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## SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

### Purpose of revenue procedure

.01 This revenue procedure explains how the Internal Revenue Service (Service) provides advice to taxpayers on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, Employee Plans Rulings and Agreements Office (Employee Plans Rulings and Agreements). It also details the types of advice available to taxpayers, and the procedures for requesting and receiving such advice.

### Organization of revenue procedure

.02

(1) Part I of this revenue procedure sets forth general information about the types of advice provided by Employee Plans Rulings and Agreements and the procedures that apply to both requests for determination letters and requests for private letter rulings. Part II contains procedures for determination letters for various types of plans and transactions. Part III contains procedures for private letter rulings within the jurisdiction of Employee Plans Rulings and Agreements. Part IV sets forth the rules for user fees that are required to be paid when requesting various types of advice.

(2) Employee Plans Rulings and Agreements issues letter rulings only on certain matters specified in section 24.01 of this revenue procedure. Rev. Proc. 2023-1, this Bulletin, sets forth

procedures for obtaining letter rulings from the Office of Associate Chief Counsel, including letter rulings relating to qualified retirement plans, § 403(b) plans, and IRAs. Rev. Proc. 2023-2, this Bulletin, sets forth procedures for requesting technical advice from the Office of Associate Chief Counsel.

**Other guidance affecting  
this revenue procedure**

.03

**(1) Determination letter program**

(a) Rev. Proc. 2022-40, 2022-47 IRB 487, provides the circumstances under which a plan sponsor may submit an individually designed plan determination letter application to Employee Plans Rulings and Agreements. Under Rev. Proc. 2022-40, an employer sponsoring an individually designed plan, including, beginning June 1, 2023, a § 403(b) individually designed plan, generally may file a determination letter application only for initial plan determination, for plan termination, and in certain other circumstances identified by the IRS in guidance published in the Internal Revenue Bulletin (IRB). Plan sponsors may also submit a determination letter application in other specified circumstances, including a submission for a qualified individually designed Merged Plan, as defined in Rev. Proc. 2022-40.

A plan sponsor of a § 403(b) individually designed plan may submit the plan for an initial plan determination no earlier than the dates provided in the chart below. The dates are based on the last digit of a plan sponsor's EIN. A plan sponsor may submit a determination letter application in any year after the year identified in the chart.

If the EIN of the plan sponsor ends in:	A determination letter application may be submitted beginning on:
1, 2, or 3	June 1, 2023
4, 5, 6, or 7	June 1, 2024
8, 9, or 0	June 1, 2025

(b) Rev. Proc. 2016-37<sup>1</sup> describes a system of remedial amendment cycles that applies to qualified pre-approved plans and the deadlines to submit applications for opinion letters.

(c) Each year a Required Amendments List is issued, which establishes the end of the remedial amendment period for an individually designed plan with respect to changes in qualification requirements that appear on the list. The 2022 Required Amendments List for Qualified Retirement Plans and § 403(b) Retirement Plans is set forth in Notice 2022-62, 2022-49 IRB 506. See <https://www.irs.gov/retirement-plans/required-amendments-list> for all Required Amendments Lists.

(d) Notice 2017-1, 2017-2 IRB 367, provides an exemption from the requirement to pay a user fee for certain requests to the Service 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.

**(2) Qualified plans pre-approved plan program – third six-year remedial amendment cycle**

<sup>1</sup> For purposes of this revenue procedure, references to Rev. Proc. 2016-37 are to Rev. Proc. 2016-37, as modified by Rev. Proc. 2017-41, 2017-29 IRB 92, Rev. Proc. 2020-40, 2020-38 IRB 575, and Rev. Proc. 2021-38, 2021-38 IRB 425, but not as modified by Rev. Proc. 2022-40, 2022-47 IRB 487.

(a) Rev. Proc. 2017-41, 2017-29 IRB 92, modifies the pre-approved program for qualified plans by eliminating the distinction between M&P and VS plans, liberalizing the types of plans eligible for pre-approved status, and affording greater flexibility in plan design. In addition, Rev. Proc. 2017-41 sets forth the procedures for obtaining an opinion letter for qualified pre-approved plans submitted with respect to the third six-year remedial amendment cycle (and subsequent cycles). The third six-year remedial amendment cycle for defined contribution plans began on February 1, 2017, and ends on January 31, 2023.

(b) Rev. Proc. 2020-10, 2020-21 IRB 295, provides that the third six-year remedial amendment cycle for pre-approved defined benefit plans began on May 1, 2020 and the on-cycle submission period for providers to submit opinion letter applications began on August 1, 2020. Notice 2020-35, 2020-35 IRB 948, provides that the deadline for employer adoption of pre-approved defined benefit plans for the second six-year remedial amendment cycle and for employers to submit determination letter applications, if eligible, was extended to July 31, 2020. Consequently, the third six-year remedial amendment cycle for pre-approved defined benefit plans began on August 1, 2020.

(c) Notice 2020-14, 2020-13 IRB 555, sets forth the 2020 Cumulative List, which is used by the Service in its review of opinion letter applications for pre-approved defined benefit plans during the third six-year remedial amendment cycle.

(d) Rev. Proc. 2020-40, 2020-38 IRB 575, modifies Rev. Proc. 2016-37 to provide that the general deadline for adopting a discretionary amendment made to a qualified pre-approved plan (generally the end of the plan year for which the plan amendment is put into effect) applies unless a statutory provision, regulations, or other guidance published in the Internal Revenue Bulletin sets forth a different deadline.

(e) Rev. Proc. 2021-38, 2021-38 IRB 425, modifies the interim amendment deadline set forth in section 15.04(1) of Rev. Proc. 2016-37 to provide that an interim amendment made to a pre-approved plan qualified under § 401(a) is adopted timely if the amendment is adopted by the end of the second calendar year after the calendar year in which the change in qualification requirements is effective with respect to the plan. Rev. Proc. 2021-38 applies to disqualifying provisions that are effective with respect to a plan after December 31, 2020.

### (3) Section 403(b) pre-approved plan program

(a) Rev. Proc. 2013-22, 2013-18 IRB 985,<sup>2</sup> sets forth the procedures for obtaining opinion and advisory letters for § 403(b) prototype plans and VS plans with respect to the first six-year remedial amendment cycle for § 403(b) pre-approved plans (the cycle that ended on June 30, 2020). Rev. Proc. 2013-22 also sets forth the initial remedial amendment period for § 403(b) plans and provides that the Service will announce, in subsequent guidance, the date that will be the last day of the remedial amendment period.

(b) Rev. Proc. 2019-39, 2019-42 IRB 945, as modified by Rev. Proc. 2020-40, 2020-38 IRB 575, Notice 2020-35, 2020-35 IRB 948, and Rev. Proc. 2021-37, 2021-38 IRB 385, sets forth a system of recurring remedial amendment periods for correcting form defects in § 403(b) individually designed plans and § 403(b) pre-approved plans first occurring after the initial remedial amendment period ends. Rev. Proc. 2019-39 also provides plan amendment deadlines for § 403(b) individually designed and pre-approved plans. Rev. Proc. 2020-40 modifies Rev.

<sup>2</sup>For purposes of this revenue procedure, references to Rev. Proc. 2013-22 are to Rev. Proc. 2013-22, as modified by Rev. Proc. 2014-28, 2014-16 IRB. 944, Rev. Proc. 2015-22, 2015-11 IRB 754, Rev. Proc. 2019-39, 2019-42 IRB 945 and Rev. Proc. 2021-37, 2021-38 IRB 385; and clarified by Rev. Proc. 2017-18, 2017-5 IRB 743.

Proc. 2019-39 to provide that the general deadline for adopting a discretionary amendment made to a § 403(b) pre-approved plan (generally the end of the plan year for which the plan amendment is put into effect) applies unless a statutory provision, regulations, or other guidance published in the Internal Revenue Bulletin, sets forth a different deadline.

(c) Rev. Proc. 2017-18, as modified by Notice 2020-35, 2020-35 IRB 948, provides that the last day of the initial remedial amendment period for § 403(b) pre-approved plans was generally June 30, 2020. Consequently, the second six-year remedial amendment cycle for § 403(b) pre-approved plans began on July 1, 2020.

(d) Rev. Proc. 2021-37 modifies and supersedes Rev. Proc. 2013-22 for opinion letter applications submitted with respect to a § 403(b) pre-approved plan's second six-year remedial amendment cycle (and subsequent cycles). The provisions of Rev. Proc. 2013-22 continue to apply to opinion and advisory letter applications submitted for the first cycle for § 403(b) pre-approved plans.

#### (4) IRA opinion letter program

Announcement 2022-6, 2022-13 IRB 934, temporarily suspends the opinion letter program for prototype IRAs (traditional, Roth and SIMPLE IRAs), SEPs (including salary reduction SEPs (SARSEPs)), and SIMPLE IRA plans. As provided in Announcement 2022-6, the Service intends to issue a new revenue procedure describing procedures for submitting a request to the Service for an opinion letter on a prototype IRA, SEP, or SIMPLE IRA plan document and will announce when applications may be submitted under the revised prototype IRA opinion letter program.

#### (5) Other guidance

(a) Rev. Proc. 2021-30, 2021-31 IRB 172, which modifies and supersedes Rev. Proc. 2019-19, 2019-19 IRB 1086, sets forth the procedures for correcting qualification and other eligible failures under the Employee Plans Compliance Resolution System (EPCRS). Beginning January 1, 2022, Rev. Proc. 2021-30 modifies the Voluntary Correction Program (VCP) to eliminate the anonymous submission procedure and to establish an option for plan sponsors to request a no-fee anonymous pre-submission conference under specified circumstances.

(b) Notice 2019-18, 2019-13 IRB 915, informs taxpayers that the Department of the Treasury (Treasury Department) and the Service do not intend to amend the regulations under § 401(a)(9) to address the use of lump sum payments to replace annuity payments being paid by a qualified defined benefit pension plan. It also provides that the Treasury Department and the Service will continue to study the issue, and until further guidance is issued, the Service will not assert that a plan amendment providing for such a retiree lump-sum window program causes the plan to violate § 401(a)(9). Notice 2019-18 also provides that during this period the Service will not issue letter rulings with regard to lump sum windows. However, if a taxpayer is eligible to apply for and receive a determination letter, the Service will not include a caveat expressing no opinion regarding the tax consequences of such a window in the letter.

(c) Rev. Proc. 2020-9, 2020-2 IRB 294, clarifies which amendments are treated as integral to a plan provision that fails to satisfy the final regulations under §§ 401(k) and 401(m) relating to hardship distributions of elective deferrals. Rev. Proc. 2020-9 also extends the deadline applicable to qualified pre-approved plans for adopting interim amendments and integral amendments relating to those regulations, to December 31, 2021.



(d) Notice 2020-50, 2020-28 IRB 35, provides that employers can choose whether to implement coronavirus-related distribution and loan rules provided under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. 116-136, and notes that qualified individuals can claim the tax benefits of coronavirus-related distribution rules even if plan provisions are not changed. It also provides plan amendment deadlines for section 2202 of the CARES Act.

(e) Notice 2020-51, 2020-29 IRB 73, provides guidance relating to the waiver of required minimum distributions (RMDs) in 2020 from certain retirement plans, pursuant to section 2203 of the CARES Act, and provides a sample plan amendment that, if adopted, provides participants a choice on whether or not to receive waived RMDs and certain related payments.

(f) Notice 2020-52, 2020-29 IRB 79, clarifies the requirements that apply to a mid-year amendment to a safe harbor § 401(k) or § 401(m) plan that reduces only contributions made on behalf of highly compensated employees. This notice also provides temporary relief in connection with the ongoing Coronavirus Disease 2019 (COVID-19) pandemic from certain requirements that would otherwise apply to a mid-year amendment to a safe harbor § 401(k) or § 401(m) plan adopted between March 13, 2020, and August 31, 2020, that reduces or suspends safe harbor contributions.

(g) Notice 2020-68, 2020-38 IRB 567, provides guidance on particular issues with respect to the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) and the Bipartisan American Miners Act of 2019 (Miners Act), Divisions O and M, respectively, under the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94.

(h) Notice 2020-86, 2020-53 IRB 1786, provides guidance with respect to sections 102 and 103 of the SECURE Act. Section 102 of the SECURE Act increases the 10 percent cap for automatic enrollment safe harbor plans. Section 103 of the SECURE Act eliminates certain safe harbor notice requirements for plans that provide for safe harbor nonelective contributions and adds new provisions for the retroactive adoption of safe harbor status for those plans.

(i) Notice 2022-33, 2022-34 IRB 147, modifies Notice 2020-68 and Notice 2020-86 by extending the deadlines for amending a retirement plan or IRA to reflect certain provisions of the SECURE Act, the Miners Act, and section 2203 of the CARES Act. The deadline for non-governmental plans is December 31, 2025, and the deadline for governmental plans generally is 90 days after the close of the third regular legislative session with the authority to amend the plan that begins after December 31, 2023.

(j) Notice 2022-45, 2022-42 IRB 301, modifies Notice 2020-50 by extending the deadlines for amending a retirement plan or IRA to reflect the provisions of section 2202 of the CARES Act and section 302 of Title III of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182. Section 2202 of the CARES Act provides special tax treatment with respect to a coronavirus-related distribution and section 302 of the Relief Act provides special tax treatment with respect to a qualified disaster distribution. The deadline for non-governmental plans and IRAs is December 31, 2025, and the deadline for governmental plans generally is 90 days after the close of the third regular legislative session with the authority to amend the plan that begins after December 31, 2023.

**Updated annually**

.04 This revenue procedure is updated annually, but it may be modified, amplified, or clarified during the year.



**Possible future updates  
related to Appeals review**

.05 As part of the implementation of the Taxpayer First Act, Pub. L. 116-25 (2019), the Service and the Internal Revenue Service Independent Office of Appeals (Independent Office of Appeals) continue to review current policies and procedures and prior administrative pronouncements. As a result of this review, there may be additional updates to this revenue procedure or other forms of guidance.

**SECTION 2. WHAT  
CHANGES HAVE BEEN  
MADE TO REVENUE  
PROCEDURE 2022-4?**

**In general**

.01 This revenue procedure is a general update of Rev. Proc. 2022-4, 2022-1 IRB 161, which sets forth general information about the types of advice provided by Employee Plans Rulings and Agreements; general procedures for letter ruling and determination letter requests; specific procedures for determination letter requests; and the user fees associated with advice requested from Employee Plans Rulings and Agreements. Procedures and user fees applicable to advice provided by the Commissioner, Tax Exempt and Government Entities, Exempt Organizations Office, are set forth in Rev. Proc. 2023-5, this Bulletin.

**Changes made to Revenue  
Procedure 2022-4**

.02 In addition to minor non-substantive changes, including changes to dates, cross references, and citations to other revenue procedures, the following changes have been made:

(1) Sections 6, 8, 9, 10, 11, 19, and 20 and Appendix B of this revenue procedure are revised to provide the procedures for obtaining a determination letter with respect to a § 403(b) individually designed plan, beginning June 1, 2023. Appendix A adds user fees for these submissions.

(2) Sections 6.02 and 16 of this revenue procedure are revised to provide that Form 5307, Application for Determination for Adopters of Modified Nonstandardized Pre-Approved Plans and Form 5316, Application for Group or Pooled Trust Ruling, may be submitted electronically beginning June 1, 2023, and must be submitted electronically beginning July 1, 2023, including payment of the user fee.

(3) Sections 3 and 31 and Appendix A of this revenue procedure reflect the temporary suspension of the opinion letter program for prototype IRAs (traditional, Roth and SIMPLE IRAs), SEPs (including salary reduction SEPs (SARSEPs)), and SIMPLE IRA plans.

(4) Section 9.02 of this revenue procedure reflects changes to the scope of determination letters.

(5) Appendix A of this revenue procedure has been modified to increase certain user fees.

(6) A new Appendix G has been added to this revenue procedure which provides a checklist for applications for nonbank trustee approval letters.

**PART I. GENERALLY APPLICABLE PROCEDURES**

**SECTION 3. IN WHAT  
FORM IS ADVICE  
PROVIDED BY  
EMPLOYEE PLANS  
RULINGS AND  
AGREEMENTS?**

**In general**

.01 Employee Plans Rulings and Agreements provides advice in the form of letter rulings, closing agreements, compliance statements, determination letters, opinion letters, advisory letters, nonbank trustee approval letters, and oral advice.

**Letter ruling**

.02 A “letter ruling” is a written statement issued to a taxpayer by Employee Plans Rulings and Agreements that interprets and applies the tax laws or any nontax laws applicable to employee plans to the taxpayer’s specific set of facts. Once issued, a letter ruling may be revoked or modified for any number of reasons, as described in section 29 of this revenue procedure, unless it is accompanied by a “closing agreement.”

**Closing agreement**

.03 A “closing agreement” is a final agreement between the Service and a taxpayer on a specific issue or liability. It is entered into under the authority in § 7121 and is final unless fraud, malfeasance, or misrepresentation of a material fact can be shown.

A closing agreement may be entered into if it is advantageous to have the matter permanently and conclusively closed, or if a taxpayer can show that there are good reasons for an agreement and that making the agreement will not prejudice the interests of the Government. In appropriate cases, taxpayers may be asked to enter into a closing agreement as a condition to the issuance of a letter ruling.

In appropriate cases, a closing agreement may be entered into with sponsors of pre-approved plans.

A closing agreement may also be entered into with respect to retirement plan failures corrected under EPCRS, as set forth in Rev. Proc. 2021-30.

**Determination letter**

.04 A “determination letter” is a written statement issued to a taxpayer by Employee Plans Rulings and Agreements that applies the principles and precedents previously announced to a specific set of facts. It is issued only if a determination can be made based on clearly established rules in the statute, a tax treaty, or the regulations, or based on a conclusion in a revenue ruling, opinion, or court decision that represents the position of the Service, and that specifically answers the questions presented. Employee Plans Rulings and Agreements issues determination letters on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans under §§ 401, 403(a), 409, and 4975(e)(7), and (except with respect to an adopting employer of a pre-approved plan requesting a determination letter under section 12 of this revenue procedure) the status for exemption of any related trusts or custodial accounts under § 501(a). Beginning June 1, 2023, Employee Plans Rulings and Agreements will begin accepting determination letter applications for § 403(b) individually designed plans pursuant to the schedule described in section 1.03(1)(a) of this revenue procedure.

**Opinion letter**

.05

(1) For applications submitted with respect to the third six-year remedial amendment cycle (and subsequent cycles) for qualified defined contribution and qualified defined benefit plans, an opinion letter is a written statement issued by Employee Plans Rulings and Agreements to a provider or mass submitter as to the qualification in form of a pre-approved plan under § 401, § 403(a), or both § 401 and § 4975(e)(7). See Rev. Proc. 2017-41.

(2) An opinion letter will also be issued as to the acceptability of the form of a prototype plan under § 403(b) for Cycle 1 and a pre-approved § 403(b) plan for Cycle 2. See Rev. Proc. 2013-22 and Rev. Proc. 2021-37.

(3) Announcement 2022-6 temporarily suspends the opinion letter program for prototype IRAs (traditional, Roth and SIMPLE IRAs), SEPs (including salary reduction SEPs (SARSEPs)), and SIMPLE IRA plans. Under the IRA prototype program, an opinion letter will be issued concerning the conformance of a prototype trust, custodial account, or individual annuity with the requirements of § 408(a), (b), (k), or (p) or § 408A, as applicable. See Rev. Proc. 87-50, 1987-2 CB 647; Rev. Proc. 91-44, 1991-2 CB 733; Rev. Proc. 92-38, 1992-1 CB 859; Rev. Proc. 97-29, 1997-1 CB 698; Rev. Proc. 98-59, 1998-2 CB 729; Rev. Proc. 2002-10, 2002-1 CB 401; and Rev. Proc. 2010-48, 2010-50 IRB 828 (pre-approved IRAs), as modified by Appendix A of this revenue procedure.

#### **Oral advice**

.06 Oral advice is advisory only and is not binding on the Service.

#### **(1) No oral rulings and no written rulings in response to oral requests.**

The Service does not orally issue rulings or determinations, nor does it issue letter rulings or determination letters in response to oral requests from taxpayers. Service employees ordinarily will discuss with taxpayers or their representatives inquiries about whether the Service will rule on particular issues and about procedural matters regarding the submission of requests for letter rulings or determination letters.

#### **(2) Discussion possible on substantive issues.**

At the discretion of the Service and as time permits, Service employees may also discuss substantive issues with taxpayers or their representatives. Such a discussion will not bind the Service or the Office of Associate Chief Counsel, and it cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

Service employees who are not directly involved in the examination, appeal, or litigation of particular substantive tax issues will not discuss those issues with taxpayers or their representatives unless the discussion is coordinated with Service employees who are directly involved in the matter. The taxpayer or the taxpayer's representative ordinarily will be asked whether an oral request for advice or information relates to a matter pending before another office of the Service or before a Federal court.

If a tax issue is not under examination, in the Independent Office of Appeals, or in litigation, the tax issue may be discussed even though the issue is affected by a nontax issue pending in litigation.

A taxpayer may seek oral technical guidance from a Service employee in a field office or service center when preparing a return or report.

The Service does not respond to letters seeking to confirm the substance of oral discussions, and the absence of a response to such a letter is not a confirmation.

#### **Nonbank trustee approval letters**

.07 A "nonbank trustee approval letter" is a letter ruling that determines that the applicant is qualified to act as a nonbank custodian pursuant to the requirements of Treas. Reg. § 1.408-2(e)(2) through (5) with respect to plans qualified under § 401(a) (including custodial accounts described in § 401(f)); accounts described in § 403(b)(7); IRAs established under § 408(a), (b), or (h); Roth IRAs established under § 408A; SIMPLE IRAs described in § 408(p); deemed IRAs established under qualified employer plans described in § 408(q); eligible deferred compensation plans under § 457(b); Coverdell educational savings accounts established under § 530; Archer medical savings accounts established under § 220; or Health Savings Accounts established under § 223. An applicant requesting approval as a nonbank trustee must provide Employee Plans Rulings and Agreements with clear and convincing proof that the requirements of the regulations are met. If there is a requirement that the applicant feels is not applicable, the application must provide clear

and convincing proof that such requirement is not germane to the manner in which the applicant will administer any trust or custodial account. See § 1.408-2(e)(6).

To assist Employee Plans Rulings & Agreements in considering an application for nonbank trustee approval, Appendices E and G should be submitted with the request for approval.

#### **Compliance statement**

.08 A “compliance statement” is a binding written agreement between Employee Plans Rulings and Agreements and, generally, the plan sponsor with respect to certain failures of a retirement plan to meet the applicable Code requirements identified by the plan sponsor in a voluntary submission under VCP. The compliance statement addresses the failures identified in the VCP submission, the terms of correction, including any revision of administrative procedures, and the time period within which proposed corrections must be implemented. A compliance statement is conditioned on (i) there being no misstatement or omission of material fact in connection with the submission, and (ii) the implementation of the specific corrections and satisfaction of any other conditions in the compliance statement. See Rev. Proc. 2021-30.

#### **Advisory letter**

.09 An “advisory letter” is issued as to the acceptability of the form of a specimen plan under § 403(b) with respect to an advisory letter application submitted for the first six-year remedial amendment cycle applicable to § 403(b) pre-approved plans (the cycle ending June 30, 2020). See Rev. Proc. 2013-22.

### **SECTION 4. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN ADVICE UNDER THIS PROCEDURE?**

#### **In general**

.01 Taxpayers may request determination letters, letter rulings, and closing agreements on issues within the jurisdiction of Employee Plans Rulings and Agreements under this revenue procedure.

#### **Determination Letters**

.02 Employee Plans Rulings and Agreements issues determination letters on the status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans under §§ 401, 403(a), 409, and 4975(e)(7), and the status for exemption of any related trusts or custodial accounts under § 501(a). See Rev. Proc. 2022-40, which sets forth a description of the determination letter program, including when to submit a request for a determination letter, for individually designed plans, and Rev. Proc. 2016-37 for pre-approved plans. Beginning June 1, 2023, Employee Plans Rulings and Agreements will begin accepting determination letter applications for § 403(b) individually designed plans pursuant to the schedule described in section 1.03(1)(a) of this revenue procedure.

#### **Letter Rulings**

.03 Employee Plans Rulings and Agreements issues letter rulings on the Code sections listed in section 24.01 of this revenue procedure, if appropriate in the interest of sound tax administration, to answer written inquiries of individuals and organizations about their status for tax purposes and the tax effects of their acts or transactions.

#### **Voluntary Closing Agreements**

.04 Employee Plans Rulings and Agreements considers voluntary closing agreement requests to resolve certain income or excise tax issues that are ineligible for resolution under EPCRS. See [www.irs.gov/retirement-plans/employee-plans-voluntary-closing-agreements](http://www.irs.gov/retirement-plans/employee-plans-voluntary-closing-agreements).

#### **Other Matters**

.05 Note that issues involving employee plans not listed in section 24.01 of this revenue procedure generally fall under the jurisdiction of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). See section 5.03 of this revenue procedure and Rev. Proc. 2023-1, this Bulletin.

**SECTION 5. ON WHAT  
ISSUES MUST WRITTEN  
ADVICE BE REQUESTED  
UNDER DIFFERENT  
PROCEDURES?**

**Pre-approved plans**

.01

(1) The procedures for obtaining opinion letters for pre-approved plans submitted with respect to the third six-year remedial amendment cycle (and subsequent cycles) are set forth in Rev. Proc. 2017-41.

(2) The procedures for obtaining opinion letters for prototype trusts, custodial accounts, or annuities under § 408(a), (b), (k), or (p), or § 408A, are set forth in Rev. Proc. 87-50; Rev. Proc. 91-44; Rev. Proc. 92-38; Rev. Proc. 97-29; Rev. Proc. 98-59; Rev. Proc. 2002-10 and Rev. Proc. 2010-48, as modified by Appendix A of this revenue procedure. Announcement 2022-6 temporarily suspends the opinion letter program.

(3) The procedures for obtaining opinion and advisory letters for prototype plans and VS plans under § 403(b) with respect to an opinion or advisory letter application submitted for a § 403(b) pre-approved plan's first cycle (ending June 30, 2020) are set forth in Rev. Proc. 2013-22. The procedures for obtaining an opinion letter with respect to a § 403(b) pre-approved plan's second six-year remedial amendment cycle (and subsequent cycles) are set forth in Rev. Proc. 2021-37.

**Employee Plans  
Compliance Resolution  
System**

.02 The procedures for obtaining compliance statements under VCP for certain failures of plans qualified under § 401(a), § 403(b) plans, SEPs, SIMPLE IRA Plans, and § 457(b) plans under EPCRS are set forth in Part V of Rev. Proc. 2021-30.

**Chief Counsel**

.03 The procedures for obtaining letter rulings, information letters, and technical advice requests on matters within the jurisdiction of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), or within the jurisdiction of other Offices of Associate Chief Counsel are set forth in the following revenue procedures:

(1) Chief Counsel's letter rulings and information letters: See Rev. Proc. 2023-1, this Bulletin.

(2) Technical Advice Requests: See Rev. Proc. 2023-2, this Bulletin.

(3) Chief Counsel's no-rule positions: See Rev. Proc. 2023-3, this Bulletin.

**Determination letters not  
issued for requests for  
minimum funding waivers**

.04 The alternative of requesting a determination letter in conjunction with a waiver of the minimum funding standard as described in section 3.04 of Rev. Proc. 2004-15, 2004-1 CB 490, is no longer available. A request for a letter ruling on a waiver of the minimum funding standard must be submitted to the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) and may no longer be submitted to Employee Plans Rulings and Agreements. See Rev. Proc. 2023-1, this Bulletin.

## SECTION 6. WHAT ARE THE GENERAL INSTRUCTIONS FOR REQUESTING LETTER RULINGS AND DETERMINATION LETTERS FROM EMPLOYEE PLANS RULINGS AND AGREEMENTS?

### In general

.01 This section explains the general instructions for requesting letter rulings and determination letters, as applicable to the particular type of request, on all matters within the jurisdiction of Employee Plans Rulings and Agreements. Requests for letter rulings and determination letters require the payment of the applicable user fee discussed in section 6.02(15), section 30, and Appendix A of this revenue procedure. Specific and additional instructions also apply to requests for letter rulings and determination letters on certain matters.

All requests must be submitted in English. All documents submitted in support of such requests must be in English or accompanied by an English translation.

### Certain information required in requests for letter rulings or determination letters, as applicable

.02

### Facts

**(1) Complete statement of facts and other information.** Each request for a letter ruling or determination letter must set forth a complete statement of all facts relating to the transaction or determination letter request. These facts include —

(a) names, addresses, telephone numbers, and taxpayer identification numbers of all interested parties (the term “all interested parties” does not mean all shareholders of a widely held corporation requesting a letter ruling relating to a reorganization, or all employees if a large number may be involved);

(b) a complete statement of the business reasons for the transaction; and

(c) a detailed description of the transaction.

The Service usually will not rule on only one step of a larger integrated transaction described in a letter ruling request. See section 25.04 of this revenue procedure. However, if such a letter ruling is requested, the facts and circumstances relating to the entire transaction, including true copies of relevant documents, etc., must be submitted.

### Documents

**(2) Copies of all contracts, wills, deeds, agreements, instruments, plan documents, and other documents.** All documents that are pertinent to the transaction (including contracts, wills, deeds, agreements, instruments, plan documents, trust documents, and proposed disclaimers) must be submitted with the request.

Original documents should not be submitted because they become part of the Service’s file and will not be returned to the taxpayer. Instead, true copies of all such documents should be

submitted with the request. Each attachment to the request should be labeled alphabetically and attached to the request in alphabetical order.

**(a) Documents for determination letter submissions on Form 5307** *(i) Before June 1, 2023:* Applicants must submit Form 5307, Application for Determination for Adopters of Modified Nonstandardized Pre-Approved Plans, submissions on paper. Applicants have the option of submitting the user fee electronically on [www.pay.gov](http://www.pay.gov), as described in section 30.07(1) of this revenue procedure, and should attach the payment confirmation to the paper Form 8717, User Fee for Employee Plan Determination Letter Request.

*(ii) On and after June 1, 2023, and before July 1, 2023:* Applicants may submit Form 5307 either on paper or electronically on [www.pay.gov](http://www.pay.gov). If Form 5307 is submitted on paper, applicants still have the option of submitting the user fee electronically on [www.pay.gov](http://www.pay.gov), as described in section 30.07(1) of this revenue procedure, and should attach the payment confirmation to the paper Form 8717. However, if Form 5307 is submitted electronically on [www.pay.gov](http://www.pay.gov) will require the user fee and documents to be submitted electronically at the time the form is being submitted.

Note: When submitting the Form 5307 electronically DO NOT submit the user fee on [www.pay.gov](http://www.pay.gov) using the Form 8717. When utilizing [www.pay.gov](http://www.pay.gov), if you receive an email that the payment was dishonored, you must resubmit the application package along with the new user fee. When resubmitting, include the email received regarding the dishonored payment with the submission package.

*(iii) On or after July 1, 2023:* Paper submissions of Form 5307 will no longer be accepted. As of July 1, 2023, applicants must submit the Form 5307 application electronically on [www.pay.gov](http://www.pay.gov) and may not submit any documents on paper, including the Form 8717. Any Form 5307 application submitted on paper on or after July 1, 2023, will be returned to the applicant, including any paper checks.

In order to more efficiently process determination letter applications, the following documents (as applicable to a particular submission) should be submitted in the following order:

- Form 2848, Power of Attorney and Declaration of Representative or Form 8821, Tax Information Authorization
- Form 8717, User Fee for Employee Plan Determination Letter Request (for paper submissions only)
- Prior Determination Letter
- Opinion/Advisory Letter
- Form 5307 (must be completed on [www.pay.gov](http://www.pay.gov) on or after July 1, 2023)
- Cover Letter
- Amendments (any prior plan documents being submitted along with any applicable amendments)
- Current Plan Document
- Adoption Agreement
- Other Applicable Documents (any additional documents not listed above)



For paper submissions, the most recent version of any applicable form should be submitted. Documents submitted should not be stapled or bound. See also the instructions to the form applicable to a particular submission for any additional submission requirements. For additional information relating to a determination letter request submitted by an adopting employer of a pre-approved plan, see sections 12 and 13 of this revenue procedure.

For electronic submissions, the size of the submissions made through [www.pay.gov](http://www.pay.gov) may be up to 15MB. If the submission is over the 15MB threshold, additional documents may be faxed to 844-255-4818. Be sure the [www.pay.gov](http://www.pay.gov) tracking ID number is listed on the fax coversheet along with the EIN, applicant name, and plan name. Faxes sent to the Service are converted into attachments delivered via email to an Outlook mailbox. If the size of the fax creates an attachment that exceeds 150MB it will not be delivered due to network protections. No notification is issued if it occurs. To avoid the problem, split up a large fax by sending separate, smaller faxes. Fax the EP Customer Service line at 855-224-1311 if you want the Service to confirm your fax or faxes have been delivered.

**(b) Determination letter submissions on Form 5300**

Paper submissions of Form 5300, Application for Determination for Employee Benefit Plans are not accepted. Applicants must submit the Form 5300 application electronically on [www.pay.gov](http://www.pay.gov) and may not submit any documents on paper, including the Form 8717. Any Form 5300 application submitted on paper will be returned to the applicant, including any paper checks. Beginning June 1, 2023, Employee Plans Rulings and Agreements will accept Form 5300 applications for § 403(b) individually designed plans. See section 1.03(1) for eligibility.

**(c) Determination letter submissions on Form 5310**

Paper submissions of Form 5310, Application for Determination for Terminating Plan, are not accepted. Applicants must submit the Form 5310 application electronically on [www.pay.gov](http://www.pay.gov) and may not submit any documents on paper, including the Form 8717. Any Form 5310 application submitted on paper will be returned to the applicant, including any paper checks.

**(d) Documents for determination letter submissions on Form 5300 and Form 5310**

In order to more efficiently process determination letter applications, when submitting Form 5300 or Form 5310 on [www.pay.gov](http://www.pay.gov), the following documents (as applicable to a particular submission) should be included in the attachment:

- Form 2848, Power of Attorney and Declaration of Representative or Form 8821, Tax Information Authorization
- Prior Determination Letter
- Opinion/Advisory Letter
- Cover Letter
- Amendments (any prior plan documents being submitted along with any applicable amendments)
- Current Plan Document
- Adoption Agreement
- Other Applicable Documents (any additional documents not listed above)

Follow the directions provided on [www.pay.gov](http://www.pay.gov). Note: When utilizing [www.pay.gov](http://www.pay.gov), if you receive an email that the payment was dishonored, you must resubmit the application package along with the new user fee. When resubmitting, include the email received regarding the dishonored payment with the submission package. Do not use Form 8717 to submit the user fee.

For additional information relating to a determination letter request for a plan termination, see section 15 of this revenue procedure.

The size of electronic submissions made on [www.pay.gov](http://www.pay.gov) may be up to 15MB. If your submission is over the 15MB threshold, additional documents may be faxed to 844-255-4818. The [www.pay.gov](http://www.pay.gov) tracking ID number must be listed on the fax coversheet along with the EIN, applicant's name, and plan name. Faxes sent to the Service are converted into attachments delivered via email to an Outlook mailbox. If the size of the fax creates an attachment that exceeds 150MB it will not be delivered due to network protections. No notification is issued if it occurs. To avoid the problem, split up a large fax by sending separate, smaller faxes. Fax the EP Customer Service line at 855-224-1311 if you want the Service to confirm your fax or faxes have been delivered.

See also the instructions to the form applicable to a particular submission for any additional submission requirements. For additional information relating to a determination letter request submitted by an adopting employer of a pre-approved plan, see sections 12 and 13 of this revenue procedure.

#### **Analysis of material facts**

**(3) Analysis of material facts.** All material facts in documents must be included, rather than merely incorporated by reference, in the taxpayer's initial request or in supplemental letters. These facts must be accompanied by an analysis of their bearing on the issue or issues, specifying the legal provisions that apply.

#### **Same issue in an earlier return**

**(4) Statement regarding whether same issue is in an earlier return.** The request must state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives, the same issue is in an earlier return of the taxpayer (or in a return for any year of a related taxpayer within the meaning of § 267 or of a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504 or of a predecessor of the taxpayer).

If the statement is affirmative, it must specify whether the issue—

- (a) is being examined by the Service;
- (b) has been examined and, if so, whether or not the statutory period of limitations has expired for either assessing tax or filing a claim for refund or credit of tax;
- (c) has been examined and, if so, whether or not a closing agreement covering the issue or liability has been entered into by the Service;
- (d) is being considered by the Independent Office of Appeals in connection with a return from an earlier period;
- (e) has been considered by the Independent Office of Appeals in connection with a return from an earlier period and, if so, whether or not the statutory period of limitations has expired for either assessing tax or filing a claim for refund or credit of tax;
- (f) has been considered by the Independent Office of Appeals in connection with a return from an earlier period and whether or not a closing agreement covering the issue or liability has been entered into by the Independent Office of Appeals;

(g) is pending in litigation in a case involving the taxpayer or a related taxpayer; or

(h) is being considered by the Pension Benefit Guaranty Corporation (PBGC) or the Department of Labor (DOL).

**Same or similar issue  
previously submitted or  
currently pending**

**(5) Statement regarding whether same or similar issue was previously ruled on or requested, or is currently pending.** The request must also state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives—

(a) Employee Plans Rulings and Agreements previously ruled on the same or a similar issue for the taxpayer (or a related taxpayer within the meaning of § 267, or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504 or a predecessor);

(b) the taxpayer, a related taxpayer, or a predecessor previously submitted the same or a similar issue to Employee Plans Rulings and Agreements but withdrew the request before a letter ruling or determination letter was issued;

(c) the taxpayer, a related taxpayer, or a predecessor previously submitted a request involving the same or a similar issue that is currently pending with Employee Plans Rulings and Agreements or the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes); or

(d) at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request involving the same or a similar issue to Employee Plans Rulings and Agreements or the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes).

If the statement is affirmative for (a), (b), (c), or (d) of this section 6.02(5), the statement must give the date the request was submitted, the date the request was withdrawn or ruled on, if applicable, and other details of the consideration of the issue by Employee Plans Rulings and Agreements or the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes).

**Statement of authorities  
supporting taxpayer's views**

**(6) Statement of supporting authorities.** If the taxpayer advocates a particular conclusion, an explanation of the grounds for that conclusion and the relevant authorities to support it must also be included. Even if not advocating a particular tax treatment of a proposed transaction, the taxpayer must still furnish views on the tax results of the proposed transaction and a statement of relevant authorities to support those views.

In all events, the request must include a statement of whether the law in connection with the request is uncertain and whether and how the issue is addressed by relevant authorities.

**Statement of authorities  
contrary to taxpayer's  
views**

**(7) Statement of contrary authorities.** The taxpayer is also encouraged to inform Employee Plans Rulings and Agreements about, and discuss the implications of, any authority believed to be contrary to the conclusion requested, such as legislation (or pending legislation), tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, or announcements. If the taxpayer determines that there are no contrary authorities, a statement in the request to this effect would be helpful. If the taxpayer does not furnish either contrary authorities or a statement that none exists, Employee Plans Rulings and Agreements, in complex cases or those presenting difficult or novel issues, may request submission of contrary authorities or a statement that none

exists. Failure to comply with this request may result in Employee Plans Rulings and Agreements refusing to issue a letter ruling or determination letter.

Identifying and discussing contrary authorities generally will enable Employee Plans Rulings and Agreements personnel to understand the issue and relevant authorities more quickly. In that case, when Employee Plans Rulings and Agreements personnel receive the request, they will have before them the taxpayer's thinking on the effect and applicability of contrary authorities. This information should lead to earlier action by Employee Plans Rulings and Agreements. If the taxpayer does not disclose and distinguish significant contrary authorities, Employee Plans Rulings and Agreements may need to request additional information, which will delay action on the request and may result in the application being returned due to being an incomplete submission.

**Statement identifying pending legislation**

**(8) Statement identifying pending legislation.** At the time of filing the request, the taxpayer must identify any pending legislation that may affect the proposed transaction. In addition, the taxpayer must notify Employee Plans Rulings and Agreements if applicable legislation is introduced after the request is filed but before a letter ruling or determination letter is issued.

**Deletions statement required by § 6110 for private letter rulings and § 403(b) plan determination letters**

**(9) Statement identifying information to be deleted from copy of letter ruling and § 403(b) plan determination letters for public inspection.** The text of private letter rulings and determination letters for § 403(b) plans is open to public inspection under § 6110. The Service makes deletions from the text before it is made available for inspection. To help the Service make the deletions required by § 6110(c), a request for a letter ruling or a determination letter for a § 403(b) plan must be accompanied by a statement indicating the deletions desired ("deletions statement"). If the deletions statement is not submitted with the request, a Service representative will tell the taxpayer that the request will be closed if the Service does not receive the deletions statement within 30 calendar days. See section 27.05 of this revenue procedure.

**(a) Format of deletions statement.** A taxpayer who wants only names, addresses, and identifying numbers to be deleted should state this in the deletions statement. If the taxpayer wants more information deleted, the deletions statement must be accompanied by a copy of the request and supporting documents on which the taxpayer should bracket the material to be deleted. The deletions statement must indicate the statutory basis under § 6110(c) for each proposed deletion.

If the taxpayer decides to ask for additional deletions before the letter ruling or determination letter is issued, additional deletions statements may be submitted.

**(b) Location of deletions statement.** The deletions statement must not appear in the request, but instead must be made in a separate document and placed on top of the request for a letter ruling or determination letter.

**(c) Signature.** The deletions statement must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature or faxed signature is not permitted.

**(d) Additional information.** The taxpayer should follow the same procedures above to propose deletions from any additional information submitted after the initial request. An additional deletions statement, however, is not required with each submission of additional information if the taxpayer's initial deletions statement requests that only names, addresses, and identifying numbers be deleted, and the taxpayer wants only the same information deleted from the additional information.

**(e) Taxpayer may protest deletions not made.** After receiving from the Service the notice under § 6110(f)(1) of intention to disclose the letter ruling or determination letter (including a copy of the version proposed to be open to public inspection and notation of third-party communications under § 6110(d)), the taxpayer may protest the disclosure of certain information in the letter ruling or determination letter. The taxpayer must send a written statement within 20 calendar days to the Service office indicated on the notice of intention to disclose. The statement must identify those deletions that the Service has not made and that the taxpayer believes should have been made. The taxpayer must also submit a copy of the version of the letter ruling or determination letter and bracket the deletions proposed that have not been made by the Service. Generally, the Service will not consider deleting any material that the taxpayer did not propose to be deleted before the letter ruling or determination letter was issued.

Within 20 calendar days after the Service receives the response to the notice under § 6110(f)(1), the Service will mail to the taxpayer its final administrative conclusion regarding the deletions to be made. The taxpayer does not have the right to a conference to resolve any disagreements concerning material to be deleted from the text of the letter ruling or determination letter. However, these matters may be taken up at any conference that is otherwise scheduled regarding the request.

**(f) Taxpayer may request delay of public inspection.** After receiving the notice under § 6110(f)(1) of intention to disclose, but within 60 calendar days after the date of notice, the taxpayer may send a request for delay of public inspection under either § 6110(g)(3) or (4). The request for delay must be sent to the Service office indicated on the notice of intention to disclose. A request for delay under § 6110(g)(3) must contain the date on which it is expected that the underlying transaction will be completed. The request for delay under § 6110(g)(4) must contain a statement from which the Commissioner of Internal Revenue may determine that there are good reasons for the delay.

