

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

ADMINISTRATIVE

Rev. Proc. 2021-1, page 1.

This procedure contains revised procedures for letter rulings and information letters issued by the Associate Chief Counsel (Corporate), Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), Associate Chief Counsel (Financial Institutions and Products), Associate Chief Counsel (Income Tax and Accounting), Associate Chief Counsel (International), Associate Chief Counsel (Passthroughs and Special Industries), and Associate Chief Counsel (Procedure and Administration). This procedure also contains revised procedures for determination letters issued by the Large Business and International Division, Small Business/Self Employed Division, Wage and Investment Division, and Tax Exempt and Government Entities Division. Rev. Proc. 2020-1 superseded.

Rev. Proc. 2021-2, page 116.

This procedure explains when and how an Associate office within the Office of Chief Counsel provides technical advice, conveyed in technical advice memoranda (TAMs). It also explains the rights that a taxpayer has when a field office requests a TAM regarding a tax matter. Rev. Proc. 2020-2 superseded.

Rev. Proc. 2021-3, page 140.

The revenue procedure provides a revised list of areas of the Code under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Associate Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes) relating to matters on which the Service will not issue letter rulings or determination letters. Rev. Proc. 2020-3, 2020-1 I.R.B. 131 is superseded.

Finding Lists begin on page ii.

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EMPLOYEE PLANS

Rev. Proc. 2021-4, page 157.

This document updates Rev. Proc. 2020-4, 2020-1 I.R.B. 148, relating to the types of advice the IRS provides to taxpayers on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division, Employee Plans Rulings and Agreements, and the procedures that apply to requests for determination letters and private letter rulings.

EXEMPT ORGANIZATIONS

Rev. Proc. 2021-5, page 250.

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. 2021-4, this Bulletin (relating to pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans)), private foundation status, and other determinations related to 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.

INCOME TAX

Rev. Proc. 2021-7, page 290.

Areas in which rulings will not be issued, Associate Chief Counsel (International).

TABLE OF CONTENTS

SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?	163
.01 Purpose of revenue procedure	163
.02 Organization of revenue procedure	163
.03 Other guidance affecting this revenue procedure	163
.04 Updated annually	167
.05 Possible future updates related to Appeals review	167
SECTION 2. WHAT CHANGES HAVE BEEN MADE TO REVENUE PROCEDURE 2020-4?	167
.01 In general	167
.02 Changes made to Revenue Procedure 2020-4	167

PART I. GENERALLY APPLICABLE PROCEDURES

SECTION 3. IN WHAT FORM IS ADVICE PROVIDED BY EMPLOYEE PLANS RULINGS AND AGREEMENTS? ..	169
.01 In general	169
.02 Letter ruling	169
.03 Closing agreement	169
.04 Determination letter	169
.05 Opinion letter	169
.06 Oral advice	170
.07 Nonbank trustee approval letters	171
.08 Compliance statement	171
.09 Advisory letter	171

SECTION 4. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN ADVICE UNDER THIS PROCEDURE?	171
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SECTION 5. ON WHAT ISSUES MUST WRITTEN ADVICE BE REQUESTED UNDER DIFFERENT PROCEDURES?	172
.01 Pre-approved plans	172
.02 Employee Plans Compliance Resolution System	172
.03 Chief Counsel	172
.04 Determination letters not issued for requests for minimum funding waivers	173

SECTION 6. WHAT ARE THE GENERAL INSTRUCTIONS FOR REQUESTING LETTER RULINGS AND DETERMINATION LETTERS FROM EMPLOYEE PLANS RULINGS AND AGREEMENTS?	173
.01 In general	173
.02 Certain information required in requests for letter rulings or determination letters, as applicable	173
.03 Additional information required in certain circumstances	182
.04 Address to send the request	184
.05 Pending letter ruling requests	184
.06 When to attach letter ruling to return	184
.07 How to check on status of request	184

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?	185
.01 In general	185
.02 Notification of appropriate Service official	185
.03 Refunds of user fees	185

