



Systems & Solutions for Sarbanes-Oxley Compliance

David Schellhase SalesForce.com, Inc.

George Socha Socha Consulting LLC

Will new SEC rules related to Sarbanes-Oxley impact your requirements to retain and product electronic records?



impact

accountants

others

risks

summary

Will new SEC rules related to Sarbanes-Oxley impact your requirements to retain and product electronic records?

If you are an accountant, yes...

Otherwise, maybe...



impact

accountants

others

risks

summary

Accountants & Accounting Firms

Title 17, Chapter II of the Code of Federal Regulations
 § 210.2-06 Retention of audit and review records.

| | |
|----------|---|
| Who | Accountants & accounting firms... |
| What | Records relevant to an audit or review of an issuer's financial statements... |
| How long | 7 years after conclusion of audit or review... |

| | |
|------------|--|
| What to do | <p>Accountants & accounting firms <u>must keep</u> all records relating to audit or review for 7 years after conclusion of audit or review ►</p> <p><u>But need not keep:</u></p> <p>Non-substantive material ►</p> <p>All of the issuer's financial information, records, databases, and reports that might be read, examined, or reviewed by the auditor ►</p> |
|------------|--|



§ 210.2-06 Retention of audit and review records.

- (a) For a period of seven years after an accountant concludes an audit or review of an issuer's financial statements to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(a)) applies, or of the financial statements of any investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), the accountant shall retain records relevant to the audit or review, including workpapers and other documents that form the basis of the audit or review, and memoranda, correspondence, communications, other documents, and records (including electronic records), which:
- (1) Are created, sent or received in connection with the audit or review, and
 - (2) Contain conclusions, opinions, analyses, or financial data related to the audit or review.
- (b) For the purposes of paragraph (a) of this section, workpapers means documentation of auditing or review procedures applied, evidence obtained, and conclusions reached by the accountant in the audit or review engagement, as required by standards established or adopted by the Commission or by the Public Company Accounting Oversight Board.
- (c) Memoranda, correspondence, communications, other documents, and records (including electronic records) described in paragraph (a) of this section shall be retained whether they support the auditor's final conclusions regarding the audit or review, or contain information or data, relating to a significant matter, that is inconsistent with the auditor's final conclusions regarding that matter or the audit or review. Significance of a matter shall be determined based on an objective analysis of the facts and circumstances. Such documents and records include, but are not limited to, those documenting a consultation on or resolution of differences in professional judgment.
- (d) For the purposes of paragraph (a) of this section, the term issuer means an issuer as defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(f)).



What Need Not Be Kept

§ 210.2-06 Retention of audit and review records.

Documents to be Retained

In the Proposing Release, we stated that non-substantive materials that are not part of the workpapers, such as administrative records, and other documents that do not contain relevant financial data or the auditor's conclusions, opinions or analyses would not meet the second of the criteria in rule 2-06(a) and would not have to be retained.

Commentators questioned whether the following documents would be considered substantive and have to be retained:

- Superseded drafts of memoranda, financial statements or regulatory filings,
- Notes on superseded drafts of memoranda, financial statements or regulatory filings that reflect incomplete or preliminary thinking,
- Previous copies of workpapers that have been corrected for typographical errors or errors due to training of new employees,
- Duplicates of documents, or
- Voice-mail messages.

These records generally would not fall within the scope of new rule 2-06 provided they do not contain information or data, relating to a significant matter, that is inconsistent with the auditor's final conclusions, opinions or analyses on that matter or the audit or review. For example, rule 2-06 would require the retention of an item in this list if that item documented a consultation or resolution of differences of professional judgment.



What Need Not Be Kept

§ 210.2-06 Retention of audit and review records.

Documents to be Retained

Commenters also questioned whether all of the issuer's financial information, records, databases, and reports that the auditor examines on the issuer's premises, but are not made part of the auditor's workpapers or otherwise currently retained by the auditor, would be deemed to be "received" by the auditor under rule 2-06(a)(1) and have to be retained by the auditor. We do not believe that Congress intended for accounting firms to duplicate and retain all of the issuer's financial information, records, databases, and reports that might be read, examined, or reviewed by the auditor. Accordingly, we do not believe that the "received" criterion in rule 2-06(a)(1) requires that such records be retained.



impact

accountants

others

risks

summary

Accountants & Everyone Else

Sarbanes-Oxley Act of 2002

§ 105. Investigations and Disciplinary Proceedings.

| | |
|----------|--|
| Who | Any person... |
| What | Any document the Board considers relevant or material to an investigation... |
| How long | No time frame mentioned |

| | |
|------------|---|
| What to do | No clear answer; for now, best practice is to follow accountants rule |
|------------|---|



§ 105. Investigations and Disciplinary Proceedings.

(a) IN GENERAL. – The Board shall establish, by rule, subject to the requirements of this section, fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.

(2) TESTIMONY AND DOCUMENT PRODUCTION. – In addition to such other actions as the Board determines to be necessary or appropriate, the rules of the Board may –

(A) require the testimony of the firm or of any person associated with a registered public accounting firm, with respect to any matter that the Board considers relevant or material to an investigation.

(B) require the production of audit work papers and any other document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board considers relevant or material to the investigation, and may inspect the books and records of such firm or associated person to verify the accuracy of any documents or information supplied;

(C) request the testimony of, and production of any document in the possession of, any other person, including any client of a registered public accounting firm that the Board considers relevant or material to an investigation under this section, with appropriate notice, subject to the needs of the investigation, as permitted under the rules of the Board; and

(D) provide for procedures to seek issuance by the Commission, in a manner established by the Commission, of a subpoena to require the testimony of, and production of any document in the possession of, any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation under this section.



§ 210.2-06 Retention of audit and review records.

II. Discussion Of Final Rule

In restricting the application of the rule to the audits and reviews of the financial statements of issuers and registered investment companies, we are not condoning more liberal document destruction policies for the audits and reviews of financial statements of other entities. For example, we would expect that auditors of the financial statements of those investment advisers, broker-dealers, and entities subject to Municipal Securities Rulemaking Board regulations that are not subject to the rule would retain relevant audit and review records consistent with applicable laws, regulations, and professional standards.



What are the risks of failing to meet the Sarbanes-Oxley requirements?



impact

accountants

others

risks

summary

What are the risks of failing to meet the Sarbanes-Oxley requirements?

Potentially substantial – fines and imprisonment of up to 20 years...



impact

accountants

others

risks

summary

Risks

§ 1519. Destruction, alternation, or falsification of records in Federal investigations and bankruptcy

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration or any matter within the jurisdiction of any department or agency of the United States of any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.



The 7 year
requirement

Risks

§ 1520. Destruction of corporate audit records

(b) Whoever knowingly and willfully violates subsection (a)(1), or any rule or regulation promulgated by the Securities and Exchange Commission under subsection

(a)(2), shall be fined under this title, imprisoned not more than 10 years, or both.



What To Do

Accountants & Accounting Firms

Keep all records relating to
audit or review for 7 years
after conclusion of audit or
review

All Others

No clear answer; for now,
best practice is to follow
accountants rule

