



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

7.11.1

OCTOBER 24, 2024

EFFECTIVE DATE

(10-24-2024)

PURPOSE

- (1) This transmits revised IRM 7.11.1, Employee Plans Determination Letter Program.

MATERIAL CHANGES

- (1) Updated IRM 7.11.1.1 (5), Program Scope and Objectives, to include Primary Stakeholders.
- (2) Added IRM 7.11.1.1.2, Authority.
- (3) Added IRM 7.11.1.1.3, Roles and Responsibilities.
- (4) Added IRM 7.11.1.1.4, Program Management and Review.
- (5) Added IRM 7.11.1.1.5, Program Controls.
- (6) Updated IRM 7.11.1.1.6 to include "DUT - TPFE," Document Upload Tool for Taxpayer Facing Employees and other additions.
- (7) Added IRM 7.11.1.1.7, Related Resources.
- (8) Updated IRM 7.11.1.2 to add provisions of TE/GE-07-0224-0004, Digital Taxpayer Communications.
- (9) Updated IRM 7.11.1.6 (1) to provide that all requests for determination letters on the qualified status of employee plans under §401, 403(a) 409 or 4975(e)(7); on whether a plan meets the requirements of §403(b); and on the exempt status of any related trust under §501 must be submitted thru Pay.gov and may not be mailed to the Service.
- (10) Updated IRM 7.11.1.8 (6) to provide that if a case is auto-selected for mandatory review, then the email received from the specialist or manager will be forwarded to QA and QA will issue the DL upon closing the case. Do not update in EDS.
- (11) Updated IRM 7.11.1.11 (1) to provide that all determination letter requests are submitted thru Pay.gov and require the user fee to be submitted with the application and attachments. Therefore, the Form 8717 and confirmation page are not required to be submitted.
- (12) Updated IRM 7.11.1.15 (1) to set forth the requirement that the application for a determination letter must be signed and dated by an authorized person or contain the penalty of perjury statement if the form is signed by someone not authorized. If the submission is filed by a representative who is authorized to sign and file the submission on behalf of a plan sponsor, as provided in a submitted Form 2848, the penalty of perjury statement shall not apply. However, the authorized representative of the plan sponsor must include a penalties of perjury statement as described in Rev. Proc. 2024-4, Section 6.02(14), signed by the plan sponsor.
- (13) Updated IRM 7.11.1.24 (1) to state that if the individual plan adopter makes any modification to a standardized plan or extensive modifications to a nonstandardized plan, they are only allowed to apply for a DL using a Form 5300 and only if they meet the criteria in IRM 7.11.1.14, "When Plans May Apply for a Determination Letter."
- (14) Updated IRM 7.11.1.24.1 (1) to state: Beginning with Cycle 3 pre-approved plans, all pre-approved plans are required to contain a procedure for provider amendments, so that corrections of prior

approved plans and changes in the Internal Revenue Code, regulations, or other guidance published in the Internal Revenue Bulletin may apply to all employers who have adopted the plan.

- (15) Updated IRM 7.11.1.32 (2) to reflect that effective July 1, 2023, all payments and Forms 5316 must be submitted via Pay.gov.
- (16) Updated IRM 7.11.1.35 (5) to indicate that generally, because of the interest rate “trade-off,” PEPs will violate §411(b)(1)(G) if the interest the participant loses by working another year is larger than the increase in the accumulated benefit for an additional year of service. Specifically, earlier years depend on compounding interest to push up the accruals, but the compounding will eventually decrease towards NRA. This has a tendency to decrease the projected accrued benefit in later years.
- (17) Updated throughout for plain language and current Revenue Procedures.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 7.11.1, dated November 9, 2023, and incorporates the applicable provisions of TEGE-07-0224-0004, Digital Taxpayer Communications.

AUDIENCE

Tax Exempt and Government Entities
Employee Plans

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Tax Exempt and Government Entities

7.11.1

Employee Plans Determination Letter Program

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7.11.1.1
(06-28-2018)
Program Scope and Objectives

- (1) Purpose: Provides procedures and technical guidance to employees reviewing Determination Letter (DL) applications.
- (2) Audience: Employee Plans (EP) Determinations and Quality Assurance (QA) staff.
- (3) Policy Owner: Director, EP.
- (4) Program Owner: EP.
- (5) Primary Stakeholders:
 - a. Internal - Director, Employee Plans, Director, Rulings and Agreements, EP Determinations and Quality Assurance managers and staff, TEGE Referrals Group.
 - b. External - Plan sponsors, plan representatives, plan participants.
- (6) Program Goals: EP Determinations' goals are:
 - a. Ensure that plans are in compliance with the tax laws by reviewing applications for DLs and opinion letters.
 - b. Protect the public interest by applying the tax law with integrity and fairness to all.

7.11.1.1.1
(10-14-2022)
Background

- (1) Plan providers may submit requests for a DL using any of the application forms listed under IRM 7.11.1.3, Application Forms for EP Determination Letters.
- (2) Plan providers may also submit requests for "pre-approved" opinion letters. EP Determinations reviews applications for opinion letters using the procedures in IRM 7.11.4, IRC 401(a) Pre-Approved Plans Program.
- (3) The IRS Restructuring and Reform Act of 1998 (RRA '98), Section 3705(a), provides identification requirements for all IRS employees working tax related matters.

Note: The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see *Taxpayer Bill of Rights*.

7.11.1.1.2
(09-28-2021)
Authority

- (1) Delegation Order 7-1 and 7-14 delegate the authority to issue favorable and adverse determination letters on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans to the Director, EP. (IRM 1.2.2.8.1 and IRM 1.2.2.8.14).
- (2) A complete list of delegation orders governing EP Rulings and Agreements can be found at *Delegation Orders and Policy Statements by Process*.
- (3) See IRM 7.1.1, Exhibit 7.1.1-1, for a complete list of the major EP revenue procedures currently in effect.

7.11 Employee Plans Determination Letter Program

7.11.1.1.3
(10-24-2024)

Roles and Responsibilities

- (1) The mission of Employee Plans is to provide EP's customers top quality service by helping them understand and comply with applicable tax laws and to protect the public interest by applying the tax laws with integrity and fairness to all.
- (2) The Director, EP, reports to the Deputy Commissioner, TE/GE, and is responsible for planning, managing, directing and executing nationwide EP activities.
- (3) EP responsibilities include:
 - a. Employee plans (including the qualification of pension, annuity, profit-sharing, and stock bonus plans, simplified employee pensions, saving incentive match plans for employees, and tax-sheltered annuities) and related trusts.
 - b. Tax treatment of participants and their beneficiaries; and deductions for employer contributions.
 - c. Procedural and administrative provisions with respect to such plans.
- (4) The Director, EP R&A, reports to the Director, EP, and is responsible for three types of services for retirement plans— voluntary compliance, determination letters, and technical guidance.
- (5) Responsibilities of the EP R&A staff include:
 - a. Processing determination letter requests from employers regarding the qualified status of their pension, annuity, profit sharing and stock bonus plans.
 - b. Issuing opinion and advisory letters to specific requestors regarding pre-approved pension, annuity, and profit-sharing plans, including individual retirement accounts, simplified employee pensions and savings incentive match plans for employees, and tax sheltered annuities.
 - c. Developing and operating voluntary correction programs, such as the EPCRS program and issuing compliance statements or entering into closing agreements under these programs.
 - d. Processing requests for changes in funding method and making other actuarial determinations and interpretations.
 - e. Coordinating with Chief Counsel on requests for funding waivers.
 - f. Developing and maintaining responsibility for actuarial publications and other standards for the valuation of transfers of future interests for income, estate and gift tax purposes.
 - g. Coordinating with TE/GE Division Counsel, Associate Chief Counsel and the DOJ on litigation issues and declaratory judgment cases under the Internal Revenue Code (IRC 7476).

7.11.1.1.4
(10-24-2024)

Program Management and Review

- (1) Programs reports:
 - a. The EP Determinations program uses Business Objects to view, create, and modify inventory and employee records. Business Objects uses tools to provide a built-in interface to query and analyze data and to build reports.
 - b. Monthly reports detailing the current inventory of cases by area and their status are produced and provided to the Director, EP Rulings and Agreements, Area Managers, and frontline managers.
 - c. Ad-hoc reports are produced as requested by determinations personnel with appropriate permission.

- d. Each quarter, EP Determinations Quality Assurance issues reports to summarize the results of their TEQMS reviews. See IRM 7.11.3, Tax Exempt Quality Measurement System (TEQMS).

(2) Program effectiveness:

- a. EP Determinations monitors business unit progress toward completing and closing cases in inventory. They provide status and progress reports to IRS leadership on a regular, recurring basis. Effectiveness is measured by analysis of compliance trends and results.

7.11.1.1.5
(10-24-2024)
Program Controls

- (1) The IRS receives EP determination letter applications, and user fees from taxpayers on Pay.gov.
- (2) The user fee information is then transferred to LINUS to ensure it is properly recorded.
- (3) The application information from Pay.gov is transferred to Tax Exempt Determination System (TEDS) and EP/EO Determination System (EDS) which are the systems that EP Determinations uses to control their inventory.
- (4) TEDS contains roles and permissions to ensure proper separation of duties. See IRM 7.15.4.
- (5) The EP Determinations Area Managers coordinate the assignment of inventory.
- (6) In order to ensure a consistent level of managerial engagement in the process of making key strategic decisions during a determination letter review, the specialist submits requests for approval by their manager through TEDS.
- (7) The manager approves or rejects any request through the TEDS.
- (8) EP Determinations QA reviewers perform reviews on mandatory review cases and for cases selected for the Tax Exempt Quality Measurement System (TEQMS) to ensure that specialists are conducting their determination letter reviews per technical, procedural and administrative requirements. See IRM 7.11.3 and IRM 7.11.9 for more information.
- (9) The IRS is fully committed to protecting the privacy rights of taxpayers and employees. Privacy laws are included in the IRC, the Privacy Act of 1974, the Freedom of Information Act, and IRS policies and practices. For more information about these laws, visit the IRS Electronic Freedom of Information Act Reading Room.
 - a. For questions about privacy, email ***Privacy**.
 - b. For question about disclosure, email ***Disclosure**.

7.11.1.1.6
(10-24-2024)
Terms and Acronyms

- (1) These acronyms are used in this IRM:

Acronym	Term
AIS	Application Identification Sheet
ASG	Affiliated Service Groups
CAP	Audit Closing Agreement Program

Acronym	Term
AIS	Application Identification Sheet
CCR	Case Chronology Record
CFR	Code of Federal Regulations
CL	Cumulative List
CSPC	Cincinnati Service Processing Center
DC	Defined Contribution
DB	Defined Benefit
DL	Determination Letters
DLN	Document Line Number
DOJ	Department of Justice
DOL	Department of Labor
DROP	Deferred Retirement Option Plan
DUT - TPF	Document Upload Tool for Taxpayer Facing Employees
EDS	Employee Plans/Exempt Organizations Determination System
EP	Employee Plans
EPCRS	Employee Plans Compliance Resolution System
EIN	Employer Identification Number
EGTRRA	Economic Growth and Tax Relief Reconciliation Act of 2001
ER	Employer
FDL	Favorable Determination Letter
FOIA	Freedom of Information Act
IRC	Internal Revenue Code
IRS	Internal Revenue Service
LFDL	Last Favorable Determination Letter
LGS	Letter Generation Subsystem
LINUS	Letter Information Network User-Fee System
LRM	Listing of Required Modifications
MPPP	Money Purchase Pension Plan

Acronym	Term
AIS	Application Identification Sheet
NRA	Normal Retirement Age
OPR	Office of Professional Responsibility
PEP	Pension Equity Plan
PGLD	Privacy, Governmental Liaison and Disclosure
POA	Power of Attorney
PBGC	Pension Benefit Guaranty Corporation
QA	Quality Assurance
RAC	Remedial Amendment Cycle
RAP	Remedial Amendment Period
RA List	Required Amendment List
RM	Reviewer's Memo
SSN	Social Security Number
TDC SM	Taxpayer Digital Communication Secure Messaging
TEDS	Tax Exempt Determination System
USERRA	Uniformed Services Employment and Reemployment Rights Act
TE/GE	Tax Exempt and Government Entities
VCP	Voluntary Compliance Program

7.11.1.1.7
(10-24-2024)

Related Resources

- (1) Rev. Proc. 2024-4, Determination Letters and Letter Rulings.
- (2) Rev. Proc. 2016-37, Modification to the Determination Letter Program for Individually-Designed Plans.
- (3) *IRS.gov - Listing of Required Modifications - LRMs.*
- (4) *Delegation Orders and Policy Statements by Process.*
- (5) IRM 7.1.1, See Exhibit 7.1.1-1 for the major EP revenue procedures currently in effect.
- (6) IRM 7.11.4, Employee Plans Determination Letter Program, IRC 401(a) and 403(b) Pre-Approved Plans Program.
- (7) IRM 7.11.5, Proper Use of Determination Letter Caveats.

7.11 Employee Plans Determination Letter Program

- (8) IRM 7.11.8, Ep Determinations Closing Agreement Program.
- (9) IRM 7.15.7.10, Case Chronology Record.