**(g) Section 6110 does not apply to certain matters.** Section 6110(l)(1) states that § 6110 disclosure provisions do not apply to any matter to which § 6104 applies. Therefore, letter rulings, determination letters with respect to qualified plans, and related background file documents dealing with the following matters (covered by § 6104) are not subject to § 6110 disclosure provisions—

(i) An application for the qualification of a pension, profit-sharing or stock bonus plan, or an individual retirement account described in § 408 or § 408A, or any application for exemption under § 501(a) by an organization forming part of such a plan or an account;

(ii) Any document issued by the Service in which the qualification or exempt status of a plan or account is granted, denied, or revoked;

(iii) Any application filed and any document issued by the Service with respect to the qualification or status of pre-approved plans; and

(iv) The portion of any document issued by the Service with respect to the qualification or exempt status of a plan or account of a proposed transaction by such plan or account.

Signature on request

**(10) Signature by taxpayer or authorized representative.** The request for a letter ruling or determination letter must be signed and dated by the taxpayer or the taxpayer's authorized representative. For paper applications, neither a stamped signature nor a faxed signature is permitted.

<b>Authorized representatives</b>	<b>(11) Authorized representatives.</b> To sign the request or to appear before the Service in connection with the request, the representative must be one of the following:
<b>Attorney</b>	(a) An attorney who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as an attorney and current authorization to represent the taxpayer.
<b>Certified public accountant</b>	(b) A certified public accountant who is qualified to practice in any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as a certified public accountant and current authorization to represent the taxpayer.
<b>Enrolled agent</b>	(c) An enrolled agent is a person, other than an attorney or certified public accountant that is currently enrolled to practice before the Service and is not currently under suspension or disbarment from practice before the Service, including a person enrolled to practice only for employee plans matters. He or she must file a written declaration with the Service showing current enrollment and authorization to represent the taxpayer. Either the enrollment number or the expiration date of the enrollment card must be included in the declaration. For the rules on who may practice before the Service, see Treasury Department Circular No. 230.
<b>Enrolled actuary</b>	(d) An enrolled actuary is a person enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242 and qualified to practice in any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service showing current qualification as an enrolled actuary and current authorization to represent the taxpayer. Practice as an enrolled actuary is limited to representation with respect to issues involving the following statutory provisions: §§ 401, 403(a), 404, 412, 413, 414, 419, 419A, 420, 4971, 4972, 4976, 4980, 6057, 6058, 6059, 6652(d), 6652(e), 6692, 7805(b), former § 405, and 29 U.S.C. 1083.
<b>Enrolled retirement plan agent</b>	<p>(e) An enrolled retirement plan agent (ERPA) is an individual who is authorized to practice before the Service under the ERPA program. The ERPA program is established under Treasury Department Circular No. 230 and is administered by the Office of Professional Responsibility.</p> <p>Practice as an ERPA is limited to representation with respect to issues involving the Employee Plans determination letter program, EPCRS, and the pre-approved programs. In addition, ERPAs are generally permitted to represent taxpayers with respect to Form 5300 series and Form 5500 filings, but not with respect to actuarial forms or schedules. For additional information on ERPAs, see § 10.4, 10.5, and 10.6 of Treasury Department Circular No. 230.</p>
<b>A person with a “Letter of Authorization”</b>	(f) Any other person, including a foreign representative, who has received a “Letter of Authorization” from the Director, Office of Professional Responsibility under section 10.7(d) of Treasury Department Circular No. 230. A person may make a written request for a “Letter of Authorization” to: Office of Director, Office of Professional Responsibility, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224. Section 10.7(d) of Treasury Department Circular No. 230 authorizes the Commissioner of Internal Revenue to allow an individual who is not otherwise eligible to practice before the Service to represent another person in a particular matter. For additional information, see section 6.02(12) of this revenue procedure.



**Employee, general partner, bona fide officer, administrator, trustee, etc.**

(g) The above requirements do not apply to a regular full-time employee representing his or her employer; to a general partner representing his or her partnership; to a *bona fide* officer representing his or her corporation, association, or organized group; to a trustee, receiver, guardian, personal representative, administrator, or executor representing a trust, receivership, guardianship, or estate; or to an individual representing his or her immediate family. A preparer of a return (other than a person referred to in paragraph (a), (b), (c), (d), or (e) of this section 6.02(11)) who is not a full-time employee, a general partner, a *bona fide* officer, an administrator, a trustee, etc., or an individual representing his or her immediate family may not represent a taxpayer in connection with a letter ruling, determination letter, or technical advice request. See section 10.7(c) of Treasury Department Circular No. 230.

**Foreign representative**

(h) A foreign representative (other than a person referred to in paragraph (a), (b), (c), (d), or (e) of this section 6.02(11)) is not authorized to practice before the Service and, therefore, may not represent a taxpayer in a request for a letter ruling or a determination letter. In this situation, the nonresident alien or foreign entity must submit the request for a letter ruling or a determination letter on the individual's or entity's own behalf or through a person referred to in paragraph (a), (b), (c), (d), or (e) of this section 6.02(11).

**Power of attorney and declaration of representative**

**(12) Power of attorney and declaration of representative.** Any authorized representative, whether or not enrolled to practice, must also comply with the conference and practice requirements of the Statement of Procedural Rules (26 C.F.R. § 601.501-601.509), which provide the rules for representing a taxpayer before the Service. An unenrolled preparer must file a Form 8821, Tax Information Authorization, for certain limited employee plans matters.

Form 2848, Power of Attorney and Declaration of Representative, must be used to provide the representative's authorization (Part I of Form 2848, Power of Attorney) and the representative's qualification (Part II of Form 2848, Declaration of Representative). 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. An original, a copy, or a fax of the power of attorney is acceptable so long as its authenticity is not reasonably disputed. For additional information regarding the Form 2848, see section 6.03(2) of this revenue procedure.

**Compliance with Treasury Department Circular No. 230**

**(13) Compliance with Treasury Department Circular No. 230.** The taxpayer's authorized representative, whether or not enrolled, must comply with Treasury Department Circular No. 230, which provides the rules for practice before the Service. In those situations in which Employee Plans Rulings and Agreements believes that the taxpayer's representative is not in compliance with Treasury Department Circular No. 230, Employee Plans Rulings and Agreements will bring the matter to the attention of the Director, Office of Professional Responsibility.

**Penalties of perjury statement**

**(14) Penalties of perjury statement.**

**(a) Format of penalties of perjury statement.** A request for a letter ruling or determination letter and any change in the request submitted at a later time must be accompanied by the following declaration: **"Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and, to the best of my knowledge and belief, the request or the modification contains all the relevant facts relating to the request, and such facts are true, correct, and complete."** See section 27.06 of this revenue procedure for the penalties of perjury statement applicable for submissions of additional information.

Applications on [www.pay.gov](http://www.pay.gov) have the following statement: **"Under penalties of perjury, I declare that I have examined this determination letter submission, including Form 53XX**



and all accompanying documents, and, to the best of my knowledge and belief, they and the facts presented in support of this application and submission are true, correct, and complete. If the zero dollar user fee is selected, I certify that the application for a determination letter on the qualified status of the plan listed above meets the conditions for exemption from user fees described in section 7528(b)(2)(B) of the Internal Revenue Code. If the reduced fee is selected with respect to an application for a determination letter as to whether a § 403(b) plan meets the requirements of § 403(b), I certify that the application for a determination letter of the plan listed above meets the conditions for a small plan user fee described in Appendix A of Revenue Procedure 2023-4.”

If this is a determination letter submission filed by an authorized representative on behalf of a plan sponsor, as provided in an attached Form 2848, the penalty of perjury statement does not apply (although the penalties of perjury box should still be marked). The plan sponsor must sign a separate penalty of perjury statement and submit the statement as an additional attachment.

**(b) Signature by taxpayer.** The declaration must be signed and dated by the taxpayer, not the taxpayer’s representative. Neither a stamped signature nor a faxed signature is permitted.

The person who signs for a corporate taxpayer must be an officer of the corporate taxpayer who has personal knowledge of the facts, and whose duties are not limited to obtaining a letter ruling or determination letter from the Service. If the corporate taxpayer is a member of an affiliated group filing consolidated returns, a penalties of perjury statement must also be signed and submitted by an officer of the common parent of the group.

The person signing for a trust, a state law partnership, or a limited liability company must be, respectively, a trustee, general partner, or member-manager who has personal knowledge of the facts.

#### **Applicable user fee**

**(15) Applicable user fee.** Section 7528 requires taxpayers to pay user fees for requests for letter rulings, opinion letters, advisory letters, determination letters, and similar requests. Appendix A to this revenue procedure contains the schedule of user fees for each type of request under the jurisdiction of Employee Plans Rulings and Agreements. Section 30 of this revenue procedure provides guidance for applying the user fee requirements. If two or more taxpayers are parties to a transaction and each requests a letter ruling, each taxpayer must satisfy the rules herein and additional user fees may apply. See section 30.04 of this revenue procedure for exemptions from the user fee requirements.

#### **Number of copies of request to be submitted**

**(16) Number of copies of request to be submitted.** Generally, a taxpayer needs to submit only one copy of the request for a letter ruling or determination letter. If, however, more than one issue is presented in a letter ruling request, the taxpayer is encouraged to submit additional copies of the request.

Further, two copies of the request for a letter ruling are required if—

(a) the taxpayer is requesting separate letter rulings on different issues as described in section 6.03(1) of this revenue procedure;

(b) the taxpayer is requesting deletions other than names, addresses, and identifying numbers, as described in section 6.02(9) of this revenue procedure (one copy is the request for the letter ruling and the second copy is the deleted version of such request); or

(c) the taxpayer is requesting a closing agreement (as defined in section 3.03 of this revenue procedure) on the issue presented.

#### **Sample of a letter ruling request**

**(17) Sample format for a letter ruling request.** To assist a taxpayer or the taxpayer's representative in preparing a letter ruling request, a sample format for a letter ruling request is provided in Appendix D. This format is not required to be used by the taxpayer or the taxpayer's representative. If the letter ruling request is not identical or similar to the format in Appendix D, the different format will neither defer consideration of the letter ruling request nor be cause for returning the request to the taxpayer or taxpayer's representative.

#### **Checklist**

**(18) Checklist for letter ruling requests.** Employee Plans Rulings and Agreements will be able to respond more quickly to a taxpayer's letter ruling request if it is carefully prepared and complete. The checklist in Appendix E of this revenue procedure is designed to assist taxpayers in preparing a request by reminding them of the essential information and documents to be furnished with the request. The checklist in Appendix E must be completed to the extent required by the instructions in the checklist, signed and dated by the taxpayer or the taxpayer's representative, and placed on top of the letter ruling request. If the checklist in Appendix E is not received, Employee Plans Rulings and Agreements will ask the taxpayer or the taxpayer's representative to submit the checklist, which may delay action on the letter ruling request. A photocopy of this checklist may be used.

#### **Additional information required in certain circumstances**

.03

#### **Multiple issues**

**(1) To request a separate letter ruling for multiple issues in a single situation.** If more than one issue is presented in a request for a letter ruling, Employee Plans Rulings and Agreements generally will issue a single letter ruling covering all the issues. However, if the taxpayer requests a separate letter ruling on any of the issues (because, for example, one letter ruling is needed sooner than another), Employee Plans Rulings and Agreements usually will comply with the request unless it is not feasible or not in the best interests of the Service to do so. A taxpayer who wants a separate letter ruling on multiple issues should make this clear in the request and submit two copies of the request. Additional checklists are solely for the specific issues designated.

In issuing each letter ruling, Employee Plans Rulings and Agreements will state that it has issued a separate letter ruling or that requests for other letter rulings are pending.

#### **Power of attorney**

**(2) Recipient of original letter ruling or determination letter.** Employee Plans Rulings and Agreements will send the original of the letter ruling or determination letter to the taxpayer and a copy of the letter ruling or determination letter to the taxpayer's representative. The letter ruling or determination letter is addressed to the taxpayer. A Form 2848, Power of Attorney and Declaration of Representative must be used to provide the representative's authorization except in certain employee plans matters. See section 6.02(12) of this revenue procedure.

**To have a copy sent to taxpayer's representative.** A copy of the letter ruling or determination letter will be sent to any representative with a check in the box in the name and address block on Form 2848 to indicate the representative is to receive notices and communications. Copies of the letter ruling or determination letter, however, will be sent to no more than two representatives.

#### **Expedited handling**

**(3) To request expedited handling.** Employee Plans Rulings and Agreements ordinarily processes requests for letter rulings and determination letters in the order of the date received. Determination letter requests are not eligible for expedited handling. Expedited handling with respect to a letter ruling request means that the request is processed ahead of the regular order.

Expedited handling is granted only in rare and unusual cases, both out of fairness to other taxpayers and because Employee Plans Rulings and Agreements seeks to process all requests as expeditiously as possible and to give appropriate deference to normal business exigencies in all cases not involving expedited handling.

A taxpayer who has a compelling need to have a letter ruling request processed ahead of the regular order may request expedited handling. This request must explain in detail the need for expedited handling. The request must be made in writing, preferably in a separate letter with, or soon after filing, the request for the letter ruling. If the request is not made in a separate letter, then the letter in which the letter ruling request is made should state, at the top of the first page: **“Expedited Handling Is Requested. See page \_\_\_\_ of this letter.”**

A request for expedited handling of requests for letter rulings will not be forwarded to the appropriate group for action until the check or money order for the user fee in the correct amount is received.

Whether the request will be granted is within the discretion of Employee Plans Rulings and Agreements. Employee Plans Rulings and Agreements may grant a request if a factor outside a taxpayer’s control creates a real business need to obtain a letter ruling before a certain time in order to avoid serious business consequences. Examples include situations in which a court or governmental agency has imposed a specific deadline for the completion of a transaction, or a transaction must be completed expeditiously to avoid an imminent business emergency (such as the hostile takeover of a corporate taxpayer), provided that the taxpayer can demonstrate that the deadline or business emergency, and the need for expedited handling, resulted from circumstances that could not reasonably have been anticipated or controlled by the taxpayer. To qualify for expedited handling in such situations, the taxpayer must also demonstrate that the taxpayer submitted the request as promptly as possible after becoming aware of the deadline or emergency. The extent to which the letter ruling request complies with all of the applicable requirements of this revenue procedure, and fully and clearly presents the issues, is a factor in determining whether expedited treatment will be granted. If Employee Plans Rulings and Agreements agrees to process a request out of order, it cannot give assurance that any letter ruling will be processed by the time requested. The scheduling of a closing date for a transaction or a meeting of the board of directors or shareholders of a corporation, without regard for the time it may take to obtain a letter ruling, will not be considered a sufficient reason to process a request ahead of its regular order. Also, the possible effect of fluctuation in the market price of stocks on a transaction will not be considered a sufficient reason to process a request out of order.

Because most requests for letter rulings cannot be processed ahead of their regular order, Employee Plans Rulings and Agreements urges all taxpayers to submit their requests well in advance of the contemplated transaction. In addition, in order to facilitate prompt action on letter ruling requests, taxpayers are encouraged to ensure that their initial submissions comply with all of the requirements of this revenue procedure (including the requirements of other applicable guidelines set forth in sections 1.03 and 26.02 of this revenue procedure), and to provide promptly any additional information requested by Employee Plans Rulings and Agreements.

**Facsimile transmission (fax)**

**(4) To receive a letter ruling by facsimile transmission (fax).** A letter ruling ordinarily is not sent by fax. However, if the taxpayer requests, a copy of a letter ruling may be faxed to the taxpayer or the taxpayer’s authorized representative. A letter ruling, however, is not issued until the ruling is mailed. See § 301.6110–2(h).

A request to fax a copy of the letter ruling to the taxpayer or the taxpayer’s authorized representative must be made in writing, either as part of the original letter ruling request or prior

to the approval of the letter ruling. The request must contain the fax number of the taxpayer or the taxpayer's authorized representative to whom the letter ruling is to be faxed.

Employee Plans Rulings and Agreements will take certain precautions to protect confidential information. For example, Employee Plans Rulings and Agreements will use a cover sheet that identifies the intended recipient of the fax and the number of pages transmitted. The cover sheet, if possible, will not identify the specific taxpayer by name, and it will be the first page covering the letter ruling being faxed.

**Requesting a conference**

**(5) To request a conference.** A taxpayer who wants to have a conference on the issues involved in a request for a letter ruling should indicate this in writing when, or soon after, filing the request.

**Address to send the request**

.04

The addresses for sending requests are provided in section 31 of this revenue procedure.

**Pending letter ruling requests**

.05

**(1) Circumstances under which the taxpayer must notify Employee Plans Rulings and Agreements.** The taxpayer must notify Employee Plans Rulings and Agreements if, after the letter ruling request is filed but before a letter ruling is issued, the taxpayer knows that—

(a) an examination of the issue or the identical issue on an earlier year's return has been started by an Examinations office of the Service;

(b) the issue is being considered by the PBGC or the DOL; or

(c) legislation that may affect the transaction has been introduced (see section 6.02(8) of this revenue procedure).

**(2) Taxpayer must notify Employee Plans Rulings and Agreements if a return is filed and must attach request to return.** If the taxpayer files a return before a letter ruling is received from Employee Plans Rulings and Agreements concerning the issue, the taxpayer must notify Employee Plans Rulings and Agreements that the return has been filed. The taxpayer must also attach a copy of the letter ruling request to the return to alert the Employee Plans Examinations office and thereby avoid premature Employee Plans Examinations office action on the issue.

**When to attach letter ruling to return**

.06 If, before filing a return, a taxpayer receives a letter ruling about any transaction that is relevant to the return, the taxpayer must attach a copy of the letter ruling to the return when it is filed.

**How to check on status of request**

.07 The taxpayer or the taxpayer's authorized representative may obtain information regarding the status of a request by calling the person whose name and telephone number are shown on the acknowledgement of receipt of the request.

**SECTION 7. WHAT ACTIONS ARE TAKEN IF A REQUEST IS WITHDRAWN OR EMPLOYEE PLANS RULINGS AND AGREEMENTS DECLINES TO ISSUE A LETTER RULING OR DETERMINATION LETTER?**

**In general**

.01 A taxpayer may withdraw a request for a letter ruling or determination letter at any time before the letter ruling or determination letter is signed by Employee Plans Rulings and Agreements. Correspondence and exhibits related to a request that is withdrawn or related to a letter ruling request or determination letter request for which Employee Plans Rulings and Agreements declines to issue a letter ruling or determination letter will not be returned to the taxpayer. See section 6.02(2) of this revenue procedure.

The processing of a request for a letter ruling or determination letter will not be suspended in Employee Plans Rulings and Agreements at the request of a taxpayer.

**Notification of appropriate Service official**

.02 If a taxpayer withdraws a request for a letter ruling, or if Employee Plans Rulings and Agreements declines to issue a letter ruling, Employee Plans Rulings and Agreements will notify the appropriate Service official in the operating division that has examination jurisdiction of the taxpayer's tax return. Employee Plans Rulings and Agreements also may give the Service official its views on the issues in the request to consider in any later examination of the return. See section 10.15 of this revenue procedure regarding the withdrawal of a determination letter application.

**Refunds of user fees**

.03 The user fee will not be returned for a letter ruling or determination letter request that is withdrawn. If Employee Plans Rulings and Agreements declines to issue a letter ruling on all of the issues in the request or declines to issue a determination letter, the user fee will be returned. If Employee Plans Rulings and Agreements, however, issues a letter ruling on some, but not all, of the issues, the user fee will not be returned.

**PART II. PROCEDURES FOR DETERMINATION LETTER REQUESTS**

**Part IIA. REQUESTING DETERMINATION LETTERS**

**SECTION 8. IN WHAT AREAS ARE DETERMINATION LETTERS ISSUED?**

**Circumstances under which determination letters are issued**

.01 Employee Plans Rulings and Agreements issues determination letters in response to taxpayers' written requests on completed transactions on matters within its jurisdiction.

Employee Plans Rulings and Agreements does not issue determination letters on the tax consequences of proposed transactions, except on the qualified status of employee plans under §§ 401, 403(a), 409, and 4975(e)(7), and the exempt status of any related trust under § 501. Beginning June 1, 2023, Employee Plans Rulings and Agreements will accept determination

letter applications for § 403(b) individually designed plans. See section 1.03(1) of this revenue procedure for eligibility.

For information regarding the procedures for obtaining opinion and advisory letters for prototype plans and VS plans under § 403(b) with respect to an application submitted for the first six-year remedial amendment cycle), see Rev. Proc. 2013-22. The procedures for obtaining an opinion letter with respect to a § 403(b) pre-approved plan's second six-year remedial amendment cycle (and subsequent cycles) are set forth in Rev. Proc. 2021-37

## Types of requests

.02 Determination letters may be requested on completed and proposed transactions as set forth in the table below:

TYPE OF REQUEST	FORMS	REV. PROC. SECTION
<b>1. Initial Qualification</b>		
a. Individually-designed plans (including collectively bargained plans and § 403(b) plans)	5300	11
b. Pre-approved plans	5300, 5307	12
c. Employee Stock Ownership Plans ("ESOPs")	5300, 5309	11
d. Multiple employer plans (§ 413(c) only)	5300	14
e. Group trusts	5316	16
f. Section 414(x) combined qualified plans	5300	11
<b>2. Termination</b>		
a. Individually-designed plans (including collectively bargained plans and § 403(b) plans)	5310, 6088	6, 15
b. Pre-approved plans	5310, 6088	6, 15
c. Multiemployer plan covered by PBGC insurance	5300, 6088, Cover letter	15
Note: Form 5310-A, Notice of Plan Merger, Consolidation, Spinoff or Transfer of Plan Assets or Liabilities – Notice of Qualified Separate Lines of Business, generally must be filed not less than 30 days before the merger, consolidation or transfer of assets and liabilities. The filing of Form 5310-A will not result in the issuance of a determination letter.		
<b>3. Certain Merged Plans Eligible to be Submitted under Rev. Proc. 2022-40</b>	5300	10.06(2), 11
<b>4. Standardized and Nonstandardized Pre-approved Plans (applicable to determination letter requests submitted pursuant to Rev. Proc. 2017-41, with respect to the third six-year remedial amendment cycle (and subsequent cycles))</b>		
a. Adoption of a nonstandardized plan that is not a multiple employer plan, if the adopting employer has not made extensive modifications to the language of the pre-approved plan	5307	12, 13
b. Adoption of a nonstandardized plan, if the adopting employer has made extensive modifications	5300	12
c. Adoption of a standardized plan that is not a multiple employer plan, if the employer requests a determination solely on overriding plan language added to satisfy §§ 415 or 416	5307	12

TYPE OF REQUEST	FORMS	REV. PROC. SECTION
d. Adoption of a standardized plan, if the adopting employer has made any modifications other than overriding plan language added to satisfy § 415 or 416	5300	12
e. Adoption by the controlling member of a qualified multiple employer plan, if the controlling member has made any modifications	5300	12
f. Adoption of a standardized or nonstandardized pension plan, including a qualified multiple employer plan, if the adopting employer (or, in the case of a multiple employer plan, the controlling member) requests a determination that the plan's normal retirement age satisfies the requirements of the regulations (final or proposed, as applicable) under § 1.401(a)-1(b)(2))	5300	12
<b>5. Special Types of Requests for Qualified Plans</b>		
a. Leased employees (§ 414(n))	5300, Cover letter	17
b. Partial termination	5300, Cover letter	9.09
c. Section 401(h) determination letters	5300, Cover letter	18
d. Section 420 determination letters including other matters under § 401(a)	5300, Cover letter, Checklist	18
e. Section 420 determination letters excluding other matters under § 401(a)	5300, Cover letter, Checklist	18

**Areas in which  
determination letters will  
not be issued**

.03 Determination letters issued in accordance with this revenue procedure do not include determinations involving the following:

(1) Issues involving §§ 72, 79, 105, 125, 127, 129, 402, 404, 409(l), 409(n), 412, 414(b), 414(c), 414(h)(2), 414(m), 415(m), 457, 511 through 515, and 4975 (other than 4975(e)(7));

(2) Plans or plan amendments for which automatic reliance is granted pursuant to section 7 of Rev. Proc. 2017-41 or section 8 of Rev. Proc. 2021-37;

(3) Plan amendments described below (these amendments will, to the extent provided, be deemed not to alter the status of a plan:

(a) An amendment solely to permit a trust forming part of a plan to participate in a pooled fund arrangement described in Rev. Rul. 81-100, 1981-1 CB 326, as clarified and modified by Rev. Rul. 2004-67, 2004-2 CB 28; Rev. Rul. 2011-1, 2011-2 IRB 251; Notice 2012-6, 2012-3 IRB 293; and Rev. Rul. 2014-24, 2014-37 IRB 529;

(b) An amendment that merely adjusts the maximum limitations under § 415 to reflect annual cost-of-living increases under § 415(d), other than an amendment that adds an automatic cost-of-living adjustment provision to the plan;

(c) An amendment to qualified plans solely to include language pursuant to section 403(c) (2) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) concerning the reversion of employer contributions made as a result of mistake of fact; and



(4) Determination letter requests with respect to plans that combine an ESOP (as defined in § 4975(e)(7)) with retiree medical benefit features described in § 401(h) (sometimes referred to as an HSOP):

(a) In general, determination letters will not be issued with respect to plans that combine an ESOP with another ESOP containing 401(h) features with respect to:

(i) whether the requirements of § 4975(e)(7) are satisfied;

(ii) whether the requirements of § 401(h) are satisfied; or

(iii) whether the combination of an ESOP with an ESOP that contains 401(h) features in a plan adversely affects its qualification under § 401(a);

(b) However, an arrangement will not be considered to be covered by this section 8.03(4) if, under the provisions of the plan, the following conditions are satisfied:

(i) No individual accounts are maintained in the § 401(h) account (except as required by § 401(h)(6));

(ii) No employer securities are held in the § 401(h) account;

(iii) The § 401(h) account does not contain the proceeds (directly or otherwise) of an exempt loan as defined in § 54.4975-7(b)(1)(iii) of the Pension Excise Tax Regulations; and

(iv) The amount of actual contributions to provide § 401(h) benefits (when added to actual contributions for life insurance protection under the plan) does not exceed 25 percent of the sum of (1) the amount of cash contributions actually allocated to participants' accounts in the plan, and (2) the amount of cash contributions used to repay principal with respect to the exempt loan, both determined on an aggregate basis since the inception of the § 401(h) arrangement; and

(5) Any issue, if the same issue involving the same taxpayer or a related taxpayer is pending in a case in litigation or before the Independent Office of Appeals.

#### **Determination letter applications**

.04 The Service will accept applications for determination letters for plans seeking initial qualification and terminating plans any time during the year. See section 12 of Rev. Proc. 2022-40. In addition, the Service will accept applications for determination letters for certain individually designed merged plans, provided the conditions described in Rev. Proc. 2022-40 are met. Beginning June 1, 2023, Employee Plans Rulings and Agreements will accept determination letter applications for § 403(b) individually designed plans. See section 1.03(1) of this revenue procedure for eligibility.

#### **Review of determination letters**

.05 Determination letters issued under this revenue procedure generally are not reviewed by any other office of the Service before they are issued. If a taxpayer believes that the conclusion reached in a determination letter is in error, the taxpayer may ask Employee Plans Rulings and Agreements to reconsider the matter or to request technical advice from the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) as described in Rev. Proc. 2023-2, this Bulletin.

## **SECTION 9. WHAT IS THE GENERAL SCOPE OF A DETERMINATION LETTER?**

### **Scope of this section**

.01 This section delineates, generally, the scope of a determination letter issued by Employee Plans Rulings and Agreements. This section also identifies certain requirements that are not considered by Employee Plans Rulings and Agreements in its review of a plan and with respect to which determination letters do not provide reliance. This section applies to all determination letters, other than letters relating to group trusts, and certain letters relating solely to the requirements of § 420 (regarding the transfer of assets in a defined benefit plan to a health benefit account described in § 401(h)). For additional information pertaining to the scope of reliance on a determination letter, see section 23 of this revenue procedure.

### **Scope of determination letters**

.02

(1)(i) General rule for changes in qualification requirements or § 403(b) requirements as defined in Rev. Proc. 2022-40 that have been or will be included on a Required Amendments List. Except as otherwise provided in section 9.02(1)(iii), with respect to ongoing plans, the Service will consider, in reviewing changes in qualification requirements and § 403(b) requirements that have been or will be included on a Required Amendments List, only those changes that appear on a Required Amendments List issued on or before the last day of the second calendar year preceding the year in which the determination letter application is submitted.

(ii) General rule for qualification requirements or § 403(b) requirements as defined in Rev. Proc. 2022-40 that have not been and will not be included on a Required Amendments List. Except as otherwise provided in section 9.02(1)(iii), with respect to ongoing plans, the Service will consider, in reviewing qualification requirements and § 403(b) requirements that have not been and will not be included on a Required Amendments List, only those qualification requirements and § 403(b) requirements that are in effect on or before the last day of the second calendar year preceding the year in which the determination letter application is submitted.

See Section 10 of Rev. Proc. 2022-40 for further details on the scope of Employee Plans Rulings and Agreements' review of determination letter applications.

(iii) There are no exceptions to the general rules for ongoing plans under section 9.02(1)(i) or (ii) for 2023. See section 10.03 of Rev. Proc. 2022-40.

(2) Terminating plans. For terminating plans, the Service will consider the qualification requirements or § 403(b) requirements that apply as of the date of termination, regardless of whether such requirements are included on a Required Amendments List. See sections 5.03(3) and 10.02 of Rev. Proc. 2022-40.

### **Design-based safe harbor**

.03 Generally, a plan will not be reviewed for, and a determination letter may not be relied on with respect to, whether a plan satisfies the nondiscrimination requirements of § 401(a)(4), the minimum participation requirements of § 401(a)(26), or the minimum coverage requirements of § 410(b). However, if the applicant elects, and the plan document provides a definition of compensation that satisfies § 1.414(s)-1(c), a plan will be reviewed for, and a determination letter may be relied on with respect to, whether the terms of the plan satisfy one of the design-based safe harbors in § 1.401(a)(4)-2(b) (relating to nondiscrimination in amount of contributions) or 1.401(a)(4)-3(b) (relating to nondiscrimination in amount of benefits). A defined contribution plan

will also be reviewed for, and a determination letter may be relied on with respect to, whether a plan's terms satisfy the applicable requirements of §§ 401(k) and 401(m).

**Governmental plans under § 414(d)**

.04 A plan will not be reviewed for, and a determination letter does not constitute a ruling or determination as to, whether the plan is a governmental plan within the meaning of § 414(d). If a determination letter applicant represents on the application that the plan is a governmental plan within the meaning of § 414(d), the determination letter issued for the plan is predicated on that representation, and the Service's determination is conditioned on the plan constituting a governmental plan within the meaning of § 414(d).

**Church plans under § 414(e)**

.05 A plan will not be reviewed for, and a determination letter does not constitute a ruling or determination as to, whether the plan is a church plan within the meaning of § 414(e). If a determination letter applicant represents on the application that the plan is a church plan within the meaning of § 414(e), the determination letter issued for the plan is predicated on that representation, and the Service's determination is conditioned on the plan constituting a church plan within the meaning of § 414(e).

**Tax treatment of certain contributions under § 414(h)**

.06 A plan will not be reviewed for, and a determination letter does not constitute a ruling or determination as to, whether contributions to the plan satisfy § 414(h). A determination letter does not express an opinion on whether contributions made to a plan treated as a governmental plan defined in § 414(d) constitute employer contributions under § 414(h)(2).

**Other limits on scope of determination letter**

.07 A favorable determination letter does not provide reliance for purposes of §§ 404, 412, 430, 431, and 432 with respect to whether an interest rate (or any other actuarial assumption) is reasonable. A favorable determination letter does not constitute a determination with respect to whether any requirements of § 414(r), relating to whether an employer is operating qualified separate lines of business, are satisfied.

**Leased employees**

.08 In addition to a determination letter request for a qualified plan, an applicant that is otherwise eligible to submit an application for a determination letter for a qualified plan may submit a cover letter requesting a determination as to whether leased employees are deemed employees of the employer under the meaning of § 414(n), with the additional information set forth in section 17 of this revenue procedure, including the Form 5300, Application for Determination for Employee Benefit Plan.

**Partial terminations**

.09 An applicant that seeks a determination as to whether a partial termination has occurred in a qualified plan must file a determination letter application electing such a determination using Form 5300. The applicant may file for a determination as to whether a partial termination has occurred, whether or not the plan is otherwise eligible to be submitted for a determination letter pursuant to section 11.01 or 12.03(3)(b) of this revenue procedure with respect to the third remedial amendment cycle (and subsequent cycles), as long as the scope of the determination letter issued with respect to the plan is limited solely to the request regarding whether a partial termination has occurred. In addition, an adopting employer of a pre-approved plan (or, if the plan is a multiple employer plan, the controlling member (an adopting employer sponsoring a qualified plan that submits the application as the lead employer of the multiple employer plan)) may request a determination limited to whether a partial termination has occurred. Applicants may not request a determination letter with respect to the entire plan unless the plan is otherwise eligible to be submitted for a determination letter.

**Publication 794, Favorable Determination Letter**

.10 Publication 794, Favorable Determination Letter, contains other information regarding the scope of a determination letter, including the requirement that all information submitted with the application be retained as a condition of reliance. In addition, the specific terms of each letter may

further define its scope and the extent to which it may be relied upon. Publication 794 can also be found at <https://www.irs.gov/forms-instructions>.

## **SECTION 10. WHAT IS THE GENERAL PROCEDURE FOR REQUESTING DETERMINATION LETTERS?**

### **Scope**

.01 Section 6 of this revenue procedure and this section 10 set forth procedures that are generally applicable to all determination letter requests. Additional procedures for specific types of requests are set forth in sections 11 through 18 of this revenue procedure.

### **Complete information required**

.02 An applicant requesting a determination letter must file the materials required by this revenue procedure with the Employee Plans Rulings and Agreements Determinations Office (EP Determinations) at the address provided in section 31 of this revenue procedure. The filing of the application, when accompanied by all information and documents required by this revenue procedure, will generally serve to provide EP Determinations with the information required to make the requested determination. However, in making the determination, EP Determinations may require the submission of additional information. If an application is determined by EP Determinations to be procedurally or technically deficient, EP Determinations may decline to process the application and an applicant may be required to resubmit the entire application and pay a new user fee in order to request a determination letter. See section 10.11 of this revenue procedure for additional information. Information submitted to EP Determinations in connection with an application for a determination letter for a qualified plan may be subject to public inspection to the extent provided by § 6104. The applicant must include EPCRS documentation for any closing agreement or compliance statement, if applicable. This includes applicable attachments or model schedules and copies of corrective amendments.

### **Complete copy of plan and applicable amendments required**

.03 In addition to a copy of the plan and other required materials under this revenue procedure to be included with a determination letter application, the determination letter application must also include a copy of all signed and dated plan amendments (including interim amendments, if applicable) adopted or effective subsequent to the most recent determination letter issued with respect to the plan (other than amendments adopted on behalf of the employer that adopted a pre-approved plan by the practitioner that sponsors the employer's pre-approved plan) even if these amendments are dated earlier than a previous determination letter issued with respect to the plan. See section 11.04 of this revenue procedure for information on when plan restatements must be included in the application. The application must also include the completed Procedural Requirements Checklist that is set forth in the Form 5300 series, as applicable.

### **Separate application for each single § 414(l) plan (qualified plans only)**

.04 A separate application is required for each single plan within the meaning of § 414(l). This requirement does not pertain to applications regarding group trusts.

### **Prior letters**

.05 If the plan (other than a plan submitted for initial determination) has received a favorable determination letter in the past, the application must include a copy of the latest determination letter. If a prior determination letter is not available, an explanation must be included with the application, and the applicant must include a copy of the prior plan or adoption agreement, and the opinion or advisory letter, if applicable. The application also must include all amendments necessary to verify that the plan was amended timely.

**Plans involving mergers  
(qualified plans only)**

.06 If the submitted plan is the result of a merger of two or more qualified plans, the applicant must include a copy of the prior determination letter for each of the plans that were combined to result in the merged plan. The applicant must include a copy of the prior plan document or, if applicable, the adoption agreement, and the opinion or advisory letter for each of the plans. The applicant also must include all amendments necessary to verify that each plan was amended timely. Additionally, for each plan involved in a merger that has a prior determination letter the applicant should only include all signed and dated plan amendments (including interim amendments, if applicable) adopted or effective subsequent to the most recent determination letter issued with respect to the plan. The requirements of this section 10.06 apply regardless of the circumstances under which a determination letter application is submitted. See section 11.01 for circumstances under which determination letter applications may be submitted and section 11.03 of this revenue procedure for additional documents that must be submitted.

**User fees**

.07 The appropriate user fee, if applicable, must be paid according to the procedures in section 30 of this revenue procedure. For paper submissions, Form 8717, User Fee for Employee Plan Determination Letter Request, must accompany each determination letter request. In addition, for paper submissions, if the user fee for a determination letter request is paid on [www.pay.gov](http://www.pay.gov), a copy of the payment confirmation must be submitted along with Form 8717. If the criteria for the qualified plan user fee exemption are met in accordance with Notice 2017-1, 2017-2 IRB 367, the certification on Form 8717 must be signed. Stamped signatures are not acceptable. See sections 6.02(2) and 30.07 of this revenue procedure for procedures relating to electronic submissions made on Form 5300, Application for Determination for Employee Benefit Plan or on Form 5310, Application for Determination for Terminating Plan. For electronic filings, the applicable user fee must be paid on [www.pay.gov](http://www.pay.gov), as described in section 30.07(1) of this revenue procedure, as part of the electronic filing. DO NOT use the Form 8717 on [www.pay.gov](http://www.pay.gov) to transmit the fee.

**Interested party/person  
notification and comment**

.08

(1) Before filing an application for a qualified plan, the applicant requesting a determination letter must satisfy the requirements of section 3001(a) of ERISA, and § 7476(b)(2) of the Code and the regulations thereunder, which provide that an applicant requesting a determination letter on the qualified status of certain retirement plans must notify interested parties of such application. The general rules with respect to notifying interested parties of requests for determination letters relating to the qualification of plans involving §§ 401 and 403(a) are set out below in sections 19A and 20A of this revenue procedure.

(2) Before filing an application for a § 403(b) plan, the applicant must satisfy the requirements for notifying interested persons set forth in sections 19B and 20B of this revenue procedure.

**Contrary authority must be  
distinguished**

.09 If the application for determination involves an issue with respect to which contrary authorities exist, failure to disclose or distinguish such contrary authorities will result in requests for additional information or the determination that the application is not complete and cannot be processed.

**Employer-employee  
relationship**

.10 EP Determinations does not make determinations regarding the existence of an employer-employee relationship as part of its determination of a plan's satisfaction of applicable requirements, but relies on the applicant's representations or assumptions, stated or implicit, regarding the existence of such a relationship. Taxpayers are reminded, however, that they may file Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, with the Service to determine the employment status of the individuals involved prior to filing an application for a determination letter. See section 12.04 of Rev. Proc. 2023-1, this Bulletin.

## **Incomplete applications**

.11 This section provides procedures for processing incomplete applications.

(1) *Procedural Completeness.* Upon receipt, an application will be reviewed to determine if it is procedurally complete. In order for an application to be procedurally complete, the application must include all of the information and documents required by this revenue procedure, including, but not limited to, the Form 5300 series application and the Procedural Requirements Checklist. See section 10.03 of this revenue procedure.

(2) *Procedurally or Technically Deficient Determination Letter Applications – Individually Designed Plans.* EP Determinations may request the submission of additional information for a procedurally or technically deficient application.

(a) If EP Determinations needs additional information to process the application, the applicant will be sent an information request with a 21-day response date.

(b) If the applicant's response to such information request is not timely or complete, a letter will be sent to the applicant, giving an additional 30-day period in which to respond.

(c) If a complete response is not received by the response deadline set forth in the letter referenced in section 10.11(2)(b) of this revenue procedure, the case will be closed. The application will not be returned and any user fee submitted with respect to the application will not be refunded.

(3) *Procedurally or Technically Deficient Determination Letter Applications – Pre-approved Plans.* EP Determinations may request the submission of additional information for a procedurally or technically deficient application submitted by an adopter of a pre-approved plan.

(a) If an application submitted by an adopter of a pre-approved plan is procedurally deficient, EP Determinations will send the applicant a letter identifying the missing information. The applicant will have 21 days from the date of the letter to submit the missing information identified. If the missing information is not sent (postmarked) within 21 days of EP Determinations' letter, the case will be closed. The application will not be returned, and any user fee with respect to the application will not be refunded.

(b) If a determination letter application for an adopter of a pre-approved plan is closed pursuant to section 10.11(3)(a) of this revenue procedure, the applicant must resubmit the entire application, including a new user fee (if applicable), by the end of the plan sponsor's remedial amendment cycle, unless a later date is specified in EP Determinations' letter.

## **Effect of failure to disclose material fact**

.12 EP Determinations may determine, based on the application form, the extent of review of the plan document. A failure to disclose a material fact or misrepresentation of a material fact on the application adversely affects the reliance that would otherwise be obtained through issuance by EP Determinations of a favorable determination letter. Similarly, failure to accurately provide any of the information called for on any form required by this revenue procedure may result in no reliance on the determination letter.

## **Where to file requests**

.13 Requests for determination letters are to be addressed to EP Determinations at the address provided in section 31 of this revenue procedure. Determination letter applications will not be accepted via fax. See sections 6.02(2) and 30.07 of this revenue procedure for procedures relating to electronic submissions made on Form 5300, Application for Determination for Employee Benefit Plan or on Form 5310, Application for Determination for Terminating Plan. Form 5307, Application for Determination for Adopters of Modified Nonstandardized Pre-Approved Plans,



and Form 5316, Application for Group or Pooled Trust Ruling, are permitted to be submitted electronically beginning June 1, 2023, and are required to be submitted electronically beginning July 1, 2023.

#### **Submission of related plans**

.14 If applications for two or more plans of the same employer are submitted together, each application should include a cover letter that identifies the name of the employer and the plan numbers and employer identification numbers of all the related plans submitted together. EP Determinations will determine whether these applications will be worked simultaneously.

#### **Withdrawal of requests**

.15 The applicant's request for a determination letter may be withdrawn by a written request at any time prior to the issuance of a final adverse determination letter. If an appeal to a proposed adverse determination letter is filed, a request for a determination letter may be withdrawn at any time prior to the forwarding of the proposed adverse action to the Chief, Independent Office of Appeals. In the case of a withdrawal of a determination request, the Service will not issue a determination of any type. For determination letter requests with respect to qualified plans, a failure to issue a determination letter as a result of a withdrawal will not be considered a failure of the Secretary or his delegate to make a determination within the meaning of § 7476. The Service may consider the information submitted in connection with the withdrawn request in a subsequent examination. Generally, the user fee will not be refunded if the application is withdrawn; however, the applicant may submit a subsequent request for a determination letter pursuant to section 11 of this revenue procedure. The application must be accompanied with the appropriate user fee in accordance with section 30 of this revenue procedure. Any such application will be treated as an initial request.