PART II. PROCEDURES FOR DETERMINATION LETTER REQUESTS

PART IIA. REQUESTING DETERMINATION LETTERS

SECTION 8. IN WHAT AREAS ARE DETERMINATION LETTERS ISSUED?	185
.01 Circumstances under which determination letters are issued.	185
.02 Types of requests	186
.03 Areas in which determination letters will not be issued.	187
.04 Determination letter applications	188
.05 Review of determination letters	188
SECTION 9. WHAT IS THE GENERAL SCOPE OF A DETERMINATION LETTER?	189
.01 Scope of this section.	189
.02 Scope of determination letters	189
.03 Design-based safe harbor	189
.04 Governmental plans under § 414(d).	189
.05 Church plans under § 414(e)	189
.06 Tax treatment of certain contributions under § 414(h).	189
.07 Other limits on scope of determination letter.	189
.08 Leased employees.	190
.09 Partial terminations.	190
.10 Publication 794, Favorable Determination Letter	190
SECTION 10. WHAT IS THE GENERAL PROCEDURE FOR REQUESTING DETERMINATION LETTERS?	190
.01 Scope	190
.02 Complete information required	190
.03 Complete copy of plan and trust instrument and applicable amendments required.	191
.04 Separate application for each single § 414(l) plan	191
.05 Prior letters	191
.06 Plans involving mergers	191
.07 User fees	191
.08 Interested party notification and comment	191
.09 Contrary authority must be distinguished.	192
.10 Employer/employee relationship	192
.11 Incomplete applications	192
.12 Effect of failure to disclose material fact	193
.13 Where to file requests	193
.14 Submission of related plans	193
.15 Withdrawal of requests	193
.16 Right to status conference	193
.17 How to request status conference	193
.18 Correct format required	194
SECTION 11. WHAT IS THE PROCESS FOR REQUESTING DETERMINATION LETTERS FOR INDIVIDUALLY DESIGNED PLANS?	194
.01 Requesting determination letters	194
.02 Forms	194
.03 Application must include copy of plan and amendments.	195
.04 Restatements required	195
.05 Section 414(x) combined plans	195
SECTION 12. WHEN MAY AN ADOPTER OF A PRE-APPROVED PLAN (STANDARDIZED OR NONSTANDARDIZED) SUBMIT A DETERMINATION LETTER APPLICATION?	195
.01 Eligibility to apply for a determination letter for a pre-approved plan under Rev. Proc. 2017-41	195
.02 Determination letter applications on Form 5307	196
.03 Determination letter applications on Form 5300	196
.04 Scope of review	198

.05	Submission period	199
.06	Reliance equivalent to determination letter	199
SECTION 13. WHAT ARE THE DETERMINATION LETTER FILING PROCEDURES FOR FORM 5307?		199
.01	Scope	199
.02	Form 5307 filing procedures	199
.03	Additional information with respect to ESOPS submitted on Form 5307	200
.04	Deviations from language of approved plan	200
.05	Adoption of plan prior to date of plan's letter	200
.06	Timing of determination letter applications for adopting employers of pre-approved plans	200
SECTION 14. WHAT ARE THE DETERMINATION LETTER FILING PROCEDURES FOR INDIVIDUALLY DESIGNED MULTIPLE EMPLOYER PLANS?		200
.01	Scope	200
.02	Applicant must request letter for plan in the name of the controlling member	201
.03	Where to file requests	201
.04	Addition of employers	201
SECTION 15. WHAT ARE THE PROCEDURES FOR FILING A REQUEST FOR A DETERMINATION UPON TERMINATION OR DISCONTINUANCE OF CONTRIBUTIONS, NOTICE OF MERGER, CONSOLIDATION, ETC.?		201
.01	Scope	201
.02	Forms	201
.03	Supplemental information	202
.04	Compliance with Title IV of ERISA	202
.05	Termination prior to time for amending for change in law	202
.06	Restatement not required for terminating plan	203
SECTION 16. WHAT ARE THE DETERMINATION LETTER FILING PROCEDURES FOR GROUP TRUSTS?		203
.01	Scope	203
.02	Required information	203
.03	Forms	203
SECTION 17. WHAT ARE THE PROCEDURES FOR FILING A REQUEST FOR A DETERMINATION OF LEASED EMPLOYEE STATUS?		204
.01	Scope	204
.02	Employer must request the determination under § 414(n)	204
.03	Forms	204
.04	Employer is responsible for determining continuing status under § 414(n)	204
.05	Pre-approved plans	204
.06	Required information for § 414(n) determination	204
SECTION 18. WHAT ARE THE PROCEDURES FOR REQUESTING SECTION 401(h) AND SECTION 420 DETERMINATION LETTERS?		205
.01	Scope	205
.02	Required information for § 401(h) determination	205
.03	Required information for § 420 determination	205
PART IIB. INTERESTED PARTY NOTICE AND COMMENT		
SECTION 19. WHAT RIGHTS TO NOTICE AND COMMENT DO INTERESTED PARTIES HAVE?		207
.01	Rights of interested parties	207
.02	Comments by interested parties	207
.03	Requests for DOL to submit comments	208
.04	Right to comment if DOL declines to comment	209
.05	Confidentiality of comments	209
.06	Availability of comments	209