7.11.1.2 (10-24-2024) **Digital Taxpayer Communications**

- (1) The IRS has implemented Taxpayer Digital Communications Secure Messaging (TDC SM) as a more efficient way for taxpayers and their authorized representatives to exchange information and documents with the IRS. Taxpayers and representatives will use the TDC SM platform by invitation only. The procedures apply to all compliance activity types (cases) that include taxpayer contact with a start date on or after June 22, 2022. An alternative secure method, the Document Upload Tool for Taxpayer Facing Employees (DUT - TPFE) is now available for use within EO and EP Rulings & Agreements on and after February 22, 2024.
- (2) You must offer either TDC SM or DUT – TPFE to all taxpayers and their representatives with the initial contact letter. If the interaction with the taxpayer is expected to be a series of multiple exchanges of documents or communications, it is recommended that you offer TDC SM at initial contact. If the interaction with the taxpayer is expected to be limited to receipt of certain documents requested, it is recommended that you offer DUT - TPFE at initial contact. If taxpayer interaction changes while working the case, you may use the alternative tool.
- (3) TE/GE has revised many initial contact letters to include language that advises taxpayers and their representatives of the availability of TDC SM and DUT – TPFE to provide a safe means for exchanging information with the IRS online. The revised letters use selectable paragraphs that you must choose. Use the TDC SM or DUT – TPFE paragraph and include a copy of Pub 5295 with the letter on all new contacts.
- (4) Taxpayers and representatives participating in the TDC SM must consent to receive and send information and documents via the TDC SM platform. Secure from the taxpayer and their representatives electing to participate with the TDC SM platform a signed Form 15314, TE/GE Secure Messaging Taxpayer Agreement Authorization of Disclosure to Designated Users. When returned, submit the signed form to the BSP shared mailbox (*TEGE TDC TP Provisioning) for taxpayer and representative account creation. Once established, the system will notify the taxpayer and their representative through email with instructions on how to access their TDC SM account. Send a welcome message to the taxpayer and their representative.
- (5) Document your invitation to use TDC SM or DUT – TPFE and the response of the taxpayer and their representative in your CCR,
- (6) Upon closure of your case, send a message to the taxpayer that you are closing your case and future communications within TDC SM or DUT – TPFE will not be possible for this case.
- (7) To offer use of the DUT - TPFE, after a phone conversation or through correspondence, provide the taxpayer or their representative an access code and URL, granting access to the upload tool. The user can upload and submit information to the TE/GE employee through DUT - TPFE. Once submitted, the taxpayer receives a confirmation, and the employee can review the transmitted documents.

- (8) To offer the DUT - TPFE, use the following language with the request for information:
 - a. IRS Documentation Upload Tool provides a safe means for exchanging information with IRS online at www.irs.gov/sendmyreply.
 - b. Your unique one-time use code is: [insert code].
- (9) The unique access code expires after 70 days. If you need another code relating to this case, contact the specialist listed in the top right corner of the letter.

7.11.1.3
(10-14-2022)
**Description of the EP
Determinations Program**

- (1) The Tax Exempt and Government Entities (TE/GE) Director, Employee Plans, has the authority to issue DLs and, when necessary, notices of proposed adverse determination. (Delegation Order 7-1 (formerly DO-112, Rev. 11)). (IRM 1.2.2.8.1). The Director uses the current revenue procedures that list procedures for the IRS to issue DLs on the:
 - a. Qualified status of pension, profit-sharing, stock bonus, and employee stock ownership plans (ESOPs) under IRC 401, IRC 403(a), IRC 409, and IRC 4975(e)(7).
 - b. Status of individually-designed 403(b) plans (as of June 1, 2023).
 - c. Status for exemption of any related trusts or custodial accounts under IRC 501(a).

Exception: The Director doesn't issue DLs on IRC 502 (feeder organizations) or IRC 511 (unrelated business income).

- (2) The Director may re-delegate this authority to internal revenue agents or tax law specialists at GS-11 or higher (collectively referred to as specialists). See IRM 1.2.2.8, Delegations of Authorities for the Rulings and Agreements Process.

Note: See *Delegation Orders by Process* for a complete list of delegation orders governing EP Rulings and Agreements.

Note: See IRM 7.1.1, Exhibit 7.1.1-1 for the major EP revenue procedures currently in effect.

- (3) EP Determinations is part of EP Rulings and Agreements within TE/GE.
- (4) DLs are generally issued in the name of the Director, EP Rulings and Agreements.
- (5) The EP Determinations Program is structured as follows:
 - a. The Director, EP Rulings and Agreements, oversees the EP Determinations letter program.
 - b. Two area managers report directly to the Director, EP Rulings and Agreements.
 - c. Frontline managers report to one of the two area managers and are responsible for a group of EP Determinations specialists.
 - d. The Manager, EP Determinations Quality Assurance, with a staff of senior determination specialists, independently oversees the review of cases and ensures case quality.

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Note: QA reviews EP Determinations mandatory review cases and those selected for Tax Exempt Quality Measurement System (TEQMS) review. See IRM 7.11.3, Tax Exempt Quality Measurement System (TEQMS) and IRM 7.11.9, Mandatory and TEQMS Case Reviews. Complete Form 3198-A, TE/GE Special Handling Notice. Import it into the file and include it in the closing email to the manager.

Note: Rev. Proc. 2024-4 (revised annually) provides directions on **how** to submit an application, while Rev. Proc. 2016-37, as modified by Rev. Proc. 2022-40 and Rev. Proc. 2023-37 provides directions on **when** to submit an application. Rev. Proc. 2019-20, as modified by Rev. Proc. 2022-40, provides additional guidance for certain amended plans.

(6) In general, IRS reviews tax-qualified plans for:

- a. Compliance with the form requirements. (Stated in IRC 401(a)).
- b. Whether a plan meets the safe-harbor nondiscrimination requirements if the plan sponsor specifically requests that they be considered.

7.11.1.4
(10-14-2022)

Application Forms for EP Determination Letters

(1) Plan sponsors request DLs on these forms:

Form #	Form Title	Purpose
Form 5300 (To access current form or instructions use Pay.gov link.)	<i>Pay.gov - Application for Determination for Employee Benefit Plan</i>	Use for individually-designed plans, and for adopters of pre-approved plans under certain circumstances.
Form 5307	Application for Determination for Adopters of Modified Nonstandardized Pre-Approved Plans	Use for nonstandardized plans where the plan provider has made limited modifications to the language of the approved specimen plan.
Form 5309	Application for Determination of Employee Stock Ownership Plan	Submit as an attachment to Form 5300 for ESOPs.
Form 5310 (To access current form in instructions use Pay.gov link.)	<i>Pay.gov - Application for Determination upon Termination</i>	Use for terminating plans; however, you must request a partial termination DL on Form 5300.
Form 5316	Application for Group or Pooled Trust Ruling	See IRM 7.11.1.32, Group Trust (Pooled Investment).

- (2) See Rev. Proc. 2024-4 (revised annually) for more information on what plan sponsors must submit with the application.
- 7.11.1.4.1
(10-14-2022)
Procedures When Not Authorized to Issue a DL
- (1) Rev. Proc. 2024-4 (revised annually), Sections 8.02 and 8.03, lists the plan types and issues that EP Determinations is or is not authorized to rule on.
- (2) If EP Determinations isn't authorized to issue a DL for the type of plan or issue submitted, return the case to the plan sponsor using these procedures:
- Complete Form 5621, Technical Analysis Control Sheet, and add an explanation of why not authorized to rule in the Notes section.
 - Refund any user fee paid with the application. See IRM 7.11.1.11.2, Specialist User Fee Responsibilities.
 - Prepare Letter 1924, Not Authorized to Rule. Use applicable selectable paragraph to show authority for returning case.
 - Close the case using closing code "03," Returned Incomplete.
 - Complete the law indicator. If the plan has a prior DL, use the same law indicator as before. If the last law indicator for the prior law was anything but K, M, J or S or if the plan has no prior DL, use "Z."
- 7.11.1.5
(10-14-2022)
Computer Systems
- (1) To process DL applications, EP Determinations uses two computer systems:
- Employee Plans and Exempt Organization Determinations System (EDS). EDS is used for case closing and research purposes only.
 - Tax Exempt Determinations System (TEDS).
- 7.11.1.5.1
(10-14-2022)
Employee Plans/Exempt Organizations Determination System (EDS)
- (1) EDS is a system to process DL applications.
- (2) EDS is used to close all cases. Cases flow to this system for final closure.
- (3) TE/GE and EP management use EDS data to plan and make decisions.
- (4) EDS guidance is listed in IRM 7.14.1, Employee Plans Determination System (EDS) User Manual - Introduction.
- 7.11.1.5.2
(10-14-2022)
Tax Exempt Determination System (TEDS)
- (1) TEDS is the paperless system to process and control DL applications. Documents are scanned into the system, allowing specialists immediate access to case data.
- (2) TEDS electronically stores the DL applications and subsequent related documents as images and case data in the Records Repository.
- (3) Specialists can process DL applications, create closing letters from the *Forms/Pubs/Product Repository*, and then submit them for closure in TEDS to their manager.
- (4) TEDS guidance is in IRM 7.15.1, Tax Exempt Determination System (TEDS), Employee Plans User Manual Introduction.
- 7.11.1.6
(10-24-2024)
Initial Processing Procedures
- (1) All requests for determination letters on the qualified status of employee plans under §401, 403(a) 409 or 4975(e)(7), on whether a plan meets the requirements of §403(b), and on the exempt status of any related trust under §501 must be submitted on Pay.gov and may not be mailed to the Service. See Rev. Proc. 2024-4, Section 31.02.

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Exception: Form 4461, Application for Approval of Standardized or Nonstandardized Defined Contribution Plans, Form 4461-A, Application for Approval of Standardized or Nonstandardized Pre-Approved Defined Benefit Plan, Form 4461-B, Application for Approval of Standardized or Nonstandardized Pre-Approved Plans are processed per IRM 7.11.4, Employee Plans Determination Letter Program, IRC 401(a) and 403(b) Pre-Approved Plans Program.

- (2) Upon receipt, each DL application receives a control date, usually the postmark or received date, which starts the 270-day period under IRC 7476 for declaratory judgments for qualification of certain retirement plans. The plans receive an Acknowledgement Notice via e-mail when the form is submitted via Pay.gov.

Note: DLs may not be issued until at least 60 days after the control date to permit time for interested parties, Department of Labor (DOL) and Pension Benefit Guaranty Corporation (PBGC) to submit comments. See IRM 7.11.1.26, 60-Day Period.

- (3) Cincinnati Service Processing Center (CSPC) employees process the user fee and establish the application on TEDS using the procedures in IRM 3.45.1, Processing Employee Plan and Exempt Organization Determination Applications and User Fees. This information is then rolled over to EDS.
- (4) After an application is established on TEDS (usually in status 51 or 61), a specialist reviews it for procedural and technical correctness per IRM 7.11.1.15, Procedural Completeness Review and IRM 7.11.1.16, Technical Review.

7.11.1.7 (10-14-2022) Ordering Cases

- (1) The specialist is responsible for managing their own inventory. To order cases:
 - a. Email the Shared Administrative Associate of group 7524 and copy your manager, the manager of group 7526, and the Shared Administrative Associate of group 7530.
 - b. Type in the subject line: Case Order.
 - c. Include in your e-mail: your grade, your series (ex. 987, 512), group number, and total number of cases requested.
 - d. Cases can be requested any day of the week.
- (2) Secretaries may take up to 24 hours to assign cases. They assign cases by grade in control date order.
- (3) If possible, a specialist should not review a plan sponsor's plan more than two submissions in a row. This minimizes the possibility of overlooking errors in plan design. This doesn't mean that several different plans of a plan sponsor could not be reviewed at the same time.

7.11.1.8 (10-14-2022) Favorable Determination Letters

- (1) When you determine that the form of the plan complies with IRC 401(a) or IRC 403(b), create a favorable DL from the Letter Repository and close the case to the manager.
- (2) You're accountable for the DL's accuracy. Use the information entered on the Form 5621, Technical Analysis Control Sheet, to enter the DL information into the letter from the repository. Also refer to these sources to help you generate the DL:

- IRM 7.11.5, Proper Use of Determination Letter Caveats
- IRM 7.13.5, EP Automated Processing, Letter Generation
- Application
- Plan documents and amendments

- (3) After creating the DL, review the application package to ensure the names, addresses, and paragraphs are accurate before submitting the case to your group manager for approval in status 74PC.
- (4) Group managers or their delegates review each case to ensure:
 - a. The DL is correct.
 - b. All procedural requirements are satisfied.
- (5) When the group manager or delegate finishes reviewing the case, they forward it to the Shared Administrative Associate for final closure or to be forwarded to QA. Cases designated for QA review will be treated as “Mandatory” cases following the instructions in IRM 7.11.1.22(1)(c), How to Close Case to Manager, and no DL or any other closing letters will be mailed.
- (6) The group manager closes TEDS cases to the Shared Administrative Associate. The Shared Administrative Associate will put the case in status 21. If the case is auto-selected for mandatory review, then the email received from the specialist or manager will be forwarded to QA and QA will issue the DL upon closing the case. Do not update in EDS.
- (7) The Shared Administrative Associate adds date and signature, then imports and mails the DL via regular mail.
- (8) If DOL, PBGC, or interested party comments were submitted, select the “certified” option on the interested party letters. QA mails the letter after they review the case.

7.11.1.8.1
(10-14-2022)
**Letter Reprint and
Correction**

- (1) You aren’t permitted to issue corrected DLs if you receive a call from a POA or plan sponsor when the prior issued letter is incorrect. If a DL contains incorrect information, the caller may request correction from EP Customer Service.
- (2) General requests for a copy of a letter take approximately three weeks to process. A corrected letter takes approximately 45 days.
- (3) Plan sponsors or POAs may fax or mail requests for correction to EP Customer Service. The request should contain:
 - a. Copy of the letter that needs correction.
 - b. Fax Number (if no fax number is given, the letter will be mailed to the address on record).
 - c. Form 2848, if applicable.
 - d. Phone Number.
 - e. Detailed explanation of the error in the original DL (include copies of any amendments in question).

Note: If the original DL references a proposed amendment, the plan sponsor must sign the proposed amendment within 91 days of the **original** DL date unless the error is directly related to the proposed amendment.

- (4) Requests for a copy of a previously issued DL should contain:

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- a. Name of the plan sponsor.
- b. Plan sponsor's EIN.
- c. Plan Number.
- d. Plan Name.
- e. Year the letter was issued (not required, but helpful).
- f. Form 2848, if applicable.
- g. Phone Number.
- h. Fax Number or address (if no fax number is given, the letter will be mailed to the address on record).
- i. Statement that the original letter was never received.