#### **Right to status conference**

.16 An applicant for a determination letter has the right to have a conference with the Director, EP Rulings and Agreements concerning the status of the application if the application has been pending at least 270 days. The status conference may be by phone or in person, as mutually agreed upon. During the conference, any issues relevant to the processing of the application may be addressed, but the conference will not involve substantive discussion of technical issues. No tape, stenographic, or other verbatim recording of a status conference may be made by any party. Subsequent status conferences may also be requested if at least 90 days have passed since the last preceding status conference.

#### **How to request status conference**

.17 A request for a status conference with the Director, EP Rulings and Agreements is to be made in writing and is to be sent to the specialist assigned to review the application or, if the applicant does not know who is reviewing the application, to the Director, EP Rulings and Agreements at the address provided in section 31 of this revenue procedure.

#### **Correct format required**

.18 For paper submissions, documents submitted should not be stapled or bound. The use of quickly removable clips or rubber bands is acceptable. The application form should be prepared using Courier 10-point font. Documents that must be unstapled or unbound may suffer data loss or may not scan properly, which impacts efficiency and delays processing of the application.

### **SECTION 11. WHAT IS THE PROCESS FOR REQUESTING DETERMINATION LETTERS FOR INDIVIDUALLY DESIGNED PLANS?**

## **Requesting determination letters**

.01 This section 11 contains the procedures for requesting determination letters for individually designed plans for qualified plans, and beginning June 1, 2023, for § 403(b) plans. Determination letters will be issued with respect to individually designed plans solely in the following circumstances:

(1) Initial plan determination. See Rev. Proc. 2022-40, section 9.02, for a description of which plans may be submitted on a Form 5300, Application for Determination for Employee Benefit Plan, for initial plan determination;

(2) Determination upon plan termination. See section 15 of this revenue procedure and section 9.04 of Rev. Proc. 2022-40 for additional procedures for requesting determination upon plan termination;

(3) Merged Plans. Individually designed qualified plan resulting from merged plans of previously unrelated entities, under the conditions set forth in section 9.05 of Rev. Proc. 2022-40; and

(4) Certain other circumstances as may be set forth in guidance published in the Internal Revenue Bulletin (see section 9.06 of Rev. Proc. 2022-40).

## **Forms**

.02 A determination letter request for the items listed in section 11.01 of this revenue procedure is made by filing the appropriate form according to the instructions to the form and any prevailing revenue procedures, notices, and announcements.

(1) Form 5300, Application for Determination for Employee Benefit Plan, including a copy of the Procedural Requirements Checklist included therein, must be filed to request a determination letter for an individually designed plan, including a collectively bargained plan. See section 12 of this revenue procedure for circumstances under which an adopting employer that has modified a pre-approved plan may submit a determination letter request. In accordance with Rev. Proc. 2022-40, section 9.02(1), an employer may submit a plan for initial plan qualification on a Form 5300 as long as a favorable determination letter has never been issued with respect to the plan as an individually designed plan. Employers submitting requests on behalf of individually designed plans should file the most recent version of the Form 5300. See sections 6.02(2)(b) and 30.07 of this revenue procedure for procedures relating to electronic submissions made on Form 5300.

(2) Form 5309, Application for Determination of Employee Stock Ownership Plan, must be filed as an attachment with a Form 5300 in order to request a determination whether the plan is an ESOP under § 409 or § 4975(e)(7).

(3) Form 5310, Application for Determination for Terminating Plan, including a copy of the Procedural Requirements Checklist included therein, must be filed to request a determination for a terminating plan. Also, see section 15 of this revenue procedure for additional procedures pertaining to applications for determination upon plan termination. See sections 6.02(2)(b) and 30.07 of this revenue procedure for procedures relating to electronic submissions. These forms and all related documents must be filed electronically on [www.pay.gov](http://www.pay.gov), as described in section 30.07(1) of this revenue procedure.

(4) Form 8717, User Fee for Employee Plan Determination Letter Request (and the payment confirmation from [www.pay.gov](http://www.pay.gov) as described in section 10.07 of this revenue procedure, if applicable) must be filed with the determination letter application. When completing the form, taxpayers should refer to the applicable Employee Plans user fees listed in Appendix A of this revenue procedure.

(5) Form 2848, Power of Attorney and Declaration of Representative.

(6) Form 8821, Tax Information Authorization.

**Application must include a copy of plan and amendments**

.03 The application must include a copy of all signed and dated plan amendments (including interim amendments, if applicable) adopted or effective subsequent to the most recent determination letter issued with respect to the plan, even if these amendments are dated earlier than a previous determination letter issued with respect to the plan. The application must also include a copy of the restated plan, if applicable. The application must also include the appropriate completed Procedural Requirements Checklist as set forth in the Form 5300 series, as applicable. If a plan did not receive a prior favorable determination letter, all plan documents and amendments must be submitted. EP Determinations has the discretion to request copies of any other amendments during its review of a plan. If the submitted plan is the result of a merger of two or more plans, the applicant must include, for each of the plans involved in the merger, a copy of the prior plan document, or if applicable, the adoption agreement, the opinion or advisory letter, and applicable amendments. See section 10.06 of this revenue procedure for further detail on information required for plans involving mergers.

**Restatements required**

.04 An individually designed plan must be restated when it is submitted for a determination letter, unless it is a terminating plan. Sponsors of terminating plans are encouraged, but not required, to submit a restatement when submitting a determination letter application. Plans submitted during 2023 must be restated for compliance for the items described in section 9 of this revenue procedure, as applicable. A plan sponsor of a dual-qualified plan that is intended to comply with both the Code and the Código de Rentas Internas para un Nuevo Puerto Rico de la Ley Núm. 1 de 31 de enero de 2011 (“Puerto Rico Code”) must submit a restatement showing compliance with these lists and the qualification requirements of the Code when submitting a determination letter application.

**Section 414(x) combined plans**

.05 EP Determinations will consider § 414(x) in issuing determination letters for individually designed plans that consist of a defined benefit plan and a qualified cash or deferred arrangement (subject to the eligibility requirements in section 11.01 of this revenue procedure). A § 414(x) plan sponsor must submit two Forms 5300 and two applicable user fees.

**SECTION 12. WHEN MAY AN ADOPTER OF A PRE-APPROVED PLAN (STANDARDIZED OR NONSTANDARDIZED) SUBMIT A DETERMINATION LETTER APPLICATION?**

**Eligibility to apply for a determination letter for a qualified pre-approved plan under Rev. Proc. 2017-41**

.01 Rev. Proc. 2017-41<sup>3</sup> is applicable to providers of pre-approved plans that submit requests for opinion letters with respect to the third six-year remedial amendment cycle (and subsequent cycles). Under Rev. Proc. 2017-41, a pre-approved plan is either a standardized or a nonstandardized plan. This section 12 generally provides guidance on the eligibility of an adopting employer of a pre-approved plan that received an opinion letter, pursuant to Rev. Proc. 2017-41, to submit a determination letter application with regard to that plan. The adoption period for defined benefit pre-approved plans, and the ability for plan sponsors to apply for a determination letter (on Form

<sup>3</sup>The application of this section is limited to applications filed on Form 5307, Application for Determination for Adopters of Modified Nonstandardized Pre-Approved Plans, and Form 5300, Application for Determination for Employee Benefit Plan. For procedures for filing a request for a determination on plan termination, see sections 6 and 15 of this revenue procedure.

5300 or 5307) with respect to the third six-year remedial amendment cycle, is expected to begin in 2023, and will be announced in future guidance.

**Determination letter  
applications on Form 5307**

.02

(1) Except as provided in section 12.02(3) of this revenue procedure, an adopting employer of a nonstandardized pre-approved plan that has made modifications to the terms of the pre-approved plan that are not extensive, or an adopting employer of any pre-approved plan (either standardized or nonstandardized) that amends its pre-approved plan solely to add language to satisfy the requirements of §§ 415 and 416 due to the required aggregation of plans, may file for a determination letter using a Form 5307, Application for Determination for Adopters of Modified Nonstandardized Pre-Approved Plans.

(2) An adopting employer eligible to file for a determination letter on Form 5307 may file on a Form 5307 regardless of whether a prior favorable determination letter has been issued with respect to the plan.

See section 13 of this revenue procedure, which sets forth the procedures for adopting employers of pre-approved plans requesting determination letters on Form 5307.

(3) Determination letter requests for the following plans must be filed on Form 5300, Application for Determination for Employee Benefit Plan, regardless of whether they are otherwise described in section 12.02(1) of this revenue procedure:

(i) Any request with respect to a multiple employer qualified plan;

(ii) A request for a nonstandardized pension plan that is not a governmental plan (within the meaning of § 414(d)) in which the normal retirement age is lower than the age 62 safe harbor in § 1.401(a)-1(b)(2), that requests reliance on whether the plan satisfies § 1.401(a)-1(b)(2);

(iii) A request for a nonstandardized pension plan that is a governmental plan (within the meaning of § 414(d)) in which the normal retirement age does not satisfy any of the safe harbors described in § 1.401(a)-1(b)(2)(v) of the proposed regulations, that requests reliance on whether the plan satisfies § 1.401(a)-1(b)(2) of the proposed regulations; and

(iv) A request for a nonstandardized plan regarding a partial termination.

**Determination letter  
applications on Form 5300**

.03

(1) The following adopting employers may file on Form 5300, Application for Determination for Employee Benefit Plan for an initial plan determination under criteria described in section 9.02(1) of Rev. Proc. 2022-40, including the criteria that the plan previously had not been filed for a determination letter on a Form 5300 and had not been issued a determination letter as an individually designed plan:

(a) An adopting employer (or, in the case of a multiple employer qualified plan, the controlling member (an adopting employer sponsoring a qualified plan that submits the application as the lead employer of the multiple employer plan)) that makes any modification to a standardized plan. Note: Pursuant to the circumstances described in section 8.06 of Rev. Proc. 2017-41 and 8.05 of Rev. Proc. 2021-37, the plan of an adopting employer of a standardized plan that makes any change to the plan is considered to be an individually designed plan and will be reviewed on the basis of the applicable Required Amendments List. An amendment to add overriding language

necessary to satisfy § 415 or 416 because of the required aggregation of multiple plans will not cause a plan to fail to be identical to a pre-approved plan. See section 12.04(3) of this revenue procedure regarding the scope of review of a plan.

(b) An adopting employer (or, if the plan is a multiple employer qualified plan, the controlling member) that makes extensive modifications to a nonstandardized plan (as set forth in section 8.06 of Rev. Proc. 2017-41 or section 8.05 of Rev. Proc. 2021-37, as applicable);

(c) An adopting employer (or, if the plan is a multiple employer qualified plan, the controlling member) of a pre-approved pension plan that is not a governmental plan (within the meaning of § 414(d)) in which the normal retirement age under the plan is lower than the age 62 safe harbor, requesting a determination letter, including, but not limited to, whether the plan satisfies § 1.401(a)-1(b)(2); and

(d) An adopting employer (or, if the plan is a multiple employer qualified plan, the controlling member) of a pre-approved pension plan that is a governmental plan (within the meaning of § 414(d)) in which the normal retirement age does not satisfy any of the safe harbors described in § 1.401(a)-1(b)(2)(v) of the proposed regulations, requesting a determination letter, including, but not limited to, whether the plan satisfies § 1.401(a)-1(b)(2) of the proposed regulations.

(2) The following adopting employers, or controlling members, as applicable, may file on Form 5300, regardless of whether a favorable determination letter has been issued with respect to the plan:

(a) The controlling member of a nonstandardized multiple employer qualified plan that makes modifications to the nonstandardized multiple employer plan that are not extensive;

(b) An adopting employer (or, if the plan is a multiple employer qualified plan, the controlling member) of a pre-approved pension plan that is not a governmental plan (within the meaning of § 414(d)), that files a determination letter request that is limited to a determination as to whether a plan's normal retirement age that is lower than the age 62 safe harbor in § 1.401(a)-1(b)(2) satisfies the requirements of § 1.401(a)-1(b)(2); and

(c) An adopting employer (or, if the plan is a multiple employer qualified plan, the controlling member) of a pre-approved pension plan that is a governmental plan (within the meaning of § 414(d)) with a normal retirement age that does not satisfy any of the safe harbors described in § 1.401(a)-1(b)(2)(v) of the proposed regulations, that files a determination letter request that is limited to a determination as to whether a plan's normal retirement age satisfies the requirements of § 1.401(a)-1(b)(2) of the proposed regulations.

An adopting employer that submits an application for a determination letter for a pre-approved plan for one or more of the reasons described in this section 12.03(2)) must identify the applicable reason(s) in a cover letter to the application and include a copy of the opinion letter.

(3) Special rules. The following special rules apply with regard to the determination letter requests for qualified plans described below:

(a) Leased employees. An adopting employer of a standardized or nonstandardized pre-approved qualified plan (or, if the plan is a multiple employer plan, the controlling member) that is eligible to submit a determination letter on Form 5300 in accordance with this section and Rev.

Proc. 2022-40 may also request a determination regarding leased employee status under § 414(n) (see section 17.05 of this revenue procedure).

(b) Partial terminations. An adopting employer of a standardized or nonstandardized pre-approved qualified plan (or, if the plan is a multiple employer plan, the controlling member) that requests a determination regarding partial termination (see section 9.09 of this revenue procedure) must file using Form 5300. If the request is limited to whether a partial termination has occurred, the employer may file on Form 5300 at any time, regardless of whether the employer is otherwise eligible to submit a determination letter application. If the request is not limited to whether a partial termination has occurred, the employer must be otherwise eligible to submit a determination letter application.

See section 18 of this revenue procedure for procedures for requesting § 401(h) and § 420 determination letters. See section 8.05 of Rev. Proc. 2017-41 regarding the effect of employer amendments on the six-year remedial amendment cycle.

#### **Scope of review**

.04

(1) Determination letter applications filed on Form 5307 as described in section 12.02 of this revenue procedure will be reviewed on the basis of the Cumulative List that was used to review the underlying pre-approved plan.

(2) Determination letter applications filed with respect to a nonstandardized plan on Form 5300, as described in section 12.03 of this revenue procedure, will be reviewed on the basis of the Cumulative List that was used to review the underlying pre-approved plan.

(3) Except as provided in section 12.04(4) of this revenue procedure, determination letter applications filed with respect to a standardized plan on Form 5300, as described in section 12.03 of this revenue procedure, will be reviewed based on the Required Amendments List that was issued during the second calendar year preceding the submission of the determination letter application.

(4) Applications filed with respect to a standardized plan requesting a determination solely with respect to:

(i) overriding plan language necessary to coordinate the applications of the limitations of § 415 or the requirements of § 416 because the employer maintains multiple plans;

(ii) a standardized pension plan (that is not a governmental plan within the meaning of § 414(d)) in which the normal retirement age under the plan is lower than age 62, limited to requesting reliance on whether the plan satisfies the requirements of § 1.401(a)-1(b)(2); or

(iii) a standardized pension plan that is a governmental plan (within the meaning of § 414(d)) with a normal retirement age that does not satisfy any of the safe harbors described in § 1.401(a)-1(b)(2)(v) of the proposed regulations, limited to requesting reliance on whether the plan satisfies the requirements of § 1.401(a)-1(b)(2) of the proposed regulations; will be reviewed on the basis of the Cumulative List that was used to review the underlying pre-approved plan.

#### **Submission period for pre-approved plans**

.05 An adopting employer must submit an application for a determination letter (whether on a Form 5300 or Form 5307) during the approximately two-year period in which employers may



adopt the pre-approved plan (employer adoption window), as described in section 14.03 of Rev. Proc. 2016-37, except with respect to requests limited to partial terminations, as noted in section 12.03(3)(b) of this revenue procedure.

**Reliance equivalent to determination letter**

.06 If an employer may rely on a favorable opinion letter pursuant to section 7 of Rev. Proc. 2017-41, the opinion letter is equivalent to a favorable determination letter. For example, the favorable opinion letter is treated as a favorable determination letter as provided in section 23 of this revenue procedure, regarding the effect of a determination letter. Rev. Proc. 2017-41 also describes the extent to which adopting employers of such plans may rely on favorable opinion letters without requesting individual determination letters.

**SECTION 13. WHAT ARE THE DETERMINATION LETTER FILING PROCEDURES FOR FORM 5307 (QUALIFIED PLANS ONLY)?**

**Scope**

.01 This section sets forth procedures for requesting determination letters for adopting employers of pre-approved plans that are eligible to submit determination letter applications on Form 5307, Application for Determination for Adopters of Modified Nonstandardized Pre-Approved Plans.

**Form 5307 filing procedures**

.02 Beginning June 1, 2023, applicants may submit the Form 5307 application electronically on [www.pay.gov](http://www.pay.gov). Beginning July 1, 2023, applicants must submit the Form 5307 application electronically on [www.pay.gov](http://www.pay.gov) and may not submit any documents on paper, including the Form 8717. Any Form 5307 application submitted on paper after June 30, 2023, will be returned to the applicant, including any paper checks. The application for a determination letter submitted on a Form 5307 must include the following:

(1) Form 8717, User Fee for Employee Plan Determination Letter Request (for paper submissions only). For electronic submissions, [www.pay.gov](http://www.pay.gov) will require the user fee and documents be submitted electronically at the time the form is being submitted;

(2) Form 5307, Application for Determination for Adopters of Modified Nonstandardized Pre-Approved Plans, including a copy of the Procedural Requirements Checklist included therein;

(3) Form 2848, Power of Attorney and Declaration of Representative, (if applicable, submit Form 8821, Tax Information Authorization);

(4) A copy of the most recent opinion letter for the pre-approved plan;

(5) A complete copy of the plan and, if applicable, a copy of the completed adoption agreement;

(6) A written representation (signature optional) made by the pre-approved plan provider that explains how the nonstandardized plan differs from the approved plan, describing the location, nature, and effect of each deviation from the language of the approved plan;

(7) A copy of the plan's latest favorable determination letter, if applicable; and

(8) Any other information or material that may be required by EP Determinations. Note: EP Determinations may request proof of provider adoption of interim amendments.

**Additional information  
with respect to ESOPs  
submitted on Form 5307**

.03 Form 5307 is being updated for the addition of ESOPs to the program. Until the revised Form 5307 is available, ESOP applications submitted on the current Form 5307 should be completed as follows:

- Question 5a should be marked “6 - profit sharing plan;”
- The cover letter should state:
  - o That the submission is for an ESOP;
  - o Whether the plan sponsor is an S or C corporation and, if the plan sponsor is an S corporation, the effective date of the S corporation election;
  - o Whether there was a change in corporate status (revocation/election from S to C or from C to S) and, if so, the effective date of such change.

Providing the information above will minimize the need for follow-up correspondence with the Service relating to Service review of applications on the current Form 5307. The request in this section 13.03 is limited to ESOP applications submitted on the current Form 5307.

**Deviations from language of  
approved plan**

.04 Deviations from the language of the approved plan will be evaluated based on the extent and complexities of the changes. If the changes are determined to be extensive, EP Determinations will require the applicant to file Form 5300, Application for Determination for Employee Benefit Plan (if the applicant is otherwise eligible to file a Form 5300), and pay the higher user fee. If the changes are too extensive to be compatible with the pre-approved program, the adopting employer’s plan will not be eligible for the pre-approved program. See section 20.03(5) of Rev. Proc. 2016–37 and section 8.06(3) of Rev. Proc. 2017-41.

**Adoption of plan prior to  
date of plan’s letter**

.05 An employer will not be treated as having adopted a pre-approved plan if the employer has signed or otherwise adopted the plan prior to the date of issuance of the pre-approved plan’s opinion letter. See section 7.03(2) of Rev. Proc. 2017-41. In this case, the determination letter application for the employer’s plan may not be filed on Form 5307 and will not be eligible for a reduced user fee. A determination letter application for a pre-approved plan must be based on the pre-approved plan with any applicable modifications.

**Timing of determination  
letter applications for  
adopting employers of pre-  
approved plans**

.06 In accordance with section 14 of Rev. Proc. 2016-37, adopting employers of pre-approved plans have a six-year remedial amendment cycle. An adopting employer of a nonstandardized plan that makes changes to the plan that are not extensive must submit the determination letter application within the employer adoption window announced by the Service, as described in section 14.03 of Rev. Proc. 2016-37. Applications submitted outside of that employer adoption window will be returned.

**SECTION 14. WHAT ARE  
THE DETERMINATION  
LETTER FILING  
PROCEDURES FOR  
MULTIPLE EMPLOYER  
PLANS (QUALIFIED  
PLANS ONLY)?**

**Scope** .01 This section sets forth procedures for applications filed with respect to plans described in § 413(c). A plan is not described in § 413(c) if all the employers maintaining the plan are members of the same controlled group or affiliated service group under § 414(b), (c), or (m).

**Applicant must request letter for plan in the name of the controlling member**

.02

(1) A determination letter applicant for a multiple employer plan that is otherwise eligible to apply for a determination letter must request a letter for the plan in the name of the adopting employer sponsoring a plan that submits the application as the lead employer of the multiple employer plan (controlling member). An applicant requesting a letter for the plan submits one Form 5300, Application for Determination of Employee Benefit Plan, for the plan in the name of the controlling member, either including or omitting the design-based safe harbor questions. A participating employer maintaining a multiple employer plan may not request its own determination letter but may rely on a favorable determination letter issued to the controlling member, except with respect to the requirements of §§ 401(a)(4), 401(a)(26), 401(l), 410(b), and 414(s), and, if the participating employer maintains or has ever maintained another plan, §§ 415 and 416.

(2) A determination letter for a multiple employer plan issued pursuant to this revenue procedure will provide reliance for purposes of the requirements of § 413(c);<sup>4</sup> however, pending issuance of final regulations under § 413(e), a favorable determination letter for a multiple employer plan will not provide reliance for purposes of § 413(e). An applicant that has a determination letter application for a multiple employer plan pending with the Service as of January 3, 2022, may withdraw the pending application, receive a refund of the user fee relating to the application, and resubmit the application following the issuance of final regulations under § 413(e). If the withdrawn application had been submitted for initial qualification of the plan, the resubmission of that application will not cause the application to fail to be considered as an application for initial qualification.

**Where to file requests**

.03 The application must be sent to the address provided in section 31 of this revenue procedure. See Appendix A, section .07(1)(d) and (e) of this revenue procedure for the applicable user fee.

**Addition of employers**

.04 The controlling member may continue to rely on its favorable determination letter after another employer commences participation in the controlling member's multiple employer plan. An employer that commences participation in the multiple employer plan after the controlling member receives a favorable determination letter may rely on the determination letter of the controlling member.

**SECTION 15. WHAT ARE THE PROCEDURES FOR FILING A REQUEST FOR A DETERMINATION UPON TERMINATION OR DISCONTINUANCE OF CONTRIBUTIONS, NOTICE OF MERGER, CONSOLIDATION, ETC.?**

**Scope** .01 This section sets forth procedures for requesting determination letters involving plan termination or discontinuance of contributions. This section also contains procedures regarding required notices of merger, consolidation, or transfer of assets or liabilities.

<sup>4</sup>For more information pertaining to the scope of reliance on a determination letter, see section 23 of this revenue procedure.

(1) Form 5310, Application for Determination for Terminating Plan, including a copy of the Procedural Requirements Checklist included therein, is filed by plans other than multiemployer plans covered by the insurance program of the PBGC. This form must be filed electronically on [www.pay.gov](http://www.pay.gov). Paper forms will not be accepted.

(2) Form 5300, Application for Determination of Employee Benefit Plan, including a copy of the Procedural Requirements Checklist included therein, is filed in the case of a qualified multiemployer plan covered by PBGC insurance. This form must be filed electronically on [www.pay.gov](http://www.pay.gov). Paper forms will not be accepted.

(3) Form 6088, Distributable Benefits from Employee Pension Benefit Plans, is filed (as applicable) in addition to Form 5310 or 5300 by a sponsor or plan administrator of a qualified defined benefit plan or a qualified underfunded defined contribution plan that files an application for a determination letter regarding plan termination. For collectively bargained qualified plans, a Form 6088 is required only if the plan benefits employees who are not collectively bargained employees within the meaning of § 1.410(b)-6(d). A separate Form 6088 is required for each employer employing such employees. See the instructions for Form 6088 for information required to be submitted along with the form, including a statement explaining how plan present values were determined.

(4) Form 5310-A, Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities – Notice of Qualified Separate Lines of Business, if required, generally must be filed not later than 30 days before a merger, consolidation, or transfer of assets and liabilities. The filing of Form 5310-A will not result in the issuance of a determination letter.

(5) Form 8717, User Fee for Employee Plan Determination Letter Request (and the payment confirmation from [www.pay.gov](http://www.pay.gov) as described in section 10.07 of this revenue procedure, if applicable). For electronic submissions on Form 5310 or Form 5300, [www.pay.gov](http://www.pay.gov) should be utilized for payment. See section 6 of this revenue procedure.

(6) Form 2848, Power of Attorney and Declaration of Representative. If applicable, submit Form 8821, Tax Information Authorization.

(7) Schedule SB (Form 5500), Single-Employer Defined Benefit Plan Actuarial Information, for defined benefit plans.

#### Supplemental information

.03 The application for a determination letter involving plan termination must also include any supplemental information or schedules required by the forms or form instructions. For example, the application must include copies of all records of actions taken to terminate the plan (such as a resolution of the board of directors) and a schedule providing certain information regarding employees who separated from vesting service with less than 100% vesting.

In cases involving the termination of plans that contain a § 401(h) feature, a cover letter must accompany the submission, and it must reference the § 401(h) feature to clarify that this feature is part of the termination application. The cover letter must specifically state the location of plan provisions that relate to the § 401(h) feature.

In the case of the termination of a multiemployer plan, there must be a cover letter accompanying the submission that specifies that it is an application for a termination of a multiemployer plan.

**Compliance with Title IV of ERISA**

.04 In the case of plans subject to Title IV of ERISA, a favorable determination letter issued in connection with a plan's termination is conditioned on approval that the termination is a valid termination under Title IV of ERISA. Notification by the PBGC that a plan may not be terminated will be treated as a material change of fact.

**Termination prior to time for amending for change in law**

.05 A plan that terminates after the effective date of a change in law, but prior to the date that amendments related to the change in law are otherwise required, must be amended to comply with the applicable provisions of law from the date on which such provisions become effective with respect to the plan. Because such a terminated plan would no longer be in existence by the required amendment date and therefore could not be amended on that date, such plan must be amended in connection with the plan termination to comply with those provisions of law that become effective with respect to the plan on or before the date of plan termination. Such amendments include any amendments made after the date of plan termination that were required in order to obtain a favorable determination letter. In addition, annuity contracts distributed from such terminated plans must meet all the applicable provisions of any change in law. See section 7 of Rev. Proc. 2022-40.

An application is deemed to be filed in connection with plan termination if it is filed no later than the later of (i) one year after the effective date of the termination, or (ii) one year after the date on which the action terminating the plan is adopted. However, in no event may the application be filed later than 12 months from the date of distribution of substantially all plan assets in connection with the termination of the plan.

**Restatement not required for terminating plan**

.06 An applicant for a terminating plan is encouraged to submit a restatement when applying for a determination letter; however, a restatement for a terminating plan generally is not required.

**SECTION 16. WHAT ARE THE DETERMINATION LETTER FILING PROCEDURES FOR GROUP TRUSTS?**

**Scope**

.01 This section provides special procedures for requesting a determination letter on the status of a group trust under Rev. Rul. 81-100, as clarified and modified by Rev. Rul. 2004-67, Rev. Rul. 2011-1, Notice 2012-6, Rev. Rul. 2014-24, and section 336(e) of the Protecting Americans from Tax Hikes Act of 2015, Division Q of Consolidated Appropriations Act, 2016, Pub. L. 114-113 (PATH Act).

**Required information**

.02 Beginning June 1, 2023, applicants may submit the Form 5316 application electronically through [www.pay.gov](http://www.pay.gov). Beginning July 1, 2023, applicants must submit the Form 5316 application electronically on [www.pay.gov](http://www.pay.gov) and may not submit any documents on paper, including the Form 8717. Any Form 5316 application submitted on paper after June 30, 2023, will be returned to the applicant, including any paper checks. Note: When utilizing [www.pay.gov](http://www.pay.gov), if an applicant receives an email that the payment was dishonored, the applicant must resubmit the application package along with the new user fee. When resubmitting, include the email received regarding the dishonored payment with the submission package. Do not use Form 8717 to submit the user fee.

A request for a determination letter with respect to a group trust is made by submitting a Form 5316, Application for Group or Pooled Trust Ruling, demonstrating how the group trust satisfies the criteria listed in Rev. Rul. 2011-1, together with the trust instrument and related documents.

Rev. Rul. 2004-67 extends the ability to participate in group trusts to eligible governmental plans under § 457(b) and clarifies the ability of certain individual retirement accounts under § 408 to participate. Rev. Rul. 2011-1 extends the ability to participate in group trusts to custodial accounts under § 403(b)(7), retirement income accounts under § 403(b)(9), and governmental retiree benefit plans under § 401(a)(24). There are two model amendments in Rev. Rul. 2011-1. Amendment 1 is for a group trust that received a determination letter from EP Determinations prior to January 10, 2011, that the group trust satisfies Rev. Rul. 81-100, but that does not satisfy the separate account requirement of paragraph (6) of the holding of Rev. Rul. 2011-1. Amendment 2 is for a group trust that received a determination letter from EP Determinations prior to January 10, 2011, that the group trust satisfies Rev. Rul. 81-100, as modified by Rev. Rul. 2004-67, and that intends to permit custodial accounts under § 403(b)(7), retirement income accounts under § 403(b)(9), or § 401(a)(24) governmental retiree benefit plans to participate in the group trust. Rev. Rul. 2014-24 extends the ability to participate in a group trust to certain retirement plans qualified only under the Puerto Rico Code, and clarifies that assets held by certain separate accounts maintained by insurance companies may be invested in group trusts that satisfy Rev. Rul. 81-100. Section 336(e) of the PATH Act modifies the rules for investment by certain church plan entities in a group trust.

## Required forms

.03

(1) Form 8717, User Fee for Employee Plan Determination Letter Request (for paper submissions only). For electronic submissions, [www.pay.gov](http://www.pay.gov) will require the user fee and documents to be submitted electronically at the time the form is being submitted. For document requirements, “See ‘What to File’ in the Instructions to Form 5316 for a list of what to include in the submission, [www.irs.gov/pub/irs-pdf/f5316.pdf](http://www.irs.gov/pub/irs-pdf/f5316.pdf).”

(2) Form 2848, Power of Attorney and Declaration of Representative. If applicable, submit Form 8821, Tax Information Authorization.

(3) Form 5316, Application for Group or Pooled Trust Ruling, including a copy of the Procedural Requirements Checklist.

## SECTION 17. WHAT ARE THE PROCEDURES FOR FILING A REQUEST FOR A DETERMINATION OF LEASED EMPLOYEE STATUS (QUALIFIED PLANS ONLY)?

### Scope

.01 This section provides procedures for determination letter requests on whether an employee is a leased employee and is deemed to be an employee of the recipient employer for qualification purposes under § 414(n). With respect to an individually designed qualified plan, an applicant may include in its request for a determination letter a request on whether an employee is a leased employee and is deemed to be an employee of the recipient employer for qualification purposes under § 414(n) only if the plan is otherwise eligible to be submitted for a determination letter pursuant to section 11.01 of this revenue procedure.

### Employer must request the determination under § 414(n)

.02 Generally, a determination letter will indicate whether an employee is a leased employee and is deemed to be an employee of the recipient employer under § 414(n) only if the employer requests such determination and submits with the determination letter application the information specified in section 17.06 of this revenue procedure.



<b>Forms</b>	.03 Form 5300, Application for Determination of Employee Benefit Plan, is submitted for a request for a determination letter that includes a request on leased employee status. Form 5307, Application for Determination for Adopters of Modified Nonstandardized Pre-Approved Plans, cannot be used for this purpose. In addition to the Form 5300, there must be a cover letter accompanying the submission, specifying that it is an application for determination of leased employee status.
<b>Employer is responsible for determining continuing status under § 414(n)</b>	.04 A determination letter on leased employee status under § 414(n) is based solely on the facts submitted at the time of the application. An employer that is the recipient of services of leased employees within the meaning of § 414(n) is responsible for determining, at any other time, whether it meets the requirements of § 401(a), and if a leased employee is deemed to be an employee of the recipient for qualified plan purposes.
<b>Pre-approved plans</b>	.05 An employer that has adopted a pre-approved plan and that is otherwise eligible to submit a determination letter request pursuant to section 12.03 of this revenue procedure may request a determination with respect to § 414(n). The employer must submit with Form 5300 the information required by section 17.06 of this revenue procedure and any other materials necessary for EP Determinations to make a determination. If an employer that has adopted a pre-approved plan requests a determination regarding leased employees, the plan will be reviewed on the basis of the Cumulative List that was used to review the underlying pre-approved plan.
<b>Required information for § 414(n) determination</b>	<p>.06 A determination letter will be issued with respect to § 414(n) only if the employer requests and is otherwise eligible to receive such a determination, and the application includes:</p> <ul style="list-style-type: none"> <li>(1) A description of the nature of the business of the recipient organization;</li> <li>(2) A copy of the relevant leasing agreement(s);</li> <li>(3) A description of the function of all leased employees within the trade or business of the recipient organization (including data as to whether all leased employees are performing services on a substantially full-time basis);</li> <li>(4) A description of facts and circumstances relevant to a determination of whether such leased employees' services are performed under primary direction or control by the recipient organization (including whether the leased employees are required to comply with instructions of the recipient about when, where, and how to perform the services, whether the services must be performed by particular persons, whether the leased employees are subject to the supervision of the recipient, and whether the leased employees must perform services in the order or sequence set by the recipient); and</li> <li>(5) If the recipient organization is relying on any qualified plan(s) maintained by the employee leasing organization for purposes of qualification of the recipient organization's plan, a description of such plan(s) (including a description of the contributions or benefits provided for all leased employees that are attributable to services performed for the recipient organization, plan eligibility, and vesting).</li> </ul>

**SECTION 18. WHAT ARE THE PROCEDURES FOR REQUESTING § 401(h) AND § 420 DETERMINATION LETTERS?**

## Scope

.01 This section provides procedures for requesting determination letters (i) with respect to whether the requirements of § 401(h) are satisfied in a plan with retiree medical benefit features, and (ii) on plan language that permits, pursuant to § 420, the transfer of assets in a defined benefit plan to a health benefit account described in § 401(h) or to an applicable life insurance account in the plan.

## Required information for § 401(h) determination

.02 EP Determinations will issue a determination letter that considers whether the requirements of § 401(h) are satisfied in a plan with retiree medical benefit features only if the plan sponsor requests such a determination, the plan sponsor is otherwise eligible to apply for a determination letter, and the plan sponsor's application includes (in addition to the application forms and any other material required by this revenue procedure) a cover letter that requests consideration of § 401(h). The cover letter must specifically state that consideration is being requested with regard to § 401(h) in addition to other matters under § 401(a) and must specifically state the location of plan provisions that satisfy the requirements of § 401(h) (Part I of the checklist in Appendix C of this revenue procedure must be used to identify the location of relevant plan provisions).

## Required information for § 420 determination

.03 EP Determinations will consider the qualified status of certain plan language designed to comply with § 420 only if the plan sponsor requests such consideration with Form 5300, Application for Determination of Employee Benefit Plan. The cover letter must specifically state (i) whether consideration is being requested only with regard to § 420, or (ii) whether consideration is being requested with regard to § 420 in addition to other matters under § 401(a) (if consideration of other matters under § 401(a) is being requested, the application forms and other materials required by this revenue procedure must also be submitted). The cover letter must specifically state the location of plan provisions that satisfy each of the following requirements (Parts I and II of the checklist in Appendix C of this revenue procedure must be used to identify the location of relevant plan provisions).

- (1) The plan must include a health benefits account as described in § 401(h).
- (2) The plan must provide that transfers shall be limited to transfers of "excess assets" as defined in § 420(e)(2).
- (3) The plan must provide that only one transfer may be made in a taxable year. However, if there is a transfer from a defined benefit plan to both a health benefits account and to an applicable life insurance account in the same taxable year, both transfers are treated as one transfer.
- (4) The plan must provide that the amount transferred will not exceed the amount that is reasonably estimated to be the amount the employer will pay out (whether directly or through reimbursement) of the health benefit account and applicable life insurance account during the taxable year of the transfer for "qualified current retiree liabilities," as defined in § 420(e)(1).
- (5) The plan must provide that no transfer will be made after December 31, 2025.
- (6) The plan must provide that any assets transferred, and any income allocable to such assets, will be used only to pay qualified current retiree health liabilities for the taxable year of transfer.
- (7) The plan must provide that any amounts transferred to a health benefits account (and income attributable to such amounts) or an applicable life insurance account that are not used to pay qualified current retiree health liabilities will be transferred back to the defined benefit portion of the plan.

(8) The plan must provide that the amounts paid out of a health benefits account will be treated as paid first out of transferred assets and income attributable to those assets.

(9) The plan must provide that the accrued pension benefits for participants and beneficiaries must become nonforfeitable as if the plan had terminated immediately prior to the transfer (or in the case of a participant who separated during the 1-year period ending on the date of transfer immediately before such separation). In the case of a transfer described in § 420(b)(4) that relates to a prior year, the plan must provide that the accrued benefit of a participant who separated from service during the taxable year to which such transfer relates will be recomputed and treated as nonforfeitable immediately before such separation.

(10) The plan must provide that a transfer will be permitted only if each group health plan or arrangement under which health benefits are provided contains provisions satisfying § 420(c)(3). The plan must define “applicable employer cost,” “cost maintenance period,” and “benefit maintenance period,” as applicable, consistent with § 420(c)(3), as amended. The plan may provide that § 420(c)(3) is satisfied separately with respect to individuals eligible for benefits under Title XVIII of the Social Security Act at any time during the taxable year and with respect to individuals not so eligible, and separately for applicable life insurance benefits with respect to individuals 65 or older at any time during the taxable year and with respect to individuals under age 65 during the taxable year.

(11) The plan must provide that transferred assets will not be used for key employees (as defined in § 416(i)(1)).

## **PART IIB. INTERESTED PARTY AND INTERESTED PERSON NOTICE AND COMMENT**

### **SECTION 19A. WHAT RIGHTS TO NOTICE AND COMMENT DO INTERESTED PARTIES HAVE (QUALIFIED PLANS ONLY)?**

#### **Rights of interested parties**

.01 Persons who qualify as interested parties under § 1.7476–1(b) with respect to a qualified plan have the following rights:

(1) To receive notice, in accordance with section 20A of this revenue procedure, that an application for an advance determination will be filed regarding the qualification of plans described in §§ 401, 403(a), 409, and/or 4975(e)(7);

(2) To submit written comments with respect to the qualification for such plans to the Service;

(3) To request the DOL to submit a comment to the Service on behalf of the interested parties; and

(4) To submit written comments to the Service on matters with respect to which the DOL was requested to comment but declined.

#### **Comments by interested parties**

.02 Comments submitted by interested parties must be received by EP Determinations by the 45th day after the day on which the application for determination is received by EP Determinations

(however, see sections 19A.03 and 19A.04 of this revenue procedure for filing deadlines in cases in which the DOL has been requested to comment). Such comments must be in writing and signed by the interested parties or by an authorized representative of such parties (as provided in section 6.02(11) of this revenue procedure), and addressed to:

- Internal Revenue Service
- EP Determinations
- Attn: Customer Service Manager
- P.O. Box 2508
- Cincinnati, OH 45202

Comments must contain the following information:

- (1) The names of the interested parties making the comments;
- (2) The name and taxpayer identification number of the applicant for a determination;
- (3) The name of the plan, the plan identification number, and the name of the plan administrator;
- (4) Whether the parties submitting the comment are:
  - (a) Employees eligible to participate under the plan;
  - (b) Employees with accrued benefits under the plan, or former employees with vested benefits under the plan;
  - (c) Beneficiaries of deceased former employees who are eligible to receive or are currently receiving benefits under the plan; or
  - (d) Employees not eligible to participate under the plan;
- (5) The specific matters raised by the interested parties on the question of whether the plan meets the requirements for qualification involving §§ 401 and 403(a), and how such matters relate to the interests of the parties making the comment; and
- (6) The address of the interested party submitting the comment (or if a comment is submitted jointly by more than one party, the name and address of a designated representative) to which all correspondence, including a notice of the Service's final determination with respect to plan's qualification should be sent. (The address designated for notice by the Service will also be used by the DOL in communicating with the parties submitting a request for comment). The designated representative may be one of the interested parties submitting the comment or an authorized representative. If two or more interested parties submit a single comment and one person is not designated in the comment as the representative for receipt of correspondence, a notice of determination mailed to any interested party who submitted the comment shall be notice to all the interested parties who submitted the comment for purposes of § 7476(b)(5).

**Requests for DOL to submit comments**

.03 A request to the DOL to submit to EP Determinations a comment pursuant to section 3001(b)(2) of ERISA must be made in accordance with the following procedures.

(1) The request must be received by the DOL by the 25th day after the day the application for determination is received by EP Determinations. However, if the parties requesting the DOL to submit a comment wish to preserve the right to comment to EP Determinations in the event the DOL declines to comment, the request must be received by the DOL by the 15th day after the day the application for determination is received by EP Determinations.

(2) The request to the DOL to submit a comment to EP Determinations must:

(a) Be in writing;

(b) Be signed as provided in section 19A.02 of this revenue procedure;

(c) Contain the names of the interested parties requesting the DOL to comment and the address of the interested party or designated representative to whom all correspondence with respect to the request should be sent (see also section 19A.02(6) of this revenue procedure);

(d) Contain the information prescribed in section 19A.02(2), (3), (4), (5), and (6) of this revenue procedure;

(e) Indicate that the application was or will be submitted to EP Determinations at the address provided in section 31 of this revenue procedure;

(f) Contain a statement of the specific matters upon which the DOL's comment is sought, as well as how such matters relate to the interested parties making the request; and

(g) Be addressed as follows:

- Deputy Assistant Secretary
- Employee Benefits Security Administration
- U.S. Department of Labor
- 200 Constitution Avenue, N.W.
- Washington, D.C. 20210
- Attention: 3001 Comment Request

**Right to comment if DOL declines to comment**

.04 If a request described in section 19A.03 of this revenue procedure is made and the DOL notifies the interested parties making the request that it declines to comment on a matter concerning qualification of the plan which was raised in the request, the parties submitting the request may still submit a comment to EP Determinations on such matter. The comment must be received by the later of the 45th day after the day the application for determination is received by EP Determinations or the 15th day after the day on which notification is given by the DOL that it declines to submit a comment on such matter (see section 19A.07 of this revenue procedure for the date of notification). In no event may the comment be received later than the 60th day after the day the application for determination was received. Such a comment must comply with

the requirements of section 19A.02 of this revenue procedure and include a statement that the comment is being submitted on matters raised in a request to the DOL upon which the DOL declined to comment.

**Confidentiality of comments**

.05 For rules regarding the confidentiality of contents of written comments submitted by interested parties to the Service pursuant to section 19A.02 or 19A.04 of this revenue procedure, see § 601.201(o)(5) of the Statement of Procedural Rules.

**Availability of comments**

.06 For rules regarding the availability to the applicant of copies of all comments on the application submitted pursuant to section 19A.01(1), (2), (3), and (4) of this revenue procedure, see § 601.201(o)(5) of the Statement of Procedural Rules.