.07	When comments are deemed made	209
SECTION 20. WHAT ARE THE GENERAL RULES FOR NOTICE TO INTERESTED PARTIES?210		
.01	Notice to interested parties	210
.02	Time when notice must be given	210
.03	Content of notice	210
.04	Procedures for making information available to interested parties	211
.05	Information to be available to interested parties	211
.06	Special rules if there are fewer than 26 participants.	211
.07	Information described in § 6104(a)(1)(D) should not be included.	212
.08	Availability of additional information to interested parties	212
.09	Availability of notice to interested parties	212
PART IIC. PROCESSING DETERMINATION LETTER REQUESTS		
SECTION 21. HOW DOES EMPLOYEE PLANS RULINGS AND AGREEMENTS HANDLE DETERMINATION LETTER REQUESTS?212		
.01	Oral advice	212
.02	Conferences	213
.03	Determination letter based solely on administrative record	213
.04	Notice of final determination	214
.05	Issuance of the notice of final determination	214
SECTION 22. WHAT ARE THE STEPS FOR EXHAUSTING ADMINISTRATIVE REMEDIES?214		
.01	In general	214
.02	Steps for exhausting administrative remedies	214
.03	Applicant's request for § 7805(b) relief	215
.04	Interested parties	215
.05	Deemed exhaustion of administrative remedies	215
.06	Service must have reasonable time to act on appeal	215
.07	Service must have reasonable time to act on request for § 7805(b) relief	215
SECTION 23. WHAT EFFECT WILL A DETERMINATION LETTER HAVE?215		
.01	May be relied on subject to limitations	215
.02	Scope of reliance on determination letter	215
.03	Effect of subsequent publication of revenue ruling, etc.	216
.04	Effect of subsequent amendment by employer	216
.05	Revocation or modification of a determination letter	216
.06	Determination letter revoked or modified based on material change in facts applied retroactively	216
.07	Not otherwise generally revoked or modified retroactively	217
.08	Taxpayer may request that retroactive effect of revocation or modification be limited under § 7805(b)	217
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?218		
.01	Scope limited to issues specified	218
.02	Generally not in employee plans qualification matters	219
.03	Request to Employee Plans Rulings and Agreements for extension of time for making an election or for other relief under § 301.9100-1.	219
.04	Issuance of a letter ruling before the issuance of a regulation or other published guidance	219
.05	Issues in prior return	220
.06	Generally not to business associations or groups	220
.07	Generally not to foreign governments	220
.08	Generally not on federal tax consequences of proposed legislation	220