- (5) The requester may fax their request to 855-224-1311 or mail it to Customer Service at the EP Determinations centralized site in Room 6-403. See Exhibit 7.11.1-1, Mailing Address List.

7.11.1.9
(10-14-2022)

Case File Requirements

- (1) Document the case file to support the conclusion you reached. You can use cycle worksheets, deficiency check sheets and individually-designed work papers to meet this requirement. See the "Case Processing" folder on the shared server and discuss with your manager to determine which worksheets to complete for your cases.
- (2) Electronically complete your work papers. All work papers must contain:
 - a. An explanation of non-routine abbreviations.
 - b. The specialist name and date each work paper was prepared.
- (3) Properly organize the case file per IRM 7.11.1.33, Administrative File, and Exhibit 7.11.1-2.
- (4) Properly import work papers into TEDS per IRM 7.15, TEDS Manual.

7.11.1.9.1
(09-23-2014)

Form 5621, Technical Analysis Control Sheet

- (1) Complete a Form 5621 for every case. Use the appropriate version from the "Case Processing" folder on the shared server.

7.11.1.9.2
(10-14-2022)

Case Chronology Record

- (1) Use the Case Chronology Record (CCR) on TEDS, not the Form 5464. Update the CCR as you work on the case. See IRM 7.15.7.10, Case Chronology Record.

Note: Management may use the form to monitor case management and your use of time.

- (2) Don't include technical or procedural issues and conclusions on TEDS CCR –Form 5464. Note them on Form 5621, or other work papers.
- (3) Enter actions you perform on the case on the TEDS CCR –Form 5464:
 - Action date
 - Time charged
 - Action code
 - Brief explanation, if the action code is insufficient
 - All names, titles and phone numbers for representatives, plan sponsors, and interested parties contacted
 - Follow-up dates for all actions

7.11.1.9.3
(09-23-2014)
**Avoiding Inflammatory
Language in Case Files**

- (1) Your internal and external communications in all case files should use a tone that reflects positively or neutrally on the IRS if correctly quoted by the media or the plan sponsor.
- (2) In general, our written products should include:
 - a. A respectful tone.
 - b. Tactful wording.
 - c. Positive words.
 - d. Courteous, reasonable and helpful writing.
 - e. Objective, clear, and dignified language.
- (3) Don't include in your written products:
 - a. Irrelevant information, especially on controversial topics.
 - b. Direct or implied criticism of the plan sponsor.
 - c. Negative or discourteous words or connotations.
 - d. Flippant tone.
 - e. Implications of doubt as to plan sponsor's honesty or intelligence.

7.11.1.10
(10-14-2022)
**Determining the
Scope/Verifying Prior
Law**

- (1) Always verify that the plan was properly amended for prior legislation.
- (2) For pre-approved plans verify the plan complied with the applicable Cumulative List (CL) for the plan sponsor's on-cycle Remedial Amendment Cycle (RAC) immediately before the cycle in which they submitted the application. If the plan was a cash balance plan or ESOP prior to adoption of a pre-approved plan, the items on the applicable CL or RA List will need to be verified for timeliness.

Example: A plan sponsor submits a Form 5307 application on March 1, 2024. The effective date of the defined benefit plan is January 1, 2021. The employer submitted a restated nonstandardized document adopted on November 30, 2023, with an opinion letter dated February 28, 2023 for the 2020 Cumulative List. You will need to verify the employer timely adopted the initial plan and was a prior adopter of a pre-approved plan.

- (3) For individually-designed plans:
 - a. If the plan has a prior favorable determination letter (FDL) for the 2010 or later CL, you will only need to verify compliance with subsequent interim amendments up thru 2015, the Required Amendment List (RA List) for all years up to and including the year for which the application is submitted, and any provisions that the employer has elected to implement in operation, including items on the operational compliance list.
 - b. If the plan has no FDL that provides reliance for a CL after 2009, you will verify compliance with all interim amendments included on the 2015 Cumulative List (2011-2015 interims), the Required Amendment List for which the application is submitted and any provision that the employer has elected to implement in operation, including items on the operational compliance list.

Example: A plan sponsor submits a Form 5310 application on March 1, 2024, with a proposed date of termination of December 30, 2023, for their DB plan that has a LFDL for the 2014 CL. You would need to review the interims

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for 2015, the RA List for 2016-2023, and any discretionary amendments submitted effective on or after January 1, 2016, including amendments under the SECURE Act.

Example: A plan sponsor adopts a new plan and submits for a DL during the calendar year beginning January 1, 2023. The review is based on the RA List issued in 2021, regardless of the fact that the plan otherwise would not be required to be amended for items on the 2021 RA List until December 31, 2023.

Exception: Plans submitted for initial qualification during the 2017 calendar year were reviewed based on the 2015 Cumulative List. (Notice 2015-84).

- (4) For new plans, verify that the plan was timely adopted in its initial plan year or by the due date of the tax return, plus extensions, for plans adopted for taxable years beginning after December 31, 2019.
- (5) If you can't verify prior law, ask the plan sponsor to provide either a:
 - a. Copy of a prior DL.
 - b. The current and prior plan document or adoption agreement (including any applicable opinion or advisory letters), trust document, all discretionary, or required amendments effective on or after January 1, 2016, and all interim amendments adopted to comply with the 2015 CL.

Note: If you're not requesting other information or if the POA or plan sponsor can't find the prior DL, review EDS and TEDS to determine if the IRS issued a DL to the plan to satisfy the above compliance.

- (6) If a plan sponsor can't prove that the plan was timely amended for prior law, the plan is considered to have a Plan Document Failure defined in Rev. Proc. 2021-30 and may need to enter into a closing agreement to correct the failure. Consult with your manager and see IRM 7.11.8, EP Determinations Closing Agreement Program.

7.11.1.11 (10-24-2024)

User Fee Requirements

- (1) All applications are submitted thru Pay.gov and require the user fee to be submitted with the application and attachments. Therefore, the Form 8717 and confirmation page are not required to be submitted.
- (2) Specialists are responsible for ensuring that the plan sponsor submitted the correct user fee with each application. See IRM 7.11.1.11.2, Specialist User Fee Responsibilities.
- (3) Rev. Proc. 2024-4, Appendix A, (revised annually) lists the fee amounts for DL requests.
- (4) Some applications may be exempt from the user fee. See IRM 7.11.1.11.1, User Fee Exemptions. However, user fees are always required for:
 - a. Group trusts.
 - b. Opinion Letters (Nonstandardized Plans).

7.11.1.11.1
(10-14-2022)
User Fee Exemptions

- (1) IRC 7528(b)(2)(B) provides an exemption from the requirement to pay a user fee for certain requests to the Internal Revenue Service (IRS) for determination letters with respect to the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership (ESOP) plans maintained by small employers ("eligible employers"). Under IRC 7528(b)(2)(B), the exemption from the user fee does not apply to any request made after the later of (i) the fifth plan year of the plan's existence or (ii) the end of any remedial amendment period with respect to the plan beginning within the first five plan years. (Notice 2017-1).

Note: An eligible employer means an employer that has no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding year, and that has at least one employee who is not a highly compensated employee (as defined in IRC 414(q)) and is participating in the plan.

- (2) In order to simplify the process for establishing whether the user fee exemption under IRC 7528(b)(2) is available and, thus, whether a user fee is required to be paid with a determination letter application for a plan, the IRS will, pursuant to the authority under IRC 7528(b)(2)(A), treat an application as being filed within a qualifying open remedial amendment period (one of the requirements for the user fee exemption) if the plan was first in existence no earlier than January 1 of the tenth calendar year preceding the year in which the application is filed.

Example: An employer is eligible for the user fee exemption if they are an eligible employer, the plan started January 1, 2012, and they file a DL application on December 1, 2022. This is because the plan isn't more than 10 years old on January 1, 2022, the year they file their application.

Example: In contrast, the employer wouldn't be exempt from the user fee if the plan started January 1, 2011, and they file their DL application December 1, 2022. This is because the plan is more than 10 years old on January 1 of the year they filed their application.

- (3) Notice 2017-1 also provides that an application that satisfies the requirements for the user fee exemption in IRC 7528(b)(2)(B), but does not meet the requirements for the ten-year rule described in the preceding paragraph, may be filed without a user fee. However, the application must include a statement describing how the application satisfies the exemption under IRC 7528(b)(2)(B).
- (4) Per Appendix A.10 of Rev. Proc. 2024-4, Form 5300, for small 403(b) plans with fewer than 100 participants, 403(b) plans that meet this requirement are eligible for a reduced user fee.

7.11.1.11.2
(10-14-2022)
Specialist User Fee Responsibilities

- (1) If you determine that the plan sponsor didn't pay a sufficient user fee, notate the deficiency on Form 5621 and request the user fee per IRM 7.11.1.15, Procedural Completeness Review.
- (2) If you determine that a refund is due:
 - a. Secure a properly executed Form 8717.
 - b. Verify the user fee payment code in TEDS/EDS is - "C" or "V". See IRM 7.15.7.3.9, Receipt and Handling Tab.

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- c. Prepare an electronic Form 1725 (CG), Routing Slip, which should include the EIN, sponsor's name, plan number, the specialist name and telephone number, the amount of the refund and the reason for the refund.
- d. Complete a User Fee Refund Form.

Note: Find the forms listed in (c) and (d), on the shared server. Go to "Case Processing", then "User Fees", then "electronic refund forms".

- e. E-mail the first page of Form 53xx, Form 8717 and the forms listed in (c) and (d) to your manager for signature.
- f. Once the forms are signed, the manager will forward the email to the Administrative Support Specialist in Group 7525 and the specialist. The specialist will import the signed forms into the non-disclosable folder in TEDS.
- g. When the closing email is sent to the Shared Administrative Associate, they will send the signed Form 1725, split-dollar user fee, Form 53xx and Form 8717 to tege.eo.adjustments@irs.gov.

Note: If a refund is being issued due to a withdrawal or the application is unable to be ruled on, a signed Form 8717 does not need to be secured. When submitting refund documentation, include a copy of the LINUS print instead.

- (3) If a plan sponsor paid a user fee and has a second application that the user fee should apply towards:
 - a. Include in the closing email to your manager, a request that the user fee be transferred from the one application to the other when preparing to close the case.
 - b. Provide the EIN, sponsor's name, plan number, the DLN for the application which has been credited with the user fee, and the DLN for the application to which the user fee should be transferred.
 - c. The group Shared Administrative Associate will email the user fee clerk and request that the user fee be transferred to the appropriate application.

7.11.1.12 (09-23-2014) Taxpayer Representatives

- (1) Specialists must prevent unauthorized disclosure. Generally, only disclose sensitive information to authorized persons such as the plan sponsor or taxpayer. See IRM 11.3.10, Disclosure of Official Information - Employee Plans Information.
- (2) Plan sponsors often seek professionals to help navigate the DL application process. They may enclose Form 2848, Power of Attorney and Declaration of Representative or Form 8821, Tax Information Authorization, in the application to allow you to speak with third-party representatives.
- (3) Any authorized representative, whether under a Form 8821 or 2848, must comply with the requirements of the Statement of Procedural Rules in 26 CFR 601.501-601.509.
- (4) Rules for the Form 2848 and Form 8821 vary. See IRM 7.11.1.12.1, Form 2848 - Authorized Representatives, and IRM 7.11.1.12.2, Form 8821- Unenrolled Preparer.
- (5) If you need to discuss the application with a third-party contact, first send notification to the taxpayer. See IRM 7.11.1.12.3, Notice of Third-Party Contacts.

7.11.1.12.1
(10-14-2022)

**Form 2848 - Authorized
Representatives**

- (1) The Form 2848, Power of Attorney and Declaration of Representative, allows an individual to represent a client before the IRS. This includes all matters connected with a presentation to the IRS concerning a client's rights, privileges, or liabilities under laws or regulations administered by the IRS, including:
 - a. Preparing and filing necessary documents.
 - b. Corresponding and communicating with the IRS.
 - c. Representing a client at conferences, hearings, and meetings.
- (2) An individual is only eligible to become an authorized representative on a Form 2848 if they meet one of these designations listed on the Form 2848 Part II:
 - CPAs.
 - Attorneys.
 - Enrolled Agents.
 - Enrolled Actuaries.
 - Enrolled Retirement Plan Agents.

Note: Enrolled Actuaries are limited to pension issues.

- (3) Unenrolled preparers, such as third-party pension administrators and consultants, aren't authorized to practice before the IRS and may not represent or advocate for a plan sponsor. If you receive a Form 2848 with (h) listed on Part II, the Form 2848 isn't valid and can't be used. Request a completed Form 8821 from the taxpayer if they still wish to have the unenrolled preparer represent them for the DL application.
- (4) Always verify that the Form 2848 is filled out correctly.
 - a. The name of the person signing Part I of Form 2848 should also be typed or printed on this form. A stamped signature is not permitted.
 - b. An original, a copy, or a fax of the power of attorney is acceptable so long as you don't reasonably dispute its authenticity.
 - c. If the Form 2848 appears incomplete, notify the taxpayer the first time you send correspondence. Don't copy the individuals named on the Form 2848 since the form was not properly completed.
- (5) Individuals named on a valid Form 2848 are entitled to copies of the correspondence and the DL if the taxpayer checks the applicable boxes next to their names. Copies of items should be sent using Letter 937-A, Transmittal of Information to Power of Attorney.
- (6) Find additional information on Form 2848 in Treasury Dept. Circular No. 230 and Rev. Proc. 2024-4 (revised annually).
- (7) If you suspect an individual is violating any of the requirements or rules described in Treasury Dept. Circular No. 230, submit a referral to the Office of Professional Responsibility (OPR). Find directions on how to make a referral in IRM 1.25.1.3, Referral to the Office of Professional Responsibility.

7.11.1.12.2
(09-23-2014)

**Form 8821 - Unenrolled
Preparer**

- (1) Unenrolled individuals who represent plan sponsors for DL applications have very limited authority because DL applications are not tax returns.