**When comments are deemed made**

.07 An application for an advance determination, a comment to EP Determinations, or, in the case of a request to the DOL, shall be deemed made when it is received by EP Determinations or the DOL, as applicable. Notification by the DOL that it declines to comment shall be deemed given when it is received by the interested party or designated representative. The notice described in section 20A.01 of this revenue procedure shall be deemed given when it is posted or sent to the person in the manner described in § 1.7476-2. In the case of an application, comment, request, notification, or notice that is sent by mail or a private delivery service that has been designated under § 7502(f), the date as of which it shall be deemed received will be determined under § 7502. However, if such an application, comment, request, notification, or notice is not received within a reasonable period from the date determined under § 7502, the immediately preceding sentence will not apply.

**SECTION 19B.  
WHAT NOTICE  
REQUIREMENTS  
APPLY TO INTERESTED  
PERSONS (§ 403(b)  
PLANS ONLY)?**

**Requirement to notify  
interested persons**

.01 Interested persons must receive notice, in accordance with section 20B of this revenue procedure, that an application for an advance determination will be filed regarding whether a § 403(b) plan meets the requirements of § 403(b). An interested person with respect to a determination letter application of an ongoing § 403(b) plan is any employee participating in the plan or eligible to participate in the plan. An interested person with respect to a determination letter application of a terminating § 403(b) plan is any participant in the plan or any beneficiary eligible to receive or receiving benefits from the plan.

**Comments by interested  
persons**

.02 Interested persons may submit written comments to the Service with respect to whether a § 403(b) plan meets the requirements of § 403(b). Comments submitted by interested persons must be received by EP Determinations by the 45th day after the day on which the application for determination is received by EP Determinations. Such comments must be in writing and signed by the interested persons or by an authorized representative of such persons (as provided in section 6.02(11) of this revenue procedure), and addressed to:

- Internal Revenue Service
- EP Determinations
- Attn: Customer Service Manager
- P.O. Box 2508
- Cincinnati, OH 45202



Comments must contain the following information:

- (1) The names of the interested persons making the comments;
- (2) The name and taxpayer identification number of the applicant for a determination;
- (3) The name of the plan, the plan identification number, and the name of the plan administrator;
- (4) Whether the persons submitting the comment are:
  - (a) Employees eligible to participate under the plan;
  - (b) Former employees with an account balance under the plan;
  - (c) Beneficiaries of deceased former employees who are eligible to receive or are currently receiving benefits under the plan; or
  - (d) Employees not eligible to participate under the plan;
- (5) The specific matters raised by the interested persons on the question of whether the plan meets the requirements of § 403(b), and how such matters relate to the interests of the persons making the comment; and
- (6) The address of the interested person submitting the comment (or if a comment is submitted jointly by more than one party, the name and address of a designated representative) to which all correspondence, including a notice of the Service's final determination with respect to the plan meeting the requirements of § 403(b) should be sent. The designated representative may be one of the interested persons submitting the comment or an authorized representative. If two or more interested persons submit a single comment and one person is not designated in the comment as the representative for receipt of correspondence, a notice of determination mailed to any interested person who submitted the comment shall be notice to all the interested persons who submitted the comment.

**When comments are deemed made**

.03 An application for an advance determination or a comment to EP Determinations shall be deemed made when it is received by EP Determinations.

**Section 19B is not applicable to plan sponsors of governmental plans**

.04 A plan sponsor of a governmental plan within the meaning of § 414(d) is not required to comply with this section 19B.

**SECTION 20A. WHAT ARE THE GENERAL RULES FOR NOTICE TO INTERESTED PARTIES (QUALIFIED PLANS ONLY)?**

.01

**Notice to interested parties**

(1) Notice that an application for an advance determination regarding the qualification of a plan that is described in § 401, 403(a), 409, or 4975(c)(7) and that is subject to § 410 is to be made must be given to all interested parties in the manner prescribed in § 1.7476-2(c) and in accordance with the requirements of this section. A notice to interested parties is deemed to be provided in a manner that satisfies § 1.7476-2(c) if the notice is delivered using an electronic medium under a system that satisfies the requirements of § 1.401(a)-21.

**Time when notice must be given**

.02 Notice must be given not less than 10 days nor more than 24 days prior to the day the application for a determination is submitted. If an applicant fails to provide the notice in a timely manner, the application will be returned to the applicant. If, however, an application is returned to the applicant for failure to adequately satisfy the notification requirements with respect to a particular group or class of interested parties, the applicant need not cause notice to be given to those groups or classes of interested parties with respect to which the notice requirement was already satisfied merely because, as a result of the resubmission of the application, the time limitations for providing the notice in this subsection would not be met.

**Content of notice**

.03 The notice referred to in section 20A.01 of this revenue procedure must contain the following information:

(1) A brief description identifying the class or classes of interested parties to whom the notice is addressed (e.g., all present employees of the employer, or all present employees eligible to participate);

(2) The name of the plan, the plan identification number, and the name of the plan administrator;

(3) The name and taxpayer identification number of the applicant for a determination;

(4) A statement that an application for a determination as to the qualified status of the plan must be made to EP Determinations at the address provided in section 31 of this revenue procedure, and whether the application relates to an initial determination, determination upon plan termination, or determination upon partial termination;

(5) A description of the class of employees eligible to participate under the plan;

(6) A statement of whether or not EP Determinations has issued a previous determination as to the qualified status of the plan;

(7) A statement that any person to whom the notice is addressed is entitled to submit, or request the DOL to submit, to EP Determinations a comment on the question of whether the plan meets the requirements of § 401 or 403(a); that two or more such persons may join in a single comment or request; and that if such persons, with respect to a qualified plan, request the DOL to submit a comment and the DOL declines to do so with respect to one or more matters raised in the request, the persons may still submit a comment to EP Determinations with respect to the matters on which the DOL declines to comment;

(8) The specific dates by which a comment to EP Determinations or, a request to the DOL must be received in order to preserve the right of comment (see section 19A of this revenue procedure);

(9) The number of interested parties needed in order for the DOL to comment; and

(10) Except to the extent that the additional information required to be made available to interested parties by sections 20A.05 through 20A.09 of this revenue procedure is included in the notice, a description of a reasonable procedure whereby such additional informational material will be available to interested parties (see section 20A.04 of this revenue procedure). A sample notice setting forth the above information in a case in which the additional information required by sections 20A.05 through 20A.09 of this revenue procedure will be made available at places accessible to the interested parties is provided in Appendix B1 to this revenue procedure.

**Procedures for making information available to interested parties**

.04 The procedure referred to in section 20A.03(10) of this revenue procedure, whereby the additional information required by sections 20A.05 through 20A.09 of this revenue procedure will (to the extent not included in the notice) be made available to interested parties, may consist of making such material available for inspection and copying by interested parties at a place or places reasonably accessible to such parties, or supplying such material by using a method of delivery or a combination thereof that is reasonably calculated to ensure that all interested parties will have access to the materials, provided such procedure is immediately available to all interested parties, is designed to supply them with such additional informational material in time for them to pursue their rights within the time period prescribed, and is available until the earlier of: 1) the filing of a pleading commencing a declaratory judgment action under § 7476 with respect to the qualification of the plan; or 2) the 92nd day after the day the notice of final determination is mailed to the applicant. Reasonable charges to interested parties for copying and/or mailing such additional informational material are permissible.

**Information to be made available to interested parties**

.05

Unless provided in the notice, or unless section 20A.06 of this revenue procedure applies, there shall be made available to interested parties under a procedure described in section 20A.04 of this revenue procedure:

(i) An updated copy of the plan and the related trust agreement (if any);

(ii) The application for determination; and

(iii) Any additional documents relating to the application which are submitted by or for the applicant to EP Determinations, or furnished by EP Determinations to the applicant.

**Special rules if there are fewer than 26 participants**

.06 If there would be fewer than 26 participants in the plan, as described in the application (including, as participants, former employees with vested benefits under the plan, beneficiaries of deceased former employees currently receiving benefits under the plan, and employees who would be eligible to participate upon making mandatory employee contributions, if any), then in lieu of making the materials described in section 20A.05 of this revenue procedure available to interested parties who are not participants (as described above), there may be made available to such interested parties a document containing the following information:

(1) A description of the plan's requirements respecting eligibility for participation and benefits and the plan's benefit formula;

(2) A description of the provisions providing for nonforfeitable benefits;

(3) A description of the circumstances which may result in ineligibility, or denial or loss of benefits;

(4) A description of the source of financing of the plan and the identity of any organization through which benefits are provided; and

(5) A description of any optional forms of benefits described in § 411(d)(6) that have been reduced or eliminated by plan amendment.

However, once an interested party or designated representative receives a notice of final determination, the applicant must, upon request, make available to such interested party (whether or not the plan has fewer than 26 participants) an updated copy of the plan and related trust agreement (if any) and the application for determination.

**Information described in § 6104(a)(1)(D) should not be included**

.07 Information of the type described in § 6104(a)(1)(D) should not be included in the application, plan, or related trust agreement submitted to EP Determinations. Accordingly, such information should not be included in any of the materials required by section 20A.05 or 20A.06 of this revenue procedure to be made available to interested parties.

**Availability of additional information to interested parties**

.08 Unless provided in the notice, there shall be made available to interested parties under a procedure described in section 20A.04 of this revenue procedure any additional documents relating to the application which are submitted by or for the applicant to EP Determinations, or furnished by EP Determinations to the applicant; provided, however, if there would be fewer than 26 participants in the plan as described in the application (including, as participants, former employees with vested benefits under the plan, beneficiaries of deceased former employees currently receiving benefits under the plan, and employees who would be eligible to participate upon making mandatory employee contributions, if any), such additional documents need not be made available to interested parties who are not participants (as described above) until they, or their designated representative, receive a notice of final determination. The applicant may also withhold from such inspection and copying any information described in § 6104(a)(1)(C) and (D) which may be contained in such additional documents.

**Availability of notice to interested parties**

.09 Unless provided in the notice, there shall be made available to all interested parties under a procedure described in section 20A.04 of this revenue procedure the material described in sections 19A.02 through 19A.07 of this revenue procedure, as applicable.

**SECTION 20B. WHAT ARE THE GENERAL RULES FOR NOTICE TO INTERESTED PERSONS (§ 403(b) PLANS ONLY)?**

**Notice to interested persons**

.01 Notice that an application for an advance determination regarding whether a § 403(b) plan satisfies the requirements of § 403(b) must be given to all interested persons in accordance with the requirements of this section.

The notice described in this section 20B.01 shall be deemed given when it is posted or sent to the person by any method reasonably calculated to ensure that each interested person is notified of the application for a determination. If the notice to interested persons is delivered using an electronic medium under an electronic system that satisfies the applicable notice requirements of § 1.401(a)-21, the notice is deemed to be provided in a manner that satisfies the requirements of this section 20B.01.

**Time when notice must be given**

.02 Notice must be given not less than 10 days nor more than 24 days prior to the day the application for a determination is submitted. If an applicant fails to provide the notice in a timely

manner, the application will be returned to the applicant. If, however, an application is returned to the applicant for failure to adequately satisfy the notification requirements with respect to a particular group or class of interested persons, the applicant need not cause notice to be given to those groups or classes of interested persons with respect to which the notice requirement was already satisfied merely because, as a result of the resubmission of the application, the time limitations for providing the notice in this subsection would not be met.

#### **Content of notice**

.03 The notice referred to in section 20B.01 of this revenue procedure must contain the following information (a sample notice is provided in Appendix B2 to this revenue procedure):

- (1) A brief description identifying the class or classes of interested persons to whom the notice is addressed;
- (2) The name of the plan, the plan identification number, and the name of the plan administrator;
- (3) The name and taxpayer identification number of the applicant for a determination;
- (4) A statement that an application for a determination as to whether the plan meets the requirements of § 403(b) has been made to EP Determinations at the address provided in section 31 of this revenue procedure, and whether the application relates to an initial determination or determination upon plan termination;
- (5) A description of the class of employees eligible to participate under the plan;
- (6) A statement of whether or not EP Determinations has issued a previous determination as to the whether the plan has satisfied the requirements of § 403(b);
- (7) A statement that any person to whom the notice is addressed is entitled to submit, to EP Determinations, a comment on the question of whether the plan meets the requirements of § 403(b); and that two or more such persons may join in a single comment or request;
- (8) The specific dates by which a comment to EP Determinations must be received in order to preserve the right of comment (see section 19B.02 of this revenue procedure); and
- (9) A description of where the additional information required by section 20B.04 of this revenue procedure will be made available at places accessible to the interested persons.

#### **Information to be made available to interested persons**

.04 Interested persons may request the following information from the plan sponsor:

- (1) An updated copy of the plan and custodial agreement or annuity contract; and
- (2) The application for determination.

Reasonable charges to interested persons for copying and/or mailing such informational materials are permissible.

#### **Information described in § 6110(c) should not be included**

.05 Information of the type described in § 6110(c) should not be included in the application, plan, or custodial agreement or annuity contract submitted to EP Determinations. Accordingly,

such information should not be included in any of the materials required by section 20B.03 or 20B.04 of this revenue procedure to be made available to interested persons.

**Section 20B is not applicable to plan sponsors of governmental plans**

.06 A plan sponsor of a governmental plan within the meaning of § 414(d) is not required to comply with this section 20B.

**PART IIC. PROCESSING DETERMINATION LETTER REQUESTS**

**SECTION 21. HOW DOES EMPLOYEE PLANS RULINGS AND AGREEMENTS HANDLE DETERMINATION LETTER REQUESTS?**

**Oral advice**

**.01 Oral advice**

(1) EP Determinations does not issue determination letters on oral requests. However, personnel in EP Determinations ordinarily will discuss with taxpayers or their representatives inquiries regarding substantive tax issues, whether EP Determinations will issue a determination letter on particular issues, and questions relating to procedural matters about submitting determination letter requests. Any discussion of substantive issues will be at the discretion of EP Determinations on a time-available basis, will not be binding on the Service, and cannot be relied upon as a basis of obtaining retroactive relief under the provisions of § 7805(b). A taxpayer may seek oral technical assistance from a taxpayer Service representative when preparing a return or report, under established procedures. Oral advice is advisory only, and the Service is not bound to recognize it in the examination of the taxpayer's return.

(2) The advice or assistance furnished, whether requested by personal appearance, telephone, or correspondence will be limited to general procedures, or will direct the inquirer to source material, such as pertinent Code provisions, regulations, revenue procedures, and revenue rulings that may aid the inquirer in resolving the question or problem.

**Conferences**

.02 EP Determinations may grant a pre-submission conference upon written request from a taxpayer or the taxpayer's representative, provided the request shows that a substantive plan, or amendment or other relevant documents have been developed for submission to the Service, but that special problems or issues are involved, and EP Determinations concludes that a conference would be warranted in the interest of facilitating review and determination when the application is formally submitted. Statements made by EP Determinations at a pre-submission conference will not be binding on the Service, and cannot be relied upon as a basis of obtaining retroactive relief under the provisions of § 7805(b). See section 10.16 of this revenue procedure regarding the right to a status conference on applications pending for at least 270 days.

**Determination letter based solely on administrative record (qualified plans only)**

**.03 Administrative record**

(1) In the case of a request for a determination letter, the determination of EP Determinations or the Independent Office of Appeals on the qualification or non-qualification of the retirement plan shall be based solely upon the facts contained in the administrative record. The administrative record shall consist of the following:



(a) The request for determination, the retirement plan and any related trust instruments, and any written modifications or amendments made by the applicant during the proceedings within the Service;

(b) All other documents submitted to the Service by, or on behalf of, the applicant with respect to the request for determination;

(c) All written correspondence between the Service and the applicant with respect to the request for determination, and any other documents issued to the applicant from the Service;

(d) All written comments submitted to the Service pursuant to sections 19A.01(2), (3), and (4) this revenue procedure, and all correspondence relating to comments submitted between the Service and persons (including the PBGC and the DOL) submitting comments pursuant to sections 19A.01(2), (3), and (4) of this revenue procedure; and

(e) In any case in which the Service makes an investigation regarding the facts as represented or alleged by the applicant in the request for determination or in comments submitted pursuant to this revenue procedure, a copy of the official report of such investigation.

(2) The administrative record shall be closed upon the earlier of the following events:

(a) The date of mailing of a notice of final determination by the Service with respect to the application for determination; or

(b) The filing of a petition with the United States Tax Court seeking a declaratory judgment with respect to the qualified status of a retirement plan under § 401(a) or § 403(a).

(3) Any oral representation or modification of the facts as represented or alleged in the application for determination or in a comment filed by an interested party, which is not reduced to writing, shall not become a part of the administrative record and shall not be taken into account in the determination of the qualified status of the retirement plan by EP Determinations or the Independent Office of Appeals.

#### **Notice of final determination**

.04 In the case of final determination, the notice of final determination shall be one of the following:

(1) The letter issued by EP Determinations or the Independent Office of Appeals which states that the applicant's plan satisfies the qualification requirements of the Code, or, in the case of a § 403(b) plan, meets the requirements of § 403(b). The favorable determination letter will be sent by certified mail in situations in which an interested party, the DOL, or the PBGC has commented on the application for determination.

(2) The letter issued, by certified mail, by EP Determinations or the Independent Office of Appeals subsequent to a letter of proposed determination, stating that the applicant's plan fails to satisfy the qualification requirements of the Code or, in the case of a § 403(b) plan, fails to satisfy the requirements of § 403(b).

#### **Issuance of the notice of final determination (qualified plans only)**

.05 EP Determinations or the Independent Office of Appeals will send the notice of final determination to the applicant, to the interested parties who have previously submitted comments on the application to the Service (or to the persons designated by them to receive such notice), to

the DOL if the DOL has submitted a comment, and to the PBGC, if the PBGC has submitted a comment.

## **SECTION 22. WHAT ARE THE STEPS FOR EXHAUSTING ADMINISTRATIVE REMEDIES (QUALIFIED PLANS ONLY)?**

### **In general**

.01 For purposes of § 7476(b)(3), a petitioner is deemed to have exhausted the administrative remedies available within the Service upon the completion of the steps described in section 22.02, 22.03, 22.04, or 22.05 of this revenue procedure subject, however, to sections 20A.06 and 20A.07 of this revenue procedure. If applicants, interested parties, or the PBGC do not complete the applicable steps described below, they will not have exhausted their respective available administrative remedies as required by § 7476(b)(3) and will, thus, be precluded from seeking declaratory judgment under § 7476 except to the extent that section 22.05 of this revenue procedure applies.

### **Steps for exhausting administrative remedies**

.02 In the case of an applicant, with respect to any matter relating to the qualification of a plan, the steps referred to in section 22.01 of this revenue procedure are:

- (1) Filing a completed application with EP Determinations pursuant to this revenue procedure;
- (2) Complying with the requirements pertaining to notice to interested parties as set forth in this revenue procedure and § 1.7476–2; and,
- (3) Appealing to the Independent Office of Appeals pursuant to § 601.201(o)(6) of the Statement of Procedural Rules, in the event a notice of proposed adverse determination is issued by EP Determinations.

### **Applicant's request for § 7805(b) relief**

.03 In order for a petitioner to be deemed to have exhausted administrative remedies within the Service with respect to § 7805(b), an applicant must submit a request for relief under § 7805(b) to the agent or specialist assigned to the case in accordance with the procedures in section 23.08 of this revenue procedure.

### **Interested parties**

.04 In the case of an interested party or the PBGC, the steps referred to in section 22.01 of this revenue procedure are, with respect to any matter relating to the qualification of the plan, submitting to EP Determinations a comment raising such matter in accordance with section 19A.01(2) of this revenue procedure, or requesting the DOL to submit to EP Determinations a comment with respect to such matter in accordance with section 19A.01(3) of this revenue procedure and, if the DOL declines to comment, submitting the comment in accordance with section 19A.01(4) of this revenue procedure, so that it may be considered by EP Determinations through the administrative process.

### **Deemed exhaustion of administrative remedies**

.05 An applicant, an interested party, or the PBGC will not be deemed to have exhausted administrative remedies prior to the earlier of:

- (1) The completion of those steps applicable to each as set forth in section 22.01, 22.02, 22.03, or 22.04 of this revenue procedure, which constitute their administrative remedies; or

(2) The expiration of the 270-day period described in § 7476(b)(3), which period shall be extended in a case in which there has not been a completion of all the steps referred to in section 22.02 of this revenue procedure, and the Service has proceeded with due diligence in processing the application for determination.

**Service must have reasonable time to act on appeal**

.06 The step described in section 22.02(3) of this revenue procedure will not be considered completed until the Service has had a reasonable time to act upon the appeal.

**Service must have reasonable time to act on request for § 7805(b) relief**

.07 If the applicant has requested relief under § 7805(b), the applicant's administrative remedies with respect to the § 7805(b) request will not be considered exhausted unless the procedures for making a § 7805(b) request as set forth in section 23.08 of this revenue procedure have been followed and the Service has had a reasonable time to act upon the request.

**SECTION 23. WHAT EFFECT WILL A DETERMINATION LETTER HAVE?**

**May be relied on subject to limitations**

.01 A taxpayer ordinarily may rely on a determination letter received from EP Determinations subject to the conditions and limitations described in this section.

**Scope of reliance on determination letter**

.02

(1) A determination letter issued pursuant to this revenue procedure contains only the opinion of EP Determinations as to the qualification of the particular plan involving the provisions of §§ 401 and 403(a) and the status of a related trust, if any, under § 501(a) or a plan's meeting the requirements of § 403(b). Such a determination letter is based on the facts and information presented to EP Determinations in connection with the application for the determination letter and may not be relied upon after a change in material fact or the effective date of a change in law, except as provided below. EP Determinations may determine, based on the application form, the extent of review of the plan document. Failure to disclose a material fact or misrepresentation of a material fact adversely affects the reliance that would otherwise be obtained through the issuance by EP Determinations of a favorable determination letter. Similarly, failure to accurately provide any of the information called for on any form required by this revenue procedure may result in no reliance. Applicants are advised to retain copies of all supporting data submitted with their applications. Failure to do so may limit the scope of reliance.

(2) While a favorable determination letter may serve as a basis for determining deductions for employer contributions thereunder, it is not to be taken as an indication that contributions are necessarily deductible as made. This latter determination can be made only upon an examination of the employer's tax return in accordance with the limitations, and subject to the conditions, of § 404.

**Effect of subsequent publication of revenue ruling, etc.**

.03 The prior qualification of a plan as adopted by an employer will not be considered to be adversely affected by the publication of a revenue ruling, a revenue procedure, or an administrative pronouncement within the meaning of § 1.6661-3(b)(2) in cases in which:

(1) The plan was the subject of a favorable determination letter and the request for that letter contained no misstatement or omission of material facts;

(2) The facts subsequently developed are not materially different from the facts on which the determination letter was based;

(3) There has been no change in the applicable law; and

(4) The employer that established the plan acted in good faith in reliance on the determination letter.

However, all such plans must be amended to comply with the published guidance for subsequent years, in accordance with the rules set forth in Rev. Proc. 2022-40.

**Effect of subsequent amendment by employer**

.04 In general, a plan sponsor that maintains a plan for which a favorable determination letter has been issued and that is otherwise entitled to rely on the determination letter may not continue to rely on the determination letter with respect to a plan provision that is subsequently amended or that is subsequently affected by a change in law. However, a plan sponsor may continue to rely on a determination letter with respect to plan provisions that are not amended (or affected by an amendment) and plan provisions that are not affected by a change in qualification requirements or § 403(b) requirements. In addition, a plan sponsor that adopts a sample or model amendment issued by the Service on a word-for-word basis (or adopts an amendment that is substantially similar to a sample or model amendment in all material respects) may continue to rely on a previously issued determination letter.

An adopting employer of a pre-approved plan amending any provision of a pre-approved plan, including its adoption agreement (other than certain amendments that will not cause a plan to fail to be identical to a pre-approved plan, as described in section 8.03 of Rev. Proc. 2017-41 and section 9.05 of Rev. Proc. 2021-37), will lose reliance on the opinion letter.

**Revocation or modification of a determination letter**

.05 If the Director, Employee Plans reaches a conclusion contrary to that expressed in a determination letter, he or she has the authority to revoke or modify a determination letter in any manner.

**Determination letter revoked or modified based on material change in facts applied retroactively**

.06 The revocation or modification of a determination letter will be applied retroactively to the taxpayer for whom the determination letter was issued or to a taxpayer whose tax liability was directly involved in the determination letter if—

(1) there was a misstatement or omission of controlling facts;

(2) the facts at the time of the transaction are materially different from the controlling facts on which the determination letter was based; or

(3) the transaction involves a continuing action or series of actions and the controlling facts change during the course of the transaction.

**Not otherwise generally revoked or modified retroactively**

.07 If the revocation or modification of a determination letter occurs, for reasons other than a change in facts as described in section 23.06 of this revenue procedure, the revocation or modification will generally not be applied retroactively to the taxpayer for whom the determination letter was issued or to a taxpayer whose tax liability was directly involved in the determination letter provided that—

(1) there was no change in the applicable law;

(2) the determination letter was originally issued for a proposed transaction; and

(3) the taxpayer directly involved in the determination letter acted in good faith in relying on the determination letter, and revoking or modifying the determination letter retroactively would be to the taxpayer's detriment.

**Taxpayer may request that retroactive effect of revocation or modification be limited under § 7805(b)**

.08 A taxpayer may seek relief from retroactive revocation or modification of a determination letter under § 7805(b). A request for relief under § 7805(b) must be in writing and must be submitted to the agent or specialist assigned to the case. The request for relief under § 7805(b) must be submitted before issuance of the final adverse determination letter.

(1) **Form of request for relief.** A taxpayer's request to limit the retroactive effect of the revocation or modification of the determination letter must--

- (a) state that it is being made under § 7805(b);
- (b) state the relief sought;
- (c) explain the reasons and arguments in support of the relief sought; and
- (d) include any documents bearing on the request.

(2) **Notice of denial of request for relief.** If the request for relief under § 7805(b) is denied, the applicant will be notified in writing of the denial.

(3) **Taxpayer must exhaust its administrative remedies.** If a taxpayer seeks declaratory judgment under § 7476 with respect to a qualified plan in response to a retroactive revocation or modification, to preserve judicial review of a claim for relief under § 7805(b), the taxpayer must follow the steps in this revenue procedure in order to have exhausted its administrative remedies with respect to its request under § 7805(b). If the taxpayer does not complete the applicable steps, the taxpayer will not have exhausted its administrative remedies as required by § 7476(b)(3) with respect to its request for § 7805(b) relief, and will thus be precluded from obtaining § 7805(b) relief in any declaratory judgment it seeks under § 7476.

If a taxpayer has requested § 7805(b) relief, the taxpayer's administrative remedies with respect to its § 7805(b) request will not be considered exhausted until the Service has had a reasonable amount of time to act upon the request.

### **PART III. PROCEDURES FOR LETTER RULING REQUESTS**

#### **PART IIIA. REQUESTING LETTER RULINGS**

**SECTION 24.  
UNDER WHAT  
CIRCUMSTANCES  
DOES EMPLOYEE  
PLANS RULINGS AND  
AGREEMENTS ISSUE  
LETTER RULINGS?**

**Scope limited to issues specified**

.01 Employee Plans Rulings and Agreements issues letter rulings on proposed transactions and on completed transactions either before or after the taxpayer's return covering the issue presented in a ruling request is filed. Employee Plans Rulings and Agreements only issues letter rulings involving:

- (1) Section 72 (involving computation of the exclusion ratio only);
- (2) Changes in funding methods (see Rev. Proc. 2017-57, 2017-44 IRB 474) and actuarial assumptions under § 412, 430, 431 or 433;
- (3) Waiver of the liquidity shortfall (as that term is defined in § 430(j)(4)) excise tax under § 4971(f)(4);
- (4) Waiver of the 60-day rollover requirement under §§ 402(c)(3) and 408(d)(3) (see Rev. Proc. 2003-16, 2003-4 IRB 359, as modified by Rev. Proc. 2016-47, 2016-37 IRB 37, and by Rev. Proc. 2020-46, 2020-45 IRB 995);
- (5) A change in the plan year of an employee retirement plan and the trust year of a tax-exempt employees' trust (see Rev. Proc. 87-27, 1987-1 CB 769);
- (6) The tax consequences of prohibited transactions under §§ 503 and 4975;
- (7) Whether individual retirement accounts established by employers or associations of employees meet the requirements of § 408(c) (see Rev. Proc. 87-50; Rev. Proc. 92-38; Rev. Proc. 98-59; Rev. Proc. 2002-10, and Rev. Proc. 2010-48, as modified by Appendix A of this revenue procedure);
- (8) Requests for relief under § 301.9100 to recharacterize contributions to a Roth IRA (see section 24.03 of this revenue procedure with respect to elections under § 301.9100-1);
- (9) Requests by the plan sponsor of a multiemployer pension plan for approval of an extension of an amortization period in accordance with § 431(d), including requests in connection with an extension of an amortization period involving whether a plan amendment is reasonable and provides for only de minimis increases in plan liabilities in accordance with §§ 401(a)(33) and 412(c)(7)(B)(i) (see Rev. Proc. 2010-52, 2010-52 IRB 927);
- (10) Requests for the return to the employer of certain nondeductible contributions (see Rev. Proc. 90-49, 1990-2 CB 620, as modified by Appendix A of this revenue procedure); or
- (11) Requests for approval of the use of a substitute mortality table in accordance with § 430(h)(3)(C) (see Rev. Proc. 2017-55, 2017-43 IRB 373).

Letter rulings involving other issues relating to qualified plans may be issued by the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). Procedures for requesting letter rulings under the jurisdiction of the Office of Associate Chief Counsel are set forth in Rev. Proc. 2023-1, this Bulletin.



**Generally not in employee plans qualification matters**

.02 The Employee Plans Rulings and Agreements office ordinarily will not issue letter rulings on matters involving a plan's status under §§ 401 through 420 and § 4975(e)(7). These matters are generally handled by EP Determinations pursuant to this revenue procedure and Rev. Proc. 2022-40. Occasionally these matters may be handled by the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). See section 4.02(12) of Rev. Proc. 2023-3, this Bulletin.

**Request to Employee Plans Rulings and Agreements for extension of time for making an election or for other relief under § 301.9100-1**

.03 Employee Plans Rulings and Agreements will consider a request for an extension of time for making an election under § 301.9100-3 to recharacterize annual contributions made to a Roth IRA. Employee Plans Rulings and Agreements will also consider recharacterization requests under § 301.9100-3 that relate to a conversion or rollover contribution to a Roth IRA but only if the rollover or conversion was made prior to January 1, 2018.

With respect to recharacterization of a Roth IRA, Employee Plans Rulings and Agreements will consider a request for an extension of time for making an election or other application for relief under § 301.9100-1 even if submitted after the return covering the issue presented in the § 301.9100-1 request has been filed and even if submitted after an examination of the return has begun or after the issues in the return are being considered by the Independent Office of Appeals or a federal court. In such a case, Employee Plans Rulings and Agreements will notify the Director, Small Business/Self-Employed (SB/SE) Examinations.

Section 301.9100-1 requests, even those submitted after the examination of the taxpayer's return has begun, are letter ruling requests that should be submitted pursuant to this revenue procedure, including payment of the applicable user fee referenced in section 6.02(15) of this revenue procedure. In addition, the taxpayer must include the information required by § 301.9100-3(e).

However, an election made pursuant to § 301.9100-2 is not a letter ruling and does not require payment of any user fee. See § 301.9100-2(d). Such an election pertains to an automatic extension of time under § 301.9100-1.

**Issuance of a letter ruling before the issuance of a regulation or other published guidance**

.04 Unless the issue is covered by section 25 of this revenue procedure, a letter ruling may be issued before the issuance of a temporary or final regulation or other published guidance that interprets the provisions of any act under the following conditions:

**(1) Answer is clear or is reasonably certain.** If the letter ruling request presents an issue for which the answer seems clear by applying the statute to the facts or for which the answer seems reasonably certain but not entirely free from doubt, a letter ruling will be issued; or

**(2) Answer is not reasonably certain.** If the letter ruling request presents an issue for which the answer does not seem reasonably certain, Employee Plans Rulings and Agreements may issue the letter ruling, using its best efforts to arrive at a determination, if it is in the best interest of tax administration. Under these circumstances, coordination with the Office of Chief Counsel generally will be required.

However, a letter ruling will not be issued if the letter ruling request presents an issue that cannot be readily resolved before a regulation or any other published guidance is issued.

**Issues in prior return**

.05 Employee Plans Rulings and Agreements ordinarily does not issue letter rulings if, at the time the ruling is requested, the identical issue is involved in the taxpayer's return for an earlier period, and that issue:

- (1) is being examined by the Director, Employee Plans Examinations;
- (2) is being considered by the Independent Office of Appeals;
- (3) is pending in litigation in a case involving the taxpayer or related taxpayer; or
- (4) has been examined by the Director, Employee Plans Examinations, or considered by the Independent Office of Appeals, and the statutory period of limitation has not expired for either assessment or filing a claim for a refund or a closing agreement covering the issue of liability has not been entered into by the Director, Employee Plans Rulings and Agreements, or by the Independent Office of Appeals.

If a return dealing with an issue for a particular year is filed while a request for a ruling on that issue is pending, Employee Plans Rulings and Agreements will issue the ruling unless it is notified by the taxpayer or otherwise learns that an examination of that issue or the identical issue on an earlier year's return has been started by the Director, Employee Plans Examinations. See section 6.05 of this revenue procedure. However, even if an examination has begun, Employee Plans Rulings and Agreements ordinarily will issue the letter ruling if the Director, Employee Plans Examinations, agrees, by memorandum, to permit the ruling to be issued.

**Generally not to business associations or groups**

.06 Employee Plans Rulings and Agreements does not issue letter rulings to business, trade, or industrial associations or to similar groups concerning the application of the tax laws to members of the group. Employee Plans Rulings and Agreements, however, may issue letter rulings to groups or associations on their own tax status or liability if the request meets the requirements of this revenue procedure.

**Generally not to foreign governments**

.07 Employee Plans Rulings and Agreements does not issue letter rulings to foreign governments or their political subdivisions about the U.S. tax effects of their laws. However, Employee Plans Rulings and Agreements may issue letter rulings to foreign governments or their political subdivisions on their own tax status or liability under U.S. law if the request meets the requirements of this revenue procedure.

**Generally not on federal tax consequences of proposed legislation**

.08 Employee Plans Rulings and Agreements does not issue letter rulings on a matter involving the federal tax consequences of any proposed federal, state, local, municipal, or foreign legislation.

**SECTION 25.  
UNDER WHAT  
CIRCUMSTANCES  
DOES EMPLOYEE  
PLANS RULINGS AND  
AGREEMENTS HAVE  
DISCRETION TO ISSUE  
LETTER RULINGS?**

**Ordinarily not in certain areas because of factual nature of the problem**

.01 Employee Plans Rulings and Agreements ordinarily will not issue a letter ruling in certain areas because of the factual nature of the problem involved or because of other reasons. Employee Plans Rulings and Agreements may decline to issue a letter ruling if appropriate in the interest of sound tax administration, including due to resource constraints, or on other grounds whenever warranted by the facts or circumstances of a particular case.

<b>No “comfort” letter rulings</b>	.02 No letter ruling will be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decision of a court of appropriate jurisdiction, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin.
<b>Not on alternative plans or hypothetical situations</b>	.03 A letter ruling will not be issued on alternative plans of proposed transactions or on hypothetical situations.
<b>Ordinarily not on part of an integrated transaction</b>	.04 Employee Plans Rulings and Agreements ordinarily will not issue a letter ruling on only part of an integrated transaction. If, however, a part of a transaction falls under a no-rule area, a letter ruling on other parts of the transaction may be issued. In this case, before preparing the letter ruling request, the taxpayer should call the office having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether Employee Plans Rulings and Agreements will issue a letter ruling on part of the transaction.
<b>Not on partial terminations of employee plans</b>	.05 Employee Plans Rulings and Agreements will not issue a letter ruling on the partial termination of an employee plan. However, determination letters involving the partial termination of an employee plan may be issued. See section 9.09 of this revenue procedure.
<b>Law requires a letter ruling</b>	.06 Employee Plans Rulings and Agreements will issue a letter ruling on prospective or future transactions if the law or regulations require a determination of the effect of a proposed transaction for tax purposes.
<b>Issues under consideration by the PBGC or the DOL</b>	.07 A letter ruling relating to an issue that is being considered by the PBGC or the DOL, that involves the same taxpayer, shall be issued at the discretion of Employee Plans Rulings and Agreements.
<b>Domicile in a foreign jurisdiction</b>	.08  (1) Employee Plans Rulings and Agreements is ordinarily unwilling to rule in situations in which a taxpayer or a related party is domiciled or organized in a foreign jurisdiction with which the United States does not have an effective mechanism for obtaining tax information with respect to civil tax examinations and criminal investigations, which would preclude Employee Plans Rulings and Agreements from obtaining information located in such jurisdiction that is relevant to the analysis or examination of the tax issues involved in the ruling request.  (2) The provisions of section 25.08(1) of this revenue procedure will not apply if the taxpayer or affected related party (a) consents to the disclosure of all relevant information requested by Employee Plans Rulings and Agreements in processing the ruling request or in the course of an examination to verify the accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (b) waives all claims to protection of bank and commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service.  In the event the taxpayer’s or related party’s consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.

## **SECTION 26. WHAT IS THE PROCEDURE FOR REQUESTING A LETTER RULING FROM EMPLOYEE PLANS RULINGS AND AGREEMENTS?**

### **General procedures for requesting a letter ruling**

.01 The procedures in section 6 of this revenue procedure are generally applicable to requests for letter rulings.

### **Specific additional procedures apply to certain letter ruling requests**

.02 The following specific revenue procedures and notices supplement the general instructions for requests described in section 24 of this revenue procedure and apply to requests for a letter ruling regarding the Code sections and matters listed in this section. These revenue procedures and notices may be revised or supplemented.

(1) For requests by the plan sponsor of a multiemployer pension plan for approval of an extension of an amortization period in accordance with § 431(d), see Rev. Proc. 2010-52, 2010-52 IRB 927.

(2) For requests by administrators or sponsors of a defined benefit plan to obtain approval for a change in funding method, see Rev. Proc. 2017-57.

(3) For requests for the return to the employer of certain nondeductible contributions, see Rev. Proc. 90-49, 1990-2 CB 620.

(4) For requests for approval of the use of a substitute mortality table in accordance with § 430(h)(3)(C), see Rev. Proc. 2017-55.

## **PART IIIB. PROCESSING LETTER RULING REQUESTS**

## **SECTION 27. HOW DOES EMPLOYEE PLANS RULINGS AND AGREEMENTS HANDLE LETTER RULING REQUESTS?**

### **In general**

.01 Employee Plans Rulings and Agreements will issue letter rulings on the matters and under the circumstances described in section 24 of this revenue procedure and in the manner described in this section and section 29 of this revenue procedure.

### **Is not bound by informal opinion expressed**

.02 Employee Plans Rulings and Agreements will not be bound by the informal opinion expressed by any authorized Service representative under this procedure, and such an opinion cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b).

### **Will return any letter ruling request mistakenly sent to wrong address**

.03 A request for a letter ruling sent to EP Determinations will be returned to the sender so that the taxpayer can submit it to the appropriate office.

### **Tells taxpayer if request lacks essential information during initial contact**

.04 If a request for a letter ruling does not comply with all the provisions of this revenue procedure, the request will be acknowledged and the Employee Plans Rulings and Agreements

representative will tell the taxpayer during the initial contact which requirements have not been met.

**Information must be submitted within 30 calendar days**

.05 If the request lacks essential information, which may include additional information needed to satisfy the procedural requirements of this revenue procedure, as well as substantive changes to transactions or documents needed from the taxpayer, the Employee Plans Rulings and Agreements representative will inform the taxpayer during the initial contact that the request will be closed if Employee Plans Rulings and Agreements does not receive the information within 30 calendar days and extension of time is not granted. See section 27.10 of this revenue procedure for information on extension of time and instructions on submissions of additional information.

**Requires prompt submission of additional information requested after initial contact**

.06 Material facts furnished to Employee Plans Rulings and Agreements by telephone or fax, or orally at a conference, must be promptly confirmed by letter to Employee Plans Rulings and Agreements. This confirmation and any additional information requested by Employee Plans Rulings and Agreements that is not part of the information requested during the initial contact must be furnished within 21 calendar days to be considered part of the request.

Additional information submitted to Employee Plans Rulings and Agreements must be accompanied by the following declaration: **“Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.”** This declaration must be signed in accordance with the requirements in section 6.02(14)(b) of this revenue procedure. A taxpayer who submits additional factual information on several occasions may provide one declaration subsequent to all submissions that refers to all submissions.

**Encourages use of fax**

.07 To facilitate prompt action on letter ruling requests, taxpayers are encouraged to submit additional information by fax as soon as the information is available. The Employee Plans Rulings and Agreements representative who requests additional information can provide a telephone number to which the information can be faxed. A copy of this information and signed penalties of perjury statement, however, must be mailed or delivered to Employee Plans Rulings and Agreements.

**Address to send additional information**

.08 Additional information should be sent to the same address as the original letter ruling request. See section 31 of this revenue procedure. However, the additional information should include the name, office symbols, and room number of the Service representative who requested the information and the taxpayer’s name and the case control number (which the Employee Plans Rulings and Agreements representative can provide).

**Number of copies of additional information to be submitted**

.09 Generally, a taxpayer needs to submit only one copy of the additional information. However, in appropriate cases, Employee Plans Rulings and Agreements may request additional copies of the information.

**Extension of 30-day or 21-day period may be granted if justified**

.10 An extension of the 30-day period under section 27.05 of this revenue procedure or the 21-day period under section 27.06 of this revenue procedure will be granted only if justified in writing by the taxpayer and approved by the manager of the group to which the case is assigned. A request for extension should be submitted before the end of the 30-day or 21-day period. If unusual circumstances close to the end of the 30-day or 21-day period make a written request impractical, the taxpayer should notify Employee Plans Rulings and Agreements within the 30-day or 21-day period that there is a problem and that the written request for extension will be coming soon. The taxpayer will be told promptly of the approval or denial of the requested extension, which will be confirmed later in writing. If the extension request is denied, there is no right of appeal.

**Case closed if taxpayer does not submit additional information**

.11 If the taxpayer does not follow the instructions for submitting additional information or requesting an extension within the time provided, a letter ruling will be issued on the basis of the information on hand, or, if appropriate, no letter ruling will be issued. If Employee Plans Rulings and Agreements determines not to issue a letter ruling because essential information is lacking, the case will be closed and the taxpayer notified in writing. If Employee Plans Rulings and Agreements receives the information after the letter ruling request is closed, the request may be reopened and treated as a new request. However, the taxpayer may be required to pay another user fee before the case can be reopened.

**Near the completion of the ruling process, advises taxpayer of conclusions and, if Employee Plans Rulings and Agreements will rule adversely, offers the taxpayer the opportunity to withdraw the letter ruling request**

.12 Generally, after the conference of right is held and before the letter ruling is issued, the Employee Plans Rulings and Agreements representative will inform the taxpayer or the taxpayer's authorized representative of Employee Plans Rulings and Agreements' final conclusions on the issues for which the letter ruling is sought. If Employee Plans Rulings and Agreements is going to rule adversely, the taxpayer will be offered the opportunity to withdraw the letter ruling request. If the taxpayer or the taxpayer's representative does not promptly notify the Employee Plans Rulings and Agreements representative of a decision to withdraw the ruling request, the adverse letter will be issued. The user fee will not be refunded for a letter ruling request that is withdrawn. See section 30.10 of this revenue procedure.