SECTION 25. UNDER WHAT CIRCUMSTANCES DOES EMPLOYEE PLANS RULINGS AND AGREEMENTS HAVE DISCRETION TO ISSUE LETTER RULINGS?.....	221
.01 Ordinarily not in certain areas because of factual nature of the problem.	221
.02 No “comfort” letter rulings.	221
.03 Not on alternative plans or hypothetical situations	221
.04 Ordinarily not on part of an integrated transaction	221
.05 Not on partial terminations of employee plans.	221
.06 Law requires a letter ruling.	221
.07 Issues under consideration by the PBGC or the DOL	221
.08 Domicile in a foreign jurisdiction.	221
SECTION 26. WHAT IS THE PROCEDURE FOR REQUESTING A LETTER RULING FROM EMPLOYEE PLANS RULINGS AND AGREEMENTS?.....	222
.01 General procedures for requesting a letter ruling.	222
.02 Specific additional procedures apply to certain letter ruling requests	222
PART IIIB. PROCESSING LETTER RULING REQUESTS	
SECTION 27. HOW DOES EMPLOYEE PLANS RULINGS AND AGREEMENTS HANDLE LETTER RULING REQUESTS?.....	223
.01 In general	223
.02 Is not bound by informal opinion expressed	223
.03 Will return any letter ruling request mistakenly sent to wrong address.	223
.04 Tells taxpayer if request lacks essential information during initial contact	223
.05 Information must be submitted within 30 calendar days	223
.06 Requires prompt submission of additional information requested after initial contact	223
.07 Encourages use of fax.	223
.08 Address to send additional information	224
.09 Number of copies of additional information to be submitted.	224
.10 30-day or 21-day period may be extended if justified and approved	224
.11 Case closed if taxpayer does not submit additional information	224
.12 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	224
.13 May request draft of proposed letter ruling near the completion of the ruling process	224
SECTION 28. HOW DOES EMPLOYEE PLANS RULINGS AND AGREEMENTS SCHEDULE CONFERENCES WITH TAXPAYERS?.....	225
.01 Schedules a conference if requested by taxpayer.	225
.02 Permits taxpayer one conference of right.	225
.03 Disallows verbatim recording of conferences	225
.04 Makes tentative recommendations on substantive issues.	226
.05 May offer additional conferences.	226
.06 Requires written confirmation of information presented at conference.	226
.07 May schedule a pre-submission conference.	226
.08 Under limited circumstances, may schedule a conference to be held by telephone.	227
SECTION 29. WHAT EFFECT WILL A LETTER RULING HAVE?.....	227
.01 Has same effect as a determination letter	227
.02 Will not apply to another taxpayer.	227
.03 Will be used by the Service in examining the taxpayer’s return	227
.04 May be revoked or modified if found to be in error.	227
.05 Letter ruling revoked or modified based on material change in facts applied retroactively	228
.06 Not otherwise generally revoked or modified retroactively.	228
.07 Will not apply to a similar transaction in same year or any other year	229
.08 Retroactive effect of revocation or modification applied to a continuing action or series of actions	229
.09 May be retroactively revoked or modified if the transaction is completed without reliance on the letter ruling.	229
.10 Taxpayer may request that retroactivity be limited	229

PART IV. USER FEES

SECTION 30. WHAT ARE THE USER FEE REQUIREMENTS FOR REQUESTING ADVICE FROM EMPLOYEE PLANS RULINGS AND AGREEMENTS?.....	229
.01 Legislation authorizing user fees	229
.02 Requests to which user fees apply	229
.03 Requests and other actions that do not require the payment of a user fee	230
.04 Exemptions from the user fee requirements	230
.05 User fees under EPCRS	230
.06 Requests involving multiple offices, fee categories, issues, transactions, or entities	230
.07 Method of payment	231
.08 Transmittal forms	232
.09 Effect of nonpayment or payment of incorrect amount	232
.10 Refunds of user fees	233
.11 Request for reconsideration of user fee	234
SECTION 31. WHAT ARE THE MAILING ADDRESSES FOR REQUESTING LETTER RULINGS, OPINION LETTERS, ADVISORY LETTERS, AND DETERMINATION LETTERS FROM EMPLOYEE PLANS RULINGS AND AGREEMENTS?.....	235
.01 Letter rulings and opinion letters	235
.02 Determination letters	236
.03 Advisory and opinion letters	236
.04 VCP compliance statements – electronic submissions only	237
SECTION 32. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?.....	237
SECTION 33. EFFECTIVE DATE.....	237
SECTION 34. PAPERWORK REDUCTION ACT.....	237
DRAFTING INFORMATION.....	238
APPENDIX A-SCHEDULE OF USER FEES	239
.01 Letter ruling requests	239
.02 Opinion letters on prototype individual retirement accounts and/or annuities, SEPs, SIMPLE IRAs, SIMPLE IRA Plans, Roth IRAs and dual-purpose IRAs	239
.03 Opinion letters on master and prototype plans submitted pursuant to Rev. Proc. 2015-36	239
.04 Advisory letters on VS plans submitted pursuant to Rev. Proc. 2015-36	239
.05 Opinion letters on pre-approved plans submitted pursuant to Rev. Proc. 2017-41	239
.06 Determination letters	239
.07 Opinion letters on § 403(b) prototype plans	240
.08 Advisory letters on § 403(b) VS plans	240
.09 User fees for VCP submissions under EPCRS Revenue Procedure 2019-19	240
APPENDIX B-SAMPLE NOTICE TO INTERESTED PARTIES	241
APPENDIX C-CHECKLIST FOR SECTION 401(h) AND SECTION 420 DETERMINATION LETTERS	243
APPENDIX D-SAMPLE FORMAT FOR A LETTER RULING REQUEST FROM EMPLOYEE PLANS RULINGS AND AGREEMENTS	245
APPENDIX E-CHECKLIST FOR LETTER RULINGS FROM EMPLOYEE PLANS RULINGS AND AGREEMENTS	247
APPENDIX F-ADDITIONAL CHECKLIST FOR ROTH IRA RECHARACTERIZATION RULING REQUESTS	249