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- (2) Unlike attorneys, CPAs, enrolled agents, enrolled actuaries and unenrolled preparers may not:
 - a. Sign documents on behalf of the plan sponsor.
 - b. Represent (act as an advocate for) the sponsor.
 - c. Practice before the IRS.
- (3) A properly executed Form 8821, Tax Information Authorization, allows an unenrolled preparer to:
 - a. Provide and receive plan information to and from the IRS.
 - b. Receive copies of correspondence from the IRS and submit information requested by the IRS (such as participant data, asset information, etc.) as part of the review of a DL application.
 - c. Discuss matters raised about a DL application (but not as an advocate) with EP employees as long as the plan sponsor makes the decisions. Contact may be made by telephone, in person, or in writing.

Caution: If box 5a of Form 8821 isn't checked, you can't send correspondence (including a copy of the DL) to individuals listed on the Form 8821.

7.11.1.12.3
(09-11-2020)

Notice of Third-Party Contacts

- (1) IRS employees may not contact third parties for determining or collecting tax liability without providing notice in advance that we may contact persons other than the taxpayer. (IRC 7602(c)(1)). You must document these contacts and provide taxpayers with this record upon request. See IRC 7602(c)(1), as amended by the Taxpayer First Act, Section 1206 (P.L. 116-25).
- (2) If the plan sponsor hasn't received a notice within the last 12 months and it is reasonably expected that we'll make a third-party contact, send a Letter 3164-K (DO) (TE/GE), Third-Party Contact Letter, to notify the taxpayer and POA, if applicable, about the potential contact.
- (3) Complete these items on the Letter 3164-K:
 - Plan sponsor's name, address and taxpayer identification number
 - Specialist's name, telephone number and badge ID number
 - Tax Period at issue
- (4) Ensure that the address is current and mail the letter first class.
- (5) Document the CCR indicating the mail date and method of delivery. Keep a copy of the letter in the case file.
- (6) You may not contact a third-party until the 46th day following the date of the notice.
- (7) See IRM 25.27.1, Third-Party Contact Program for more information.

7.11.1.13
(10-14-2022)

IRC 401(b) Period

- (1) Under the IRC 401(b) Remedial Amendment Period (RAP), a plan may be amended retroactively to comply with the IRC qualification requirements. Regulations under 26 CFR 1.401(b)-1:
 - a. Describe the disqualification requirements that plan sponsors may amend retroactively and the RAP during which retroactive amendments may be adopted.

- b. Grant the IRS Commissioner the discretion to designate certain plan provisions as disqualifying provisions and to extend the remedial amendment period.
- (2) See Rev. Proc. 2016-37, Section 5, for the rules to extend the RAP for disqualifying provisions that are first effective on or after January 1, 2016. These rules are different from the rules described in Rev. Proc. 2007-44 for cases submitted under their Remedial Amendment Cycle (RAC).
- (3) The general deadline to adopt discretionary amendments is the end of the plan year in which the plan amendment is effective. Rev. Proc. 2016-37, Section 8.02.

Exception: Discretionary amendments that increase accrued benefits based on service during the immediately prior plan year and that are adopted within the first 2½ months of the current plan year (described in IRC 412(d)(2)) don't adversely affect the plan's qualification.

- (4) See Section 5 of Revenue Procedure 2022-40 for rules regarding the 403(b) individually-designed remedial amendment period.

7.11.1.14
(10-14-2022)
**When Plans May Apply
for a Determination
Letter**

- (1) Rev. Proc. 2016-37, Section 4.03, provides that, effective January 1, 2017, a sponsor of an individually-designed plan will only be permitted to submit a DL application for:
 - a. Initial plan qualification.
 - b. Qualification upon termination.
 - c. Other circumstances that the IRS announces. See Rev. Proc. 2019-20.
- (2) See Rev. Proc. 2016-37, Sections 19 and 20, for the rules for pre-approved plans, as modified by Rev. Proc. 2020-40 and Rev. Proc. 2023-37.
- (3) If an application isn't eligible to apply for a DL, close the case as incomplete (do not return the hardcopy of the case), issue a refund (if applicable), and issue a 1924 letter using the applicable selectable paragraphs.

7.11.1.15
(10-24-2024)
**Procedural
Completeness Review**

- (1) Review the case file for only the following four items. Verify the application includes the:
 - a. Correct user fee. See IRM 7.11.1.11, User Fee Requirements.
 - b. Ensure the required application for a determination letter is signed and dated by an authorized person (Rev. Proc. 2024-4 Section 6.02(11)) or contains the penalty of perjury statement if the form is signed by someone not authorized. If the submission is filed by a representative who is authorized to sign and file the submission on behalf of a plan sponsor, as provided in a submitted Form 2848, the penalty of perjury statement shall not apply; however, the authorized representative of the plan sponsor must include a penalty of perjury statement as described in Rev. Proc. 2024-4, Section 6.02(14), signed by the plan sponsor.

Exception: For cases received on or after January 1, 2018, if an old version of the Form 5300 is received, return the application as incomplete with a 1924 letter.
 - c. Plan document. For Form 5300, the plan document must be a current restatement.

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- (2) If you discover that the case meets the requirements for a closing agreement, you can't close the case as an incomplete submission. Complete both the procedural and technical reviews and then follow the closing agreement procedures. (IRM 7.11.8).
- (3) For all terminating plans that submit a Form 5310 application and for cases submitted under the post-RAC rules of Rev. Proc. 2016-37, all information needed is requested in a Letter 1196 request.

7.11.1.16 (10-14-2022) Technical Review

- (1) Begin the technical review of the case file after the Procedural Completeness Review. The technical review includes analyzing the entire application package, including but not limited to:
 - a. The application.
 - b. Plan language.
 - c. Prior law verification.
 - d. Amendments, if any.
 - e. Cover letter.
 - f. All other supporting documentation.

Note: The level of review depends on the type of case you're assigned. Discuss with your manager the level of review and which worksheets to complete, if necessary.

- (2) Plan sponsors must follow the procedures in Rev. Proc. 2024-4 (revised annually) when requesting a DL. If the application is missing information, you must request additional information using the following letters.
- (3) Draft Letters 1196, 1955, 5537 and 5542 and their related attachments using the letter templates in the *Forms/Pubs/Products Repository*. If the plan sponsor or authorized representative gave a fax number, then you must send Letters 1196, 1955, 5537, and 5542 to the individuals using Letter 937-A. If faxed, keep a fax confirmation for the case file. Include a copy of the AIS sheet when faxing information requests for TEDS cases.

Additional Information Letter	Letter Purpose and Response Date
Letter 937-A	<ul style="list-style-type: none"> Used with valid power of attorney or appointee communications.
Letter 1196	<ul style="list-style-type: none"> Initial request for additional information. Use a response date of 21 calendar days from letter date.
Letter 1955	<ul style="list-style-type: none"> Subsequent information requests after Letter 1196. Use a response date of 14 calendar days from letter date.

Additional Information Letter	Letter Purpose and Response Date
Letter 5537	<ul style="list-style-type: none"> Documents 10-day extension to Letter 1196 or Letter 1955 deadline requested verbally or in writing before response date by sponsor or authorized representative. Use a response date of 10 calendar days from the previous response date.
Letter 5542	<ul style="list-style-type: none"> Documents extension granted by area manager. Used only in rare and extenuating circumstances. Applicant must request extension in writing before deadline. Specialist must first approve then send to manager, and if manager approves, they send to area manager for approval. If area manager: <ul style="list-style-type: none"> Approves, issue Letter 5542 and use the area manager's granted response date. Disapproves, call and notify applicant and document action in the case file. <p>Exception: You may grant a 14-day extension without requesting approval from the area manager if the plan sponsor's appointed contact or the POA is no longer working on the application. This allows time for a new employee or POA to become familiar with the case.</p>

Note: If a response date falls on a Saturday, Sunday, or legal holiday, use the next business day.

- (4) Write additional information requests professionally. Clearly state the issues and cite authority to support the government's position.
- (5) If anonymity is a concern, use last name only or request a pseudonym. See IRM 10.5.7.1, Use of Pseudonyms by IRS Employees.

7.11.1.16.1
(10-14-2022)
Technically Incomplete Cases

- (1) If you don't receive the plan sponsor's complete response to Letters 1196, 1955, 5537, or 5542 by 15 business days after the letter deadline, send one of the following:
 - a. A closing agreement offer letter after you complete the steps in IRM 7.11.8.2.1, Preparing the Case for the Closing Agreement Process, if the case meets the requirements for a closing agreement. If the plan sponsor doesn't accept the closing agreement offer, consider proposing an adverse determination letter per IRM 7.11.11, Proposed Adverse Cases.
 - b. Letter 5544, if the case doesn't meet the requirements for a closing agreement.

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- c. Letter 5544 and refer the case to EP Examinations per IRM 7.11.10, EP Examinations and Fraud Referral Procedures, if the issues require a referral but doesn't affect plan qualification.
- (2) Use Letter 5544, Technically Incomplete Letter, and attach the List of Missing Items pages.
 - a. Use the Letter 5544 template and List of Missing Items attachment in the *Forms/Pubs/Products Repository*.
 - b. Date the Letter 5544 with the date you send it.
 - c. Insert a response date 30 calendar days from the date of the letter. If it falls on a Saturday, Sunday, or legal holiday, use the next business day. If faxed, keep a fax confirmation for the case file.
- (3) If the applicant sends a deficient response to Letter 5544 **before** the response deadline, immediately call them to notify them of the deficiencies and indicate that unless they send the missing information by the deadline, the case will be closed as an incomplete application.
- (4) If the applicant doesn't send a complete response by the response due date (allowing 15 additional business days (mail and scanning time)), close the case as incomplete and issue Letter 5888, and the List of Missing Items.
- (5) Don't return hard copy case files or user fees to plan sponsors issued a Letter 5888.
- (6) Close the case in status 03.

7.11.1.17 (10-14-2022) **Withdrawal of Applications**

- (1) A plan sponsor may withdraw their DL application at any time before IRS issues a final adverse DL.
- (2) The plan sponsor must submit a written request to withdraw the application.
- (3) The IRS keeps the application and doesn't refund the user fee.
- (4) For all withdrawn cases:
 - a. Create a Letter 5275.
 - b. Use closing code "04."
 - c. Use Law Indicator Code to verify the last law ruled on (if no prior DL, use law indicator Z).
 - d. Enter in the upper right corner of the repository letter the date of the written withdrawal request.
 - e. If the plan has a potential disqualifying feature, include selectable paragraph C regarding VCP.
- (5) If there are potential disqualifying features, refer the case to EP Examinations using the procedures in IRM 7.11.10, EP Examinations and Fraud Referral Procedures. Inform the plan sponsor that you are referring the plan for examination.
- (6) The 60-day period for interested party comments doesn't apply to withdrawn applications. If interested parties have submitted comments, send a copy of the withdrawal letter to each interested party, using Pattern Letter 1935(P).

7.11.1.18

(10-14-2022)

Duplicate Submissions

- (1) If a plan sponsor sends duplicate cases, correction dispose (status 30) one of the cases. To determine which case to correction dispose, use these rules:
 - a. If both cases are in TEDS, correction dispose either one. If both have the same control date but the user fee is only paid on one, dispose the one with the incorrect fee. Do not retrieve the hard copy case file for the correction disposed case.
 - b. If one case is in TEDS and one in EDS, generally dispose the EDS case. If you keep the EDS case, print the necessary documents from the TEDS case and place them in the EDS case file.
- (2) To correction dispose:
 - a. Add "Duplicate TEDS case # ___has been correction disposed," on the Form 5621 for the case you review.
 - b. Add "This case is duplicate of TEDS case # ___and is being correction disposed" on the Form 5621 for the correction disposed case.
 - c. For TEDS cases, update closing code of the duplicate case to status 30 and the case reviewed to the applicable closing code and then place both applications in status 74PC.
 - d. Send closing email to manager.
 - e. Place the following statement in the closing email to your manager if the user fees aren't correct. Request that the specialist or manager email "TE/GE-EO-Adjustments" these statements:
 "Change user fee on correction disposed case EDS case # ___ to \$(0).
 Also change the user fee on the on-going case EDS case # ___ to \$ ___
 and the user fee payment code to V on both."

7.11.1.19

(10-14-2022)

**How to Request a
Hardcopy of a Case
Closed Prior to 11/21/16**

- (1) To request a hardcopy of a case from the Florence, KY files office, complete a Form 2275, Records Request, Charge and Recharge. Find a blank version of the form in the *Forms/Pubs/Products Repository*.
- (2) Complete these Form 2275 items:
 - a. Box 1 - Plan sponsors EIN.
 - b. Box 2 - Form number (5300, 5307, 5310).
 - c. Box 3 - Plan number.
 - d. Box 4 - Year Case Established.
 - e. Box 6 - Document Locator Number (DLN).
 - f. Box 7- Name and address Plan Sponsor or Taxpayer.
 - g. Box 10 - Have your manager electronically sign this box.
 - h. Box with no number - Enter your EDS employee number.
 - i. Box 12 - Check the "Other" box and enter "TE/GE EP Determinations".
 - j. Box 13 - Check the "Cincinnati" box.
 - k. Box 13B - Enter "TE/GE - EP".
 - l. Box 13D - Your group number.
 - m. Box 13E - Your office address.
 - n. Box 13F - Your room number where your mail is delivered to your office.
 - o. Box 13G - Your name.
 - p. Box 13H - Your phone number.
 - q. Box 13 - Check "A. Original Document."
 - r. Box 14 - Check "A. Initial."
 - s. Box 18 - Enter "Need hard copy of case file (include TEDS case #)."

7.11 Employee Plans Determination Letter Program

- (3) Secure email the form to your manager for approval. The manager signs box 9 and returns it to you.
- (4) For control dates on or after December 3, 2018, send Form 2275 to the TE/GE Determinations Processing Unit in Ogden, by EEfax (855) 312-0550.
- (5) When you receive the hardcopy, it will come with a Form 3210 and a copy of the Form 2275 submitted to obtain the hard copy. You should:
 - a. Sign the Form 3210 and send it back to the originator. Make a copy for the TEDS file.
 - b. Import a copy of the email into the non-disclosable folder on TEDS.
 - c. Process the case as usual.
 - d. Before closing the case, assemble the hard copy case per Exhibit 7.11.1-2, Case File Assembly Guide. Place the Form 2275 on top of the hard copy folder so that it can be returned to the correct location.