**May request draft of proposed letter ruling near the completion of the ruling process**

.13 To accelerate issuance of letter rulings, in appropriate cases near the completion of the ruling process, the Employee Plans Rulings and Agreements representative may request that the taxpayer or the taxpayer's representative submit a proposed draft of the letter ruling on the basis of discussions of the issues. The taxpayer, however, is not required to prepare a draft letter ruling in order to receive a letter ruling.

The format of the submission should be discussed with the Employee Plans Rulings and Agreements representative who requests the draft letter ruling. The representative usually can provide a sample format of a letter ruling and will discuss the facts, analysis, and letter ruling language to be included. The draft will become part of the permanent files of Employee Plans Rulings and Agreements.

The proposed letter ruling should be sent to the same address as any additional information and contain in the transmittal the information that should be included with any additional information (for example, a penalties of perjury statement is required). See section 27.06 of this revenue procedure.

**SECTION 28. HOW DOES EMPLOYEE PLANS RULINGS AND AGREEMENTS SCHEDULE CONFERENCES WITH TAXPAYERS?**

**Schedules a conference if requested by taxpayer**

.01 A taxpayer may request a conference regarding a letter ruling request. Normally, a conference is scheduled only if Employee Plans Rulings and Agreements considers it to be helpful in deciding the case or if an adverse decision is indicated. If conferences are being arranged for more than one request for a letter ruling involving the same taxpayer, they will be scheduled so as to cause the least inconvenience to the taxpayer. A taxpayer who wants to have a conference on the issue or issues involved should indicate this in writing when, or soon after, filing the request.

If a conference has been requested, the taxpayer will be notified by telephone, if possible, of the time and place of the conference, which must then be held within 21 calendar days after this contact. Instructions for requesting an extension of the 21-day period and notifying the taxpayer



or the taxpayer's representative of Employee Plans Rulings and Agreements' approval or denial of the request for extension are the same as those described in section 27.10 of this revenue procedure regarding providing additional information.

**Permits taxpayer one conference of right**

.02 A taxpayer is entitled, as a matter of right, to only one conference, except as described under section 28.05 of this revenue procedure. This conference normally will be held at the group level and will be attended by a person who, at the time of the conference, has the authority to sign the letter ruling in his or her own name or for the group manager.

If more than one group has taken an adverse position on an issue in a letter ruling request, or if the position ultimately adopted by one group will affect that adopted by another, a representative from each group with the authority to sign in his or her own name or for the group manager will attend the conference. If more than one subject is to be discussed at the conference, the discussion will constitute a conference on each subject.

To have a thorough and informed discussion of the issues, the conference usually will be held after the group has had an opportunity to study the case. However, at the request of the taxpayer, the conference of right may be held earlier.

No taxpayer has a right to appeal the action of a group to any other official of the Service. *But* see section 28.05 of this revenue procedure for situations in which the Service may offer additional conferences.

**Disallows verbatim recording of conferences**

.03 Because conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made by any party.

**Makes tentative recommendations on substantive issues**

.04 The senior Employee Plans Rulings and Agreements representative present at the conference ensures that the taxpayer has the opportunity to present views on all the issues in question. A Service representative explains Employee Plans Rulings and Agreements' tentative decision on the substantive issues and the reasons for that decision. If the taxpayer asks Employee Plans Rulings and Agreements to limit the retroactive effect of any letter ruling or limit the revocation or modification of a prior letter ruling, an Employee Plans Rulings and Agreements representative will discuss the recommendation concerning this issue and the reasons for the recommendation. However, the representatives will not make a commitment regarding the conclusion that Employee Plans Rulings and Agreements intends to adopt.

**May offer additional conferences**

.05 Employee Plans Rulings and Agreements will offer the taxpayer an additional conference if, after the conference of right, an adverse holding is proposed, but on a new issue, or on the same issue but on different grounds from those discussed at the first conference. There is no right to another conference if a proposed holding is reversed at a higher level with a result less favorable to the taxpayer, if the grounds or arguments on which the reversal is based were discussed at the conference of right.

The limit on the number of conferences to which a taxpayer is entitled does not prevent Employee Plans Rulings and Agreements from offering additional conferences, including conferences with an official higher than the group level, if Employee Plans Rulings and Agreements determines they are needed. Such conferences are not offered as a matter of course simply because the group has reached an adverse decision. In general, conferences with higher level officials are offered only if Employee Plans Rulings and Agreements determines that the case presents significant issues of tax policy or tax administration and that the consideration of these issues would be enhanced by additional conferences with the taxpayer.

**Requires written confirmation of information presented at conference**

.06 The taxpayer should furnish to Employee Plans Rulings and Agreements any additional data, reasoning, precedents, etc., that were proposed by the taxpayer and discussed at the conference but not previously or adequately presented in writing. The taxpayer must furnish the additional information within 21 calendar days from the date of the conference. See section 27.06 of this revenue procedure for instructions on submission of additional information. If the additional information is not received within that time, a ruling will be issued on the basis of the information on hand or, if appropriate, no ruling will be issued.

Procedures for requesting an extension of the 21-day period and notifying the taxpayer or the taxpayer's representative of Employee Plans Rulings and Agreements' approval or denial of the requested extension are the same as those stated in section 27.10 of this revenue procedure regarding submitting additional information.

**May schedule a pre-submission conference**

.07 Sometimes it will be advantageous to both Employee Plans Rulings and Agreements and the taxpayer to hold a conference before the taxpayer submits the letter ruling request to discuss substantive or procedural issues relating to a proposed transaction. These conferences are held only: if the identity of the taxpayer is provided to Employee Plans Rulings and Agreements if the taxpayer actually intends to make a request, if the request involves a matter on which a letter ruling is ordinarily issued, and at the discretion of Employee Plans Rulings and Agreements and as time permits. For example, a pre-submission conference will not be held on an issue if, at the time the pre-submission conference is requested, the identical issue is involved in the taxpayer's return for an earlier period and that issue is being examined. See section 24 of this revenue procedure. Generally, the taxpayer will be asked to provide a statement of whether the issue is an issue on which a letter ruling is ordinarily issued and a draft of the letter ruling request or other detailed written statement of the proposed transaction, issue(s), and legal analysis before the pre-submission conference. If the taxpayer's representative will attend the pre-submission conference, a power of attorney form is required. A Form 2848, Power of Attorney and Declaration of Representative, must be used to provide the representative's authorization.

Any discussion of substantive issues at a pre-submission conference is advisory only, is not binding on the Service, and cannot be relied upon as a basis for obtaining retroactive relief under the provisions of § 7805(b). See section 3.06(2) of this revenue procedure. A letter ruling request submitted following a pre-submission conference will not necessarily be assigned to the group that held the pre-submission conference.

**May schedule a conference to be held by telephone**

.08 A taxpayer may request that a conference of right be held by telephone. If the request is approved, the taxpayer will be advised when to call the Employee Plans Rulings and Agreements representatives (not a toll-free call).

**SECTION 29. WHAT EFFECT WILL A LETTER RULING HAVE?**

**Has same effect as a determination letter**

.01 Except as described in this section 29, a letter ruling issued by Employee Plans Rulings and Agreements has the same effect as a determination letter ruling issued to a taxpayer under Part II of this revenue procedure.

**Will not apply to another taxpayer**

.02 A taxpayer may not rely on a letter ruling issued to another taxpayer. See § 6110(k)(3).

**Will be used by the Service  
in examining the taxpayer's  
return**

.03 When determining a taxpayer's liability, the Service must ascertain whether—

- (1) the conclusions stated in the letter ruling are properly reflected in the return;
- (2) the representations upon which the letter ruling was based reflected an accurate statement of the material facts;
- (3) the transaction was carried out substantially as proposed; and
- (4) there has been any change in the law that applies to the period during which the transaction or continuing series of transactions were consummated.

**May be revoked or modified  
if found to be in error**

.04 A letter ruling found to be in error or not in accord with the current views of the Service may be revoked or modified, unless it was part of a closing agreement as described in section 3.03 of this revenue procedure. If a letter ruling is revoked or modified, the revocation or modification applies to all years open under the period of limitation unless a request to limit the retroactive effect of a revocation or modification has been granted under § 7805(b). A request to limit the retroactive revocation or modification of a letter ruling issued by Employee Plans Rulings and Agreements should be submitted to the agent or specialist assigned to the case, and should otherwise follow the procedures described in section 23.08 of this revenue procedure.

A letter ruling may be revoked or modified by—

- (1) a letter giving notice of revocation or modification to the taxpayer to whom the letter ruling was issued;
- (2) the enactment of legislation or ratification of a tax treaty;
- (3) a decision of the United States Supreme Court;
- (4) the issuance of temporary or final regulations; or
- (5) the issuance of a revenue ruling, revenue procedure, notice, or other statement published in the Internal Revenue Bulletin.

Consistent with these provisions, if a letter ruling relates to a continuing action or a series of actions, it will ordinarily be applied until any one of the events described above occurs or until the letter ruling is specifically withdrawn by the Service.

Publication of a notice of proposed rulemaking will not affect the application of any letter ruling issued under this revenue procedure.

If a letter ruling is revoked or modified by a letter to the taxpayer, the letter will state whether the revocation or modification is retroactive. If a letter ruling is revoked or modified by the issuance of final or temporary regulations or by the publication of a revenue ruling, revenue procedure, notice, or other statement in the Internal Revenue Bulletin, the document may contain a statement as to its retroactive effect on letter rulings.

**Letter ruling revoked or modified based on material change in facts applied retroactively**

.05 The revocation or modification of a letter ruling will be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling if—

- (1) there was a misstatement or omission of controlling facts;
- (2) the facts at the time of the transaction are materially different from the controlling facts on which the letter ruling was based; or
- (3) the transaction involves a continuing action or series of actions and the controlling facts change during the course of the transaction.

**Not otherwise generally revoked or modified retroactively**

.06 If the revocation or modification of a letter ruling occurs, for reasons other than a change in facts as described in section 29.05 of this revenue procedure, the revocation or modification will generally not be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling provided that—

- (1) there was no change in the applicable law;
- (2) the letter ruling was originally issued for a proposed transaction; and
- (3) the taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling, and revoking or modifying the letter ruling retroactively would be to the taxpayer's detriment.

If a letter ruling is revoked or modified by a letter with retroactive effect, the letter will, except in fraud cases, state the grounds on which the letter ruling is being revoked or modified and explain the reasons why it is being revoked or modified retroactively.

**Will not apply to a similar transaction in same year or any other year**

.07 A letter ruling issued by Employee Plans Rulings and Agreements on a particular transaction represents a holding of the Service on that transaction only. It will not apply to a similar transaction in the same year or any other year. Except in unusual circumstances, the application of that letter ruling to the transaction will not be affected by the later issuance of regulations (either temporary or final) if conditions (1) through (3) in section 29.06 of this revenue procedure are met.

**Retroactive effect of revocation or modification applied to a continuing action or series of actions**

.08 If a letter ruling is issued by Employee Plans Rulings and Agreements covering a continuing action or series of actions and the letter ruling is later found to be in error or no longer in accord with the position of the Service, the Service ordinarily will limit the retroactive effect of revocation or modification to a date that is not earlier than that on which the letter ruling is revoked or modified.

**May be retroactively revoked or modified if the transaction is completed without reliance on the letter ruling**

.09 A taxpayer is not protected against retroactive revocation or modification of a letter ruling involving a transaction completed before the issuance of the letter ruling or involving a continuing action or series of actions occurring before the issuance of the letter ruling, because the taxpayer did not enter into the transaction relying on a letter ruling.

**Taxpayer may request that retroactivity be limited**

.10 Under § 7805(b), the Service may prescribe the extent to which a revocation or modification of a letter ruling will be applied without retroactive effect. See section 23.08 of this revenue procedure for further explanation of the procedures for requesting relief under § 7805(b).

## PART IV. USER FEES

### SECTION 30. WHAT ARE THE USER FEE REQUIREMENTS FOR REQUESTING ADVICE FROM EMPLOYEE PLANS RULINGS AND AGREEMENTS?

#### Legislation authorizing user fees

.01 Section 7528 directs the Secretary of the Treasury or a delegate (the “Secretary”) to establish a program requiring the payment of user fees for requests to Employee Plans Rulings and Agreements for letter rulings, opinion letters, determination letters, and similar requests. The fees charged under the program: (1) are to vary according to categories or subcategories established by the Secretary; (2) are to be determined after taking into account the average time for, and difficulty of, complying with requests in each category and subcategory; and (3) are payable in advance. Section 7528(b)(3) directs the Secretary to provide for exemptions and reduced fees under the program as the Secretary determines to be appropriate, but the average fee applicable to each category may not be less than the amount specified in § 7528.

#### Requests to which user fees apply

.02 In general, user fees apply to all requests for letter rulings, opinion letters, determination letters, advisory letters, and compliance statements submitted by or on behalf of taxpayers, sponsoring organizations or other entities as described in this revenue procedure. Requests to which a user fee is applicable must be accompanied by the appropriate fee as determined from the fee schedule set forth in Appendix A of this revenue procedure. The fee may be refunded in limited circumstances as set forth in section 30.10 of this revenue procedure.

#### Requests and other actions that do not require the payment of a user fee

.03 Actions that do not require the payment of a user fee include the following:

(1) Elections pertaining to automatic extensions of time under § 301.9100-1;

(2) Use of forms that are not to be filed with the Service (for example, no user fee is required in connection with the use of Form 5305, Traditional Individual Retirement Trust Account, or Form 5305–A, Traditional Individual Retirement Custodial Account, in order to adopt an individual retirement account under § 408(a));

(3) In general, plan amendments whereby sponsors amend their plans by adopting, word-for-word, the model language set forth in a revenue procedure which states that the amendment should not be submitted to the Service and that the Service will not issue new opinion, advisory, ruling or determination letters for plans that are amended solely to add the model language; and

(4) Change in accounting period permitted by a published revenue procedure that permits an automatic change without prior approval of the Commissioner.

#### Exemptions from the user fee requirements

.04 The following exemptions, and only these exemptions, apply to the user fee requirements. No user fees are charged to:

(1) Departments, agencies, or instrumentalities of the United States that certify that they are seeking a letter ruling, determination letter, opinion letter or similar letter on behalf of a program or activity funded by federal appropriations. The fact that a user fee is not charged has no bearing

on whether an applicant is treated as an agency or instrumentality of the United States for purposes of any provision of the Code except for § 7528.

(2) Eligible employers within the meaning of § 7528(b)(2)(C)(ii) who request a determination letter with respect to a qualified plan within the first five plan years or, if later, the end of any remedial amendment period with respect to the plan that begins within the first five plan years. See, Instructions to Form 8717, User Fee for Employee Plans Determination Letter Request, and Notice 2002-1, 2002-1 CB 283, as amplified by Notice 2003-49, 2003-2 CB 294, and Notice 2017-1.

#### **User Fees under EPCRS**

.05 User fees for submissions under VCP are set forth in Appendix A of this revenue procedure. For further guidance on EPCRS, see Rev. Proc. 2021-30.

#### **Requests involving multiple offices, fee categories, issues, transactions, or entities**

.06

(1) *Requests involving several offices.* If a request dealing with only one transaction involves more than one of the offices within the Service (for example, one issue is under the jurisdiction of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) and another issue is under the jurisdiction of the Commissioner (Tax Exempt and Government Entities Division), the taxpayer is only responsible for the payment of the single highest fee that could be charged by any of the offices involved. See Rev. Proc. 2023-1, this Bulletin, for the user fees applicable to issues under the jurisdiction of the Office of Associate Chief Counsel (Corporate), the Office of Associate Chief Counsel (Financial Institutions and Products), the Office of Associate Chief Counsel (Income Tax and Accounting), the Office of Associate Chief Counsel (Passthroughs and Special Industries), the Office of Associate Chief Counsel (Procedure and Administration), the Office of Associate Chief Counsel (International), or the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes).

(2) *Requests involving several fee categories.* If a request dealing with only one transaction involves more than one fee category, the taxpayer is responsible only for payment of the single highest fee that could be charged for any of the categories involved.

(3) *Requests involving several issues.* A request is treated as one request if the request deals with only one transaction but involves several issues. In such instances, only one fee applies; namely, the fee that applies to the particular category or subcategory involved. The addition of a new issue relating to the same transaction will not result in an additional fee, unless the issue places the transaction in a higher fee category.

(4) *Requests involving several unrelated transactions.* In situations in which: (a) a request involves several transactions or (b) a request for a change in accounting period involves several unrelated items, each transaction or item is treated as a separate request. As a result, a separate fee will apply for each unrelated transaction or item. An additional fee also will apply if the request is changed by the addition of an unrelated transaction or item not contained in the initial submission. As a result, a separate fee will apply for each unrelated transaction or item.

(5) *Requests for separate letter rulings for several entities.* Each entity involved in a transaction that desires a separate letter ruling in its own name must pay a separate fee. Payment of a separate fee is required regardless of whether the transaction or transactions may be viewed as related.

#### **Method of payment**

.07



(1) *Payment of user fees for determination letter applications.* User fees for determination letter applications on Forms 5300 and 5310 must be paid in the appropriate amount by using [www.pay.gov](http://www.pay.gov), utilizing the payment methods available on the website. User fees for determination letter applications on Forms 5307 and 5316 may be paid either by a check, payable to the United States Treasury in the appropriate amount, or by using [www.pay.gov](http://www.pay.gov), utilizing the payment methods available on the website. Beginning July 1, 2023, user fees for determination letter applications on Forms 5307 and 5316 must be paid in the appropriate amount by using [www.pay.gov](http://www.pay.gov), utilizing the payment methods available on the website. DO NOT use Form 8717 to submit user fee on applications submitted electronically.

If the user fee is paid electronically, for a paper submission, payment confirmations are provided on the [www.pay.gov](http://www.pay.gov) portal and must be submitted along with the paper Form 8717. Additional information can be found at Frequently Asked Questions at [www.pay.gov](http://www.pay.gov).

(2) *Payment of VCP user fees.* User fees should be made using the payment methods available on [www.pay.gov](http://www.pay.gov). The Service no longer accepts paper submissions under VCP. See Rev. Proc. 2021-30 for detailed procedures on the VCP submission process.

(3) *Payment of user fees for pre-approved plan submissions and letter rulings.* Each request to Employee Plans Rulings and Agreements for a letter ruling, opinion letter, or advisory letter must be accompanied by a check, payable to the United States Treasury, in the appropriate amount. Taxpayers should not send cash. The payment of user fees for letter rulings and opinion letter and advisory letter applications may not be made on [www.pay.gov](http://www.pay.gov).

The check may be converted to an electronic fund transfer. “Electronic fund transfer” is the term used to refer to the process in which the Service electronically instructs the financial institution holding the funds to transfer funds from the account named on the check to the United States Treasury account, rather than processing the check. By sending a completed, signed check to the Service, the Service is authorized to copy the check and to use the account information from the check to make an electronic fund transfer from the account for the same amount as the check. If the electronic fund transfer cannot be processed for technical reasons, the Service is authorized to process the copy of the check.

The electronic fund transfer from an account will usually occur within 24 hours, which is faster than a check is normally processed. Therefore, it is necessary to ensure there are sufficient funds available in the checking account when the check is sent to the Service. The check will not be returned to the applicant from its financial institution.

## Transmittal forms

.08

(1) Form 8717, User Fee for Employee Plan Determination Letter Request (and a payment confirmation from [www.pay.gov](http://www.pay.gov) as described in section 30.07(1) of this revenue procedure, if applicable) and Form 8717-A, User Fee for Employee Plan Opinion Letter Requests are intended to be used as attachments to certain determination letter, opinion letter, and advisory letter applications. Space is reserved for the attachment of the applicable user fee check on Form 8717-A. No similar form has been designed to be used in connection with requests for letter rulings. Do not use Form 8717 for VCP submissions. Instead, see section 30.08(2) of this revenue procedure. For electronic submissions, [www.pay.gov](http://www.pay.gov) should be utilized for payment. See section 30.07(1) and section 6 of this revenue procedure for Form 5310 and Form 5300 submissions, and beginning July 1, 2023, for Form 5307 and Form 5316 submissions.

(2) VCP submissions must be made to the Service using [www.pay.gov](http://www.pay.gov), on Form 8950, Application for Voluntary Correction Program (VCP) Submission under the Employee Plans Compliance Resolution System (EPCRS), embedded in [www.pay.gov](http://www.pay.gov). If a VCP submission is made to the Service but the user fee payment did not go through or is less than the applicable amount, Form 8951, Additional User Fee Payment for Open Application for Voluntary Correction Program (VCP), embedded in [www.pay.gov](http://www.pay.gov), should be submitted to make the new payment. A duplicate Form 8950 should not be submitted. Requests for a VCP pre-submission conference must also be made via [www.pay.gov](http://www.pay.gov) by submitting a Form 8950. See section 10.01(2) of Rev. Proc. 2021-30.

#### **Effect of nonpayment or payment of incorrect amount**

.09 Except as provided in Part II of this revenue procedure, it will be the general practice of Employee Plans Rulings and Agreements that:

(1) The respective offices within Employee Plans Rulings and Agreements that are responsible for issuing letter ruling or determination letters will exercise discretion in deciding whether to immediately return submissions that are not accompanied by a correct user fee. In those instances in which the submission is not immediately returned, the requester will be contacted and given a reasonable period of time to submit the proper fee. If the proper fee is not received within a reasonable amount of time, the entire submission will then be returned. However, the respective offices of Employee Plans Rulings and Agreements, in their discretion, may defer substantive consideration of a submission until proper payment has been received.

(2) An application for a determination or opinion or advisory letter will not be returned merely because Form 8717 or Form 8717-A was not attached.

(3) The return of a submission to the requester may adversely affect substantive rights if the submission is not perfected and resubmitted to Employee Plans Rulings and Agreements within 30 days of the date of the cover letter returning the submission.

(4) If a check is for more than the correct amount for Form 8717-A, per Appendix A of this revenue procedure, the submission will be accepted and the amount of the excess payment will be returned to the requester.

(5) If the user fee included with the VCP submission is less than the user fee required by Appendix A or if no fee is submitted, the submission may not be processed.

#### **Refunds of user fees**

.10 In general, the user fee **will not be refunded** unless the Service declines to rule or make a determination on **all issues** for which a ruling or determination letter is requested.

(1) The following situations are examples in which the fee **will not** be refunded:

(a) The request for a letter ruling or determination letter is withdrawn at any time subsequent to its receipt by the Service, unless the only reason for withdrawal is that the Service has advised the requester that a higher user fee than was sent with the request is applicable and the requester is unwilling to pay the higher fee. For example, no fee will be refunded in cases in which the taxpayer has been advised that a proposed adverse ruling is contemplated and subsequently withdraws its submission.

(b) The request is procedurally deficient, although accompanied by the proper fee or an overpayment, and it is not timely perfected upon request. If there is a failure to timely perfect the request, the case will be considered closed and the failure to perfect will be treated as a withdrawal for purposes of this revenue procedure.

(c) In the case of a request for a letter ruling, if the case has been closed by Employee Plans Rulings and Agreements because essential information has not been submitted timely, the request may be reopened and treated as a new request. However, the requester must pay another user fee before the case can be reopened. See section 27.11 of this revenue procedure. In the case of a request for a determination letter, if the case has been closed by EP Determinations because the requested information has not been timely submitted, the case will be closed and the user fee will not be refunded. See section 10.11 of this revenue procedure.

(d) A letter ruling, determination letter, etc., is revoked in whole or in part at the initiative of the Service. The fee paid at the time the original letter ruling, determination letter, etc., was requested will not be refunded.

(e) The request contains several issues and the Service rules on some, but not all, of the issues. The highest fee applicable to the issues on which the Service rules will not be refunded.

(f) The requester asserts that a letter ruling the requester received covering a single issue is erroneous or not responsive (other than an issue on which the Service has declined to rule) and requests reconsideration. The Service, upon reconsideration, does not agree that the letter ruling is erroneous or is not responsive.

(g) The situation is the same as described in subparagraph (f) of this section 30.10(1) except that the letter ruling covered several unrelated transactions. The Service, upon reconsideration, does not agree with the requester that the letter ruling is erroneous or is not responsive for all of the transactions, but does agree that it is erroneous as to one or more of the transactions. The fee accompanying the request for reconsideration will not be refunded except to the extent applicable to any transaction for which the Service agrees the letter ruling was in error.

(h) The request is for a supplemental letter ruling, determination letter, etc., concerning a change in facts (whether significant or not) relating to the transaction on which the Service ruled.

(i) The request is for reconsideration of an adverse or partially adverse letter ruling or a final adverse determination letter, and the taxpayer submits arguments and authorities not submitted before the original letter ruling or determination letter was issued.

(2) The following situations are examples in which the user fee **will** be refunded:

(a) In a situation to which section 30.10(1)(i) of this revenue procedure does not apply, the taxpayer asserts that a letter ruling the taxpayer received covering a single issue is erroneous or is not responsive (other than an issue on which the Service declined to rule) and requests reconsideration. Upon reconsideration, the Service agrees that the letter ruling is erroneous or is not responsive. The fee accompanying the taxpayer's request for reconsideration will be refunded.

(b) In a situation to which section 30.10(1)(i) of this revenue procedure does not apply, the requester requests a supplemental letter ruling, determination letter, etc., to correct a mistake that Employee Plans Rulings and Agreements agrees it made in the original letter ruling, determination letter, etc., such as a mistake in the statement of facts or in the citation of a Code section. Once Employee Plans Rulings and Agreements agrees that it made a mistake, the fee accompanying the request for the supplemental letter ruling, determination letter, etc., will be refunded.

(c) The taxpayer requests and is granted relief under § 7805(b) in connection with the revocation, in whole or in part, of a previously issued letter ruling. The fee accompanying the request for relief will be refunded.

(d) In a situation to which section 30.10(1)(b) of this revenue procedure would otherwise apply, except that Employee Plans Rulings and Agreements does not request perfection of the procedural deficiencies in the application but rather does not accept the application and returns it to the requester, the fee accompanying the request will be returned or refunded.

(e) In a situation to which section 30.10(1)(e) of this revenue procedure applies, the requester requests reconsideration of the Service's decision not to rule on an issue. Once Employee Plans Rulings and Agreements agrees to rule on the issue, the fee accompanying the request for reconsideration will be refunded.

(3) *VCP Submissions*. For refunds relating to VCP submissions, see Rev. Proc. 2021-30, section 10.07(2).

#### **Request for reconsideration of user fee**

.11 A taxpayer that believes the user fee charged by Employee Plans Rulings and Agreements for its request for a letter ruling, determination letter, etc., is either not applicable or incorrect and wishes to receive a refund of all or part of the amount paid (see section 30.10 of this revenue procedure) may request reconsideration of the user fee and, if desired, the opportunity for an oral discussion by sending a letter to the Service at the applicable Post Office Box or other address provided in section 31 of this revenue procedure. Both the incoming envelope and the letter requesting such reconsideration should be prominently marked "USER FEE RECONSIDERATION REQUEST." No user fee is required for these requests. The request must be marked for the attention of the appropriate unit as listed in the table below.

<i><b>If the matter involves primarily:</b></i>	<i><b>Mark for the attention of:</b></i>
Employee plans letter ruling requests and all other employee plans matters handled by Employee Plans Rulings and Agreements	Employee Plans Rulings and Agreements
Opinion letter and advisory letter requests pursuant to Rev. Proc. 2013-22 and Rev. Proc. 2021-37	Area Manager, EP Determinations
Employee plans determination letter requests and opinion letter requests pursuant to Rev. Proc. 2017-41	Area Manager, EP Determinations

Notwithstanding the above, user fees associated with submissions made under VCP are fixed, apply to all plan sponsors, and generally will not be refunded. However, if a taxpayer believes it submitted an incorrect fee relating to a VCP submission, the taxpayer should contact the Service employee who is working the case to determine whether a partial refund or additional payment is applicable. If the taxpayer is not in contact with a specific Service employee with regard to the taxpayer's submission, the taxpayer may call the VCP Case Status telephone number at (626) 927-2011. If there is a disagreement as to the fee that applies to a specific VCP case, the matter may be discussed with the Service employee's manager.

**SECTION 31. WHERE  
TO SUBMIT REQUESTS  
FOR LETTER RULINGS,  
OPINION LETTERS,  
ADVISORY LETTERS,  
DETERMINATION  
LETTERS, AND  
COMPLIANCE  
STATEMENTS FROM  
EMPLOYEE PLANS  
RULINGS AND  
AGREEMENTS?**

**Letter rulings and opinion  
letters**

.01 Requests should be mailed to the appropriate address provided in this section 31.01.

*(1) Employee plans letter rulings under Rev. Procs. 87–50, 90–49, 2003–16, 2010–52, 2017–55, 2017–57, or this revenue procedure:*

- Internal Revenue Service
- Attention: EP Letter Rulings
- P.O. Box 12192
- TE/GE Stop 31A Team 105
- Covington, KY 41012-0192

*(2) Employee plan opinion letters under Rev. Procs. 87–50, 97–29, 98–59, or 2010–48:*

- Internal Revenue Service
- Attention: EP Opinion Letters
- P.O. Box 12192
- TE/GE Stop 31A Team 105
- Covington, KY 41012-0192

Announcement 2022-6 temporarily suspends the opinion letter program for prototype IRAs (traditional, Roth and SIMPLE IRAs), SEPs (including salary reduction SEPs (SARSEPs)), and SIMPLE IRA plans.

**Note:** Hand-delivered requests must be marked RULING REQUEST SUBMISSION. The delivery should be made to the following address between the hours of 8:30 a.m. and 4:00 p.m., where a receipt will be given:

- Courier’s Desk
- Internal Revenue Service
- Attention: EP Letter Rulings
- TE/GE Stop 31A Team 105

- 7940 Kentucky Drive
- Florence, KY 41042

## **Determination letters**

.02

Requests for determination letters on the qualified status of employee plans under § 401, 403(a), 409, or 4975(e)(7), whether a plan meets the requirements of § 403(b), and the exempt status of any related trust under § 501 are handled by the EP Determinations Office. Requests permissibly submitted on paper should be sent to the Internal Revenue Service at the address shown below:

- Internal Revenue Service
- Attention: EP Determination Letters
- P.O. Box 12192
- TE/GE Stop 31A Team 105
- Covington, KY 41012-0192

## **Opinion and advisory letters**

.03

(1) The following types of requests and applications are handled by EP Determinations and should be sent to the Service at the address shown below:

(a) requests for opinion letters on the form of pre-approved employee plans under § 401 or 403(a) for the third six-year remedial amendment cycle (and subsequent cycles), pursuant to Rev. Proc. 2017-41; and

(b) requests for § 403(b) prototype opinion letters and for § 403(b) VS advisory letters for § 403(b) pre-approved plans under Rev. Proc. 2013-22:

- Internal Revenue Service
- Attn. Pre-Approved Plans Coordinator
- P.O. Box 2508
- Room 6-403: Group 7521
- Cincinnati, OH 45201

(c) requests of § 403(b) pre-approved plans for opinion letters under Rev. Proc. 2021-37:

- Internal Revenue Service
- Attn. Pre-Approved Plans Coordinator
- P.O. Box 2508
- Room 6-403: Group 7521
- Cincinnati, OH 45201



(2) Applications shipped by Express Mail or a delivery service for all of the above **except** for pre-approved employee plans should be sent to:

- Internal Revenue Service
- Attention: EP Determination Letters
- TE/GE Stop 31A Team 105
- 7940 Kentucky Drive
- Florence, KY 41042

(3) Applications shipped by Express Mail or a delivery service for pre-approved employee plans should be sent to:

- Internal Revenue Service
- Attn: Pre-Approved Plans Coordinator
- 550 Main Street
- Room 6-403: Group 7521
- Cincinnati, OH 45202

**VCP compliance statements  
– electronic submissions  
only**

.04

VCP submissions (including requests for pre-submission conferences) may not be mailed to the Service. If this occurs, the submissions will be returned to the applicant, including any submitted paper checks. VCP submissions, including payment of the user fee, are made to the Service on [www.pay.gov](http://www.pay.gov). For further details, see Form 8950 instructions and sections 10 and 11 of Rev. Proc. 2021-30.

**SECTION 32. WHAT  
IS THE EFFECT OF  
THIS REVENUE  
PROCEDURE ON OTHER  
DOCUMENTS?**

Rev. Proc. 2022-4 is superseded.

**SECTION 33. EFFECTIVE  
DATE**

This revenue procedure is effective January 3, 2023.

**SECTION 34.  
PAPERWORK  
REDUCTION ACT**

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-0047.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 6.02, 6.03, 6.05, 6.06, 10.03, 10.08, 10.11, 10.14, 10.15, 10.17, 11.04, 16, 17, 18, 19A, 19B, 20A, 20B, 21.02, 22.03, 23.02, 23.08, 27.05, 27.06, 27.07, 27.08, 27.09, 27.10, 27.13, 28.01, 28.06, 28.07, and 29.10 of this revenue procedure, and in Appendices C, E, and F of this revenue procedure. This information

is required to evaluate and process the request for a letter ruling or determination letter, and with respect to determination letters, information collected will be used to determine whether a plan is entitled to favorable tax treatment as a qualified plan. In addition, this information will be used to help the Service delete certain information from the text of the letter ruling or determination letter before it is made available for public inspection, as required by §§ 6110 and 6104. The collections of information are required to obtain a letter ruling or determination letter. The likely respondents are individuals, businesses or other for-profit institutions, tax exempt organizations, and government entities.

The estimated total annual reporting and/or recordkeeping burden with respect to letter ruling requests is 769 hours. The estimated total annual reporting and/or recordkeeping burden with respect to determination letters is 38,067 hours.

The estimated annual burden per respondent/recordkeeper varies from 15 minutes to 40 hours, depending on individual circumstances and the type of request involved, with an estimated average burden of 6.01 hours for letter ruling requests and 3.02 hours for determination letter requests. The estimated number of respondents and/or recordkeepers is 128 for letter rulings and 12,605 for determination letters.

For letter rulings, the estimated annual frequency of responses is one request per applicant, except that a taxpayer requesting a letter ruling may also request a pre-submission conference.

For determination letters, the estimated annual frequency of responses (used for reporting requirements only) is once every three years.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

## **DRAFTING INFORMATION**

The principal author of this revenue procedure is Amy Moskowitz of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding submission and processing of requests under this revenue procedure, contact Robin Joecken, Employee Plans, at 513-975-6365 (not a toll-free number).

## APPENDIX A

### SCHEDULE OF USER FEES

The amount of the user fee payable with respect to each category or subcategory of submission is as set forth in the following schedule.

CATEGORY	USER FEE
<i>.01 Letter ruling requests</i>	
(1) Computation of exclusion for annuitant under § 72	\$1,000
(2) Change in plan year (Form 5308, <i>Request for Change in Plan/Trust Year</i> )	\$1,000
<b>Note:</b> No user fee is required if the requested change is permitted to be made pursuant to the procedure for automatic approval set forth in Rev. Proc. 87-27, 1987-1 CB 769. In such a case, Form 5308 should not be submitted to the Service.	
(3) Five-Year Automatic Extension of the Amortization Period	\$7,500
(4) All other letter rulings under jurisdiction of the Employee Plans Office (see section 24.01 of this revenue procedure)	\$12,500
<i>.02 Opinion letters on prototype individual retirement accounts and/or annuities, SEPs, SIMPLE IRAs, SIMPLE IRA Plans, Roth IRAs and dual-purpose IRAs (until further notice, Announcement 2022-6 temporarily suspends the issuance of opinion letters on IRAs)</i>	
<b>Note:</b> If a mass submitter submits, in any 12-month period ending January 31, more than 300 applications on behalf of word-for-word adopters of prototype IRAs or prototype dual-purpose IRAs with respect to a particular plan document, only the first 300 such applications will be subject to the fee; no fee will apply to those in excess of the first 300 such applications submitted within the 12-month period.	\$2,500
<i>.03 Opinion letters on master and prototype plans submitted pursuant to Rev. Proc. 2015-36</i>	
(1) Assumption of sponsorship of an approved M&P plan, without any amendment to the plan document, by a new entity, as evidenced by a change of employer identification number, per basic plan document	\$300
(2) Change in name and/or address of sponsor of an approved M&P plan, per basic plan document	None
<i>.04 Advisory letters on VS plans submitted pursuant to Rev. Proc. 2015-36</i>	
(1) Assumption of sponsorship of an approved VS plan, without any amendment to the plan document, by a new entity, as evidenced by a change of employer identification number, per basic plan document	\$300
(2) Change in name and/or address of practitioner of an approved VS specimen plan, per basic plan document	None
<i>.05 Opinion letters on pre-approved plans submitted pursuant to Rev. Proc. 2017-41</i>	
(1) Mass submitter and non-mass submitter plans with adoption agreements	
(a) per basic plan document, with one adoption agreement	\$16,000
(b) per each additional adoption agreement	\$11,000
(2) Mass submitter and non-mass submitter single document plans (no adoption agreements)	
(a) per each single document plan	\$28,000
(3) Provider's word-for-word adoption of mass submitter's basic plan document per adoption agreement or single document plan	\$300
(4) Provider's minor modification of mass submitter's basic plan document per adoption agreement or single document plan	\$1,000
(5) Assumption of sponsorship of a pre-approved plan, without any amendment to the plan document, by a new entity, as evidenced by a change of employer identification number, per basic plan document.	\$300
(6) Change in name and/or address of a provider of a pre-approved plan per basic plan document	None
<i>.06 Opinion letters on pre-approved plans submitted pursuant to Rev. Proc. 2021-37</i>	
(1) Mass submitter and non-mass submitter plans with adoption agreements	
(a) per basic plan document, with one adoption agreement	\$16,000
(b) per each additional adoption agreement	\$11,000
(2) Mass submitter and non-mass submitter single document plans (no adoption agreements)	
(a) per each single document plan	\$28,000

CATEGORY	USER FEE
(3) Provider's word-for-word adoption of mass submitter's basic plan document per adoption agreement or single document plan	\$300
(4) Provider's minor modification of mass submitter's basic plan document per adoption agreement or single document plan	\$1,000
(5) Assumption of sponsorship of a pre-approved plan, without any amendment to the plan document, by a new entity, as evidenced by a change of employer identification number, per basic plan document	\$300
(6) Change in name and/or address of a provider of a pre-approved plan per basic plan document	None
<i>.07 Determination letters</i>	
(1) Determination Letters:	
(a) Form 5300 (Application for Determination for Employee Benefit Plan)	\$2,700
(b) Form 5300 (Application for Determination for Employee Benefit Plan, § 403(b) plans, with 100 or more participants)	\$2,700
Note: the number of participants is determined on the last day of the plan year before submission.	
(c) Form 5300 (Application for Determination for Employee Benefit Plan, § 403(b) small plans with fewer than 100 participants)	\$300
Note: the number of participants is determined on the last day of the plan year before submission.	
(d) Form 5307 (Application for Determination for Adopters of Modified Nonstandardized Pre-Approved Plans)	\$1,000
(e) Form 5310 (Application for Determination for Terminating Plan)	\$3,500
(f) Multiple employer qualified plans (Form 5300)	\$4,000
(g) Multiple employer qualified plans (Form 5310), regardless of number of participants	\$4,000
(2) Group trusts contemplated by Rev. Rul. 81-100, 1981-1 CB 326, Rev. Rul. 2004-67, 2004-2 CB 28, Rev. Rul. 2011-1, 2011-2 IRB 251, Rev. Rul. 2014-24, 2014-37 IRB 529. Form 5316, Application for Group or Pooled Trust Ruling, is available for group trust submissions.	\$1,000
<i>.08 Opinion letters on § 403(b) prototype plans pursuant to Rev. Proc. 2013-22 and Rev. Proc. 2014-28</i>	
(1) Section 403(b) prototype plan of a word-for-word identical adopter of a § 403(b) prototype mass submitter's basic plan document, per adoption agreement	\$300
(2) Section 403(b) prototype plan of a minor modifier of a § 403(b) prototype mass submitter's basic plan document, per adoption agreement	\$1,000
(3) Assumption of sponsorship of an approved § 403(b) prototype plan, without any amendment to the plan document, by a new entity, as evidenced by a change of employer identification number, per basic plan document	\$300
(4) Change in name and/or address of sponsor of an approved § 403(b) prototype plan, per basic plan document	None
<i>.09 Advisory letters on § 403(b) VS plans pursuant to Rev. Proc. 2013-22 and Rev. Proc. 2014-28</i>	
(1) Section 403(b) VS specimen plan of a word-for-word identical adopter of a mass submitter specimen plan	\$300
(2) Section 403(b) VS specimen plan of a minor modifier of a § 403(b) VS mass submitter specimen plan (or per adoption agreement if applicable)	\$1,000
(3) Assumption of sponsorship of an approved § 403(b) VS plan, without any amendment to the plan document, by a new entity, as evidenced by a change of employer identification number, per specimen plan	\$300
(4) Change in name and/or address of practitioner of an approved § 403(b) VS specimen plan, per specimen plan	None
<i>.10 User Fees for VCP submissions under EPCRS Revenue Procedure 2021-30</i>	
(1) Regular submissions under VCP. (For a special rule relating to terminating Orphan Plans see section 4.08 of Rev. Proc. 2021-30):	
Plans with assets of—	
(a) \$500,000 or less	\$1,500
(b) Over \$500,000 to \$10,000,000	\$3,000
(c) Over \$10,000,000	\$3,500

**Note: In general.** User fees under this section are determined based on end of year net assets of a plan as reported on the most recently filed Form 5500 series return.

**Plans not required to file Form 5500 Series.** If the plan sponsor is not required to file a Form 5500 series return with regard to a plan eligible for VCP, the amount of net assets for user fee purposes generally will be the amount of net assets as of the last day of the most recently completed plan year preceding the date of the VCP submission. However, if this information has not been compiled by the time the plan sponsor is ready to make a VCP submission to the Service, the plan sponsor may use the amount of net assets associated with the most recently completed prior plan year for which information on the amount of net assets is available. This exception will not apply if the VCP submission is mailed to the Service more than seven months after the close of the most recently completed plan year preceding the date of the VCP submission.

(2) VCP fee for Group Submissions, initial fee for first 20 plans

\$10,000

**Note:** The fee for a group submission is based on the number of plans affected by the failure as described in the compliance statement. The initial fee is due at the time of submission. An additional fee is due equal to the product of the number of plans in excess of 20 multiplied by \$250. The maximum fee for a group submission is \$50,000. If additional plans are added following the group submission, the additional fee is paid subject to the \$50,000 maximum fee. With respect to pre-approved plans, the fee is determined based on the number of basic plan documents submitted and the number of employers who have adopted each basic plan document by using an adoption agreement associated with that basic plan document. See Form 8951, User Fee for Application for Voluntary Correction Program (VCP), and Rev. Proc. 2021-30, sections 10.11 and 11.06.

## APPENDIX B1

### SAMPLE NOTICE TO INTERESTED PARTIES (QUALIFIED PLANS)

The sample notice set forth below may be used to satisfy the requirements of section 20A of this revenue procedure.