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 manner in which such advice is requested and provided.

Organization of revenue procedure

.02

(1) Part I of this revenue procedure contains 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 contains 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. 2021–1, this Bulletin, sets forth procedures for obtaining letter rulings from the Office of Associate Chief Counsel, including letter rulings relating to qualified retirement plans and IRAs. Rev. Proc. 2021–2, 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. 2016–37, 2016–29 I.R.B. 136, provides the circumstances under which a plan sponsor may submit a determination letter application to Employee Plans Rulings and Agreements. Under Rev. Proc. 2016–37, an employer sponsoring an individually designed plan generally may file a determination letter application only for initial qualification, for plan termination, and in other specified circumstances. In addition, Rev. Proc. 2016–37 describes a system of remedial amendment cycles that applies to qualified pre-approved master and prototype (M&P) and volume submitter (VS) plans and the deadlines to submit applications for opinion and advisory letters.

(b) Rev. Proc. 2019–20, 2019–20 I.R.B. 1182, provides for a limited expansion of the determination letter program with respect to individually designed plans. Under this limited expansion, the Service (i) accepted determination letter applications for certain individually designed statutory hybrid plans during a 12-month period beginning September 1, 2019, and ending August 31, 2020; and (ii) accepts certain individually designed Merged Plans, as defined in that revenue procedure, on an ongoing basis. Rev. Proc. 2019–20 also provides for a limited extension of the remedial amendment period under § 401(b) of the Internal Revenue Code (Code) and Rev. Proc. 2016–37 under specified circumstances, and for special sanction structures that apply to certain plan document failures.

(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. Beginning in 2019, the Required Amendments List will ap-

ply to both qualified plans and § 403(b) plans. The 2019 Required Amendments List for Qualified Retirement Plans and § 403(b) Retirement Plans is contained in Notice 2019-64, 2019-52 I.R.B. 1505. See <https://www.irs.gov/retirement-plans/required-amendments-list> for all Required Amendments Lists.

(d) Notice 2017-1, 2017-2 I.R.B. 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 – second six-year remedial amendment cycle

(a) Rev. Proc. 2015-36, 2015-27 I.R.B. 20, sets forth the procedures for obtaining opinion and advisory letters for qualified pre-approved M&P and VS plans, respectively, submitted with respect to remedial amendment cycles prior to the third six-year remedial amendment cycle. Rev. Proc. 2015-36 continues to apply to certain opinion and advisory letter applications for defined benefit M&P and VS plans that are word-for-word identical to approved mass submitter plans that may still be submitted for opinion and advisory letters with respect to the second six-year remedial amendment cycle, pursuant to section 21.03 of Rev. Proc. 2015-36.

(b) Announcement 2018-05, 2018-13 I.R.B. 461, provides that the period for employer adoption of pre-approved defined benefit plans for the second six-year remedial amendment cycle will end on April 30, 2020. Announcement 2018-05 also provides that starting May 1, 2018, and ending April 30, 2020, the Service will accept applications for individual determination letters from employers who adopt such plans and are otherwise eligible to submit a determination letter request.

(c) Notice 2020-35, 2020-35 I.R.B. 948, pursuant to the authority under § 7508A, extends until July 31, 2020, 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. Notice 2020-35 also extends, until July 31, 2020, actions that are otherwise required to be performed with respect to disqualifying provisions during the remedial amendment period that would otherwise end on April 30, 2020.