7.11.1.20
(10-14-2022)

DL Cases with Related Voluntary Correction Program Submissions

- (1) Review the DL application for these indications of an open or pending VCP submission:
 - Information on a cover letter
 - Form 5300 Line 19 is checked "yes"
 - Non-scannable file in TEDS that indicates a submission to VCP

Note: Per Rev. Proc 2016-51, a determination letter application generally may not be submitted with a VCP submission. Please see Rev. Proc. 2021-30 Section 6 for exceptions.
 - (2) Determination cases with late amender failures and a filed VCP submission will no longer be held in suspense until the VCP case is closed. These procedures are for processing determination cases with late amender failures and whereby the taxpayer has disclosed that it has filed a VCP submission.
 - (3) If you see indicators, contact the VCP contact person to verify whether a VCP case has been established.
- Note:** If the failures that are being corrected in VCP are operational and do not adversely affect the DL application, document the Form 5621 and close the case under normal procedures.

7.11.1.20.1
(09-23-2014)
**Protecting VCP
Eligibility**

- (1) Plan sponsors may protect their eligibility to enter into the VCP by disclosing an issue in their DL application. They commonly disclose an issue in the cover letter of their initial DL submission. To make the disclosure effective, the cover letter must contain specific details on the relief sought; not a broad, generic reservation.
- (2) Examples of an effective reservation include:
 - a. "In Section 4.4 of the plan we added language XYZ. We believe the use of this language is acceptable under current tax law. However, in the event that you disagree we reserve the right to submit this issue to VCP."
 - b. "We are looking for the good faith EGTRRA amendment but, as of the date of this submission, have been unable to locate it."
- (3) An example of an ineffective reservation is:

- a. "In the event that this plan is found to have a qualification issue we reserve the right to enter into the Voluntary Correction Program."
- (4) If you determine the issue raised in the cover letter is a qualification issue, inform the plan sponsor and tell them to submit an application to VCP. Follow the procedures in IRM 7.11.1.20, DL Cases with Related Voluntary Correction Submissions.

7.11.1.21
(10-14-2022)
Suspense Cases

- (1) Suspend your work on a case when:
 - a. Management directs you to do so.
 - b. There is pending litigation.
 - c. The plan is under examination by the IRS or PBGC and the other business unit or government agency indicates that issuing a DL would impact their review's outcome or their review may result in a plan qualification failure and issuing a DL would be inappropriate.

Note: Effective May 5, 2017, you are not required to suspend any cases under examination by the DOL. If the plan meets the requirements of IRC 401(a), issue the DL regardless of whether DOL is examining the plan.
- (2) Before you suspend work on a case:
 - a. Work the case to the furthest point possible (resolve any other issues in the application).
 - b. Contact the other business unit or government entity to determine the status of their review.
 - c. If the review is expected to continue beyond two weeks, place the determination case in group suspense.
 - d. Create Letter 1938 and send it to the plan sponsor or POA.
 - e. Update the case to suspense status: status 37 for TEDS.
- (3) You may take the case out of suspense if:

Reason Case was Suspended	Action Allowing Case to be Taken Out of Suspense
Management directed	Management permits case to be taken out of suspense.

Reason Case was Suspended	Action Allowing Case to be Taken Out of Suspense
Concurrent EP examination or referral	<p>If, after 6 months, EP Examinations:</p> <ul style="list-style-type: none"> a. Hasn't started their review, take the case out of suspense. Inform the EP Area Manager who will notify EP Examinations that you are closing the determination case. b. Has started but not finished their review, and haven't discovered issues that affect the determination case, take the case out of suspense. Have your manager inform the EP Area Manager who notifies EP Examinations that you are closing the determination case. c. Has started but not finished their review, but has discovered issues that would affect the determination case, leave case in suspense until audit conclusion.
Cases pending litigation	<p>Secure an explanation from the POA or plan sponsor about the nature of the litigation against the plan.</p> <p>If you determine that the legal actions against the plan will affect the DL, place the case in suspense until the litigation is resolved.</p>

7.11.1.22
(10-14-2022)

How to Close Case to Manager

(1) TEDS cases are closed via an email to your manager:

- a. Create and complete the closing letter in the *Forms/Pubs/Products Repository*. Verify entity information (spelling, etc.) is correct.
- b. Generate and export the CCR in TEDS and verify the full CCR was properly exported to the non-disclosable folder.
- c. Create electronic Form 3198-A for mandatory review cases. Import the form to the non-disclosable folder and include a copy in your closing e-mail. Also, check the mandatory review indicator by going to File>Mandatory Review from the case level in TEDS and choosing "Send for Mandatory Review" and choosing the appropriate "Mandatory Review Type".

- d. Import the Form 5621, any work papers, correspondence (sent or received) via Taxpayer Digital Communications or by EEFax, and any other documents not already scanned into the TEDS file by the Campus.
- e. Add the Closing Letter Number information in the "EP Closing Data" Tab in TEDS. The Format for this field is XXXX.000. Example: 5274.000. 1132.000. 1924.000.
- f. Change case to status 74PC on TEDS.
- g. Secure email the following to your manager:
 - The CCR
 - Form 5621
 - Copies of final closing letter
 - Form 3198-A (if applicable).

Title the email "Case Closure" or "Mandatory Review Case", if applicable and include:

- Case Name
- TEDS case number
- Type of closing letter, and if applicable, "Refund to be processed" in the body of the email

Reminder: If the application requires a refund to be processed, ensure the signed Form 1725, Split Dollar User Fee form, Form 8717 or LINUS print and the first page of Form 53XX are emailed to the Administrative Group 7524.

7.11.1.23
(06-19-2017)
**Individually-Designed
Plans**

- (1) Common issues for individually-designed plans include:
 - a. Code sections which may be incorporated by reference.
 - b. Part-time employee exclusions.
 - c. Fail-safe provisions for coverage and nondiscrimination.

7.11.1.23.1
(06-19-2017)
**Code Sections Which
May be Incorporated by
Reference**

- (1) Plans aren't permitted to incorporate sections of the Code and regulations by reference unless the incorporation is specifically authorized by the Code, regulations or other authority. See Announcement 75-110, 1975-43 IRB 20.
- (2) If a plan has a choice to make (for example, a plan can use either the current or prior year testing method under IRC 401(k)), they can't incorporate that part by reference, as it would lead either to a non-determinable accrual or benefit, or to an impermissible use of discretion.
- (3) See Exhibit 7.11.1-3, Code Sections which may be Incorporated by Reference, for a list of permitted incorporations.

7.11.1.23.2
(10-14-2022)
**Part-Time Employee
Exclusions**

- (1) A plan provision is treated as violating IRC 401(a) if the plan provision *could* result in the exclusion of an employee who has completed a year of service, by reason of a minimum service requirement.
- (2) This issue is typically encountered with plans attempting to exclude part-time or seasonal employees. Part-time or seasonal employees are commonly defined as employees who are *expected* to work less than 1,000 hours of service during a plan year or employees who don't customarily work more than "x" number of hours per week. Plans that have this language are imposing a service requirement that could result in excluding an employee who may complete more than 1,000 hours of service, in violation of IRC 410(a)(1).

Note: The SECURE Act (Pub. L. 116-94) requires employers to allow employees who work at least 500 hours during each of three consecutive 12-month periods to participate in, and make deferral contributions to their 401(k) plans, although no matching contributions are required. Collectively bargained 401(k) plans are excluded. The SECURE Act was further amended by the SECURE 2.0 Act, Section 125, which reduced the three-year rule to two years, effective for plan years beginning after December 31, 2024.

- (3) Closely scrutinize any exclusion classification, whether it is part-time, seasonal, temporary, or any other classification of employees. If a plan has employee classifications, then it must clearly define them. The language may have to be amended to meet IRC 410(a)(1).
- (4) A plan with indirect service requirements must be amended to either:
 - a. Define the exclusion classification in such a way as to avoid imposing an indirect service requirement in violation of IRC 410(a)(1).
 - b. Include “fail-safe” language which provides that, notwithstanding any exclusion classifications, any employee that completes at least 1,000 hours of service in an eligibility computation period will be an eligible employee.

7.11.1.23.3
(06-19-2017)
Fail-Safe Provisions for Coverage and Nondiscrimination

- (1) As a result of the corrective amendment procedures in 26 CFR 1.401(a)(4)-11(g), plans may contain fail-safe provisions designed to ensure they automatically satisfy:
 - a. IRC 401(a)(4), nondiscrimination.
 - b. IRC 410(b), coverage.
 - c. IRC 401(a)(26), participation.
- (2) When reviewing a fail-safe provision, determine how it impacts compliance with the following IRC and Treas. Reg. sections:

Code or Regulation Section	Rule
26 CFR 1.401-1(a)(2)	A qualified pension, profit sharing, or stock bonus plan must be a definite written program which is established and maintained by the employer.
26 CFR 1.401-1(b)(1)(i)	A pension plan must systematically provide for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement.
26 CFR 1.401-1(b)(1)(ii)	A profit sharing plan must provide a definite predetermined formula for allocating the contributions made to the plan among the participants.
IRC 411(d)(6)	The accrued benefit of a participant under a qualified plan may not be decreased as a result of an amendment to the plan.

Code or Regulation Section	Rule
26 CFR 1.401(a)(4)-11(g)	Where certain rules are satisfied, a corrective amendment adopted after the end of a plan year is treated as adopted and effective as of the first day of such plan year enabling such plan to satisfy IRC 401(a).

- (3) For a fail-safe provision to satisfy these code sections, it:
- Can't give the plan sponsor discretion in determining whether the provisions require additional allocations or accruals. In other words, a plan sponsor can't have discretion over which test it will use to satisfy the nondiscrimination and coverage requirements. To satisfy this requirement, the plan must specify which test (for example, the average benefit test for coverage or the general test for nondiscrimination) it uses to satisfy coverage and nondiscrimination and the methods or optional rules (for example, cross-testing) it uses to run the test. The plan can't incorporate the test and any optional rules by reference. Also, the plan must state any definitions of terms necessary in running the test and the optional rules used for the test.
 - Must include language that ensures a participant's rights are fixed as of the last day of the relevant plan year. No other part of the plan may override these rights or take them away.
 - Can't give the plan sponsor discretion over which employees receive additional allocations or accruals. You must be able to tell from the plan terms which employees will receive the additional allocations or accruals.
 - Must state a formula for the additional allocations or accruals, keeping in mind IRC 411(d)(6).
- Exception:** Sometimes it may not be necessary for a plan's fail-safe to provide a formula for additional allocations or accruals, such as a fail-safe which is built into a plan's normal allocation or benefit formula.
- (4) Plans with fail-safe provisions that don't satisfy the above criteria should be corrected to satisfy the requirements, or deleted. If the plan sponsor refuses to correct or delete the provision, propose an adverse letter.
- (5) Note that the corrective amendment procedures under 26 CFR 1.401(a)(4)-11(g) can be used more efficiently if the plan doesn't contain fail-safe language:
- By deleting the fail-safe language, plan sponsors have more flexibility each year when deciding which test and optional rules to use to satisfy the nondiscrimination or coverage requirement.
 - Using a fail-safe provision, conversely, eliminates all flexibility and may lead to using a method in satisfying IRC 401(a)(4) or IRC 410(b) that is not the most cost effective to the plan sponsor and the plan.

7.11 Employee Plans Determination Letter Program

7.11.1.24 (10-24-2024) **Pre-Approved Plans**

- (1) The Pre-Approved Plan Program is described in IRM 7.11.4. Once a pre-approved plan provider receives an opinion letter under IRM 7.11.4, employers who adopt a nonstandardized plan and make modifications which are not extensive may submit them to the IRS for review. Pre-approved plans are usually submitted on a Form 5307, but if the individual plan adopter makes any modification to standardized plan or extensive modifications to a nonstandardized plan, they are only allowed to apply for a DL using a Form 5300 and only if they meet the criteria in IRM 7.11.1.14, When Plans May Apply for a Determination Letter. See Rev. Proc. 2016-37 Section 20.03, as modified by Rev. Proc. 2023-37 as well as sections 12 and 13 of Rev. Proc. 2024-4 (updated annually).
- (2) Issues and important topics involving pre-approved plans are:
 - a. Pre-approved plans with power to amend.
 - b. Correction of pre-approved plans language.
 - c. Listing of required modifications (LRM).
 - d. Pre-approved plans with revoked opinion or advisory letters.

7.11.1.24.1 (10-24-2024) **Pre-Approved Plan with Power to Amend**

- (1) Beginning with Cycle 3 pre-approved plans, all pre-approved plans are required to contain a procedure for provider amendments, so that corrections of prior approved plans and changes in the Code, regulations, or other guidance published in the Internal Revenue Bulletin may apply to all employers who have adopted the plan. Plans that give the provider the power to amend on behalf of adopting employers aren't required to submit interim amendments with the Form 5307 application but should still submit discretionary amendments for review.
 - a. If the application includes an unsigned interim amendment, it's not necessary to secure the executed amendment because it's assumed the provider of the standardized or nonstandardized plan timely adopted an amendment. Don't include the adoption date for the unsigned interim amendments on the DL.
 - b. If the employer submits an interim or discretionary amendment which was adopted late, pursue a closing agreement to correct the late amendment (even if the provider is the one who adopted the amendment).