#### NOTICE TO INTERESTED PARTIES

1. Notice To: \_\_\_\_\_ [describe class or classes of interested parties]

An application is to be made to the Internal Revenue Service for an advance determination [on the qualification of the following employee pension benefit plan]:

2. \_\_\_\_\_

(name of plan)

3. \_\_\_\_\_

(plan number)

4. \_\_\_\_\_

(name and address of applicant)

5. \_\_\_\_\_

(applicant EIN)

6. \_\_\_\_\_

(name and address of plan administrator)

7. The application will be filed on \_\_\_\_\_ for an advance determination as to whether the plan meets the qualification requirements of § 401 or § 403(a) of the Internal Revenue Code (Code), with respect to the plan's \_\_\_\_\_ [initial plan qualification, termination, or partial termination]. The application will be filed with:

- Internal Revenue Service
- Attention: EP Determination Letters
- P.O. Box 12192
- TE/GE Stop 31A Team 105
- Covington, KY 41012-0192

8. The employees eligible to participate under the plan are:

9. The Internal Revenue Service [has/has not] previously issued a determination letter with respect to the qualification of this plan.

#### RIGHTS OF INTERESTED PARTIES

10. You have the right to submit to EP Determinations, either individually or jointly with other interested parties, your comments as to whether this plan meets the qualification requirements of the Code. Label your comments "Interested Party Statement". Include the EIN, plan name, and plan number in your correspondence. Also include your contact information (mailing address and phone number) in case we need to contact you. Your comments to EP Determinations should be submitted to:

- Internal Revenue Service
- EP Determinations



- Attn: Customer Service Manager
- P.O. Box 2508
- Cincinnati, OH 45202

You may instead, individually or jointly with other interested parties, request the DOL to submit, on your behalf, comments to EP Determinations regarding qualification of the plan. If the DOL declines to comment on all or some of the matters you raise, you may, individually, or jointly if your request was made to the DOL, submit your comments on these matters directly to EP Determinations at the Cincinnati address above.

## **REQUESTS FOR COMMENTS BY THE DOL**

11. The DOL may not comment on behalf of interested parties unless requested to do so by the lesser of 10 employees or 10 percent of the employees who qualify as interested parties. The number of persons needed for the DOL to comment with respect to this plan is \_\_\_\_\_. If you request the DOL to comment, your request must be in writing and must specify the matters upon which comments are requested, and must also include:

- (1) the information contained in items 2 through 5 of this Notice; and
- (2) the number of persons needed for the DOL to comment.

A request to the DOL to comment should be addressed as follows:

- Deputy Assistant Secretary
- Employee Benefits Security Administration
- U.S. Department of Labor,
- 200 Constitution Avenue, N.W.
- Washington, D.C. 20210
- Attention: 3001 Comment Request

## **COMMENTS TO THE INTERNAL REVENUE SERVICE**

12. Comments submitted by you to EP Determinations must be in writing and received by \_\_\_\_\_.

However, if there are matters that you request the DOL to comment upon on your behalf, and the DOL declines, you may submit comments on these matters to EP Determinations to be received by it within 15 days from the time the DOL notifies you that it will not comment on a particular matter, or by \_\_\_\_\_, whichever is later, but not after \_\_\_\_\_. A request to the DOL to comment on your behalf must be received by it by \_\_\_\_\_ if you wish to preserve your right to comment on a matter upon which the DOL declines to comment, or by \_\_\_\_\_ if you wish to waive that right.

## **ADDITIONAL INFORMATION**

13. Detailed instructions regarding the requirements for notification of interested parties may be found in sections 19A and 20A of Rev. Proc. 2023-4, IRB 2023-1, 162. Additional information concerning this application (including, if applicable, the following: an updated copy of the plan and related trust; the application for determination; any additional documents relating to the application that have been submitted to the Service; and copies of section 19A of Rev. Proc. 2023-4) is available at \_\_\_\_\_ during the hours of \_\_\_\_\_ for inspection and copying. (There is a nominal charge for copying and/or mailing.)

## APPENDIX B2

### SAMPLE NOTICE TO INTERESTED PERSONS (§ 403(b) PLANS)

The sample notice set forth below may be used to satisfy the requirements of section 20B of this revenue procedure.

#### NOTICE TO INTERESTED PERSONS

1. Notice To: \_\_\_\_\_ [describe class or classes of interested persons]

An application is to be made to the Internal Revenue Service for an advance determination that a § 403(b) plan meets the requirements of § 403(b):

2. \_\_\_\_\_

(name of plan)

3. \_\_\_\_\_

(plan number)

4. \_\_\_\_\_

(name and address of applicant)

5. \_\_\_\_\_

(applicant EIN)

6. \_\_\_\_\_

(name and address of plan administrator)

7. The application will be filed on \_\_\_\_\_ for an advance determination as to whether the plan meets the requirements of § 403(b) of the Internal Revenue Code (Code), with respect to the plan's \_\_\_\_\_ [initial determination as to whether the plan meets the requirements of § 403(b) or the determination upon plan termination that the plan meets the requirements of § 403(b)]. The application will be filed with:

- Internal Revenue Service
- Attention: EP Determination Letters
- P.O. Box 12192
- TE/GE Stop 31A Team 105
- Covington, KY 41012-0192

8. The employees eligible to participate under the plan are:

9. The Internal Revenue Service [has/has not] previously issued a determination letter whether this plan meets the requirements of § 403(b).

#### RIGHTS OF INTERESTED PERSONS

10. You have the right to submit to EP Determinations, either individually or jointly with other interested persons, your comments as to whether this plan meets the requirements of § 403(b). Label your comments "Interested Person Statement". Include the EIN, plan name, and plan number in your correspondence. Also include your contact information (mailing address and phone number) in case we need to contact you. Your comments to EP Determinations should be submitted to:

- Internal Revenue Service
- EP Determinations
- Attn: Customer Service Manager
- P.O. Box 2508
- Cincinnati, OH 45202

#### **COMMENTS TO THE INTERNAL REVENUE SERVICE**

11. Comments submitted by you to EP Determinations must be in writing and received by \_\_\_\_\_.

#### **ADDITIONAL INFORMATION**

12. Detailed instructions regarding the requirements for notification of interested persons may be found in sections 19B and 20B of Rev. Proc. 2023-4, IRB 2023-1, 162. Additional information concerning this application (including, if applicable, the following: an updated copy of the plan and related custodial account or annuity; the application for determination; any additional documents relating to the application that have been submitted to the Service; and copies of section 19B of Rev. Proc. 2023-4) is available at \_\_\_\_\_ during the hours of \_\_\_\_\_ for inspection and copying. (There is a nominal charge for copying and/or mailing.)

## APPENDIX C

### CHECKLIST FOR § 401(h) AND § 420 DETERMINATION LETTERS

As part of a § 401(h) or § 420 determination letter request described in section 18 of this revenue procedure the following checklist must be completed and attached to the determination letter request. If the request relates to § 401(h) but not to § 420, complete Part I only. If the request relates to § 420, complete Parts I and II. Answer each question by circling “Yes” or “No.” If a question contains a place for a section number, insert the section number that gives the information called for by a yes answer to a question.

#### PART I

**CIRCLE    SECTION**

- |  |        |     |
|--|--------|-----|
| 1. Does the Plan contain a medical benefits account within the meaning of § 401(h) of the Internal Revenue Code (Code)? If the medical benefits account is a new provision, items “a” through “h” should be completed.   | Yes No | ___ |
| a. Does the medical benefits account specify the medical benefits that will be available and contain provisions for determining the amount that will be paid?  | Yes No | ___ |
| b. Does the medical benefits account specify who will benefit?   | Yes No | ___ |
| c. Does the medical benefits account indicate that such benefits, when added to any life insurance protection in the Plan, will be subordinate to retirement benefits? (This requirement will not be satisfied unless the amount of actual contributions to provide § 401(h) benefits (when added to actual contributions for life insurance protection under the Plan) does not exceed 25 percent of the total actual contributions to the Plan (other than contributions to fund past service credits), determined on an aggregate basis since the inception of the § 401(h) arrangement.) | Yes No | ___ |
| d. Does the medical benefits account maintain separate accounts with respect to contributions to key employees (as defined in § 416(i)(1)) to fund such benefits?  | Yes No | ___ |
| e. Does the medical benefits account state that amounts contributed must be reasonable and ascertainable?  | Yes No | ___ |
| f. Does the medical benefits account provide for the impossibility of diversion prior to satisfaction of liabilities (other than item “7” below)?  | Yes No | ___ |
| g. Does the medical benefits account provide for reversion upon satisfaction of all liabilities (other than item “7” below)?   | Yes No | ___ |
| h. Does the medical benefits account provide that forfeitures must be applied as soon as possible to reduce employer contributions to fund the medical benefits?   | Yes No | ___ |

#### PART II

**CIRCLE    SECTION**

- |  |        |     |
|--|--------|-----|
| 2. Does the Plan limit transfers to “Excess Assets” as defined in § 420(e)(2)?   | Yes No | ___ |
| 3. Does the Plan provide that only one transfer may be made in a taxable year?   | Yes No | ___ |
| 4. Does the Plan provide that the amount transferred shall not exceed the amount reasonably estimated to be paid for qualified current retiree liabilities?  | Yes No | ___ |
| 5. Does the Plan provide that no transfer will be made after December 31, 2025?  | Yes No | ___ |
| 6. Does the Plan provide that transferred assets and income attributable to such assets shall be used only to pay qualified current retiree liabilities for the taxable year of transfer?  | Yes No | ___ |
| 7. Does the Plan provide that any amounts transferred (plus income) that are not used to pay qualified current retiree liabilities shall be transferred back to the defined benefit portion of the Plan?   | Yes No | ___ |
| 8. Does the Plan provide that amounts paid out of a health benefits account or an applicable life insurance account will be treated as paid first out of transferred assets and income attributable to those assets?   | Yes No | ___ |
| 9. Does the Plan provide that participants’ accrued benefits become nonforfeitable on a termination basis (i) immediately prior to transfer, or (ii) in the case of a participant who separated within 1 year before the transfer, immediately before such separation? | Yes No | ___ |
| 10. In the case of transfers described in § 420(b)(4) relating to 1990, does the Plan provide that benefits will be recomputed and become nonforfeitable for participants who separated from service in such prior year as described in § 420(c)(2)?                   | Yes No | ___ |

- |   |        |       |
|---|--------|-------|
| 11. Does the Plan provide that transfers will be permitted only if each group health plan or arrangement or group-term life insurance plan, as applicable contains provisions satisfying § 420(c)(3), as amended? | Yes No | _____ |
| 12. Does the Plan define “applicable employer cost”, “cost maintenance period” and “benefit maintenance period”, as needed, consistently with § 420(c)(3), as amended?  | Yes No | _____ |
| 13. Does the Plan provide that transferred assets cannot be used for key employees?   | Yes No | _____ |

## APPENDIX D

### SAMPLE FORMAT FOR A LETTER RULING REQUEST FROM EMPLOYEE PLANS RULINGS AND AGREEMENTS

*(Insert the date of request)*

[for Employee Plans]  
Internal Revenue Service  
Attention: EP Letter Rulings  
P.O. Box 12192  
TE/GE Stop 31A Team 105  
Covington, KY 41012-0192

Dear Sir or Madam:

*(Insert the name of the taxpayer)* (the “Taxpayer”) requests a ruling on the proper treatment of *(insert the subject matter of the letter ruling request)* under § *(insert the number)* of the Internal Revenue Code.

*[If the taxpayer is requesting expedited handling, the letter ruling request must contain a statement to that effect. This statement must explain the need for expedited handling. See section 6.03(3) of this revenue procedure.]*

#### A. STATEMENT OF FACTS

##### 1. Taxpayer Information

[Provide the statements required by sections 6.02(1)(a), (b), and (c) of Rev. Proc. 2023-4, 2023-1 IRB 162. Hereafter, all references are to Rev. Proc. 2023-4, unless otherwise noted.]

For example, a taxpayer that maintains a qualified employee retirement plan and files an annual Form 5500 series of returns may include the following statement to satisfy sections 6.02(1)(a), (b), and (c):

The Taxpayer is a construction company with principal offices located at 100 Whatever Drive, Wherever, Maryland 12345, and its telephone number is (123) 456-7890. The Taxpayer’s federal employer identification number is 00-1234567. The Taxpayer uses the Form 5500 series of returns on a calendar year basis to report its qualified employee retirement plan and trust.

##### 2. Detailed Description of the Transaction.

[The ruling request must contain a complete statement of the facts relating to the transaction that is the subject of the letter ruling request. This statement must include a detailed description of the transaction, including material facts in any accompanying documents, and the business reasons for the transaction. See sections 6.02(1)(b), 6.02(1)(c), and 6.02(2).]

#### B. RULING REQUESTED

[The ruling request should contain a concise statement of the ruling requested by the taxpayer.]

#### C. STATEMENT OF LAW

[The ruling request must contain a statement of the law in support of the taxpayer’s views or conclusion, including any authorities believed to be contrary to the position advanced in the ruling request. This statement must also identify any pending legislation that may affect the proposed transaction. See sections 6.02(6), 6.02(7), and 6.02(8).]

#### D. ANALYSIS

[The ruling request must contain a discussion of the facts and an analysis of the law. See sections 6.02(3), 6.02(6), 6.02(7), and 6.02(8).]



## E. CONCLUSION

[The ruling request should contain a statement of the taxpayer's conclusion on the ruling requested.]

## F. PROCEDURAL MATTERS

### 1. Rev. Proc. 2023–4 statements

- a. [The statement required by section 6.02(4).]
- b. [The statement required by section 6.02(5).]
- c. [The statement required by section 6.02(6) regarding whether the law in connection with the letter ruling request is uncertain and whether the issue is adequately addressed by relevant authorities.]
- d. [The statement required by section 6.02(7) if the taxpayer determines that there are no contrary authorities.]
- e. [If the taxpayer wants to have a conference on the issues involved in the letter ruling request, the ruling request should contain a statement to that effect. See section 6.03(5).]
- f. [If the taxpayer is requesting the letter ruling to be issued by fax, the ruling request should contain a statement to that effect. See section 6.03(4).]
- g. [If the taxpayer is requesting separate letter rulings on multiple issues, the letter ruling request should contain a statement to that effect. See section 6.03(1).]

### 2. Administrative

- a. A Power of Attorney is enclosed. [See sections 6.02(12) and 6.03(2).]
- b. The deletions statement and checklist required by Rev. Proc. 2023–4 are enclosed. [See sections 6.02(9), (16), and (18).]
- c. The required user fee is enclosed. [See section 6.02(15).]

Very truly yours,

*(Insert the name of the taxpayer or the taxpayer's authorized representative)*

By:

\_\_\_\_\_  
Signature      Date

Typed or printed name of person signing request

**DECLARATION:** [See section 6.02(14).]

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request and such facts are true, correct, and complete.

*(Insert the name of the taxpayer)*

By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title      Date

Typed or printed name of person signing declaration

## APPENDIX E

### CHECKLIST FOR LETTER RULINGS FROM EMPLOYEE PLANS RULINGS AND AGREEMENTS

#### IS YOUR RULING REQUEST COMPLETE?

#### INSTRUCTIONS

The Service will be able to respond more quickly to your letter ruling request if it is carefully prepared and complete. To ensure that your request is in order, use this checklist. Complete the four items of information requested before the checklist. Answer each question by circling “Yes,” “No,” or “N/A.” If a question contains a place for a page number, insert the page number (or numbers) of the request that gives the information called for by a yes answer to a question. **Sign and date the checklist (as taxpayer or authorized representative) and place it on top of your request.**

If you are an authorized representative submitting a request for a taxpayer, you must include a completed checklist with the request or the request will either be returned to you or substantive consideration of it will be deferred until a completed checklist is submitted. **If you are a taxpayer preparing your own request without professional assistance, an incomplete checklist will not be cause for returning your request or deferring substantive consideration of the request.** However, you should still complete as much of the checklist as possible and submit it with your request.

TAXPAYER’S NAME \_\_\_\_\_

TAXPAYER’S I.D. No. \_\_\_\_\_

ATTORNEY/P.O.A. \_\_\_\_\_

PRIMARY CODE SECTION \_\_\_\_\_

#### CIRCLE ONE ITEM

- |                         |   |
|-------------------------|---|
| Yes No N/A              | 1. Does your request involve an issue under the jurisdiction of Employee Plans Rulings and Agreements? See section 24.01 of Rev. Proc. 2023-4, for the list of issues on which Employee Plans Rulings and Agreements issues letter rulings. See section 5 of Rev. Proc. 2023-4, for issues under the jurisdiction of other offices. (Hereafter, all references are to Rev. Proc. 2023-4, unless otherwise noted.) |
| Yes No N/A<br>Page ____ | 2. If the request deals with a completed transaction, have you filed the return for the year in which the transaction was completed? See section 24.01.   |
| Yes No                  | 3. Are you requesting a letter ruling on a hypothetical situation or question? See section 25.03.   |
| Yes No                  | 4. Are you requesting a letter ruling on alternative plans of a proposed transaction? See section 25.03.  |
| Yes No                  | 5. Are you requesting the letter ruling for only part of an integrated transaction? See section 25.04.  |
| Yes No                  | 6. Have you submitted another letter ruling request for the transaction covered by this request?  |
| Yes No                  | 7. Are you requesting the letter ruling for a business, trade, industrial association, or similar group concerning the application of tax law to its members? See section 24.06.  |
| Yes No<br>Page ____     | 8. Have you included a complete statement of all the facts relevant to the transaction? See section 6.02(1).  |
| Yes No N/A              | 9. Have you submitted with the request true copies of all wills, deeds, plan documents, and other documents relevant to the transaction, and labeled and attached them in alphabetical sequence? See section 6.02(2).   |
| Yes No<br>Page ____     | 10. Have you included, rather than merely incorporated by reference, all material facts from the documents in the request? Are they accompanied by an analysis of their bearing on the issues that specifies the document provisions that apply? See section 6.02(3).   |
| Yes No<br>Page ____     | 11. Have you included the required statement regarding whether the same issue in the letter ruling request is in an earlier return of the taxpayer or in a return for any year of a related taxpayer? See section 6.02(4).  |
| Yes No<br>Page ____     | 12. Have you included the required statement regarding whether the Service previously ruled on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor? See section 6.02(5).   |

**CIRCLE ONE****ITEM**

Yes No  
Page \_\_\_\_\_

13. Have you included the required statement regarding whether the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted the same or similar issue but withdrew it before the letter ruling was issued? See section 6.02(5).

Yes No  
Page \_\_\_\_\_

14. Have you included the required statement regarding whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities? See section 6.02(6).

Yes No  
Page \_\_\_\_\_

15. Have you included the required statement of relevant authorities in support of your views? See section 6.02(6).

Yes No N/A  
Page \_\_\_\_\_

16. Does your request discuss the implications of any legislation, tax treaties, court decisions, regulations, notices, revenue rulings, or revenue procedures you determined to be contrary to the position advanced? See section 6.02(7), which states that taxpayers must inform the Service of such authorities.

Yes No N/A  
Page \_\_\_\_\_

17. If you determined that there are no contrary authorities, have you included a statement to this effect in your request? See section 6.02(7).

Yes No N/A  
Page \_\_\_\_\_

18. Have you included in your request a statement identifying any pending legislation that may affect the proposed transaction? See section 6.02(8).

Yes No

19. Is the request accompanied by the deletions statement required by section 6110? See section 6.02(9).

Yes No N/A  
Page \_\_\_\_\_

20. Have you (or your authorized representative) signed and dated the request? See section 6.02(10).

Yes No N/A

21. If the request is signed by your representative, or if your representative will appear before the Service in connection with the request, is the request accompanied by a properly prepared and signed power of attorney (Form 2848) with the signatory's name typed or printed? See section 6.02(12).

Yes No N/A  
Page \_\_\_\_\_

22. Have you included, signed and dated, the penalties of perjury statement in the form required by section 6.02(14)?

Yes No N/A

23. Have you included the correct user fee with the request and made your check or money order payable to the United States Treasury? See section 6.02(15) and section 30 and Appendix A, for the correct amount and additional information on user fees.

Yes No N/A

24. Are you submitting your request in duplicate if necessary? See section 6.02(16).

Yes No N/A  
Page \_\_\_\_\_

25. If you are requesting separate letter rulings on different issues involving one factual situation, have you included a statement to that effect in each request? See section 6.03(1).

Yes No N/A  
Page \_\_\_\_\_

26. If you have more than one representative, have you designated whether the representatives listed on the power of attorney (Form 2848) are to receive a copy of the letter ruling? See section 6.03(2).

Yes No N/A

27. If you want your letter ruling request to be processed ahead of the regular order or by a specific date, have you requested expedited handling in the form required by section 6.03(3) and stated a compelling need for such action in the request?

Yes No N/A  
Page \_\_\_\_\_

28. If you want to have a conference on the issues involved in the request, have you included a request for a conference in the ruling request? See section 6.03(5).

Yes No N/A

29. If your request is covered by any of the revenue procedures listed in section 26, have you complied with all of the requirements of the applicable revenue procedures?

Yes No N/A

30. Have you addressed your request to the appropriate office provided in section 31? Improperly addressed requests may be delayed (sometimes for over a week) in reaching the appropriate office for initial processing.

Signature

Title or authority

Date

Typed or printed name of person signing checklist

## APPENDIX F

### ADDITIONAL CHECKLIST FOR ROTH IRA RECHARACTERIZATION RULING REQUESTS

Note: A conversion of a traditional IRA to a Roth IRA, and a rollover from any other eligible retirement plan to a Roth IRA, made in tax years after December 31, 2017, cannot be re-characterized as having been made to a traditional IRA.

In order to assist Employee Plans in processing a ruling request involving a Roth IRA recharacterization, in addition to the items in Appendix E, please check the following list. Answer each question by circling “Yes,” “No,” or “N/A.” If a question contains a place for a page number, insert the page number (or numbers) of the request that gives the information called for by a yes answer to a question.

- |                         |   |
|-------------------------|---|
| Yes No N/A<br>Page ____ | 1. Did you include the name(s) of the trustee and/or custodian of the traditional individual retirement account (IRA) (generally, a financial institution)?   |
| Yes No N/A<br>Page ____ | 2. Is each IRA identification number included?  |
| Yes No N/A<br>Page ____ | 3. If the ruling request involves Roth conversions of a married couple, is the necessary information with respect to each IRA of each party included? Note: as long as the parties file a joint federal Form 1040, the Service can issue one ruling covering both parties. Furthermore, if a joint federal income tax return has been filed for the year or years in question, the Service only requires one user fee even if each spouse had failed conversions. |
| Yes No N/A<br>Page ____ | 4. If there was one or more attempted conversions, are the applicable dates on which the attempted IRA conversion(s) occurred included?   |
| Yes No N/A<br>Page ____ | 5. If the reason that a conversion failed is that the taxpayer or related taxpayers relied upon advice of a tax professional such as a CPA, or an attorney, is the name and occupation of that adviser included?  |
| Yes No N/A<br>Page ____ | 6. Is certification that the taxpayer or taxpayers timely filed the relevant federal tax return(s) included?  |
| Yes No N/A<br>Page ____ | 7. Is there a short statement of facts with respect to the conversion?  |
| Yes No N/A<br>Page ____ | 8. If the taxpayer recharacterized his/her Roth IRA to a traditional IRA prior to submitting a request for § 9100 relief, are the date(s) of the recharacterization(s), name(s) of trustees and/or custodians, and the identification numbers of the traditional IRA(s) included?   |
| Yes No N/A<br>Page ____ | 9. Does the request include the type of contribution (i.e., regular or conversion) and amount of the contribution being recharacterized?  |

## APPENDIX G

### ADDITIONAL CHECKLIST FOR NONBANK TRUSTEE APPLICATIONS

In order to assist Employee Plans Rulings and Agreements in considering an application for nonbank trustee approval, please use this checklist, in addition to the checklist in Appendix E, and submit it with your request.

Please respond with Yes, No, or N/A.

1. Did you specify the types of accounts you want to handle (e.g., IRAs, Roth IRAs, 403(b)(7) custodial accounts)?
2. Did you specify whether you want to handle accounts passively and/or non-passively?
3. Did you identify the percentage ownership of individuals of the applicant, taking into account the rules for constructive ownership provided in IRC 1563(e) and (f)(2)? Did you describe in detail the intermediate and ultimate ownership of the applicant or provide an organizational chart illustrating such ownership?
4. If you do not satisfy any of the safe harbors in Treas. Reg. § 1.408-2(e)(2)(i), did you discuss factors relating to satisfying the continuity requirement such as concentration of ownership, number of employees, number of physical locations, non-owner management, and overall financial condition?
5. Did you provide a copy of your audited financial statements that show net worth as determined at the end of the most recent taxable year?
6. Does your submission include draft Rules of Fiduciary Conduct?
7. Do the draft Rules of Fiduciary Conduct contain each item (if applicable) in Treas. Reg. § 1.408-2(e)(5)?
8. Did you provide a complete copy of the applicant's current bond with riders?
9. Did you discuss each requirement in Treas. Reg. § 1.408-2(e)(2) through § 1.408-2(e)(5)?
10. Did you provide documentation to substantiate compliance with each requirement (if applicable)?
11. Did you provide a representation that, if approved, the applicant will act as a trustee only if the written custodial agreement or trust instrument provides for the substitution of a custodian or trustee?

## Rev. Proc. 2023-5

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**SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?**

This revenue procedure sets forth procedures for issuing determination letters on issues under the jurisdiction of the Director, Exempt Organizations (EO) Rulings and Agreements. Specifically, it explains the procedures for issuing determination letters on tax-exempt status (in response to applications for recognition of exemption from Federal income tax under §§ 501 or 521 other than those subject to Rev. Proc. 2023-4, this Bulletin (relating to pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans)), private foundation status, and other determinations related to tax-exempt organizations. These procedures also apply to revocation or modification of determination letters. This revenue procedure also provides guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under § 7428. Finally, this revenue procedure provides guidance on applicable user fees for requesting determination letters.

**Description of terms used in this revenue procedure**

.01 For purposes of this revenue procedure—

(1) The term “Service” means the Internal Revenue Service.

(2) The term “EO Rulings and Agreements” means the office in Exempt Organizations & Government Entities that is primarily responsible for up-front, customer-initiated activities such as determination letter requests, taxpayer assistance, and assistance to other Exempt Organizations & Government Entities offices. The EO Rulings and Agreements office includes the offices of EO Determinations and EO Determinations Quality Assurance.

(3) The term “EO Determinations” means the office in EO Rulings and Agreements of the Service that is primarily responsible for processing requests for determination letters.

(4) The term “Independent Office of Appeals” (Internal Revenue Service Independent Office of Appeals) means any office under the direction and control of the Chief of Appeals. The purpose of the Independent Office of Appeals is to resolve tax controversies, without litigation, on a fair and impartial basis. The Independent Office of Appeals is independent of EO Rulings and Agreements.

(5) The term “determination letter” means a written statement issued by EO Determinations or the Independent Office of Appeals in response to a request for the Service’s ruling on a question of tax-exempt status, foundation status, or other determination under the jurisdiction of the Director, EO Rulings and Agreements. This includes a written statement issued by EO Determinations or an office of the Independent Office of Appeals on the basis of advice secured from the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) pursuant to the procedures prescribed in Rev. Proc. 2023-2, this Bulletin. A determination letter applies the principles and precedents previously announced to a specific set of facts.

(6) The term “request” means the written submission that an organization uses to obtain a determination letter in accordance with the requirements of this revenue procedure.

(7) The term “application” means a request for recognition of exemption from Federal income tax under §§ 501 or 521.

#### **Updated annually**

.02 This revenue procedure is updated annually but may be modified or amplified during the year.

## **SECTION 2. NATURE OF CHANGES TO REV. PROC. 2022-5 AND RELATED REVENUE PROCEDURES AND FORMS**

### **What changes have been made to Rev. Proc. 2022-5?**

.01 This revenue procedure updates Rev. Proc. 2022-5, 2022-1 IRB 256, which deals with procedures for issuing Exempt Organization determination letters. Notable changes to Rev. Proc. 2022-5 that appear in this year’s update include—

(1) Edits were made throughout to reflect Rev. Proc. 2022-8, 2022-4 IRB 455 (2022), which provided information and procedures on the electronic Form 1024, *Application for Recognition of Exemption Under Section 501(a) or Section 521 of the Internal Revenue Code*.

(2) Section 9.02 of this revenue procedure includes a change made by the Independent Office of Appeals to acknowledge there is now an opportunity to protest/appeal a proposed adverse

determination letter on classification or reclassification of a § 4947(a)(1) non-exempt charitable trust as described in § 509(a)(3).

(3) Section 13.02 of this revenue procedure was updated to note that favorable determination letters issued in 2014 and later are available on Tax Exempt Organization Search at [www.irs.gov/teos](http://www.irs.gov/teos) and explain that requests for applications and determination letters of exempt organizations can be made by submitting Form 4506-B, *Request for a Copy of Exempt Organization IRS Application or Letter*. Previously, requests for these materials were made by submitting Form 4506-A, *Request for a Copy of Exempt or Political Organization IRS Form*. See the instructions for Form 4506-A for information on how to obtain copies of annual information returns.

(4) Section 16 of this revenue procedure was updated to explain that this revenue procedure supersedes Rev. Proc. 2022-8.

(5) Editorial changes were made throughout including minor non-substantive changes, dates, and cross-references. Citations to other revenue procedures were changed to reflect the appropriate annual revenue procedures.

#### **Related revenue procedures**

.02 This revenue procedure supplements the following revenue procedures—

(1) Rev. Proc. 80-27, 1980-1 CB 677, which sets forth procedures under which tax-exempt status may be recognized on a group basis for subordinate organizations affiliated with and under the general supervision and control of a central organization.

(2) Rev. Proc. 72-5, 1972-1 CB 709, which provides information for religious and apostolic organizations seeking recognition of exemption under § 501(d).

(3) Rev. Proc. 2015-17, 2015-7 IRB 599, which provides information regarding procedures for organizations described in § 501(c)(29).

(4) Rev. Proc. 2014-11, 2014-3 IRB 411, which sets forth procedures for reinstating the tax-exempt status of organizations that have had their tax-exempt status automatically revoked under § 6033(j)(1).

(5) Rev. Proc. 2016-41, 2016-30 IRB 165, which sets forth the procedure for an organization to notify the Service, consistent with § 506, that it is operating as an organization described in § 501(c)(4).

(6) Rev. Proc. 2018-15, 2018-9 IRB 379, which describes the circumstances under which a domestic § 501(c) organization that changes its form or place of organization will not be required to file a new exemption application and such an organization's reporting requirements.

#### **Related forms that are not a request for a determination letter**

.03 **Forms that are not requests for a determination.** Certain organizations are required to submit the following forms, but such forms are not requests for a determination and, thus, are not subject to the procedures in this revenue procedure.

(1) **Form 3115, *Application for Change in Accounting Method*.** A tax-exempt organization described in § 501(c) that wants to change its method of accounting for computing taxable income must follow the procedures that are generally applicable to all taxpayers for requesting

the Commissioner's consent to an accounting method change, including, if applicable, filing a Form 3115, *Application for Change in Accounting Method* (see, e.g., Rev. Proc. 2015-13, 2015-5 IRB 419, as modified and clarified by Rev. Proc. 2021-34, 2021-35 IRB 337 (or any successor)). A tax-exempt organization described in § 501(c) must request consent to change its method of accounting for computing taxable income only if the tax-exempt organization has previously adopted a method of accounting for computing taxable income for the item(s) being changed. A taxpayer generally adopts a method of accounting in the first year in which an item is taken into account in computing taxable income. Thus, a tax-exempt organization that has adopted a method of accounting for an item of income or expense from an unrelated trade or business must generally request consent in order to change its method of accounting for reporting the item in any subsequent year, regardless of whether the gross income from the unrelated trade or business is greater than or equal to \$1,000 in such subsequent year. However, a tax-exempt organization that has not yet adopted a method of accounting for an item does not have to request consent to change the methodology of reporting the item. Thus, a tax-exempt organization that is required to file a Form 990-T, *Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))* solely due to owing a § 6033(e)(2) proxy tax but has not yet adopted a method of accounting for an item of income or expense does not have to request consent to change its methodology for reporting such item on its Form 990-T (or Form 990, as applicable). See Rev. Proc. 2015-13, as modified and clarified by Rev. Proc. 2021-34, and Section 9 of Rev. Proc. 2023-1, this Bulletin for procedures applicable to taxpayers, including tax-exempt organizations, for requesting changes in method of accounting.

(2) **Form 8871, *Political Organization Notice of Section 527 Status*.** A political party, a campaign committee for a candidate for Federal, state, or local office, and a political action committee are all political organizations subject to tax under § 527. To be tax-exempt, a political organization may be required to notify the Service that it is to be treated as a § 527 organization by electronically filing Form 8871, *Political Organization Notice of Section 527 Status*. See [www.irs.gov](http://www.irs.gov) ("Tax Information for Political Organizations").

(3) **Form 8976, *Notice of Intent to Operate Under Section 501(c)(4)*.** An organization described in § 501(c)(4) must, no later than 60 days after the date the organization is established, notify the Service that it is operating as an organization described in § 501(c)(4) by submitting a completed Form 8976, *Notice of Intent to Operate Under Section 501(c)(4)* and the accompanying user fee. See [www.irs.gov](http://www.irs.gov) ("Electronically Submit Your Form 8976, Notice of Intent to Operate Under Section 501(c)(4)").

### SECTION 3. UNDER WHAT CIRCUMSTANCES DOES EO DETERMINATIONS ISSUE DETERMINATION LETTERS?

**Matters on which EO  
Determinations will issue a  
determination letter**

.01 EO Determinations issues determination letters on the following matters—

(1) Initial qualification for tax-exempt status of organizations described in §§ 501 or 521 (including reinstatement of organizations that have been automatically revoked pursuant to § 6033(j) and subordinate organizations included in a group exemption letter that have been revoked pursuant to that provision). See Rev. Proc. 2018-15 for procedures applicable to an entity changing its form or state of organization;

(2) Updated tax-exempt status letter (affirmation letter) to reflect changes to an organization's name or address, or to replace a lost tax-exempt status letter;

(3) Classification or reclassification of private foundation status, including whether an organization is—

(a) A private foundation;

(b) A public charity described in §§ 509(a)(1) and 170(b)(1)(A) (other than clauses (v), (vii), and (viii));

(c) A public charity described in § 509(a)(2) or (4);

(d) A public charity described in § 509(a)(3), whether such organization is described in § 509(a)(3)(B)(i), (ii), or (iii) (supporting organization type), and whether or not a Type III supporting organization is functionally integrated;

(e) A private operating foundation described in § 4942(j)(3); or

(f) An exempt operating foundation described in § 4940(d)(2).

(4) Recognition of unusual grants to certain organizations under §§ 170(b)(1)(A)(vi) and 509(a)(2);

(5) Requests for relief under Treas. Reg. § 301.9100-1 in connection with applications for recognition of exemption;

(6) Terminations of private foundation status under § 507(b)(1)(B);

(7) Advance approval of certain set-asides described in § 4942(g)(2);

(8) Advance approval under § 4945(g) of organizations' grant making procedures;

(9) Advance approval of voter registration activities described in § 4945(f);

(10) Whether an organization is exempt from filing annual information returns under § 6033, as provided in Treas. Reg. § 1.6033-2(g)(1), Rev. Proc. 95-48, 1995-2 CB 418, and Rev. Proc. 96-10, 1996-1 CB 577;

(11) Determination of foundation status under § 509(a)(3) of non-exempt charitable trusts described in § 4947(a)(1); and

(12) Government entity voluntary termination of § 501(c)(3) recognition (must include documentation that the organization is not subject to income tax, other than under § 501(a)).

**Circumstances under which  
determination letters are  
not issued**

.02 The Service may decline to issue a determination letter when appropriate in the interest of sound tax administration or on other grounds whenever warranted by the facts or circumstances of a particular case. In addition, the Service will not issue a determination letter in response to any request if—



(1) the request involves an issue under the jurisdiction of the Office of Associate Chief Counsel described in Rev. Proc. 2023-1;

(2) the same issue involving the same taxpayer, or a related taxpayer, is pending in a case in litigation or before the Independent Office of Appeals. If the issue in litigation involving the same taxpayer or a related taxpayer is not the taxpayer or a related taxpayer's qualification as a tax-exempt entity (such as a declaratory judgment action under § 7428), the Service may issue a determination letter on tax-exempt status after consultation with counsel;

(3) the determination letter is requested by an industry, trade association, or similar group on behalf of individual taxpayers within the group (other than subordinate organizations covered by a group exemption letter);

(4) the determination letter is requested by an organization seeking to qualify under § 501(c)(5) the purpose of which is directed to the betterment of conditions of those engaged in the pursuits of labor, agriculture, or horticulture, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations relating to an activity involving controlled substances (within the meaning of schedule I and II of the Controlled Substances Act, 21 USC § 801 et seq.) that is prohibited by Federal law regardless of its legality under the law of the state in which such activity is conducted;

(5) the determination letter is requested by an organization seeking to qualify under § 501(c)(6) the purpose of which is directed to the improvement of business conditions of one or more lines of business relating to an activity involving controlled substances (within the meaning of schedule I and II of the Controlled Substances Act, 21 USC § 801 et seq.) that is prohibited by Federal law regardless of its legality under the law of the state in which such activity is conducted;

(6) the request is based on alternative plans of proposed transactions or on hypothetical situations. An application based on proposed activities that satisfies section 6.07(2) of this revenue procedure (related to recognizing tax-exempt status in advance of actual operations) is not considered to be based on hypothetical situations;

(7) an organization currently recognized as exempt under § 501(c) of the Code seeks a new determination letter confirming that the organization is still recognized under the same Code section under the current facts;

(8) an organization seeks a determination of foundation status that is identical to its current foundation status as determined by EO Determinations. For example, an organization that is already recognized as described in §§ 509(a)(1) and 170(b)(1)(A)(ii) as a school generally will not receive a new determination letter that it is still described in §§ 509(a)(1) and 170(b)(1)(A)(ii) under the current facts;

(9) an organization currently recognized as described in § 501(c)(3) seeks a determination letter recognizing the organization as described in a different subsection of § 501(c);

(10) an organization currently recognized as exempt under § 501(c) (other than a government entity as specified in section 3.01(12) of this revenue procedure) requests a determination to relinquish its tax-exempt status under § 501(a);



(11) a domestic organization currently recognized as exempt under § 501(c) seeks a determination letter but is not required to reapply because it has changed its form or state of organization in accordance with the requirements in Rev. Proc. 2018-15. An organization may request an affirmation letter to reflect changes to its name or address as provided in section 3.01(2) of this revenue procedure; or

(12) an organization applies for a group exemption letter. Notice 2020-36, 2020-21 IRB 840, provides that the Service will not accept any requests for group exemption letters until publication of the final revenue procedure described in the Notice or other guidance in the Internal Revenue Bulletin.

**Note:** In some circumstances, an organization may seek a letter ruling from the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) on a specific legal issue, including whether an activity furthers an organization's exempt purpose. *See* Rev. Proc. 2023-1 and Rev. Proc. 2023-3, this Bulletin.

**Technical advice may be requested in certain cases**

.03 EO Determinations generally issues determination letters only if the question presented is answered by a statute, tax treaty, regulation, court opinion, or guidance published in the Internal Revenue Bulletin. At any time during the course of consideration by EO Determinations, if either EO Determinations or the organization believes that its case involves an issue on which there is no published precedent, or there has been non-uniformity in the Service's handling of similar cases, EO Determinations may decide to seek, or the organization may request that EO Determinations seek, technical advice from the Office of Associate Chief Counsel with subject matter jurisdiction over the issue. *See* Rev. Proc. 2023-2.

**Review of determination letters**

.04 Determination letters issued under this revenue procedure are not generally reviewed by any other office outside of EO Rulings and Agreements before they are issued. For post-determination review of determination letters by EO Determinations Quality Assurance, *see* section 11.03 of this revenue procedure.

**Determination letter based solely on administrative record**

.05 A determination letter is issued based solely upon the facts, attestations, and representations contained in the administrative record.

(1) The taxpayer is responsible for the accuracy of any factual representations or attestations contained in the request.

(2) Any oral representation of additional facts, or modification of facts, as represented or alleged in the request, must be reduced to writing and signed by the taxpayer under a penalty of perjury statement, in accordance with section 4.06 of this revenue procedure.

(3) The failure to disclose a material fact or misrepresentation of a material fact on the request, which includes an incorrect representation or attestation, may adversely affect the reliance that the organization submitting the request would otherwise obtain through issuance by the Service of a favorable determination letter. *See* section 11.02 of this revenue procedure for additional information.

**SECTION 4. WHAT ARE THE GENERAL INSTRUCTIONS FOR REQUESTING DETERMINATION LETTERS?**

## In general

.01 This section explains the general instructions for requesting determination letters. In addition to these general instructions, specific procedures apply to requests submitted by letter (as described in section 5 of this revenue procedure) and to requests for determinations submitted on Form 8940, *Request for Miscellaneous Determination* (as described in section 7 of this revenue procedure).

## Format of request

.02 **Which form, if any, should be used for the request?** Some requests are made by letter and some requests are made by submitting a specific form.

## Form 1023 application

(1) **Form 1023 application.** An organization seeking recognition of exemption under § 501(c)(3) (including an organization to which § 501(e), (f), (k), (n), (q), or (r) is applicable) must electronically submit a completed Form 1023 at [www.pay.gov](http://www.pay.gov). In the case of an organization that provides credit counseling services, *see* § 501(q). In the case of an organization that is a hospital and is seeking tax-exempt status under § 501(c)(3), *see* § 501(r). Notwithstanding the foregoing, eligible organizations may seek recognition of exemption under § 501(c)(3) by submitting a completed Form 1023-EZ, as described in section 6.06(2) of this revenue procedure, rather than by submitting Form 1023. For additional information about the electronic submission process, refer to Form 1023 and its Instructions.

## Form 1023-EZ application

(2) **Form 1023-EZ application.** An eligible organization, as described in section 6.05 of this revenue procedure, may, but is not required to, seek recognition of exemption under § 501(c)(3) by submitting a completed electronic Form 1023-EZ.

Alternatively, an eligible organization may seek tax-exempt status under § 501(c)(3) by submitting a completed Form 1023, as described in section 6.06(1) of this revenue procedure.

For additional information about the electronic submission process, refer to Form 1023-EZ and its instructions.

## Form 1024 application

(3) **Form 1024 application.** An organization seeking a determination letter from the Service recognizing tax-exempt status under § 501(c)(2), (5)-(19), (21)-(23), (25)-(29), or (d) must electronically submit a completed Form 1024, *Application for Recognition of Exemption Under Section 501(a) or Section 521*. An organization seeking a determination letter from the Service recognizing tax-exempt status under § 521 may also electronically submit Form 1024.

Organizations that seek to operate under § 501(c)(9) or (17) must apply for recognition of exemption. *See* § 505. Other organizations may choose to seek a determination letter recognizing tax-exempt status under § 501 by filing Form 1024, but are not required to do so except in certain cases (*see*, for example, § 6033(j)(2) regarding failures to file annual information returns or annual electronic notifications required under § 6033(a) or (i)).

## Form 1024-A application

(4) **Form 1024-A application.** An organization seeking a determination letter from the Service recognizing tax-exempt status under § 501(c)(4) must electronically submit a completed Form 1024-A and the accompanying user fee at [www.pay.gov](http://www.pay.gov). In the case of an organization that provides credit counseling services and seeks recognition of exemption under § 501(c)(4), *see* § 501(q).

Section 501(c)(4) organizations may choose to seek a determination letter recognizing tax-exempt status under § 501(c)(4) by filing Form 1024-A, but are not required to do so except in certain cases (*see*, for example, § 6033(j)(2) regarding failures to file annual information returns or annual electronic notifications required under § 6033(a) or (i)).

