

## Elective Deferral Election Records as Plan Sponsors Proceed With Caution

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In a time when most employees make their 401(k) plan elective deferral elections electronically, plan sponsors often do not think twice about maintaining records of employee deferral elections, since they expect their third party administrators ("**TPAs**") will retain such electronic records. However, this confidence in the TPA's records can be a trap for the unwary, as mistakes in the transmission of elections from the TPA to the employer's payroll can easily occur, and the elections for long-standing employees may have been entered manually based on paper election forms that could have long since been misplaced (or destroyed in accordance with a TPA's record retention policies). Further, if the plan sponsor has changed TPAs, the current TPA's records for participants prior to the conversion are based on the records of the prior TPA and may no longer be accessible following conversion to the new TPA.Â

A lack of reliable records can create numerous complications for plan sponsors, including an inability to determine a participant's actual election when the payroll system's and the TPA's records differ. Even more troublesome for plan sponsors is when the lack of records makes it impossible for a plan sponsor to produce copies of election forms when requested by IRS or DOL agents in plan audits â a routine request in any audit process. Add in the fact that errors may not be found for years, and a recipe for costly and complicated corrections has been created.

While there is no foolproof method to guarantee elective deferral records are 100% accurate, there are some steps plan sponsors can take to help increase the accuracy of their records:

- Establish a system to double check elections transmitted by the TPA to payroll to ensure the data is entered correctly;
- Annually confirm the TPA's records of deferral elections are consistent with the plan sponsor's payroll records;
- Communicate annually with participants regarding what elections they have in place, along with instructions on how to change elections;
- When changing TPAs, verify all participant deferral elections and ensure the prior TPA provides either the plan sponsor or the new TPA with a copy of participants' prior elections; and
- When rehiring an employee who participates in a plan with an automatic enrollment feature, confirm the elective deferral election being implemented by the TPA complies with the plan's enrollment provisions governing rehires.

You can read our prior posts regarding records retention [here](#) and [here](#).