7.11.1.24.2 (06-19-2017) **Correction of Pre-Approved Plans Language**

- (1) If you are working a Form 5307, Application for Determination for Adopters of Modified Volume Submitter Plans, or other pre-approved plan and find what appears to be an error in the pre-approved plan language, do **not** request amendments to that language. Instead, take the following steps:
 - a. Accept the language as previously approved.
 - b. Complete a referral. See a sample in the "Pre-Approved Plans" folder on the shared server.
 - c. Sign the referral. List appropriate citations.
 - d. Get your manager's signature.
 - e. Email the signed referral, along with a copy of the plan language in question, to the pre-approved plans coordinator or mail it to the following address:

Internal Revenue Service
Attn: Pre-Approved Plans Coordinator

P.O. Box 2508, Mail Stop 6-403
Cincinnati, OH 45202

- (2) The coordinator reviews the information to determine if further action is necessary.

7.11.1.24.3
(06-19-2017)
Listing of Required Modifications (LRM)

- (1) LRMs are information packages that help standardized sponsors draft plans to conform to applicable law and regulations. The IRS creates new LRMs for each major set of law changes, and for defined contribution and defined benefit plans separately. Find the LRMs at: *IRS.gov - Listing of Required Modifications - LRMs*.

7.11.1.24.4
(06-19-2017)
Pre-Approved Plan with Revoked Opinion or Advisory Letter

- (1) The IRS may revoke an opinion letter found to be in error or in violation of current IRS rules. Revocation may be effected by:
- a. A notice to the provider to which the letter was originally issued.
 - b. Regulation.
 - c. Revenue ruling.
 - d. Other statement published in the Internal Revenue Bulletin.

Note: See Rev. Proc. 2023-37, Section 22, for more information.

- (2) If you are working a determination case and find that the plan sponsor has an opinion letter which has been revoked, contact the pre-approved coordinator to verify.
- (3) Generally, close the case as incomplete with a Letter 1924. The plan sponsor may resubmit as an individually-designed plan using a Form 5300, if eligible.

7.11.1.25
(10-14-2022)
Delayed Determination Letter Conference

- (1) If an application for a DL has been pending for at least 270 days, the plan sponsor has the right to a conference with the EP Determinations manager concerning the application's status.
- (2) The conference may be by phone or in person and the discussion is limited to processing procedures only.
- (3) The applicant must request a conference with the EP Determinations manager in writing and send it to the specialist assigned the application or, if the plan sponsor doesn't know who's reviewing the application, to the EP Determinations manager at the address in Exhibit 7.11.1-1.
- (4) Parties can't make a tape, stenographic, or other verbatim recording of a status conference. The applicant may request subsequent conferences after 90 days after the last preceding conference.
- (5) For more details, see Rev. Proc. 2024-4 (updated annually), Section 10.17.

7.11.1.25.1
(10-14-2022)
Determination Letters not Issued within 270 Days

- (1) A plan sponsor requesting a DL may seek a declaratory judgment by the Tax Court if the IRS fails to issue a DL within 270 days after the case's control date. (IRC 7476(a)).
- (2) Plan sponsors must exhaust all administrative remedies before a declaratory judgment will be made (IRC 7476(b)(3)) including:

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- a. Filing a complete application under Rev. Proc. 2024-4 (revised annually).
- b. Properly filing the notice to interested parties per Rev. Proc. 2024-4, Section 20 (revised annually), and 26 CFR 1.7476-2.
- c. Appealing to the appropriate appeals office per 26 CFR 601.201(o)(6) if a notice of proposed adverse determination is issued by EP Determinations.

Note: If the plan sponsor requests, in writing, that EP Determinations seek technical advice on the applicability of IRC 7805(b) relief, this is considered an administrative step. See IRM 7.11.12, Preparing Technical Advice Requests.

7.11.1.26 (06-19-2017) 60-Day Period

- (1) You may close cases and issue DLs without any holding period for the following types of plans, which **aren't** subject to comments by interested parties, DOL and PBGC:
 - a. A plan which hasn't provided employer contributions at any time after September 2, 1974.
 - b. A plan established and maintained by a society, order, or association described in IRC 501(c)(8) or 9 if no part of the contributions to, or under, that plan are made by employers of participants in such plan.
 - c. Specimen plans or basic plan documents of practitioners requesting advisory or opinion letters in IRM 7.11.4, IRC 401(a) Pre-Approved Plans Program.
 - d. Applications that are withdrawn by the plan sponsor. See IRM 7.11.1.17, Withdrawal of Applications.
- (2) You must hold all other plans for 60 days from the control date to allow interested parties to comment.
- (3) If you receive interested party comments after you review a plan, but before you issue a DL, consider the comments. See IRM 7.11.1.29, Interested Party Comments.

7.11.1.27 (12-06-2018) Abusive Transactions and Listed Transactions

- (1) Abusive transactions include tax schemes that:
 - a. Promise large deductions.
 - b. Divert reportable income.
 - c. Promise tax-free distributions.
- (2) When you detect a possible transaction or plan type that appears abusive, discuss it with your manager and then, if appropriate, email the TE/GE Fraud Specialist with any applicable information. Find more information about listed transactions at *Employee Plans Abusive Tax Transactions*.
- (3) EP has jurisdiction over several listed transactions including, but not limited to:
 - a. IRC 401(k) accelerated deductions.
 - b. S Corporations ESOPs.
 - c. Abusive use of insurance in retirement plans - IRC 412(e)(3) plans.

7.11.1.27.1
(10-14-2022)
Procedures for Listed Transactions

- (1) A listed transaction is a transaction that is the same as or substantially similar to a type of transaction identified as a tax avoidance transaction (26 CFR 1.6011-4(b)(2)). A transaction is “substantially similar” to a listed transaction when it is “expected to obtain the same or similar types of tax consequences” and is either factually similar to a listed transaction or is based on the same or similar tax strategy.
- (2) When you identify a listed transaction during a DL request, develop the issue according to these procedures:
 - a. Discuss the case with your manager.
 - b. Contact the TE/GE Fraud Specialist. Contact information can be found at TE/GE Points of Contact, *TE/GE Points of Contact (sharepoint.com)*
 - c. Complete a Form 5666, TE/GE Information Report, per IRM 7.11.10, EP Examinations and Fraud Referral Procedures. All TE/GE referrals should be emailed to the CP&C, C&CA referrals mailbox. If you cannot email your referral, it can be sent by mail to Referrals, Mail Stop 4910DAL, 1100 Commerce St., Dallas TX 75242-1198. When sending referrals to the email address at the EO Referrals mailbox, please indicate in the subject line of the email, “**Employee Plans - Listed Transactions Referral**”.

1. Send a secure email to *Manager EO Classification. (This email address is EOclass@irs.gov)
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2. If email is unavailable, mail to: Internal Revenue Service Referrals - Mail Stop 4910DAL 1100 Commerce St., Dallas, TX 75242-1198.
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7.11.1.28
(06-19-2017)
International Issues

- (1) Complete the electronic International Worksheet (see the shared server in the “International Issues” folder, International Worksheet, if the Form 5300 series application includes one or more of the following issues:
 - a. The sponsor is a non-U.S. or U.S. Territory company.
 - b. The trust is a foreign trust or U.S. Territory trust.
 - c. The plan has dual qualification under IRC 401(a) and the Puerto Rico Internal Revenue Code (P.R. IRC).
 - d. The Puerto Rican plan makes an ERISA Section 1022(i)(2) election. (Trust established in Puerto Rico and an election is made to qualify under U.S. law).
- (2) Send the form to your group manager for approval. Secure email the approved form to the QA reviewer listed on the form.
- (3) If you discover either of the following potential qualification issues, prepare an examination referral using the procedures in IRM 7.11.10, Employee Plans Determination Letter Program, EP Examinations and Fraud Referral Procedures, and send it to the appropriate QA reviewer listed on the International Worksheet:
 - a. Foreign trust with a group trust. (Rev. Rul. 2011-1 exempts Puerto Rican trusts that participated in group trusts as of January 10, 2011).

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- b. Transfer of assets and liabilities to or from a U.S. qualified trust to or from a foreign trust. Notice 2012-6 exempts transfers to a separate Puerto Rican trust before January 1, 2013.

- (4) Report time you spend working on potential international issues on WebETS activity code 301 and project code 0060. This includes both direct case time and any ancillary time you spend working on customer inquiries. Time charged should be with the approval of your group manager.

7.11.1.28.1
(10-14-2022)

Dual-Qualified Plans

- (1) Dual-qualified plans have trusts sited in the U.S. but are intended to qualify under the Puerto Rican IRC as well as IRC 401(a).
- (2) The provisions that apply for Puerto Rican employees may not be in the plan document but should be incorporated in a separate addendum.
- (3) Add paragraph 2 to the 5274 Letter and paragraph 29 to the 1132 Letter for all dual-qualified plans.

7.11.1.28.2
(10-14-2022)

Puerto Rican Plan Election Under ERISA Section 1022(i)(2)

- (1) To be a qualified plan under IRC 401(a), a trust must be created or established in the United States.

Exception: Trusts created or established in Puerto Rico are to be treated as trusts created or established in the United States if they make a written election for this. (ERISA Section 1022(i)(2)).

- (2) The plan administrator can make the election (26 CFR 1.401(a)-50(b)) by:
 - a. Filing a statement making the election with EP Examinations, or
 - b. Filing the election as part of an application for a favorable determination letter with EP Determinations.
- (3) If the election is filed with EP Examinations, the group manager should send Letter 5890 to the plan administrator acknowledging receipt, and forward a copy of the election and a copy of the issued Letter 5890 to the Manager, EP Rulings and Agreements, Quality Assurance.
- (4) If you encounter an election in a DL application:
 - a. Review the plan document to determine if the requirements of IRC 401(a) are satisfied.
 - b. Verify that "Puerto Rican plan" is listed as a case category on TEDS. If not, add it per IRM 7.15.7.3.7, Editing Case Categories.
 - c. Prepare the favorable DL (Add paragraph 2 and 8 to the Letter 5274 and paragraph 7, 8 and 29 to the Letter 1132) and close the case to your manager.
 - d. EEFax the 5300 series application and the favorable DL to the appropriate QA reviewer listed on the International Worksheet.

7.11.1.29
(10-14-2022)

Interested Party Comments

- (1) Plan sponsors are required to give notice to interested parties before submitting a DL application per Rev. Proc. 2024-4, Section 20 (revised annually).
- (2) Interested parties are defined in 26 CFR 1.7476-1(b) and generally include:
 - a. The employer's present employees who are eligible to participate in the plan.

- b. The employer's other present employees whose principal place of employment is the same as that of the employees eligible to participate in the plan.
 - c. For plan terminations: former employees with accrued benefits under the plan and beneficiaries of deceased former employees with vested benefits under the plan.
- (3) Interested parties may submit their comments to the DOL or directly to the IRS. If an interested party or group of interested parties submit their comments to DOL, the interested parties may request DOL to comment on the application to the IRS. The DOL then may forward the interested party comments to the IRS with their own comments, if appropriate.
- (4) Associate interested party comments with the determination application as soon as administratively possible. Parties must submit their comments by the 45th day after the date EP Determinations receives the determination application for EP to consider them during the plan review. Comments parties submitted to DOL are subject to additional rules. See Rev. Proc. 2024-4 (revised annually), Section 19 for further explanation.
- (5) When you receive an interested party comment:
 - a. Immediately send a signed and dated Letter 5446, Acknowledgment Letter, to the interested party and their representative, if applicable.
 - b. Consider the comments as part of your DL review and clearly document the Form 5621 of the effect the comments had on the final determination.
- (6) Interested parties are not entitled to confidentiality.
 - a. Anonymous comments aren't considered interested party comments.
 - b. If an interested party contacts you and wants to submit anonymous comments, explain that their comments aren't confidential, and we won't notify them of our final decision on the application submitted.
 - c. Anonymous comments will not be given to the employer, but the employer may view the comments if the application is subject to public disclosure.

Note: This IRM doesn't address disclosure issues. A disclosure specialist should be contacted, via your group manager, if this issue comes up.
- (7) If your determination is favorable:
 - a. Prepare Letter 1935 for each interested party that submitted comments. The repository requires that you apply the appropriate "selectable paragraph" to the letter. Select Paragraph 1 for a complete application. In addition, above the salutation line, you should select "Certified Mail" when preparing the letter. Certified mail provides a receipt for the sender. Also, below the "Sincerely" closing, type in the name of the Director, EP Rulings and Agreements. Additionally, below the signature line, you must designate the number of the letter that will be attached to Letter 1935. For example, if a favorable letter will be issued, type in "5274" or "1132" as the enclosure.
 - b. Attach a copy of the favorable DL to each Letter 1935. Also, include a copy of the letter for their representative, if applicable.

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- c. Prepare Letter 1939 for the plan sponsor, which notifies them that interested party comments were submitted. Also, include a copy of the letter for their representative, if applicable.
 - d. Don't date or mail the letters; keep them in the case file for QA to mail. The repository automatically enters the current date when the letter is generated. Delete the date before you save the letter.
- (8) If your determination is unfavorable:
 - a. Prepare Letter 1935 for each interested party that submitted comments and follow the adverse procedures in IRM 7.11.11.
 - b. Attach a copy of the adverse DL to each Letter 1935. Also, include a copy of the letter for their representative, if applicable.
 - c. Don't prepare a Letter 1939.
 - d. Don't date or mail the letters; keep them in the case file for QA to mail. Generate the letters from the repository and delete the date before you save the letter or print the letter.
- (9) If your application is deemed "unable to rule" or "incomplete", prepare a Letter 1935 for each interested party with a copy of the closing letter but don't complete the "List of Missing Items". Select Paragraph 2 if the application is incomplete or going to be returned. When you select Paragraph 2 you must also select the number of the letter that will be issued to the applicant. For example, if the application is withdrawn, Letter 2044 should be selected.
- (10) Be careful to avoid improper disclosures to the interested party. You may solicit information on the interested party comments but you can't disclose your case actions for the determination application. QA reviews the case, mails the appropriate letters and closes the case. If parties disagree with the determination, they have at least 92 days to file a petition with the U.S. Tax Court as outlined in IRC 7476(b)(5) and the Letter 1935.
- (11) Interested party comments make the case mandatory review. Choose the mandatory review indicator from the case level in TEDS and select the interested party review type.
- (12) Prepare Form 3198, TE/GE Special Handling Notice. Mark Form 3198 "Mandatory Review - Interested Party Comments".
- (13) If you or QA reasonably anticipate litigation by an interested party, QA may forward the case for pre-issuance review by Counsel.
- (14) See Rev. Proc. 2024-4 (revised annually), Sections 19 and 20 for additional information.
- (15) All interested party comments are available to the plan sponsor. 26 CFR 601.201(o)(5)(v). If a plan sponsor, upon receiving Letter 1939, contacts you and requests copies of the comments, contact Customer Service to have copies of the interested party comments sent to the sponsor.
- (16) Draft Letters 1935, 1939, and 5446 using the letter templates in the *Forms/Pubs/Products Repository*. Delete the date from each letter.