Submission of Form 1024-A does not relieve an organization of the requirement to submit Form 8976, *Notice of Intent to Operate Under Section 501(c)(4)*. For additional information about the electronic submission process, refer to Form 1024-A and its Instructions.

#### **Form 1028 application**

(5) **Form 1028 application.** An organization seeking recognition of exemption under § 521 may submit a completed Form 1028, *Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code*, along with Form 8718. Note that an organization seeking a determination letter from the Service recognizing tax-exempt status under § 521 may instead electronically submit the revised Form 1024.

#### **Form 8940 request for miscellaneous determination**

(6) **Form 8940 request for miscellaneous determination.** The Form 8940, *Request for Miscellaneous Determination*, is used for the following determination letter requests—

- (a) Advance approval of certain set-asides described in § 4942(g)(2);
- (b) Advance approval of voter registration activities described in § 4945(f);
- (c) Advance approval of scholarship procedures described in § 4945(g);
- (d) Exemption from Form 990 filing requirements;
- (e) Advance approval that a potential grant or contribution constitutes an unusual grant;
- (f) Change in Type (or initial determination of Type) of a § 509(a)(3) organization;
- (g) Reclassification of foundation status, including a voluntary request from a public charity for private foundation status;
- (h) Termination of private foundation status under § 507(b)(1)(B)—advance ruling request; and
- (i) Termination of private foundation status under § 507(b)(1)(B)—60-month period ended.

#### **Letter request**

##### **(7) Letter request.**

(a) **Letter applications.** A central organization that has previously received or is concurrently requesting recognition of its own tax-exempt status can request a group exemption letter by submitting a letter application along with Form 8718. *But see*, section 3.02(12) of this revenue procedure.

(b) **Other letter requests.** Any determination letter request which is not required to be submitted on a form may be submitted by letter.

#### **Language requirements**

.03 All requests must be submitted in English. All documents submitted in support of such requests must be in English or accompanied by an accurate and complete English translation.

#### **Signature on request**

.04 **Signature on request.** The request for determination letter must be signed and dated by the taxpayer or, when applicable, the taxpayer's authorized representative. Neither a stamped

signature nor a faxed signature is permitted. However, a faxed signature is permitted if requested by the Service in the case of an organization replacing its initial request with a request for a determination under a different subsection of § 501(c) during processing of an initial request, or as otherwise requested during the processing of an initial request.

**(1) Individual authorized to sign Form 1023, Form 1023-EZ, Form 1024, Form 1024-A or Form 8940 on behalf of an organization.** In the case of a request for a determination letter made by filing Form 1023, Form 1023-EZ, Form 1024, Form 1024-A or Form 8940, an officer, director, trustee, or other official who is authorized to sign for the organization must sign the applicable form. The signature of a representative authorized by a power of attorney who is not an officer, director, trustee, or other official of the organization will not satisfy the signature requirement for Form 1023, Form 1023-EZ, Form 1024, Form 1024-A or Form 8940. See the instructions to the applicable form for more information on who may sign the application on behalf of an organization.

**(2) Authorized representatives for all other requests.** Except as provided in (1) of this section 4.04, to sign the request, or to appear before the Service in connection with the request, the authorized representative must be listed in Appendix B.

#### **Power of attorney and declaration of representative**

**.05 Power of attorney and declaration of representative.** Any representative authorized by a power of attorney, whether or not licensed to practice, must comply with the conference and practice requirements of the Statement of Procedural Rules (26 CFR §§ 601.501-601.509) and Treasury Department Circular No. 230, which provide the rules for representing a taxpayer before the Service.

Form 2848, *Power of Attorney and Declaration of Representative* must be used to provide the authorized representative's authorization (Part I of Form 2848, *Power of Attorney*) and the authorized representative's qualification (Part II of Form 2848, *Declaration of Representative*).

The name of the individual signing Part I of Form 2848 should also be typed or printed on this form. A stamped signature is not permitted.

An original, a copy, or a facsimile transmission (fax) of the power of attorney is acceptable so long as its authenticity is not reasonably disputed.

#### **Penalty of perjury statement**

.06

**(1) Penalty of perjury statement requirements for requests for determination letters made on Form 1023, Form 1023-EZ, Form 1024, Form 1024-A, or Form 8940.** The signature of an individual described in section 4.04(1) of this revenue procedure satisfies the penalty of perjury statement signature requirements for requests on Form 1023, Form 1023-EZ, Form 1024, Form 1024-A, or Form 8940, as applicable.

**(2) Penalty of perjury statement requirements for letter requests and responses to requests for additional information.** Any letter request or information submitted at a later time (regardless of the format of the original request), must be accompanied by the following declaration—

“Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and, to the best of my knowledge and belief, the

request or the modification contains all the relevant facts relating to the request, and such facts are true, correct, and complete.”

This declaration must be signed and dated by the taxpayer, not the taxpayer’s representative authorized by a power of attorney. The signature of an individual described in section 4.04(1) of this revenue procedure is the signature of the taxpayer for purposes of the penalty of perjury statement. The signature of an authorized representative described in section 4.04(2) of this revenue procedure will not satisfy the penalty of perjury statement requirements (except as otherwise provided in Appendix B). See the instructions to the relevant form for additional detail. Neither a stamped signature nor a faxed signature is permitted. However, a faxed signature is permitted if requested by the Service in the case of information submitted in response to a request by the Service for additional information after the request for a determination.

The individual who signs for a corporate taxpayer must be an officer of the corporate taxpayer who has personal knowledge of the facts, and whose duties are not limited to obtaining a determination letter from the Service.

The individual signing for a trust, a state law partnership, or a limited liability company must be, respectively, a trustee, general partner, or member-manager who has personal knowledge of the facts.

**Applicable user fee**

.07 Section 7528 requires taxpayers to pay user fees for requests for determination letters. *See* section 14 and Appendix A of this revenue procedure for more information.

**Where will copies of the determination letter be sent?**

.08 The original of the determination letter will be sent to the taxpayer and a copy of the determination letter will be sent to up to two authorized representatives listed on Form 2848 as appointed to receive notices and communications.

**Expedited processing**

.09 Requests for determination letters are normally processed in the order of receipt by the Service. However, expedited processing of a request for a determination letter may be approved where a request for expedited processing is made in writing and contains a compelling reason for processing the request for a determination letter ahead of others. Upon approval of a request for expedited processing, a request for a determination letter will be considered ahead of the normal order. This does not mean the request for a determination letter will be immediately approved or denied.

**(1) Procedures for requesting expedited handling.** In the case of the electronically submitted Form 1023, Form 1024, or Form 1024-A, a request for expedited handling must be indicated on the form and a supporting written statement must be submitted as an attachment with the completed application.

In the case of other requests for determination letters, the request for expedited handling must be made in writing, preferably in a separate letter sent with, or soon after filing, the request for the determination letter. If the request is not made in a separate letter, then the letter in which the determination letter request is made should say, at the top of the first page: **“Expedited Handling Is Requested. See page \_\_\_ of this letter.”**

A request for expedited handling will not be forwarded to the appropriate group for action unless the application has been accepted for processing. *See* section 6.06(1) of this revenue procedure (requirements for a complete application).

Whether the request will be granted is within the Service's discretion. Circumstances generally warranting expedited processing include—

(a) a grant to the applicant is pending and the failure to secure the grant may have an adverse impact on the organization's ability to continue to operate;

(b) the purpose of the newly created organization is to provide disaster relief to victims of emergencies such as flood and hurricane; and

(c) there have been undue delays in issuing a determination letter caused by a Service error.

Because most requests for determination letters cannot be processed ahead of their regular order, the Service urges all taxpayers to submit their requests well in advance of the contemplated transaction. In addition, in order to facilitate prompt action on determination letter requests, taxpayers are encouraged to ensure that their initial submissions comply with all of the requirements of this revenue procedure, and to promptly provide any additional information requested by the Service.

**(2) Applications on Form 1023-EZ are ineligible for expedited handling.** An organization may not request expedited handling of a Form 1023-EZ.

#### **Non-acceptance for processing**

.10 The Service will not accept for processing any request that is substantially incomplete.

**(1) Requests other than Form 1023-EZ.** An application other than Form 1023-EZ that is missing any item of information listed in section 6.06(1) of this revenue procedure will be considered substantially incomplete and will not be accepted for processing. A request other than an application may be considered substantially incomplete if it does not contain the information, documentation, and other materials required by sections 4, 5, or 7 of this revenue procedure, or Form 8940 and its Instructions, as applicable to the particular request.

**(2) Requests on Form 1023-EZ.**

**(a) Incomplete Form 1023-EZ.** A submitted Form 1023-EZ that is not a completed Form 1023-EZ within the meaning of section 6.06(2) of this revenue procedure will not be accepted for processing by the Service. The Service may, but is not required to, request additional information to validate information presented or to clarify an inconsistency on a Form 1023-EZ.

**(b) Form 1023-EZ and pending application.** The Service will not accept for processing a Form 1023-EZ from an organization that has an application for recognition of exemption pending with the Service.

**(3) Effect of non-acceptance.** An organization will be notified if its request is not accepted for processing and any user fee that was paid with the request will be refunded. *See* section 14.09 of this revenue procedure. An organization may then submit a new request, including the missing information, with a new user fee.

#### **How to check on status of request**

.11 The taxpayer or the taxpayer's authorized representative should refer to [www.irs.gov](http://www.irs.gov) ("Where's My Exemption Application for Tax-Exempt Status?") for guidelines on when to expect



to hear from the Service and may obtain information regarding the status of a request by calling the toll-free Customer Account Services number, 877-829-5500.

## **SECTION 5. WHAT ARE THE SPECIFIC PROCEDURES FOR REQUESTING A DETERMINATION LETTER BY LETTER?**

### **In general**

.01 This section explains the specific procedures for requesting a determination letter by letter. Any determination letter request which is not required to be submitted on a form may be submitted by letter. For example, an organization seeking to be described in § 501(d) would submit a letter application in accordance with this section 5 and other applicable sections of this revenue procedure, and Rev. Proc. 72-5, 1972-1 CB 709.

Other specific procedures may apply, depending on the type of request. *See* section 6 of this revenue procedure for applications for recognition of exemption under §§ 501 or 521.

### **Certain information required**

.02

#### **Statement of facts**

(1) **Complete statement of facts and other information.** Each request for a determination letter must contain a complete statement of all facts relating to the request. These facts include the organization's name, address, telephone number, and Employer Identification Number (EIN).

#### **Documents**

(2) **Copies of all organizing documents, bylaws, contracts, wills, deeds, agreements, instruments, and other documents.** All documents that are pertinent to the request (including organizing documents, bylaws, contracts, wills, deeds, agreements, instruments, trust documents, and proposed disclaimers) must be submitted with the request.

Original documents should not be submitted because they become part of the Service's file and will not be returned to the taxpayer. Instead, true copies of all such documents should be submitted with the request. Each document, other than the request, should be labeled alphabetically and attached to the request in alphabetical order.

#### **Analysis of material facts**

(3) **Analysis of material facts.** All material facts in documents must be included, rather than merely incorporated by reference, in the taxpayer's initial request or in supplemental letters. These facts must be accompanied by an analysis of their bearing on the request, specifying the provisions that apply.

#### **Same or similar issue previously submitted or currently pending**

(4) **Statement regarding whether same or similar issue was previously ruled on or requested, or is currently pending.** The request must also state whether, to the best of the knowledge of both the taxpayer and the taxpayer's authorized representatives—

(a) the Service or the Office of Associate Chief Counsel previously ruled on the same or similar issue for the taxpayer (or a related taxpayer within the meaning of § 267, or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504) or a predecessor;



(b) the taxpayer, a related taxpayer, a predecessor, or any authorized representatives previously submitted the same or similar issue to the Service or the Office of Associate Chief Counsel but withdrew the request before a letter ruling or determination letter was issued;

(c) the taxpayer, a related taxpayer, or a predecessor previously submitted a request involving the same or a similar issue that is currently pending with the Service or the Office of Associate Chief Counsel; or

(d) at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request involving the same or a similar issue to the Service or the Office of Associate Chief Counsel.

If the statement is affirmative for (a), (b), (c), or (d) of this section 5.02(4), the statement must give the date the request was submitted, the date the request was withdrawn or ruled on, if applicable, and other details of the Service's or Office of Associate Chief Counsel's consideration of the issue.

#### **Statement of authorities**

(5) The request must include a statement of whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities.

(a) **Statement of supporting authorities.** If the taxpayer advocates a particular conclusion, an explanation of the grounds for that conclusion and the relevant authorities to support it must also be included. Even if not advocating a particular tax treatment of a proposed transaction, the taxpayer must still furnish views on the tax results of the proposed transaction and a statement of relevant authorities to support those views.

(b) **Statement of contrary authorities.** The taxpayer is also encouraged to inform the Service about, and discuss the implications of, any authority believed to be contrary to the position advanced, such as legislation (or pending legislation), tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, or announcements. If the taxpayer determines that there are no contrary authorities, a statement in the request to this effect would be helpful. If the taxpayer does not furnish either contrary authorities or a statement that none exists, the Service in complex cases or those presenting difficult or novel issues may request submission of contrary authorities or a statement that none exists. Failure to comply with this request may result in the Service's refusal to issue a determination letter.

Identifying and discussing contrary authorities will generally enable Service personnel to understand the issue and relevant authorities more quickly. When Service personnel receive the request, they will have before them the taxpayer's thinking on the effect and applicability of contrary authorities. This information should make research easier and lead to earlier action by the Service. If the taxpayer does not disclose and distinguish significant contrary authorities, the Service may need to request additional information, which will delay action on the request.

#### **SECTION 6. WHAT ARE THE SPECIFIC PROCEDURES FOR APPLICATIONS FOR RECOGNITION OF EXEMPTION UNDER §§ 501 OR 521?**

<b>In general</b>	.01 This section sets forth procedures for applying for and issuing determination letters in response to applications for recognition of exemption under §§ 501 or 521, other than those subject to Rev. Proc. 2023-4 (relating to pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans).
<b>Terrorist organizations not eligible to apply for recognition of exemption</b>	.02 An organization that is identified or designated as a terrorist organization within the meaning of § 501(p)(2) is not eligible to apply for recognition of exemption.
<b>Format of application</b>	.03 An organization seeking recognition of exemption under §§ 501 or 521 is required to submit the appropriate completed application form or the appropriate completed letter request. In the case of a numbered application form, the current version of the form must be submitted. The current version of the form can be found on <a href="http://www.irs.gov">www.irs.gov</a> (“Forms & Instructions”).
<b>User fees</b>	.04 An organization applying for recognition of exemption must pay the user fee with its Form 1023, Form 1023-EZ, Form 1024, or Form 1024-A through <a href="http://www.pay.gov">www.pay.gov</a> when submitting its form. For other applications for recognition of exemption, an organization must attach a completed Form 8718, <i>User Fee for Exempt Organization Determination Letter Request</i> , to its application.
<b>Form 1023-EZ applications</b>	.05 <p>(1) <b>Eligibility for Form 1023-EZ application.</b> An organization that is an eligible organization may use Form 1023-EZ to apply for recognition of exemption under § 501(c)(3), unless the organization is designated in section 6.05(2) of this revenue procedure as an organization that is ineligible to submit Form 1023-EZ. An organization is an eligible organization if the organization satisfies all of the following criteria—</p> <p>(a) The organization has projected annual gross receipts of \$50,000 or less in the current taxable year and the next two years;</p> <p>(b) The organization had annual gross receipts of \$50,000 or less in each of the past three years for which the organization was in existence; and</p> <p>(c) The organization has total assets the fair market value of which does not exceed \$250,000. For purposes of this eligibility requirement, a good faith estimate of the fair market value of the organization’s assets is sufficient.</p> <p>(2) <b>Ineligibility for Form 1023-EZ application.</b> The following organizations are not eligible to submit Form 1023-EZ and must use Form 1023 to apply for recognition of exemption under § 501(c)(3) —</p> <p>(a) Organizations formed under the laws of a foreign country (United States territories and possessions are not considered foreign countries);</p> <p>(b) Organizations that do not have a mailing address in the United States (territories and possessions are considered the United States for this purpose);</p> <p>(c) Organizations that are successors to, or controlled by, an entity suspended under § 501(p) (suspension of tax-exempt status of terrorist organizations);</p>

- (d) Organizations that are not corporations, unincorporated associations, or trusts, such as a limited liability corporation (LLC);
- (e) Organizations that are formed as for-profit entities or are successors to for-profit entities;
- (f) Organizations whose tax-exempt status were previously revoked or that are successors to an organization whose tax-exempt status was previous revoked (other than an organization the tax-exempt status of which was automatically revoked for failure to file a Form 990 series return or notice for three consecutive years under § 6033(j));
- (g) Churches or conventions or associations of churches described in § 170(b)(1)(A)(i);
- (h) Schools, colleges, or universities described in § 170(b)(1)(A)(ii);
- (i) Hospitals or medical research organizations described in §§ 170(b)(1)(A)(iii) or 501(r)(2)(A)(i) (cooperative hospital service organizations described in § 501(e));
- (j) Cooperative service organizations of operating educational organizations described in § 501(f);
- (k) Qualified charitable risk pools described in § 501(n);
- (l) Supporting organizations described in § 509(a)(3);
- (m) Organizations that have as a substantial purpose providing assistance to individuals through credit counseling activities such as budgeting, personal finance, financial literacy, mortgage foreclosure assistance, or other consumer credit areas;
- (n) Organizations that invest, or intend to invest, five percent or more of their total assets in securities or funds that are not publicly traded;
- (o) Organizations that participate, or intend to participate, in partnerships (including entities or arrangements treated as partnerships for Federal tax purposes) in which they share profits and losses with partners other than § 501(c)(3) organizations;
- (p) Organizations that sell, or intend to sell, carbon credits or carbon offsets;
- (q) Health Maintenance Organizations (HMOs);
- (r) Accountable Care Organizations (ACOs), or organizations that engage in, or intend to engage in, ACO activities (such as participation in the Medicare Shared Savings Program (MSSP) or in activities unrelated to the MSSP described in Notice 2011-20, 2011-16 IRB 652);
- (s) Organizations that maintain, or intend to maintain, one or more donor advised funds;

(t) Organizations that are organized and operated exclusively for testing for public safety and that are requesting a foundation classification under § 509(a)(4);

(u) Private operating foundations;

(v) Organizations that are applying for retroactive reinstatement of tax-exempt status under sections 5 or 6 of Rev. Proc. 2014-11, 2014-3 IRB 411, after being automatically revoked (*see* section 6.05(3) of this revenue procedure for additional information);

(w) Organizations applying for retroactive reinstatement under section 4 of Rev. Proc. 2014-11 after being automatically revoked that are seeking a foundation classification that is different from the classification they had at the time of revocation;

(x) Agricultural research organizations described in § 170(b)(1)(A)(ix); and

(y) Organizations that are currently or were previously exempt under another subsection of § 501(c).

Further information regarding these eligibility requirements may be provided in the Instructions for Form 1023-EZ.

**Form 1023 and Form 1023-EZ applications for reinstatement after automatic revocation**

**(3) Form 1023 and Form 1023-EZ applications for reinstatement after automatic revocation.** Organizations that claim tax-exempt status under § 501(c) generally must file annual Form 990 series returns or notices, even if they have not yet received their determination letter recognizing their tax-exempt status. If an organization fails to file required Form 990 series returns or notices for three consecutive years, its tax-exempt status will be automatically revoked by operation of § 6033(j). Such an organization may apply for reinstatement of its tax-exempt status, and such recognition may be granted retroactively, as provided in Rev. Proc. 2014-11. Consistent with the eligibility requirements for using Form 1023-EZ that are set forth in section 6.05(1)-(2) of this revenue procedure, only an organization requesting reinstatement of § 501(c)(3) status under section 4 (streamlined retroactive reinstatement of tax-exempt status for small organizations within 15 months of revocation) or section 7 (reinstatement of tax-exempt status from postmark date) of Rev. Proc. 2014-11 may apply using Form 1023-EZ (other than an organization also seeking a foundation status change as explained in section 6.05(2)(w) of Rev. Proc. 2014-11). An organization requesting reinstatement of § 501(c)(3) status under section 5 (retroactive reinstatement of tax-exempt status within 15 months of revocation) or section 6 (retroactive reinstatement more than 15 months after revocation) of Rev. Proc. 2014-11 must apply using Form 1023.

**What are the requirements for a completed application?**

.06

**Requirements for a completed application other than a Form 1023-EZ application**

(1) A completed application (other than a Form 1023-EZ), including a letter application, is one that—

(a) is signed or, in the case of a Form 1023, Form 1024, or Form 1024-A, is electronically signed by an authorized individual under penalties of perjury (*see* sections 4.04 and 4.06 of this revenue procedure);

(b) includes the organization's correct EIN;

(c) (i) for organizations other than those described in § 501(c)(3) or (4), includes a statement of receipts and expenditures and a balance sheet for the current year and the three preceding years (or the years the organization was in existence, if less than four years), and if the organization has not yet commenced operations or has not completed one accounting period, a proposed budget for two full accounting periods and a current statement of assets and liabilities;

(ii) for organizations described in § 501(c)(3) or (4), *see* Form 1023 and Instructions for Form 1023 or Form 1024-A and Instructions for Form 1024-A, respectively;

(d) includes a detailed narrative statement of proposed activities, including each of the fundraising activities of a § 501(c)(3) organization, and a narrative description of anticipated receipts and contemplated expenditures;

(e) includes a copy of the organizing or enabling document that is signed by a principal officer or two members in the case of an unincorporated association, or is accompanied by a written declaration signed by an authorized individual certifying that the document is a complete and accurate copy of the original or otherwise satisfies the requirements of a “conformed copy,” as outlined in Rev. Proc. 68-14, 1968-1 CB 768;

(f) if the organizing or enabling document is in the form of articles of incorporation, includes evidence that it was filed with, and approved by, an appropriate state official (*e.g.*, stamped “Filed” and dated by the Secretary of State); alternatively, a copy of the articles of incorporation may be submitted if accompanied by a written declaration signed by an authorized individual that the copy is a complete and accurate copy of the original copy that was filed with and approved by the state; if a copy is submitted, the written declaration must include the date the articles were filed with the state;

(g) if the organization has adopted bylaws or similar governing rules, includes a current copy; the bylaws need not be signed if submitted as an attachment to the application for recognition of exemption; otherwise, the bylaws must be verified as current by an authorized individual (*see* section 4.04 of this revenue procedure); and

(h) is accompanied by the correct user fee (and Form 8718, when applicable).

**Requirements for a completed Form 1023-EZ application**

(2) A Form 1023-EZ submitted online at [www.pay.gov](http://www.pay.gov) by an eligible organization is complete if it—

(a) includes responses for each required line item of the form, including an accurate date of organization and an attestation that the organization has completed the Form 1023-EZ eligibility worksheet, as in effect on the date of submission, is eligible to apply for tax-exempt status using Form 1023-EZ, and has read the Instructions for Form 1023-EZ and understands the requirements to be exempt under § 501(c)(3) as expressed therein;

(b) includes the organization’s correct EIN;

(c) is electronically signed, under penalties of perjury, by an individual authorized to sign for the organization (as specified in sections 4.04 and 4.06 of this revenue procedure and the Instructions for Form 1023-EZ); and

(d) is accompanied by the correct user fee.

A Form 1023-EZ will not be considered complete if the organization's name and EIN do not match the records in the Service's Business Master File. Furthermore, a Form 1023-EZ submitted by an organization that is not an eligible organization within the meaning of section 6.05 of this revenue procedure will not be considered complete.

**What are the standards for issuing a determination letter on tax-exempt status?**

.07

**Tax-exempt status must be established in application, including attestation and supporting documents**

(1) A favorable determination letter will be issued to an organization if its completed application, including attestations and supporting documents, along with any additional information requested by the Service and provided by the organization, establishes that it satisfies the particular requirements of the section under which exemption from Federal income tax is claimed.

**Tax-exempt status may be recognized in advance of actual operations**

(2) (a) For all applications other than a Form 1023-EZ, tax-exempt status may be recognized in advance of the organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for tax-exempt status pursuant to the section of the Code under which tax-exempt status is claimed.

(i) A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

(ii) The organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

(iii) Where the organization cannot demonstrate to the satisfaction of the Service that it qualifies for tax-exempt status pursuant to the section of the Code under which tax-exempt status is claimed, the Service will generally issue a proposed adverse determination letter. *See* section 9 of this revenue procedure.

(b) For Form 1023-EZ applications, tax-exempt status may be recognized in advance of the organization's operations if the attestations contained in the organization's completed Form 1023-EZ (along with any additional information requested by the Service and provided by the organization) establish that it satisfies the requirements for tax-exempt status under § 501(c)(3).

**Even if application is complete, additional information may be required**

(3) Even though an application is complete, the Service may request additional information before issuing a determination letter. The failure to respond to a request for additional information may result in the closure of the application without a determination letter being issued and without a refund of the user fee. If the failure to respond to a request for additional information results in the Service issuing a proposed adverse determination letter to the organization, the proposed adverse determination letter will inform the organization of its opportunity to protest/appeal the decision and request a conference. *See* section 9 of this revenue procedure for the applicable appeal/protest procedures.

(a) In the case of an application under § 501(c)(3), the period of time beginning on the date the Service requests additional information until the date the information is submitted to the Service will not be counted for purposes of the 270-day period referred to in § 7428(b)(2).

(b) The Service will select a statistically valid random sample of Form 1023-EZ applications for pre-determination reviews, which will result in requests for additional information.

**Effective date of tax-exempt status**

.08

(1) **In general.** A determination letter recognizing tax-exempt status of an organization described in § 501(c), other than § 501(c)(29), is effective as of the date of formation of an organization if: (1) its purposes and activities prior to the date of the determination letter have been consistent with the requirements for tax-exempt status; and (2) it has filed an application for recognition of exemption within 27 months from the end of the month in which it was organized.

(2) **When an application is not submitted within 27 months of formation.** An organization that otherwise meets the requirements for tax-exempt status and the issuance of a determination letter but does not meet the requirements for recognition from date of formation will be recognized from the postmark date of its application or the submission date of its Form 1023, Form 1023-EZ, Form 1024, or Form 1024-A, as applicable.

(3) **Application of Treas. Reg. § 301.9100-3: Organizations required to apply for tax-exempt status under §§ 505, 508, and 501(c)(29) and the regulations thereunder.** Unlike other tax-exempt organizations, an organization described in § 501(c)(3), (9), or (17) generally is required to apply for recognition of exemption within 27 months from the end of the month in which it was organized in order to be recognized and treated as tax-exempt effective as of the date of formation. *See* §§ 505 and 508, Treas. Reg. §§ 1.505(c)-1T, 1.508-1(a), and 301.9100-2(a)(2)(iii) and (iv). A similar rule applies to organizations described in § 501(c)(29). *See* § 501(c)(29), Treas. Reg. § 1.501(c)(29)-1, and Rev. Proc. 2015-17, 2015-7 IRB 599. In its application for recognition of exemption under § 501(c)(3), (9), (17), or (29), an organization that has not filed its application within the required time period may request relief under Treas. Reg. § 301.9100-3 in order to be recognized and treated as tax-exempt effective as of a date earlier than the date of application, and EO Determinations may grant such relief if the requirements for relief are met. An organization applying for recognition of exemption under § 501(c)(3) after 27 months from formation may not use Form 1023-EZ if it requests an effective date earlier than the submission date, but instead must file a Form 1023. An organization will not be granted relief under Treas. Reg. § 301.9100-3 if either (1) granting the request for relief would result in the organization's tax-exempt status being automatically revoked under § 6033(j)(1) effective before the application date (without regard to the provisions of § 6033(j)(3) and guidance issued thereunder), or (2) the period of limitations on assessment under § 6501(a) for any taxable year for which the organization claims tax-exempt status has expired prior to the date of application.

(4) **Application of Treas. Reg. § 301.9100-3: Organizations not required to apply for tax-exempt status under §§ 505, 508, or 501(c)(29) and the regulations thereunder.** Treas. Reg. § 301.9100-3 does not apply to an organization that is not required to apply for recognition of exemption in order to be tax-exempt, and the Service will not consider a request for relief under Treas. Reg. § 301.9100-3 from such an organization.

(5) **When the Service requires the organization to make amendments.**



(a) If the Service requires the organization to alter its activities or make substantive amendments to its enabling instrument, tax-exempt status will be effective as of the date specified in the determination letter.

(b) If the Service requires the organization to make a non-substantive amendment, tax-exempt status will ordinarily be recognized as of the date of formation if it satisfies the requirements in section 6.08(1) of this revenue procedure. Examples of non-substantive amendments include correction of a clerical error in the enabling instrument or the addition of a dissolution clause where the activities of the organization prior to the determination letter are consistent with the requirements for tax-exempt status.

## **SECTION 7. WHAT ARE THE SPECIFIC PROCEDURES FOR DETERMINATION LETTER REQUESTS ON FORM 8940?**

### **In general**

.01 This section explains the specific procedures for requesting a determination letter by submitting Form 8940, including requests for a determination letter on foundation status.

### **Requests made on Form 8940**

.02 A request described in section 4.02(6) of this revenue procedure must be submitted on Form 8940 (except where otherwise permitted, including when such request is made as part of an application for recognition of exemption), along with all information, documentation, and other materials required by Form 8940 and the instructions thereto, as well as the appropriate user fee provided in Appendix A. For complete information about filing requirements and the submission process, refer to Form 8940 and the Instructions for Form 8940.

### **Initial classification of private foundation status**

.03 All § 501(c)(3) organizations are classified as private foundations under § 509(a) unless they qualify as a public charity under § 509(a)(1) (which cross-references § 170(b)(1)(A)(i)-(vi), and (ix)), (2), (3), or (4). *See* Treas. Reg. §§ 1.170A-9 and 1.509(a)-1 through 1.509(a)-7. The Service determines an organization's private foundation or public charity status when the organization files its Form 1023, or when eligible, Form 1023-EZ. This status will be included in the organization's determination letter on tax-exempt status.

### **Under what circumstances must an organization request a determination of foundation status, and when is such a request optional?**

.04 (1) **Requests to change from one public charity classification to another public charity classification.** On its Form 990, *Return of Organization Exempt From Income Tax Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)*, a public charity indicates the paragraph of § 509(a), and subparagraph of § 170(b)(1)(A), if applicable, under which it qualifies as a public charity. Because of changes in its activities or operations, this may differ from the public charity status listed in its original determination letter. Although an organization is not required to obtain a determination letter to qualify for the new public charity status, in order for Service records to recognize any change in public charity status, an organization must obtain a new determination of foundation status by filing Form 8940 pursuant to this revenue procedure.

(2) **Requests from public charities for private foundation status.** If a public charity no longer qualifies as a public charity under § 509(a)(1)-(4), then it becomes a private foundation, and, as a private foundation, it must file Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation*. The organization is not required to, but may, obtain a determination letter on its new private foundation status. The organization indicates this change in foundation status by filing its Form 990-PF return and following any procedures specified in the form, instructions, or other published guidance. Thereafter, the organization may terminate its private foundation status, such as by giving notice and qualifying as a public charity again under

§ 509(a)(1)-(3) during a 60-month termination period in accordance with the procedures under § 507(b)(1)(B) and Treas. Reg. § 1.507-2(b).

**(3) Requests from private foundations for public charity status.** An organization that erroneously determined that it was a private foundation (for example, by erroneously classifying an item or items in its calculation of public support) and wishes to correct the error can request a determination letter classifying it as a public charity by showing that it continuously met the public support tests during the relevant periods.

**(4) Requests for private operating foundation status.** A private foundation may qualify as an operating foundation under § 4942(j)(3) without a determination letter from the Service, but the Service will not recognize such status in its records without a determination letter from the Service. An organization claiming to be an exempt operating foundation under § 4940(d)(2) must obtain a determination letter from the Service recognizing such status to be exempt from the § 4940 tax on net investment income.

**Not applicable to notices submitted by private foundations regarding terminations under § 507 or changes of status pursuant to examination**

.05

(1) The procedures in this revenue procedure do not apply to the notice an organization must submit in seeking to terminate its private foundation status under § 507.

(2) The procedures in this revenue procedure also do not apply to the examination of an organization which results in changes to its foundation status.

## **SECTION 8. WITHDRAWAL OF A REQUEST FOR DETERMINATION LETTER**

**Request may be withdrawn prior to issuance of a determination letter**

.01 A taxpayer may withdraw a request for a determination letter at any time before the determination letter is issued by the Service. An authorized individual must make such a request in writing in accordance with the instructions to the form on which the request for a determination letter was submitted, if applicable. For purposes of this section 8.01, the issuance of a determination letter includes a proposed adverse determination letter.

(1) When a request for determination letter is withdrawn, the Service will retain the application, Form 8940, or letter request and all supporting documents.

(2) The Service may consider the information submitted in connection with the withdrawn request in a subsequent examination of the organization, or in connection with a subsequent application submitted by the organization.

(3) Generally, the user fee will not be refunded if a request is withdrawn. *See* section 14 of this revenue procedure.

## **SECTION 7428 IMPLICATIONS OF WITHDRAWAL OF APPLICATION UNDER § 501(C) OR (D)**

.02 The withdrawal of an application under § 501(c) or (d) is not a failure to make a determination within the meaning of § 7428(a)(2) or an exhaustion of administrative remedies within the meaning of § 7428(b)(2).

## **SECTION 9. PROCEDURES FOR ADVERSE DETERMINATION LETTERS**

### **In general**

.01 This section explains the procedures for issuing adverse determination letters. Different procedures apply to adverse determination letters relating to issues that may receive consideration by the Independent Office of Appeals and to all other types of adverse determination letters.

### **Types of requests that may receive Independent Office of Appeals consideration**

.02 The following types of determination letter requests will provide an organization with an opportunity to protest/appeal a proposed adverse determination—

(1) the initial qualification of the organization as exempt from tax under §§ 501(a) or 521, or as an organization described in § 170(c)(2);

(2) the classification or reclassification of the organization's foundation status under § 509(a), including the classification or re-classification of a § 4947(a)(1) non-exempt charitable trust as described in § 509(a)(3); and

(3) the classification of the organization as a private operating foundation under § 4942(j)(3).

### **Contents of proposed adverse determination letter for requests with appeals rights**

.03 If EO Determinations reaches the conclusion that the organization does not meet the requirements for a favorable determination letter and the letter is a type for which an opportunity for protest/appeal is available under section 9.02 of this revenue procedure, the Service will issue a proposed adverse determination letter, which will—

(1) include a detailed discussion of the basis for the Service's conclusion; and

(2) inform the organization of its opportunity to protest/appeal the decision and request a conference with the Independent Office of Appeals.

The non-acceptance under section 4.10 of this revenue procedure of a request for a determination letter is not a proposed adverse determination.

### **Protest/appeal of a proposed adverse determination letter on certain issues**

.04 To protest/appeal a proposed adverse determination letter described in section 9.02 of this revenue procedure, the organization must submit a statement of the facts, law, and arguments in support of its position, within 30 days of the date of the proposed adverse determination letter. The organization must also state whether it is requesting a conference with the Independent Office of Appeals.

### **Final adverse determination letter where no protest/ appeal is submitted**

.05 If an organization does not submit a timely protest/appeal of a proposed adverse determination letter on an issue described in section 9.02 of this revenue procedure, a final adverse determination letter will be issued to the organization. The final adverse letter will provide information about the disclosure of the proposed and final adverse letters. *See* section 13.04 of this revenue procedure.

The non-acceptance under section 4.10 of this revenue procedure of a request for a determination letter is not a final adverse determination.

**Review of protest by EO Determinations**

.06 If an organization submits a protest/appeal of a proposed adverse determination letter described in section 9.02 of this revenue procedure, EO Determinations will review the protest and, if it determines that the organization satisfies the requirements for approval of its request, issue a favorable determination letter. If EO Determinations maintains its adverse position after reviewing the protest, it will forward the case file to the Independent Office of Appeals. If new information is raised in the protest, EO Determinations will follow the procedures described in section 9.08 of this revenue procedure, which may require the issuance of a new proposed denial, prior to sending the case to the Independent Office of Appeals.

**Consideration by the Independent Office of Appeals**

.07 The Independent Office of Appeals will consider the organization's protest/appeal submitted in response to a proposed adverse determination letter described in section 9.02 of this revenue procedure. If the Independent Office of Appeals agrees with the proposed adverse determination, it will either issue a final adverse determination or, if a conference was requested, contact the organization to schedule a conference. At the end of the conference process, which may involve the submission of additional information, the Independent Office of Appeals will generally issue a final adverse determination letter or a favorable determination letter.

If the Independent Office of Appeals believes that the tax-exempt status or private foundation status issue is not covered by published precedent or that there is non-uniformity, the Independent Office of Appeals must request technical advice from the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). *See* Rev. Proc. 2023-2.

**Effect of new information raised in protest/appeal**

.08 If the organization submits new information as part of a protest, or during consideration by the Independent Office of Appeals, the matter may be returned to EO Determinations for further consideration. As a result of its review of the new information, EO Determinations may issue a favorable determination letter, rebuttal letter, or new proposed adverse determination letter. If a rebuttal letter is issued, EO Determinations will forward the case to the Independent Office of Appeals. If a new proposed adverse determination letter is issued, the organization must submit a protest/appeal of the new proposed adverse determination letter in order to have consideration of the issue by the Independent Office of Appeals.

**An appeal or protest may be withdrawn**

.09 An organization may withdraw its protest/appeal before the Service issues a final adverse determination letter. Upon receipt of the withdrawal request, the Service will complete the processing of the case in the same manner as if no appeal or protest was received. An organization that withdraws a protest/appeal will not be considered to have exhausted its administrative remedies within the meaning of § 7428(b)(2).

**Appeal and conference rights not applicable in certain situations**

.10 The opportunity to appeal a proposed adverse determination letter and the conference rights described above are not applicable to matters where delay would be prejudicial to the interests of the Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the statute of limitations, or where immediate action is necessary to protect the interests of the Federal government).

**Adverse determination letter on an issue that will not receive consideration by the Independent Office of Appeals**

.11 If EO Determinations reaches the conclusion that the organization does not meet the requirements for a favorable determination on an issue that is not described in section 9.02 of this revenue procedure (*e.g.*, advance approval that a potential grant or contribution constitutes an unusual grant; exemption from Form 990 filing requirements), the Service generally will advise the organization of its adverse position and give the organization a chance to submit additional information or withdraw the request before issuing an adverse determination letter, which will include a detailed discussion of the basis for the Service's conclusion. The organization will not have the opportunity to protest/appeal the adverse determination letter.

**Possible future updates  
related to review by the  
Independent Office of  
Appeals**

.12 As part of the implementation of the Taxpayer First Act, Pub. L. 116-25 (2019), the Service and the Independent Office of Appeals continue to review current policies and procedures and prior administrative pronouncements. As a result of this review, there may be additional updates to this revenue procedure or other forms of guidance.

**SECTION 10.  
DECLARATORY  
JUDGMENT  
PROVISIONS OF § 7428**

**Actual controversy  
involving certain issues**

.01 Generally, a declaratory judgment proceeding under § 7428 can be filed in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia with respect to an actual controversy involving a determination by the Service or a failure of the Service to make a determination with respect to—

(1) the initial qualification or continuing qualification of an organization as an organization described in § 501(c)(3) that is exempt from tax under § 501(a) or as an organization described in § 170(c)(2);

(2) the initial classification or continuing classification of an organization as a private foundation (as defined in § 509(a));

(3) the initial classification or continuing classification of an organization as a private operating foundation (as defined in § 4942(j)(3));

(4) the initial classification or continuing classification of a cooperative as an organization described in § 521(b) which is exempt from tax under § 521(a); or

(5) the initial qualification or continuing qualification of an organization as an organization described in § 501(c) (other than paragraph (3)) or (d) and exempt from tax under § 501(a).

**Final determination to  
which § 7428 applies**

.02 A final determination to which § 7428 applies is a determination letter, sent by certified or registered mail, which holds that the organization is—

(1) not described in §§ 501(c), (d), or 170(c)(2);

(2) a public charity described in a part of §§ 509 or 170(b)(1)(A) other than the part under which the organization requested classification;

(3) not a private operating foundation as defined in § 4942(j)(3); or

(4) a private foundation and not a public charity described in a part of §§ 509 or 170(b)(1)(A).

**Failure to make a  
determination to which  
§ 7428 applies**

.03 If the Service declines to issue a determination letter under section 3.02 of this revenue procedure to an organization seeking a determination described in section 10.01 of this revenue procedure, the organization may be able to pursue a declaratory judgment under § 7428, provided that it has exhausted its administrative remedies.

**Section 7428 does not apply to the non-acceptance or withdrawal of a request**

.04 (1) The non-acceptance for processing of a request under section 4.10 of this revenue procedure is not a final determination or a failure to make a determination to which § 7428 applies.

(2) The withdrawal of an application pursuant to section 8 of this revenue procedure is not a failure to make a determination within the meaning of § 7428(b)(2).

**Exhaustion of administrative remedies**

.05 Before filing a declaratory judgment action, an organization must exhaust its administrative remedies by taking, in a timely manner, all reasonable steps to secure a determination from the Service. These include—

(1) (a) For an organization seeking to be described in § 501(c)(3), filing a completed application Form 1023 (within the meaning of section 6.06(1) of this revenue procedure) or a completed Form 1023-EZ (within the meaning of section 6.06(2) of this revenue procedure);

(b) For an organization seeking private foundation classification, filing a completed Form 8940; or

(c) For an organization seeking to be described in § 501(c) (other than paragraph (3)) or in § 501(d), filing a completed appropriate Form or letter request (within the meaning of section 6.06(1) of this revenue procedure).

(2) In appropriate cases, requesting relief pursuant to Treas. Reg. § 301.9100-1 regarding the extension of time for making an election or application for relief from tax;

(3) When applicable, timely submitting all additional information requested by the Service to perfect a determination letter request;

(4) In appropriate cases, requesting relief under § 7805(b) in the manner provided in section 12.04 of this revenue procedure; and

(5) Exhausting all administrative appeals available within the Service pursuant to section 9 of this revenue procedure.

An organization will not have exhausted its administrative remedies by completing the steps in this section 10.05 if the organization submitted Form 1023-EZ but was not eligible to submit Form 1023-EZ, as described in section 6.05(1)-(2) of this revenue procedure.

**Not earlier than 270 days after seeking determination**

.06 An organization will in no event be deemed to have exhausted its administrative remedies prior to the earlier of—

(1) the completion of all reasonable steps to secure a determination from the Service, including the applicable steps in section 10.05 of this revenue procedure, and the issuance by the Service by certified or registered mail of a final determination letter; or

(2) the expiration of the 270-day period described in § 7428(b)(2) in a case where the Service has not issued a final determination letter, and the organization has taken, in a timely manner, all reasonable steps to secure a determination letter as provided in section 10.05 of this revenue procedure. The 270-day period referred to in § 7428(b)(2) will not be considered to have started



prior to the date a completed application is submitted to the Service. If the Service requests additional information from an organization, the period of time beginning on the date the Service requests additional information until the date the information is submitted to the Service will not be counted for purposes of the 270-day period referred to in § 7428(b)(2).

**Service must have reasonable time to act on an appeal or protest**

.07 The steps described in section 10.05 of this revenue procedure will not be considered completed until the Service has had a reasonable time to act upon a protest/appeal.

