRS or DOL immediately and respond in a timely manner.

The top-of-mind issue is this: Requests for extension must be submitted before the filing deadline, whether they are filed electronically or on paper.

MANDATORY ELECTRONIC FILING IS HERE TO STAY

Deciphering and complying with complex tax and ERISA retirement plan regulations is challenging. Our skilled professionals guide clients through tax filings, benefit plan compliance, and benefit plan audits. Please contact BDO's Employee Benefit Plan Audit team or Global Employer Services team to learn how we can assist.

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