7.11.1.30

(10-14-2022)

**Application Involving
Plan Merger or
Consolidation, Spin-off,
or Transfer of Plan
Assets or Liabilities**

- (1) As described in Rev. Proc. 2019-20, Section 3, the determination letter program was expanded to permit plan sponsors to submit determination letter applications for certain individually-designed Merged Plans (as defined at Section 5.01(2)) on an ongoing basis. The applicant must include copies of the last determination letter for each plan and all subsequent plan documents and amendments adopted after the last determination letter.
- (2) The following table sets out applicable terms and regulations.

Term and Regulation Section	Definition
Merger or Consolidation - 26 CFR 1.414(l)-1(b)(2)	Combining two or more plans into a single plan. A merger or consolidation doesn't occur: <ol style="list-style-type: none"> Merely because one or more corporations undergo reorganization (whether or not taxable). If two plans are not combined into a single plan, such as by using one trust which limits the availability of assets of one plan to provide benefits to participants and beneficiaries of only that plan.
Spin-off - 26 CFR 1.414(l)-1(b)(4)	Splitting a single plan into two or more plans
Transfer of assets or liabilities - 26 CFR 1.414(l)-1(b)(3)	One plan diminishes assets or liabilities and another plan acquires these assets or assumes these liabilities

- (3) Verify the following issues (in addition to normal review procedures) for plans involved in these types of transactions:
- Prior law compliance for ALL involved plans. See IRM 7.11.1.10, Determining the Scope/Verifying Prior Law.
 - With a merger of two or more plans, the applicant must include a copy of LFDL for each of the plans, a copy of the prior plan document and if it was pre-approved, include the opinion or advisory letter for each plan and describe amendments that must be included with the application.
 - Protected benefits are still available.
 - The merger agreement or amendment was timely adopted. (IRM 7.11.1.13 (3)).
- (4) Participants must be entitled to benefits after the merger, consolidation, or transfer that are equal to or greater than the benefits immediately prior to the merger, consolidation, or transfer, if the plan then terminated. (IRC 401(a)(12) and IRC 414(l)). Ensure the following during your review:
- Vested benefits are not reduced.
 - Special benefits, rights, and features have not been reduced.

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- c. Benefits from the pension plan may still be distributed using Joint and Survivor Annuities (if a pension plan merges with a non-pension plan).
- (5) For applications with a spin-off, determine if a “spin-off/termination” or “termination/reestablishment” transaction has occurred. Under a typical “spin-off/termination” transaction, an employer:
 - a. Splits an overfunded defined benefit plan into two defined benefit plans, one for its active employees and one covering its retirees.
 - b. Allocates the excess assets to the plan covering the retirees.
 - c. Terminates the retirees’ plan and receives the excess assets.
 - d. Continues to maintain the defined benefit plan for the active employees after the transaction.
- (6) Under a “termination/reestablishment” an employer typically:
 - a. Terminates an overfunded defined benefit plan.
 - b. Receives the excess assets.
 - c. Then establishes a new defined benefit plan covering the active employees.
- (7) See IRM 7.12.1.17.1, Overfunded DB Plan at Termination, for DL requests involving a defined benefit plan where a “termination/reestablishment” or “spin-off/termination” has occurred.
- (8) The effective date of a merger or spin-off is determined based on the facts and circumstances of the particular situation. To determine the effective date, consider these relevant factors, none of which is necessarily controlling:
 - a. The dates on which the affected employees stop accruing benefits under one plan and begin coverage and benefit accruals under another plan.
 - b. The date on which the amount of assets to be eventually transferred is calculated.
 - c. If the merger or spin-off agreement provides that interest is to accrue from a certain date to the date of actual transfer, the date from which such interest will accrue.
- (9) Because a plan sponsor may rely on the favorable DL for the surviving plan as to whether the merged plans were timely and correctly amended for new tax law, include only the surviving plan’s amendments on the favorable DL.
- (10) If you discover any issues, you may need to refer the plan for an examination. See IRM 7.11.10, EP Examinations and Fraud Referral Procedures.

7.11.1.31 (06-19-2017) **Government Plans**

- (1) Governmental Plans are defined in IRC 414(d). These plans are exempt from several IRC 401(a) qualification requirements and are therefore worked under special procedures. See the Government Plan Information folder on the shared server (internal use only) for helpful job aids.

7.11.1.31.1 (06-19-2017) **Deferred Retirement Option Plan (DROP) Features in Governmental Plans**

- (1) Under a typical DROP design, a DB plan participant who is eligible to retire and immediately receive retirement payments under the DB plan:
 - a. Continues to work and makes an election to freeze their benefit accruals (no additional service or compensation credits accrue).
 - b. The amounts that the participant would have received as a DB retirement payment had he retired are credited to the DROP (DB Benefit Amounts).

- (2) Also, the DROP may also permit employee or employer contributions to the DROP in addition to the DB Benefit Amounts credited to the DROP (Additional Contributions). A back DROP is a plan into which contributions to the DROP account are made for the years after the employee enters into the arrangement and for prior years. The plan determines the specific years.
- (3) DB Benefit Amounts credited to a DROP aren't treated as annual additions subject to the IRC 415(c) limitation. Therefore, if the DROP plan doesn't allow any other Additional Contributions, IRC 415(c) language isn't required in the plan.
- (4) If Additional Contributions are provided in the DROP, the Additional Contributions also aren't treated as annual additions subject to the IRC 415(c) limitation unless all three of the following are met:
 - a. The DROP consists of segregated accounts for each participant.
 - b. Earnings on amounts in the DROP are based solely on actual investment earnings (the DROP doesn't provide a fixed or guaranteed rate of return on funds in the DROP).
 - c. The DROP doesn't permit the accrual of earnings in the DROP to stop at any time.
- (5) Review the plan document and if the DROP doesn't meet all three criteria, the Additional Contributions aren't treated as annual additions and the IRC 415(c) limits language isn't required in the plan.
- (6) The benefits can't be subject to the employer's discretion. The plan document must be clear as to what rate of return, if any, is credited to the DROP.

7.11.1.32
(10-14-2022)
Group Trust (Pooled Investment)

- (1) A group trust status request for a DL is filed on Form 5316, Application for Group or Pooled Trust Ruling.
- (2) The application must include these documents:
 - a. Effective July 1, 2023, all payments and Forms 5316 must be submitted via Pay.gov.
 - b. A completed Form 5316.
 - c. A copy of the trust's latest DL, if applicable.
 - d. The trust instrument and related documents.
 - e. A written request demonstrating how the group trust satisfies the six criteria listed in Rev. Rul. 81-100 as clarified and modified by Rev. Rul. 2004-67, Rev. Rul. 2011-1, Notice 2012-6, Rev. Rul. 2012-24 and Section 336(e) of the Protecting Americans from Tax Hikes Act of 2015. (Division Q of Consolidated Appropriations Act of 2016. Pub L. 114-113 (PATH Act)).
- (3) Review the request to ensure that the six criteria were properly met.
- (4) Use Letter 1520, Letter for Group Trust Arrangement, to issue a favorable DL.
- (5) See Rev. Proc. 2024-4 (revised annually), Section 16, for more information.

7.11 Employee Plans Determination Letter Program

7.11.1.33 (06-19-2017) Administrative File

- (1) The administrative file is the physical case established for each complete DL application. It contains all accumulated documents associated with the application's processing.
- (2) The administrative file contains two types of documents:
 - a. Administrative record items.
 - b. All other documents in the administrative file, such as the Form 5464, work papers, or reviewer's memoranda (non-disclosable files).
- (3) The case file, consisting of the initial submission material and all correspondence between the IRS and the plan sponsor, makes up the majority of the "administrative record." See IRM 7.11.11.2 for a definition of administrative record and Exhibit 7.11.11-1, Sample Proposed Adverse Case File Assembly, for an example of includable items. Place other documents on the left side (non-disclosable) of the folder. See Exhibit 7.11.1-2, Case File Assembly Guide.

Note: When working a TEDS case, organize documents in the correct folder (disclosable vs. non-disclosable). However, the exact order may vary.

- (4) Each administrative file may be subject to review and consideration by Appeals or the United States Tax Court.
- (5) Only written communications between the parties are included in the administrative record considered in court cases. (26 CFR 601.201(o)(8)).

7.11.1.33.1 (06-19-2017) Public Inspection Procedures

- (1) Since September 2, 1974 (ERISA), the public has been able to inspect and obtain copies of disclosable parts of the administrative file.
- (2) If you receive a request for public inspection, send the request to the address listed in Number 3 of Exhibit 7.11.1-1, Mailing Addresses. Taxpayers may get help to request copies of employee plans related information by calling the toll-free telephone number 877-829-5500.
- (3) EP Determinations coordinates with the requestor's local Disclosure Office to arrange for copies.
- (4) If the plan has 25 or fewer participants, the entire record is non-disclosable. This means that only the employer, their designated representative and properly identified plan participants may inspect the case file.
- (5) Find the procedures for public disclosure in IRC 6104(a)(1)(B) (C) and (D), and IRM 11.3.10.

7.11.1.33.2 (06-19-2017) Administrative File Retention

- (1) All EP Determinations case files are electronically scanned into TEDS. The electronic file is kept on TEDS indefinitely. The hard copy of the file is kept until TEDS is certified for back-up and recovery purposes and then destroyed. See IRM 1.15.3, Records and Information Management, Disposing of Records.
- (2) Administrative files may be retired to the Federal Record Center immediately after closing the DL case and purging unnecessary materials, unless IRS:
 - a. Issued a final adverse letter.
 - b. Received interested party comments.
 - c. Specialist or manager believe there is a potential for litigation.

- (3) Director, EP Rulings and Agreements, may decide to:
 - a. Keep certain information from administrative files to efficiently respond to plan sponsor requests for corrected DLs.
 - b. Hold the entire file for a designated period (such as, 60 to 90 days) before retiring it to the Federal Records Center.
- (4) To obtain a copy of the administrative file from the Federal Records Center, complete the EP Records Retrieval Form (internal use only) found in the "Letters and Forms" folder on the shared server.

7.11.1.34
(06-19-2017)

**Normal Retirement Age
for Pension Plans**

- (1) On May 22, 2007, the IRS published 26 CFR 1.401(a)-1(b)(2) to address the definition of normal retirement age (NRA) for qualified pension plans.
- (2) Under the new rules, the following procedures apply:

If on or after May 22, 2007, the Pension Plan (including Money Purchase Pension Plans (MPPP) and Profit Sharing Plans which maintain money from a merged MPPP) had either:	Then:
<ol style="list-style-type: none"> a. A NRA of 62 or greater b. Substantially all participants are qualified safety employees and a NRA of at least 50. 	The plan is deemed to comply with the Final Regulations; therefore you may issue the DL without further consideration.
<ol style="list-style-type: none"> a. A NRA less than 62 (even if later amended). b. Substantially all participants are qualified public safety employees and an NRA less than 50 (even if later amended). 	Complete the NRA check sheet from the "NRA Final Regulations" folder on the shared server and send to QA who helps determine whether the plan complied with the Final Regulations.
Exception: If the pension plan is a collectively bargained multiemployer plan with a NRA of age 55 or above.	The plan is deemed to comply with the Final Regulations; however, complete the NRA check sheet from the "NRA Final Regulations" folder on the shared server and send to QA for final approval.

Note: See Notice 2012-29 for governmental plans.

7.11.1.35
(10-14-2022)
**Pension Equity Plan
(PEP) Accrued Benefit
Rules under IRC
411(b)(1)**

- (1) In a DB plan, the participant’s accrued benefit must not be reduced on account of any increase in his age or service (except in rare circumstances). (IRC 411(b)(1)(G)).
- (2) Most PEP formulas include an interest component that is either:

a. Explicit (interest is added to the accumulated benefit after accruals cease).

b. Implicit (interest is included as part of a deferred to NRA annuity factor used to convert the accumulated benefit to an annuity payable at NRA).
- (3) A plan provides for explicit interest if it states that interest is credited to the accumulated benefit after benefit accruals cease (such as upon termination of employment, transfer to a nonparticipating employer or division, or attainment of a maximum number of years of service or points).

Example: A plan may state that after a participant terminates employment with the plan sponsor, the accumulated benefit is credited with 4% interest for each year until the annuity starting date.

- (4) An implicit interest PEP doesn’t credit interest to the accumulated benefit after benefit accruals cease, but instead determines the accrued benefit as an annuity commencing at NRA by dividing the accumulated benefit by a deferred annuity factor. This has the same effect as projecting interest to NRA using the interest rate (and mortality rates, if applicable) embedded in the deferred annuity factor.
- (5) Generally, because of the interest rate “trade-off”, PEPs will violate IRC 411(b)(1)(G) if the interest the participant loses by working another year is larger than the increase in the accumulated benefit for an additional year of service. Specifically, earlier years depend on compounding interest to push up the accruals but the compounding will eventually decrease towards NRA. This has a tendency to decrease the projected accrued benefit in later years. To mitigate this a PEP must contain language that ensures compliance with the accrued benefit rules under IRC 411(b)(1)(G). Review all PEP plan documents to ensure that the plan contains language showing that they comply with IRC 411(b)(1)(G). Pending the issuance of guidance that will provide for more specific ways of complying with IRC 411(b)(1)(G), there are a number of ways that a plan may include acceptable language in the plan document.