**SECTION 11.  
FAVORABLE  
DETERMINATION  
LETTERS**

**Reliance on determination letter**

.01 A taxpayer ordinarily may rely on a favorable determination letter received from the Service, regardless of the format of request submitted, subject to the conditions and limitations described in this section 11.

**Limitations on reliance**

.02

(1) **Will not apply to another taxpayer.** A taxpayer may not rely on, use, or cite as precedent a determination letter issued to another taxpayer. *See* § 6110(k)(3).

(2) **Material change in facts.** A determination letter may not be relied upon by the organization submitting the request if there is a material change in facts. For a determination letter on tax-exempt status, a material change includes a change in the character, the purpose, or the method of operation of the organization that is inconsistent with the organization's tax-exempt status. *See* section 12.01 of this revenue procedure.

(3) **Inaccurate information on request.** A determination letter issued to an organization that submitted a request in accordance with this revenue procedure may not be relied upon by the organization submitting the request if it was based on any omission or inaccurate material information submitted by the organization. Inaccurate material information includes an incorrect representation or attestation as to the organization's organizational documents, the organization's exempt purpose, the organization's conduct of prohibited and restricted activities, or the organization's eligibility to file Form 1023-EZ. *See* section 12.01 of this revenue procedure.

(4) **Change in law.** A change in law may affect reliance. *See* section 12.01 of this revenue procedure.

**Post-determination review**

.03

(1) **Determination letters may be post-reviewed.** Determination letters may be reviewed by EO Determinations Quality Assurance to assure uniform application of the statutes, tax treaties, regulations, court opinions, or guidance published in the Internal Revenue Bulletin.

(2) **Procedures for addressing determination letters reviewed and found to have been issued in error.** If upon post-determination review EO Determinations Quality Assurance concludes, based on the information contained in the existing application file, that a determination letter



issued by EO Determinations was issued in error, the matter will be referred to EO Examinations for consideration.

## **SECTION 12. REVOCATION OR MODIFICATION OF A DETERMINATION LETTER**

.01 **In general.** A determination letter may be revoked or modified—

- (1) by a notice to the taxpayer to whom the determination letter was issued;
- (2) by enactment of legislation or ratification of a tax treaty;
- (3) by a decision of the Supreme Court of the United States;
- (4) by the issuance of temporary or final regulations;
- (5) by the issuance of a revenue ruling, revenue procedure, or other statement published in the Internal Revenue Bulletin; or
- (6) automatically, by operation of § 6033(j), for failure to file a required annual return or notice for three consecutive years.

**Note:** If an organization no longer qualifies under the Code section for which it originally applied for recognition of exemption, then the determination letter will be revoked, rather than modified.

### **Appeal and conference procedures in the case of revocation or modification of tax-exempt status letter**

.02 In the case of a revocation or modification of a determination letter described in section 9.02 of this revenue procedure, the procedures to protest/appeal the revocation or modification are generally the same as set out in section 9 of this revenue procedure. However, organizations revoked under § 6033(j) will not have an opportunity for consideration by the Independent Office of Appeals.

### **Revocation or modification of a determination letter may be retroactive**

.03 The revocation or modification of a determination letter may be retroactive if—

- (1) there has been a change in the applicable law;
- (2) the organization omitted or misstated material information. A misstatement of material information includes an incorrect representation or attestation as to the organization's organizational documents, the organization's exempt purpose, the organization's conduct of prohibited and restricted activities, or the organization's eligibility to file Form 1023-EZ;
- (3) the organization operated in a manner materially different from that originally represented in an application for recognition of exemption; or
- (4) in the case of an organization to which § 503 applies, the organization engaged in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization.

If a determination letter is revoked or modified by a letter with retroactive effect, the letter will, except in fraud cases, state the grounds on which the determination letter is being revoked or modified and explain the reasons why it is being revoked or modified retroactively.

**Organization may request that retroactivity be limited under § 7805(b)**

.04 An organization may seek relief from retroactive revocation or modification of a determination letter under § 7805(b). A request for relief under § 7805(b) must be in writing and must be submitted to the agent or specialist assigned to the case. The request for relief under § 7805(b) must be submitted before issuance of the final adverse determination letter.

(1) **Form of request for relief.** An organization's request to limit the retroactive effect of the revocation or modification of the determination letter must—

- (a) state that it is being made under § 7805(b);
- (b) state the relief sought;
- (c) explain the reasons and arguments in support of the relief sought; and
- (d) include any documents bearing on the request.

(2) **Notice of denial of request for relief.** If the request for relief under § 7805(b) is denied, the organization will be notified in writing of the denial.

(3) **Organization must exhaust its administrative remedies.** If an organization seeks declaratory judgment under § 7428 in response to a retroactive revocation or modification, to preserve judicial review of a claim for relief under § 7805(b), the organization must follow the steps in this revenue procedure in order to have exhausted its administrative remedies with respect to its request under § 7805(b). If the organization does not complete the applicable steps, the organization will not have exhausted its administrative remedies as required by § 7428(b)(2) with respect to its request for § 7805(b) relief, and will thus be precluded from obtaining § 7805(b) relief in any declaratory judgment it seeks under § 7428.

If the organization has requested § 7805(b) relief, the organization's administrative remedies with respect to its § 7805(b) request will not be considered exhausted until the Service has had a reasonable amount of time to act upon the request.

**Effective date of revocation or modification of a determination letter on tax-exempt status**

**.05 Effective date of revocation or modification.**

(1) If the organization omitted or misstated material information in a request, revocation or modification will be effective as of the effective date of the determination letter issued in response to the request.

(2) If there is a material change in facts, inconsistent with the conclusion of a determination letter, revocation or modification will ordinarily take effect as of the date of such material change.

(3) If a determination letter was issued in error or is no longer in accord with the Service's position and § 7805(b) relief is granted (*see* section 12.04 of this revenue procedure), ordinarily,

the revocation or modification will be effective not earlier than the date on which the Service modifies or revokes the original determination letter.

### **SECTION 13. DISCLOSURE OF APPLICATIONS AND DETERMINATION LETTERS INCLUDING THAT OF FOUNDATION STATUS**

**Determination letter will be disclosed under §§ 6104 or 6110 depending on the type of request and the type of determination letter issued**

.01 Sections 6104 and 6110 provide rules for the disclosure of requests, including forms, supporting documents, and determination letters issued in response to requests.

**(1) A favorable determination letter issued in response to an application for recognition of exemption from Federal income tax under §§ 501 or 521, as well as certain determination letters regarding foundation status are disclosed under § 6104.** Determination letters that an applicant organization is exempt from Federal income tax and letters or documents issued by the Service that an organization is or is not a private foundation, or described in §§ 509(a), 4940(d) (2), 4942(j)(3), or 4943(f) are disclosed under § 6104.

**(2) Other determination letters are disclosed under § 6110.** Any determination letter that is not disclosed under § 6104 is disclosed under § 6110. This includes proposed and final denial of tax-exempt status when such denial becomes final, advance approval of grant making procedures described in § 4545(g), advance approval of certain set-asides described in § 4942(g)(2), advance approval of voter registration activities described in § 4945(f), and advance approval of an unusual grant per Rev. Proc. 2018-32, 2018-23 IRB 739.

**(3) Whether other determination letters are disclosed under §§ 6104 or 6110 will vary based on the type of determination.**

**Disclosure of applications, supporting documents, and favorable determination letters under § 6104**

.02 If a favorable determination letter is issued in response to an application for recognition of exemption from Federal income tax under §§ 501 or 521, the application form, any supporting documents, and any determination letter issued in response to the application (including a proposed adverse determination letter) are available for public inspection upon request under § 6104(a)(1). In addition, letters or documents issued by the Service that an organization is or is not a private foundation, or described in §§ 509(a), 4940(d) (2), 4942(j)(3), or 4943(f) are disclosed under § 6104. However, there are certain limited disclosure exceptions for a trade secret, patent, process, style of work, or apparatus, if the Service determines that the disclosure of the information would adversely affect the organization.

(1) Favorable determination letters issued in 2014 and later are available on Tax Exempt Organization Search at [www.irs.gov/teos](http://www.irs.gov/teos). Additionally, the public can request information available for public inspection under § 6104(a)(1) by submitting Form 4506-B, *Request for a Copy of Exempt Organization IRS Application or Letter*, or by using such other form or procedure as the IRS may specify. Organizations should ensure that applications and supporting documents do not include unnecessary personal identifying information (such as bank account numbers or social security numbers) that could result in identity theft or other adverse consequences if publicly disclosed.

(2) The tax-exempt organization is required to make its application for recognition of exemption, supporting documents, and any determination letter issued in response to the application (including a proposed adverse determination letter) available for public inspection without charge. For more

information about the tax-exempt organization's disclosure obligations, *see* Publication 557, *Tax-Exempt Status for Your Organization*.

**Disclosure of determination letters under § 6110**

.03 The Service is required to make any determination letter that is not disclosed under § 6104, including adverse determinations of tax-exempt status, available for public inspection under § 6110. Upon issuance of the final adverse determination letter to an organization, both the proposed adverse determination letter and the final adverse determination letter will be released pursuant to § 6110. In addition, determinations of advance approval of grant making procedures described in § 4945(g), advance approval of certain set-asides described in § 4942(g)(2), advance approval of voter registration activities described in § 4945(f), and advance approval of an unusual grant per Rev. Proc. 2018-32 will be released pursuant to § 6110.

The written determination and background file documents are made available to the public after the deletion of names, addresses, and any other information that might identify the taxpayer. *See* § 6110(c) for other specific disclosure exemptions.

**Taxpayer may protest disclosure under § 6110 of certain information in a determination letter**

.04 If the determination letter is disclosed under § 6110, the determination letter will enclose Notice 437, *Notice of Intention to Disclose*, and redacted copies of the final and proposed adverse determination letters. Notice 437 provides procedures to follow and instructions if the organization disagrees with the deletions proposed by the Service.

Within 20 calendar days after the Service receives the response to the Notice 437, the Service will mail to the taxpayer its final administrative conclusion regarding the deletions to be made. The taxpayer does not have the right to a conference to resolve any disagreements concerning material to be deleted from the text of the determination letter. However, these matters may be taken up at a conference with the Independent Office of Appeals that is otherwise scheduled regarding the request, if available under section 9 of this revenue procedure.

**Taxpayer may request delay of public inspection under § 6110**

.05 After receiving the Notice 437, but within 60 calendar days after the date of notice, the taxpayer may send a request for delay of public inspection under either § 6110(g)(3) or (4). The request for delay must be sent to the Service office indicated on the Notice 437. The request for delay under § 6110(g)(4) must contain a statement from which the Commissioner of Internal Revenue may determine that there are good reasons for the delay.

**Note:** Section 6110(l)(1) states that § 6110 disclosure provisions do not apply to any matter to which § 6104 applies. Therefore, disclosure of determination letters and related background file documents dealing with an approved application for recognition of exemption under § 501(a) as an organization described in § 501(c) or (d), or a notice of status as a political organization under § 527 (covered by § 6104) may not be protested or delayed by request of the taxpayer.

**Disclosure to state officials when the Service refuses to recognize tax-exempt status under § 501(c)(3)**

.06 The Service may notify the appropriate state officials of a refusal to recognize an organization as tax-exempt under § 501(c)(3). *See* § 6104(c). The notice to the state officials may include a copy of a proposed or final adverse determination letter the Service issued to the organization. In addition, upon request by the appropriate state official, the Service may make available for inspection and copying the application for recognition of exemption and other information relating to the Service's determination on tax-exempt status.

The Service does not consider the non-acceptance of an application under section 4.10 of this revenue procedure to be a refusal to recognize an organization as tax-exempt.

**Disclosure to state officials of information about § 501(c)(3) applicants**

.07 The Service may disclose to state officials the name, address, and identification number of any organization that has applied for recognition of exemption under § 501(c)(3). The Service does not consider an organization the application of which is not accepted under section 4.10 of this revenue procedure to have applied for recognition of exemption.

**SECTION 14. WHAT ARE THE USER FEE REQUIREMENTS FOR DETERMINATION LETTERS?**

**Legislation authorizing user fees**

.01 Section 7528 directs the Secretary of the Treasury or delegate (Secretary) to establish a program requiring the payment of user fees for requests to the Service for determination letters and similar requests.

The fees charged under the program: (1) are to vary according to categories or subcategories established by the Secretary; (2) are to be determined after taking into account the average time for, and difficulty of, complying with requests in each category and subcategory; and (3) are payable in advance.

Section 7528(b)(2) directs the Secretary to provide for exemptions and reduced fees under the program as the Secretary determines to be appropriate, but the average fee applicable to each category must not be less than the amount specified in § 7528(b)(3).

**Requests to which user fees apply**

.02 In general, user fees apply to all requests for determination letters described in this revenue procedure.

Requests to which a user fee applies must be accompanied by the appropriate fee as determined from the fee schedule provided in Appendix A of this revenue procedure. The fee may be refunded in limited circumstances as set forth in section 14.09 of this revenue procedure.

**Requests and other actions to which user fees do not apply**

.03 Actions that do not require the payment of a user fee include—

(1) Elections pertaining to automatic extensions of time under Treas. Reg. § 301.9100-1; and

(2) Confirmation of tax-exempt status (affirmation letter) (to replace lost tax-exempt status letter and to reflect name and address changes).

**Exemption from the user fee requirements**

.04 Departments, agencies, or instrumentalities of the United States that certify that they are seeking a determination letter on behalf of a program or activity funded by Federal appropriations are exempt from the user fee requirements. The fact that a user fee is not charged under § 7528 has no bearing on whether an applicant is treated as an agency or instrumentality of the United States for purposes of any other provision of the Code.

In addition, Canadian registered charities do not pay a user fee. *See* Appendix A.

**Requests involving multiple fee categories, issues, or entities**

.05

(1) **Requests involving several fee categories.** Requests submitted as part of an initial application (*e.g.*, foundation classification; exemption from Form 990 filing requirements) are considered part of the initial application and aren't subject to an additional user fee.

(2) **Multiple requests on a single Form 8940.** A separate Form 8940 and user fee are generally required for each type of request for which an organization has checked a box on Form 8940. However, the following scenarios are considered a single request—

(a) A request for reclassification as a public charity under § 509(a)(3) that checks boxes f and g of Form 8940; or

(b) A request for advance approval of grant making procedures for a program described in both § 4945(g)(1) and (3).

(3) **Requests for separate determination letters for several entities.** Each entity involved in a request that desires a separate determination letter in its own name (for example, subordinate organizations seeking change of filing requirements) must pay a separate fee. Payment of a separate fee is required regardless of whether the requests may be viewed as related.

#### Method of payment

.06

(1) **Payment of user fees for applications of recognition of exemption on Form 1023, Form 1023-EZ, Form 1024, or Form 1024-A.** User fees for applications for recognition of exemption on Form 1023, Form 1023-EZ, Form 1024, or Form 1024-A must be paid through [www.pay.gov](http://www.pay.gov).

(2) **Payment of user fees for other requests.** For requests other than those in section 14.06(1) of this revenue procedure, each request to the Service for a determination letter must be accompanied by a check, payable to the United States Treasury, in the appropriate amount. Taxpayers should not send cash.

The check may be converted to an electronic fund transfer. “Electronic fund transfer” is the term used to refer to the process in which the Service electronically instructs the financial institution holding the funds to transfer funds from the account named on the check to the United States Treasury account, rather than processing the check. By sending a completed, signed check to the Service, the Service is authorized to copy the check and to use the account information from the check to make an electronic fund transfer from the account for the same amount as the check. If the electronic fund transfer cannot be processed for technical reasons, the Service is authorized to process the copy of the check.

The electronic fund transfer from an account will usually occur within 24 hours, which is faster than a check is normally processed. Therefore, it is necessary to ensure there are sufficient funds available in the checking account when the check is sent to the Service. The check will not be returned from the financial institution.

#### Transmittal forms

.07 Form 8718 should be attached to applications other than Form 1023, Form 1023-EZ, Form 1024, or Form 1024-A, to transmit a check in the amount of the required user fee.

#### Effect of nonpayment or payment of incorrect amount

.08 It will be the general practice of the Service that—

(1) An application for a determination letter containing the correct user fee will generally be accepted for processing even if Form 8718 was not attached.

(2) If a check is for more than the correct amount, the submission will be accepted for processing and the amount of the excess payment will be returned to the requester.

(3) If a check is for less than the correct amount or no check is received, the submission will not be accepted for processing and any user fee that was paid with the request will be refunded. *See* section 4.10 of this revenue procedure.

#### **Refunds of user fees**

.09 In general, the user fee will not be refunded unless the Service does not accept the request for processing or declines to make a determination on all issues for which a determination letter is requested.

(1) Examples in which the user fee **will not** be refunded:

(a) The request for a determination letter is withdrawn at any time subsequent to its receipt by the Service. For example, no fee will be refunded where the taxpayer has been advised that an adverse ruling is contemplated and the taxpayer subsequently withdraws its submission.

(b) A determination letter is revoked in whole or in part. The fee paid at the time the original determination letter was requested will not be refunded.

(c) The request contains several issues and the Service rules on some, but not all, of the issues. The highest fee applicable to the issues on which the Service rules will not be refunded.

(2) The following situations are examples in which the user fee **will** be refunded:

(a) The request is not accepted for processing under section 4.10 of this revenue procedure.

(b) The Service declines to rule on the request in accordance with section 3.02 of this revenue procedure.

#### **Request for reconsideration of user fee**

.10 A taxpayer that believes the user fee charged by the Service for its request for a determination letter is either not applicable or incorrect and wishes to receive a refund of all or part of the amount paid (*see* section 14.09 of this revenue procedure) may request reconsideration and, if desired, the opportunity for an oral discussion by sending a letter to the Internal Revenue Service at the applicable Post Office Box or other address given in section 15 of this revenue procedure. Both the incoming envelope and the letter requesting such reconsideration should be prominently marked “USER FEE RECONSIDERATION REQUEST.” No user fee is required for these requests. The request should be marked for the attention of “Manager, EO Determinations Quality Assurance.”

#### **SECTION 15. MAILING ADDRESS FOR REQUESTING DETERMINATION LETTERS**

.01



(1) The following types of requests and applications handled by the EO Determinations Office should be sent to the Internal Revenue Service Center, at the address in section 15.01(2) of this revenue procedure:

- (a) applications for recognition of exemption on Form 1028;
- (b) requests for determination letters submitted on Form 8940; and
- (c) requests submitted by letter.

(2) The address is:

Internal Revenue Service  
P.O. Box 12192  
TE/GE Stop 31A Team 105  
Covington, KY 41012-0192

.02 Applications for recognition of exemption on Form 1023, Form 1023-EZ, Form 1024, and Form 1024-A are handled by the EO Determinations Office but must be submitted electronically online at [www.pay.gov](http://www.pay.gov). Paper submissions of Form 1023, Form 1023-EZ, Form 1024, and Form 1024-A will not be accepted for processing.

.03 Determinations and requests not subject to a user fee (including a Form 1023 that a Canadian registered charity as referenced in Appendix A submits in order to be listed in the Tax Exempt Organization Search database for organizations eligible to receive tax-deductible charitable contributions (Pub. 78 data) or to determine public charity status) should be sent to the Internal Revenue Service at the address shown below:

Internal Revenue Service  
P.O. Box 2508  
Cincinnati, OH 45201

.04 Requests shipped by Express Mail or a private delivery service for all of the above should be sent to:

Internal Revenue Service  
7940 Kentucky Drive TE/GE  
Mail Stop 31A Team 105  
Florence, KY 41042

**SECTION 16. EFFECT  
OF THIS REVENUE  
PROCEDURE ON OTHER  
DOCUMENTS**

Revenue Procedures 2022-5 and 2022-8 are superseded.

**SECTION 17. EFFECTIVE  
DATE**

This Revenue Procedure is effective January 2, 2023.

**SECTION 18.  
PAPERWORK  
REDUCTION ACT**

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 USC § 3507) under multiple control numbers.

The collection of information on Forms 1023 and 1023-EZ have been reviewed and approved under control number 1545-0047. The collection of information on Forms 1024 and 1024-A have been reviewed and approved under control number 1545-0047. The collection of information on Form 1028 has been reviewed and approved under control number 1545-0047. The collection of information on these forms is required if an organization wants to be recognized as tax-exempt by the Service. The Service needs the information to determine whether the organization satisfies the legal requirements for tax-exempt status.

The specific information collected in connection with requesting a letter application has been approved and reviewed under control number 1545-0047. The Service needs this information to determine whether the organization satisfies the legal requirements for tax-exempt status.

The collection of information for Form 8940 has been approved and reviewed under control number 1545-2211. This information is required to evaluate and process the request for a determination letter.

The collection of information on Form 2848 has been reviewed and approved under control number 1545-0150. It is used to authorize someone to act for the respondent in tax matters. It grants all powers that the taxpayer has except signing a return and cashing refund checks. Data is used to identify authorized representatives and to ensure that confidential information is not divulged to unauthorized persons.

The collection of information on Form 8718 has been reviewed and approved under control number 1545-0047. The Omnibus Reconciliation Act of 1990, Pub. L. 101-508, requires payment of a “user fee” with each application for a tax-exempt organization determination letter. Because of this requirement, the Form 8718 was created to provide filers the means to enclose their payment and indicate what type of request they are making.

The collections of information are voluntary, to obtain a benefit. The likely respondents are tax-exempt organizations and their authorized representatives.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB number.

Books and records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

**DRAFTING  
INFORMATION**

The principal author of this Revenue Procedure is Ingrid Vatamanu of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For additional information, please contact Ms. Vatamanu at 202-317-6177 (not a toll-free number).

## APPENDIX A

### Schedule of User Fees

This table summarizes the various types of Exempt Organization determination letter user fees.

ISSUE	USER FEE
(1) Application for recognition of exemption under § 501(c)(3) submitted on Form 1023-EZ	\$275
(2) All other applications for recognition of exemption under § 501 except for those included in (1) of Appendix A of this revenue procedure and under § 521 (other than pension, profit-sharing, and stock bonus plans described in § 401).	\$600
(3) Group exemption letters	\$2,500
<b>Note:</b> An additional user fee under (1) or (2) of Appendix A of this revenue procedure above is also required when a central organization submits an initial application for recognition of exemption with its request for a group exemption letter. As explained in section 3.02(11) of this revenue procedure, the Service is not currently accepting requests for group exemption letters.	
(4) Canadian registered charities	None
<b>Note:</b> In accordance with the income tax treaty between the United States and Canada, and pursuant to a mutual arrangement between the competent authorities of the two countries, Canadian registered charities are automatically recognized as exempt under § 501(c)(3) without filing an application for recognition of exemption. For details, <i>see</i> Notice 99-47, 1999-2 CB 391. Therefore, no user fee is required when a Canadian registered charity submits a written request to be listed in Tax Exempt Organization Search database for organizations eligible to receive tax-deductible charitable contributions (Pub. 78 data), or for a determination on its private foundation status. For additional information about the submission process, refer to the Form 1023 Instructions.	
(5) Affirmation Letter – Confirmation of tax-exempt status (to replace lost tax-exempt status letter, and to reflect name and address changes)	None
(6) Reclassification of private foundation status, including	
<ul style="list-style-type: none"> <li>• operating foundation status described in § 4942(j)(3) and exempt operating foundation status described in § 4940(d);</li> <li>• a determination that a public charity is described in § 509(a)(3)(i), (ii), or (iii), including whether or not a Type III supporting organization is functionally integrated;</li> <li>• reclassification of foundation status, including voluntary requests from public charities for private foundation status and voluntary requests from public charities, including requests from subordinate organizations, to change from one public charity status to another public charity status; or</li> <li>• final public charity classification determination for organizations whose advance ruling periods expired prior to June 9, 2008, without providing the required information (Form 8940).</li> </ul>	\$550
(7) Regulations § 301.9100 relief in connection with applications for recognition of exemption	None
(8) Section 507 terminations – advance or final ruling under § 507(b)(1)(B) (Form 8940)	\$550
(9) Section 4942(g)(2) set asides – advance approval (Form 8940)	\$2,500
(10) Section 4945 advance approval of organization's grant making procedures (Form 8940)	\$2,500
(11) Section 4945(f) advance approval of voter registration activities (Form 8940)	\$2,500
(12) Section 6033 annual information return filing requirements (including a subordinate organization's change of filing requirements) (Form 8940)	\$550
(13) Unusual grants to certain organizations under §§ 170(b)(1)(A)(vi) and 509(a)(2) (Form 8940)	\$550
(14) User Fee for determination letters under the jurisdiction of the Determinations Office not otherwise described or covered in this Appendix.	\$550

## APPENDIX B

### Authorized Representatives

To sign a request for a determination letter or to appear before the Service in connection with the request, the representative must be:

<b>Attorney</b>	(a) An attorney who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service on Form 2848 showing current qualification as an attorney and current authorization to represent the taxpayer.
<b>Certified public accountant</b>	(b) A certified public accountant who is qualified to practice in any state, possession, territory, commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice before the Service. He or she must file a written declaration with the Service on Form 2848 showing current qualification as a certified public accountant and current authorization to represent the taxpayer.
<b>Enrolled agent</b>	(c) An enrolled agent, other than an attorney or certified public accountant, that is currently enrolled to practice before the Service and is not currently under suspension or disbarment from practice before the Service, including a person enrolled to practice only for employee plans matters. He or she must file a written declaration with the Service on Form 2848 showing current enrollment and authorization to represent the taxpayer. Either the enrollment number or the expiration date of the enrollment card must be included in the declaration. For the rules on who may practice before the Service, <i>see</i> Treasury Department Circular No. 230.
<b>A person with a “Letter of Authorization”</b>	<p>(d) Any other person, including a foreign representative, who has received a “Letter of Authorization” from the Director, Office of Professional Responsibility under section 10.7(d) of Treasury Department Circular No. 230. He or she must file a written declaration with the Service on Form 2848 (or equivalent power of attorney and declaration of representative) showing authorization to represent the taxpayer with a copy of the “Letter of Authorization” attached.</p> <p>A person may make a written request for a “Letter of Authorization” to: Director, Office of Professional Responsibility, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, DC 20224. Circular No. 230 section 10.7(d) (“Special appearances”) authorizes the Commissioner, or delegate, to allow an individual who is not otherwise eligible to practice before the Service to represent another person in a particular matter.</p>
<b>Employee, general partner, bona fide officer, administrator, trustee, etc.</b>	(e) A regular full-time employee representing his or her employer, a general partner representing his or her partnership, a bona fide officer representing his or her corporation, association, or organized group, a trustee, receiver, guardian, personal representative, administrator, or executor representing a trust, receivership, guardianship, or estate, or an individual representing his or her immediate family. He or she may be required to file a written declaration with the Service on Form 2848 showing authorization to represent the taxpayer. <i>See</i> Form 2848 for more information. A preparer of a return (other than a person referred to in paragraph (a), (b), or (c) of this Appendix B) who is not a full-time employee, general partner, a bona fide officer, an administrator, trustee, etc., or an individual representing his or her immediate family may not represent a taxpayer in connection with a determination letter or a technical advice request. <i>See</i> section 10.7(c) of Treasury Department Circular No. 230.
<b>Foreign representative</b>	(f) A foreign representative (other than a person referred to in paragraph (a), (b), or (c) of this Appendix B) is not authorized to practice before the Service and, therefore, must withdraw from representing a taxpayer in a request for a determination letter. In this situation, the nonresident alien or foreign entity must submit the request for a determination letter on the individual’s or entity’s own behalf or through a person referred to in paragraph (a), (b), or (c) of this Appendix B.

## Rev. Proc. 2023-7

### SECTION 1. PURPOSE

#### .01 Purpose

This revenue procedure updates Rev. Proc. 2022-7, 2022-1 I.R.B. 297, by providing a current list of those areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (International) (hereinafter “the Office”) relating to matters in which the Internal Revenue Service will not issue letter rulings or determination letters.

#### .02 Changes

Section 4.01(1) adds whether a transferee foreign corporation, or any qualified subsidiary or any qualified partnership, is engaged in an active trade or business, under § 1.367(a)-3(c)(3)(i)(A), outside of the United States to the list of areas for which letter rulings and determination letters ordinarily will not be issued.

### SECTION 2. BACKGROUND AND SCOPE OF APPLICATION

#### .01 Background

In the interest of sound tax administration, the Service answers inquiries from individuals and organizations regarding their status for tax purposes and the tax effects of their acts or transactions before the filing of returns or reports that are required by the Internal Revenue Code. There are, however, areas where the Service will not issue letter rulings or determination letters, either because the issues are inherently factual or for other reasons. These areas are set forth in sections 3 and 4 of this revenue procedure.

Section 3 lists areas in which letter rulings and determination letters will not be issued under any circumstances.

Section 4 lists areas in which letter rulings and determination letters ordinarily will not be issued; in these areas, unique and compelling reasons may justify issuing a letter ruling or determination letter. A taxpayer who plans to request a letter ruling or determination letter in an area described in Section 4 should first contact

the Office by telephone or in writing to discuss the unique and compelling reasons that the taxpayer believes justify issuing the letter ruling or determination letter. Although not required, a written submission is encouraged because it will enable Office personnel to arrive more quickly at an understanding of the unique facts of each case. A taxpayer who contacts the Office by telephone may be requested to provide a written submission.

The Service may provide a general information letter in response to inquiries in areas on either the Section 3 or Section 4 list. These lists are not all-inclusive. Future revenue procedures may add or delete items. The Service may also decline to rule on an individual case for reasons peculiar to that case, and the decision will not be announced in the Internal Revenue Bulletin. See Rev. Proc. 2023-1, Section 6.02.

#### .02 Scope of Application

This revenue procedure does not preclude the submission of requests for technical advice to the Office from other offices of the Service.

### SECTION 3. AREAS IN WHICH LETTER RULINGS OR DETERMINATION LETTERS WILL NOT BE ISSUED

#### .01 Specific Questions and Problems

(1) Section 861.—Income from Sources Within the United States.—A method for determining the source of a pension payment to a nonresident alien individual from a trust under a defined benefit plan that is qualified under § 401(a) if the proposed method is inconsistent with §§ 4.01, 4.02, and 4.03 of Rev. Proc. 2004-37, 2004-1 C.B. 1099.

(2) Section 862.—Income from Sources Without the United States.—A method for determining the source of a pension payment to a nonresident alien individual from a trust under a defined benefit plan that is qualified under § 401(a) if the proposed method is inconsistent with §§ 4.01, 4.02, and 4.03 of Rev. Proc. 2004-37, 2004-1 C.B. 1099.

(3) Section 871(g).—Special Rules for Original Issue Discount.—Whether a debt instrument having original issue discount within the meaning of § 1273 is not an original issue discount obligation within

the meaning of § 871(g)(1)(B)(i) when the instrument is payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

(4) Section 894.—Income Affected by Treaty.—Whether a person that is a resident of a foreign country is entitled to benefits under the United States income tax treaty with that foreign country pursuant to the limitation on benefits article. However, the Service may rule regarding the legal interpretation of a particular provision within the relevant limitation on benefits article.

(5) Section 954.—Foreign Base Company Income.—The effective rate of tax that a foreign country will impose on income.

(6) Section 954.—Foreign Base Company Income.—Whether the facts and circumstances show that a controlled foreign corporation makes a substantial contribution through the activities of its employees to the manufacture, production, or construction of the personal property sold within the meaning of § 1.954-3(a)(4)(iv).

(7) Sections 7701(b) and 894.—Definition of Resident Alien and Nonresident Alien.—Whether an alien individual, whether or not a dual resident alien, is a nonresident of the United States, including whether the individual has met the requirements of the substantial presence test or exceptions thereto, or whether the alien is solely a nonresident under a United States income tax treaty. However, the Service may rule regarding the legal interpretation of a particular provision of § 7701(b) or the regulations thereunder.

#### .02 General Areas.

(1) The prospective application of the estate tax to the property or the estate of a living person, except that rulings may be issued on any international issues in a ruling request accepted pursuant to § 5.06 of Rev. Proc. 2023-1, in this Bulletin.

(2) Whether reasonable cause exists under Subtitle F (Procedure and Administration) of the Code.

(3) Whether a proposed transaction would subject a taxpayer to criminal penalties.

(4) Any area where the ruling request does not comply with the requirements of Rev. Proc. 2023-1.

(5) Any area where the same issue is the subject of the taxpayer’s pending re-



quest for competent authority assistance under a United States income tax treaty.

(6) A “comfort” ruling will not be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decisions of a court, tax treaties, revenue rulings, or revenue procedures absent extraordinary circumstances (e.g., a request for a ruling required by a governmental regulatory authority in order to effectuate the transaction).

(7) Any frivolous issue, as that term is defined in § 6.10 of Rev. Proc. 2023-1.

#### **SECTION 4. AREAS IN WHICH LETTER RULINGS OR DETERMINATION LETTERS WILL NOT ORDINARILY BE ISSUED**

##### **.01 Specific Questions and Problems**

(1) Section 367(a).—Transfers of Property from the United States.— Whether the transferee foreign corporation, or any qualified subsidiary or any qualified partnership, is engaged in an active trade or business outside the United States for purposes of § 1.367(a)-3(c)(3)(i)(A).

(2) Section 367(a).—Transfers of Property from the United States.— Whether a transferred corporation subject to a gain recognition agreement under § 1.367(a)-8 has disposed of substantially all of its assets.

(3) Section 367(b).—Other Transfers.—Whether and the extent to which regulations under § 367(b) apply to an exchange involving foreign corporations, unless the ruling request presents a significant legal issue or subchapter C rulings are requested in the context of the exchange.

(4) Section 864.—Definitions and Special Rules.—Whether a taxpayer is engaged in a trade or business within the United States, and whether income is effectively connected with the conduct of a trade or business within the United States; whether an instrument is a security as defined in § 1.864-2(c)(2); whether a taxpayer effects transactions in the United States in stocks or securities under § 1.864-2(c)(2); whether an instrument or item is a commodity for purposes of § 1.864-2(d)(3); and for purposes of § 1.864-2(d)(1) and (2), whether a commodity is of a kind customarily dealt in on an organized commodity exchange, and whether a transac-

tion is of a kind customarily consummated at such place.

(5) Section 871(h).—Repeal of Tax on Interest of Nonresident Alien Individuals Received from Certain Portfolio Debt Investments.—Whether a payment constitutes portfolio interest under § 871(h); whether an obligation qualifies for any of the components of portfolio interest such as being in registered form; and whether the income earned on contracts that do not qualify as annuities or life insurance contracts because of the limitations imposed by §§ 72(s) and 7702(a) is portfolio interest as defined in § 871(h).

(6) Section 881(c).—Repeal of Tax on Interest of Foreign Corporations Received from Certain Portfolio Debt Investments.— Whether a payment constitutes portfolio interest under § 881(c); whether an obligation qualifies for any of the components of portfolio interest such as being in registered form; and whether the income earned on contracts that do not qualify as annuities or life insurance contracts because of the limitations imposed by §§ 72(s) and 7702(a) is portfolio interest as defined in § 881(c).

(7) Section 892.—Income of Foreign Governments and of International Organizations.—Whether income derived by foreign governments and international organizations is excluded from gross income and exempt from taxation and any underlying issue related to that determination.

(8) Section 893.—Compensation of Employees of Foreign Governments and International Organizations.—Whether wages, fees, or salary of an employee of a foreign government or of an international organization received as compensation for official services to such government or international organization is excluded from gross income and exempt from taxation and any underlying issue related to that determination.

(9) Section 894.—Income Affected by Treaty.—Whether the income received by an individual in respect of services rendered to a foreign government or a political subdivision or a local authority thereof is exempt from federal income tax or withholding under any of the United States income tax treaties that contain provisions applicable to such individuals.

(10) Section 894.—Income Affected by Treaty.—Whether a taxpayer has a per-

manent establishment in the United States for purposes of any United States income tax treaty and whether income is attributable to a permanent establishment in the United States.

(11) Section 894.—Income Affected by Treaty.—Whether certain persons will be considered liable to tax under the laws of a foreign country for purposes of determining if such persons are residents within the meaning of any United States income tax treaty, including pursuant to Rev. Rul. 2000-59, 2000-2 C.B. 593.

(12) Section 894.—Income Affected by Treaty.—Whether the income received by a nonresident alien student or trainee for services performed for a university or other educational institution is exempt from federal income tax or withholding under any of the United States income tax treaties that contain provisions applicable to such nonresident alien students or trainees.

(13) Section 894.—Income Affected by Treaty.—Whether the income received by a nonresident alien performing research or teaching as personal services for a university, hospital or other research institution is exempt from federal income tax or withholding under any of the United States income tax treaties that contain provisions applicable to such nonresident alien teachers or researchers.

(14) Section 894.—Income Affected by Treaty.—Whether a recipient of a payment is the beneficial owner for purposes of any United States income tax treaty.

(15) Section 894.—Income Affected by Treaty.—Whether an entity is treated as fiscally transparent by a foreign jurisdiction for purposes of § 894(c) and the regulations thereunder or pursuant to any United States income tax treaty.

(16) Section 895.—Income derived by a foreign central bank of issue from obligations of the United States or from bank deposits.—Whether income derived by a foreign central bank of issue is excluded from gross income and exempt from taxation and any underlying issue related to that determination.

(17) Section 901.—Taxes of Foreign Countries and of Possessions of United States.—Whether a foreign levy meets the requirements of a creditable tax under § 901.

(18) Section 901.—Taxes of Foreign Countries and of Possessions of United

ed States.—Whether a person claiming a credit has established, based on all of the relevant facts and circumstances, the amount (if any) paid by a dual capacity taxpayer under a qualifying levy that is not paid in exchange for a specific economic benefit. See § 1.901-2A(c)(2).

(19) Section 903.—Credit for Taxes in Lieu of Income, Etc., Taxes.—Whether a foreign levy meets the requirements of a creditable tax under § 903.

(20) Section 937.—Definition of Bona Fide Resident.—Whether an individual is a bona fide resident of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands. However, the Service may rule regarding the legal interpretation of a particular provision of § 937(a) or the regulations thereunder.

(21) Sections 954(d), 993(c).—Manufactured Product.—Whether a product is manufactured or produced for purposes of §§ 954(d) and 993(c).

(22) Section 956.—Investment of Earnings in United States Property.—Whether a pledge of the stock of a controlled foreign corporation is an indirect pledge of the assets of that corporation. See § 1.956-2(c)(2).

(23) Section 985.—Functional Currency.—Whether a currency is the functional currency of a qualified business unit.

(24) Section 989(a).—Qualified Business Unit.—Whether a unit of the taxpayer's trade or business is a qualified business unit.

(25) Section 1058.—Transfers of Securities Under Certain Agreements.—Whether the amount of any payment described in § 1058(b)(2) or the amount of any other payment made in connection with a transfer of securities described in § 1058 is from sources within or without the United States; the character of such amounts; and whether the amounts constitute a particular kind of income for purposes of any United States income tax treaty.

(26) Section 1059A.—Limitation on Taxpayer's Basis or Inventory Cost in Property Imported from Related Persons.—Whether a taxpayer's cost or inventory basis in property imported from a foreign affiliate will not be limited by § 1059A due to differences between customs valuation and tax valuation.

(27) Sections 1471, 1472, 1473, and 1474.—Taxes to Enforce Reporting on Certain Foreign Accounts.—Whether a taxpayer, withholding agent, or intermediary has properly applied the requirements of chapter 4 of the Internal Revenue Code (§§ 1471 through 1474, also known as "FATCA") or of an applicable intergovernmental agreement to implement FATCA.

(28) Section 1503(d).—Dual Consolidated Loss.—Whether the income tax laws of a foreign country would deny any opportunity for the foreign use of a dual consolidated loss in the year in which the dual consolidated loss is incurred under § 1.1503(d)-3(e)(1); whether no possibility of foreign use exists under § 1.1503(d)-6(c)(1); whether an event presumptively constitutes a triggering event under § 1.1503(d)-6(e)(1)(i)-(ix); whether the presumption of a triggering event is rebutted under § 1.1503(d)-6(e)(2); and whether a domestic use agreement terminates under § 1.1503(d)-6(j)(1).

(29) Section 2501.—Imposition of Tax.—Whether a partnership interest is intangible property for purposes of § 2501(a)(2) (dealing with transfers of intangible property by a nonresident not a citizen of the United States).

(30) Section 7701.—Definitions.—Whether an estate or trust is a foreign estate or trust for federal income tax purposes.

(31) Section 7701.—Definitions.—Whether an intermediate entity is a conduit entity under § 1.881-3(a)(4); whether a transaction is a financing arrangement under § 1.881-3(a)(4)(ii); whether the participation of an intermediate entity in a financing arrangement is pursuant to a tax avoidance plan under § 1.881-3(b); whether an intermediate entity performs significant financing activities under § 1.881-3(b)(3)(ii); whether an unrelated intermediate entity would not have participated in a financing arrangement on substantially the same terms under § 1.881-3(c).

(32) Section 7874.—Expatriated Entities and Their Foreign Parents.—Whether, after the acquisition, the expanded affiliated group has substantial business activities in the foreign country in which, or under the law of which, the foreign entity is created or organized, when com-

pared to the total business activities of the expanded affiliated group.

(33) Section 7874.—Expatriated Entities and Their Foreign Parents.—Whether a foreign corporation completes the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership.

#### .02 General Areas

(1) Whether a taxpayer has a business purpose for a transaction or arrangement.

(2) Whether a taxpayer uses a correct North American Industry Classification System (NAICS) code or Standard Industrial Classification (SIC) code.

(3) Any transaction, or series of transactions, that is designed to achieve a different tax consequence or classification under U.S. tax law (including tax treaties) and the tax law of a foreign jurisdiction, where the results of that different tax consequence or classification are inconsistent with the purposes of U.S. tax law (including tax treaties).

(4)(a) Situations where a taxpayer or a related party is domiciled or organized in a foreign jurisdiction with which the United States does not have an effective mechanism for obtaining tax information with respect to civil tax examinations and criminal tax investigations, which would preclude the Service from obtaining information located in such jurisdiction that is relevant to the analysis or examination of the tax issues involved in the ruling request.

(b) The provisions of subsection 4.02(4)(a) above shall not apply if the taxpayer or affected related party (i) consents to the disclosure of all relevant information requested by the Service in processing the ruling request or in the course of an examination to verify the accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (ii) waives all claims to protection of bank or commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service. In the event the taxpayer's or related party's consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.



(5) The federal tax consequences of proposed federal, state, local, municipal, or foreign legislation.

(6)(a) Situations involving the interpretation of foreign law or foreign documents. The interpretation of a foreign law or foreign document means making a judgment about the import or effect of the foreign law or document that goes beyond its plain meaning.

(b) The Service, at its discretion, may consider ruling requests that involve the interpretation of foreign laws or foreign documents. In these cases, the Service may request information in addition to

that listed in § 7.01(2) and (6) of Rev. Proc. 2023-1, including a discussion of the implications of any authority believed to interpret the foreign law or foreign document, such as pending legislation, treaties, court decisions, notices, or administrative decisions.

(7) The treatment or effects of hook equity, as described in section 4.02(11) of Rev. Proc. 2023-3, in this Bulletin.

## **SECTION 5. EFFECT ON OTHER REVENUE PROCEDURES**

Rev. Proc. 2022-7 is superseded.

## **SECTION 6. EFFECTIVE DATE**

This revenue procedure is effective January 3, 2023.

## **SECTION 7. DRAFTING INFORMATION**

This revenue procedure was compiled by Nancy M. Galib of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure contact Ms. Galib at (202) 317-3800 (not a toll-free number).