



Understanding the Employee Plans Examination Process

This publication explains your rights as a taxpayer and the Employee Plans examination, appeal and compliance resolution processes

The Taxpayer Bill of Rights

1. The Right to Be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

2. The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

3. The Right to Pay No More than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

4. The Right to Challenge the IRS's Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

5. The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.

6. The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

7. The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and will provide, where applicable, a collection due process hearing.

8. The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

9. The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

10. The Right to a Fair and Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

The Employee Plans Examination Process

The TE/GE Mission

To provide Tax Exempt and Government Entities customers top-quality service by helping them understand and comply with applicable tax laws and to protect the public interest by applying the tax law with integrity and fairness to all.

Introduction

The goal of Employee Plans Examinations is to promote voluntary compliance by reviewing the operation of retirement plans for consistency with plan terms and pension law. **Publication 556**, *Examination of Returns, Appeal Rights, and Claims for Refund*, explains the rules and procedures the IRS follows in examinations.

Return selection

There are several ways a retirement plan is selected for examination. It may be selected as a part of an initiative, project or referral, because of a questionable or unusual item on the return, or as a random selection. We use a centralized case selection and review process to enhance consistency of enforcement activities and to focus resources on the areas that have the most positive impact on retirement plans. Our tasks include identifying areas of noncompliance, developing corrective strategies and assisting with those strategies.

Transfer to another area office. Generally, the IRS area office where the sponsoring employer is located examines the Form 5500 return. If, however, another area office can examine the return more quickly and conveniently, you may request to have the case transferred to that office.

Repeat examinations. If we examined your return for the same items in either of the two previous years and proposed no change to the information reported, please contact us as soon as possible so we can see if we should discontinue the audit.

The examination

A specially-trained examiner will notify you by phone or letter that your plan has been selected for audit. A letter confirming the audit will follow the initial phone contact. It will include a list of items that you or your representative must provide for the audit. We may request that you provide some items before the initial appointment and we may request additional items later.

You can authorize someone to represent you if they are eligible to practice before the IRS. If you have someone represent you in your absence, you must furnish written authorization. You may use Form 2848, *Power of Attorney and Declaration of Representative*, for this authorization.

The audit may include a complete review of plan operations or it may focus on specific issues.

The most common areas of review include —

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| <ol style="list-style-type: none">1. Eligibility, participation and coverage—Are eligible employees properly participating?2. Vesting—Have service and vesting been properly credited?3. Discrimination—Do contributions, benefits, rights or features improperly favor highly compensated employees?4. Top-heavy requirements—Have minimum contributions and benefits, and accelerated vesting been provided?5. Contribution and benefit limits—Are contributions and benefits within applicable limits? | <ol style="list-style-type: none">6. Funding and deductions—Are contributions correct and timely made, and deductions within applicable limits?7. Distributions—Are distributions correctly calculated, properly made, and timely and accurately reported?8. Trust activities—Is the trust operated for the exclusive benefit of participants and according to fiduciary standards?9. Plan and trust documents—Does the form of the plan and trust meet the tax law?10. Returns and reports—Were federal returns and reports timely and accurately filed? |
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Initial interview. You'll be asked to explain the plan administrative practices and procedures, as well as the organizational structure and operation of your business. This will help the examiner understand your plan, focus the review and complete the examination in a shorter time.

Information review. The examiner will analyze your information, perform tests and sample data. The examiner may expand the analysis to include additional details and larger samples until it's reasonably certain that the plan operation satisfies the qualification requirements.

Requests for additional information. The examiner may require additional information or corrective action prior to concluding the examination. If so, the examiner will explain the reason for the request, describe the information and provide a reasonable response time.

Closing interview. When the initial field work is concluded, the examiner will explain the areas that may require your attention or corrective action.

Review process. The examiner's work is subject to a random review process for technical and procedural accuracy. If your plan is selected for review, you may experience a delay and may be required to provide additional information.

Closing letter. The final step in the examination process is a letter explaining the examiner's conclusions. An Employee Plans examination can result in a tax liability for related entities and individuals and may require coordination with other IRS business units.

Appeal rights. If you don't agree with the examiner's proposed changes, you can appeal them to the IRS Appeals Office. Most differences can be settled without expensive and time-consuming court trials. Your appeal rights are explained in **Publication 1020**, *Appeal Procedures for Employee Plans Examinations*.

Resolving qualification issues - The Employee Plans Compliance Resolution System (EPCRS)

Failing to comply with plan terms and pension law may result in the plan losing its tax-favored status, including the trust losing its tax-exempt status, the employer losing tax deductions and unanticipated taxable income to employees.

Most plan failures can be corrected using EPCRS. These programs aren't generally available where the law provides for tax consequences other than loss of tax-favored status of the plan, such as excise taxes.

EPCRS includes the following programs for plans that are under examination —

Self-Correction Program. You can self-correct many retirement plan errors without contacting the IRS or paying a fee. There are no application or reporting requirements.

You can self-correct an insignificant operational error at any time to preserve the tax-favored status of your plan. An operational error occurs when you don't follow the written plan terms. Even when the operational error is significant, you may still be able to self-correct if you take timely action.

Audit Closing Agreement Program (Audit CAP). If you haven't corrected a qualification failure and it isn't eligible to be self-corrected, you may be able to enter into an agreement with the IRS to correct the failure and pay a reasonable sanction. The sanction will be based on an amount that's directly related to the amount of tax benefits preserved. It will bear a reasonable relationship to the nature, extent and severity of the failure, considering the extent to which correction occurred before the audit.

The examiner will provide you with additional information about these programs if he or she determines that there are plan qualification issues.

IRS Publications

- 556** Examination of Returns, Appeal Rights, and Claims for Refund
- 560** Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)
- 571** Tax-Sheltered Annuity Plans (403(b) Plans) for Employees of Public Schools and Certain Tax-Exempt Organizations
- 575** Pension and Annuity Income
- 590** Individual Retirement Arrangements (IRAs)
- 1020** Appeal Procedures for Employee Plans Examinations
- 3998** Choosing a Retirement Solution for Your Small Business

Tax information

The IRS provides the following sources for forms, publications and additional information.

Employee Plans Questions: 877-829-5500

Forms and Publications: 800-829-3676

Internet: www.irs.gov/retirement

Treasury Inspector General for Tax Administration: If you want to confidentially report misconduct, waste, fraud, or abuse by an IRS employee, call 800-366-4484 (800-877-8339 for TTY/TDD or 202-927-7018 for fax). You can remain anonymous.