Type of PEP	Example of Plan Language
Explicit Rate and Implicit Rate PEPs	<div>Notwithstanding any other provision in the plan, a participant’s accrued benefit as of any determination date will never be less than the benefit required to comply with IRC 411(b)(1)(G).</div> <div>Note: This language may be preferred. It is intended to automatically change with guidance but can lead to plan operational errors if not paid attention to.</div>

Type of PEP	Example of Plan Language
Explicit Rate and Implicit Rate PEPs	<p>Notwithstanding any other provision in the plan, a participant's accrued benefit may not be reduced on account of an increase in a participant's age or service.</p> <p>Note: This is IRC Code language which should be used with caution because it is not specific.</p>
Explicit Rate and Implicit Rate PEPs	<p>A participant's accrued benefit as of any determination date shall not be less than the accrued benefit to which the participant would have been entitled if he had ceased accruals at the end of any prior plan year.</p> <p>Note: This is called high watermark. This provision can be added without IRC 411(d)(6) cutback concerns.</p>
Explicit Rate PEPs	<p>A participant's accrued benefit shall be the lesser of the annuity benefit that the participant has accumulated to date (including interest projected to NRA and the annuity benefit the participant would accumulate if they worked to NRA).</p> <p>Caution: This language must be included at the time the plan becomes a PEP. This provision also known as mountain topping, cannot be added to an existing plan without creating a cutback of benefits, which violates IRC 411(d)(6).</p>

Type of PEP	Example of Plan Language
Explicit Rate PEPs	<p>The accumulated benefit determined under the PEP formula as of any determination date cannot be less than the accumulated benefit as of the end of any prior year with interest credited to the determination date, determined as if the participant had ceased accruals as of the end of that prior plan year.</p> <p>Note: This is called high watermark. This provision can be added without IRC 411(d)(6) cutback concerns.</p>
Implicit Rate PEPs	<p>A participant's accrued benefit shall be the lesser of the annuity benefit that the participant has earned to date (including interest, and mortality, if applicable), reflected in the deferred annuity factor, and the benefit the participant would earn if they worked to NRA and accumulated the full number of PEP credits.</p> <p>Caution: This provision, "mountain topping", cannot be added to an existing plan without creating a cutback of benefits, which violates IRC 411(d)(6). In other words, this must be added at the time a plan becomes a PEP.</p>

Caution: While plan sponsors can add most of these provisions retroactively, a PEP plan generally can't be amended to apply the "lesser of" formula to benefits already accrued, because that amendment could cause a reduction in the accrued benefit and violate IRC 411(d)(6).

Exhibit 7.11.1-1 (10-14-2022)**Mailing Address List**

Send application Forms 5300, 5307, 5309, 5310, and 5316 to one of the addresses in Rev. Proc. 2024-4, Section 31.02.

Use one of these addresses for the EP Determinations centralized site with the below identifiers:

Express Mail or Delivery Service	Mailing Address
Internal Revenue Service	Internal Revenue Service
550 Main Street	PO Box 2508
Cincinnati, OH 45202	Cincinnati, OH 45201

***Add the following identifiers to the above addresses for the centralized site:**

Pre-Approved Coordinator

Mail Stop 6-403

Records Unit - Mail Stop 6-403

Director, EP Rulings and Agreements - Mail Stop 6-403

Manager, EP Determinations Quality Assurance - Mail Stop 6-403

Staff Assistant, EP Determinations - Mail Stop 6-403

EP User Fee Issues Group 7256 - Mail Stop 6-403

EP User Fee Adjustments Clerk - Mail Stop 6-403

EP Determination Letter Corrections Group 7535 - Mail-Stop 6-403

Exhibit 7.11.1-2 (10-14-2022)**Case File Assembly Guide**

1- In unagreed or adverse letter cases, or in cases where a request for public inspection is received, prepare an index. List in the index, all of the pertinent material and make a copy of the documents and save to a zip file. Label the material in the zip file according to the index.

2- For all unagreed or adverse letter cases, also prepare a report (Attachment A) explaining why the plan is not qualified. This report should contain sections covering FACTS, LAW, CONCLUSION and the TAXPAYER'S POSITION. Leave the original plus one copy loose in the file. The group manager initials a file copy and fastens it in the file.

3- Place all unneeded material in the purge folder in TEDS. Don't purge original forms. Don't "purge" anything on the unagreed or adverse letter cases. NOTE: The case should not be purged at the group level.

4- If required, import Form 3198-A, Special Handling Notice, to the nondisclosable folder.

5- Generally you don't have to rearrange items on TEDS to meet the below requirements but you must ensure that all non-disclosable items are in the correct folder.

Nondisclosable Folder	Disclosable Folder
Form 5666, TE/GE Information Report, and attachments, if applicable. Original and file copy.	File copy of the unagreed report, if applicable.
TEDS CCR/Form 5464, Case Chronology Record (chronological, most recent on top).	
Form 6088, Distributable Benefits from Employee Pension Benefit Plans.	Final determination letters for the current application. There should be a copy for the plan sponsor, and POA (if applicable).
Form 5621, Technical Analysis Control Sheet.	The final letter to interested parties and the final letter to the employer regarding interested party comments.
A copy of the official report when the IRS makes an investigation regarding the facts, as submitted by the plan sponsor, or in comments submitted by interested parties.	Form 8717, User Fee Request for Determination Application.
Worksheets prepared by the specialist, and any Alert Guideline Worksheets or locally developed work papers, notes and any internal communication regarding the case.	Form 2848, Power of Attorney and Declaration of Representation or Form 8821, Tax Information Authorization
Form 5456, Reviewer's Memorandum, and Form 5457, Response to Reviewer's Memorandum. See 26 CFR 301.6104(a)-1(g)	Last favorable DL.
Form 5402, Appeals Transmittal Memorandum, and supporting statements along with any Appeals work papers, if applicable. See 26 CFR 301.6104(a)-1(g).	Opinion letter (Master or Prototype, Regional Prototype, or Volume Submitter).

Exhibit 7.11.1-2 (Cont. 1) (10-14-2022)
Case File Assembly Guide

Nondisclosable Folder	Disclosable Folder
Other miscellaneous materials not disclosable as identified by disclosure regulation and IRM 11.3.10, Disclosure of Official Information - Employee Plans Information, including examination and deduction referral information or closing letters from prior audit.	Form 8905, Certification of Intent To Adopt a Pre-approved Plan.
Plan amendments which contain employee identifying return and return information as described in IRC 6103(b)	Application Form and all attachments. Exception: Place any confidential information described in IRC 6103(b) (such as, compensation information) on the left side of the folder due to disclosure issues.
Closing agreements, including related documents (work papers, correspondence, etc.).	Written correspondence between the IRS and the plan sponsor for the request for determination.
Any demonstrations or documents that contain employee return and return information as described in IRC 6103(b) including but not limited to information on terminated participants and any internal faxes or emails.	Any other documentation issued by the IRS to the plan sponsor regarding qualification.
	Interested Party Comments.
	Correspondence with interested parties with respect to their written interested party comments.
	Amendments.
	Plan and group annuity contract including any supplements to negotiated pension plans.
	Trust instrument.
	Notice to interested parties.
	Supplemental data supporting the application (this includes statistical analysis, such as turnover data, coverage, balance sheets, etc).
	Miscellaneous materials and correspondence relating to the application, such as copies of insurance contracts.

Exhibit 7.11.1-3 (10-14-2022)**Code Sections which may be Incorporated by Reference**

Permitted Sections (some or all incorporation by reference allowed)	Authority
IRC 401(a)(9) - Notwithstanding any other provision of law, except as provided in the regulations, a plan may incorporate by reference the requirements of 401(a)(9). However, 26 CFR 1.401(a)(9)-1, A-3, states: "In order to satisfy 401(a)(9), the plan must include the provisions described in this paragraph reflecting 401(a)(9). First, the plan must generally set forth the statutory rules of IRC 401(a)(9), including the incidental death benefit requirement in 401(a)(9)(G). Second, the plan must provide that distributions will be made in accordance with this section and §§1.401(a)(9)-2 through 1.401(a)(9)-9. The plan document must also provide that the provisions reflecting section 401(a)(9) override any distribution options in the plan inconsistent with section 401(a)(9). The plan also must include any other provisions reflecting section 401(a)(9) that are prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin."	P.L. 99-514, 1121(d)(3)-(5), as amended by P.L. 100-647, 1011A(a)(3)-(4), and 26 CFR 1.401(a)(9)-1, A-3
IRC 401(a)(17) - Governmental Plans - annual compensation limits	26 CFR 1.401(a)(17)-1(d)(4)(ii)(C)
IRC 401(a)(17)(B) - Cost of Living Increases	26 CFR 1.401(a)(17)-1(a)(3)
IRC 401(a)(30) - Limit on Elective Deferrals - A plan may incorporate the applicable limits by reference.	26 CFR 1.401(a)-30(a)
IRC 401(k)(3), 26 CFR 1.401(k)-2 - ADP test generally may be incorporated by reference, except as provided under 1.401(k)-1(e)(7).	26 CFR 1.401(k)-1(e)(7)
IRC 401(m)(2), 26 CFR 1.401(m)-2 - ACP test may be incorporated by reference, except as provided under 26 CFR 1.401(m)-1(c)(2).	26 CFR 1.401(m)-1(c)(2)
IRC 402(g) - Annual Limit - The dollar limitation under IRC 402(g) may be incorporated by reference.	26 CFR 1.401(a)-30(a) and P.L. 100-647, 1011(c)(10).
IRC 410(a)(3), IRC 411(a)(5), DOL Regulation 2530.200b-2(b) and (c) - The definition of hours of service must be in the plan document, but the rules for determining hours of service for reasons other than the performance of duties and crediting hours of service to computation periods may be incorporated by reference.	DOL Regulation 2530.200b-2(f).
IRC 414(u) - USERRA	P.L. 103-353 (USERRA), P.L. 104-188 (SBJPA), sec. 1704(n) Rev. Proc. 96-49, (Oct. 21, 1996)

Exhibit 7.11.1-3 (Cont. 1) (10-14-2022)**Code Sections which may be Incorporated by Reference**

Permitted Sections (some or all incorporation by reference allowed)	Authority
<p>IRC 415 - Limitations may be incorporated. Plan provisions must preclude the possibility that the limit under section 415 will be exceeded. If a requirement can be applied in more than one manner, the plan must specify the manner in which the requirement will be met unless the Code or the regulations provide a default rule which the plan will follow. For example, the plan must include the following:</p>	<p>Notice 87-21, Q&A 11 (Feb. 9, 1987) and 26 CFR 1.415(a)-1(d)(3).</p>
<p>IRC 415(b) - how adjustments are made if there are two or more DB plans. IRC 415(c) - how adjustments are made if there are two or more DC plans. IRC 415(c)(3) - 26 CFR 1.415(c)-2(a) provides that compensation from the employer within the meaning of IRC 415(c)(3), which is used for purposes of IRC 415 and regulations promulgated under IRC 415, means all items of remuneration described in 1.415(c)-2(b), but excludes the items of remuneration described in 1.415(c)-2(c). IRC 415 compensation does not require any additional language if the plan intends to use the general definition in 1.415(c)-2(a). However, if the plan intends to use one of the safe harbors in 1.415(c)-2(d), then it must specify which safe harbor definitions in 1.415(c)-2(d)(2), (3), or (4) it intends to use. Please see the note below. IRC 415(d) - A plan may incorporate by reference the annual adjustments to the limitations of 415 that are made pursuant to 415(d).</p> <p>Note: Notice 2010-15, Q&A-9 provides that differential wage payments must be treated as compensation under IRC 415(c)(3) and 1.415(c)-2. If the plan incorporates by reference the default definition under Reg. 1.415(c)-2(a), or the safe harbor definition under 1.415(c)-2(d)(2), it will not satisfy the requirement that differential wage payments be included as part of IRC 415(c)(3) compensation. This is because neither of these definitions incorporate differential wages under IRC 3401(a). Therefore, if the plan uses the default definition or the definition under 1.415-2(d)(2), ensure that the plan separately includes differential wage payments. The safe harbor definitions under 26 CFR 1.415(c)-2(d)(3) and (4) include wages under IRC 3401(a) and, thus, comply with the requirement that differential wage payments be included as part of IRC 415(c)(3) compensation.</p>	<p>26 CFR 1.415(a)-1(d)(3)(v)</p>

Exhibit 7.11.1-3 (Cont. 2) (10-14-2022)**Code Sections which may be Incorporated by Reference**

Permitted Sections (some or all incorporation by reference allowed)	Authority
IRC 416 - If the employer has only one plan, a single benefit structure that will always satisfy IRC 416, and the vesting schedule will always satisfy IRC 416, then no section 416 language is required.	26 CFR 1.416-1 Q&A T-36(a) and (c)
IRC 416(i) - Criteria for determining key employees and non-key employees, but the definition of compensation must be specified in the plan.	26 CFR 1.416-1, Q&A T-36(b)
IRC 416(g) - description of how the top-heavy ratio is computed may be incorporated by reference.	26 CFR 1.416-1, Q&A T-36(b)
IRC 417(e)(3) - Applicable Mortality Table for Purposes of IRC 417(e) and 415(b) - A plan amendment may incorporate by reference the applicable mortality table under IRC 417(e)(3).	Rev. Rul. 2007-67 (November 6, 2007). Effective for plan years that begin after December 31, 2007.
IRC 436 - A plan may define these terms by incorporating by reference the definition under the regulations, as follows: (i) Adjusted funding target attainment percentage (AFTAP) – 1.436-1(j)(1). (ii) Annuity starting date (ASD) – 1.436-1(j)(2). (iii) Prohibited payment – 1.436-1(j)(6). (iv) IRC 436 measurement date – 1.436-1(j)(8). (v) Unpredictable contingent event – 1.436-1(j)(9). (vi) Unpredictable contingent event benefit – 1.436-1(j)(9). (vii) Inclusive presumed AFTAP – 1.436-1(g)(2)(iii).	Notice 2011-96