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

(a) Rev. Proc. 2017-41, 2017-29 I.R.B. 92, modifies the pre-approved program 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 the 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 (and subsequent) six-year remedial amendment cycles. The third six-year remedial amendment cycle for defined contribution plans began on February 1, 2017, and ends on January 31, 2023. Under Rev. Proc. 2017-41, the on-cycle submission period for pre-approved plan providers to submit applications for opinion letters for defined contribution plans for the third six-year remedial amendment cycle began on October 2, 2017, and ended on October 1, 2018. The third six-year remedial amendment cycle for defined benefit plans began on February 1, 2019, and will end on January 31, 2025.

(b) The 2017 Cumulative List, which is used by the Service in its review of opinion letter applications for pre-approved defined contribution plans during the third six-year remedial amendment cycle, is contained in Notice 2017-37, 2017-29 I.R.B. 89.

(c) Rev. Proc. 2018-42, 2018-36 I.R.B. 424, modified Rev. Proc. 2017-41 to extend the deadline for submitting on-cycle applications for opinion letters for pre-approved defined contribution plans for the third six-year remedial amendment cycle from October 1, 2018, to December 31, 2018.

(d) Announcement 2020-7, 2020-35 I.R.B. 959, provides that the Service intends to issue opinion letters with regard to the third six-year remedial amendment cycle for pre-approved defined contribution plans by June 30, 2020, or soon thereafter. Announcement 2020-7 also provides that an employer adopting a newly approved plan will be required to adopt the plan document by July 31, 2022, and that, from August 1, 2020 to July 31, 2022, the Service will accept applications for determination letters from employers who adopt such plans under the third six-year remedial amendment cycle and are otherwise eligible to submit a determination letter request.

(e) Announcement 2018-05 provides that the Service will announce in future guidance a delayed beginning date for the third six-year remedial amendment cycle for pre-approved defined benefit plans. Rev. Proc. 2020-10, 2020-21 I.R.B. 295, provides the delayed beginning date for the third six-year remedial amendment cycle for pre-approved defined benefit plans. The third six-year remedial amendment cycle for pre-approved defined benefit plans begins on May 1, 2020, and ends on January 31, 2025, and the on-cycle submission period for providers to submit opinion letter applications begins on August 1, 2020, and ends on July 31, 2021. Notice 2020-35 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 letters, if eligible, is extended to July 31, 2020. Consequently, the third six-year remedial amendment cycle for pre-approved defined benefit plans began on August 1, 2020, and will still end on January 31, 2025.

(f) 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, is contained in Notice 2020-14, 2020-13 I.R.B. 555.

(g) Rev. Proc. 2020-40, 2020-38 I.R.B. 575, provides that a discretionary amendment made to a qualified pre-approved plan or § 403(b) pre-approved plan is timely adopted if it is adopted by the deadline set forth in a statutory provision or guidance that is earlier or later than the general deadline applicable to discretionary amendments.

(4) Section 403(b) pre-approved plan program

(a) Rev. Proc. 2013-22, 2013-18 I.R.B. 985, as modified by Rev. Proc. 2014-28, 2014-16 I.R.B. 944, Rev. Proc. 2015-22, 2015-11 I.R.B. 754, and Rev. Proc. 2019-39, 2019-42 I.R.B. 945; and clarified by Rev. Proc. 2017-18, 2017-5 I.R.B. 743, sets forth the procedures for obtaining opinion and advisory letters for § 403(b) prototype plans and VS plans. 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 I.R.B. 945, 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. Proc. 2019-39 with respect to the deadline for timely adoption of discretionary amendments to § 403(b) pre-approved plans.

(c) Rev. Proc. 2017-18 provides that March 31, 2020, is the last day of the initial remedial amendment period for § 403(b) plans. Rev. Proc. 2019-39 provides that the second § 403(b) pre-approved plan cycle begins immediately after March 31, 2020.

(d) Notice 2020-35 modifies Rev. Proc. 2017-18 and Rev. Proc. 2019-39 by extending the initial remedial amendment period for § 403(b) plans to June 30, 2020. Consequently, the second § 403(b) pre-approved plan cycle began on July 1, 2020.

(5) Other guidance

(a) Rev. Proc. 2019-19, 2019-19 I.R.B. 1086, which modifies and supersedes Rev. Proc. 2018–52, 2018–42 I.R.B. 611, sets forth the procedures for correcting qualification and other eligible failures under the Employee Plans Compliance Resolution System (EPCRS).

(b) Notice 2019-18, 2019-13 I.R.B. 915, informs taxpayers that the 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 I.R.B. 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. This revenue procedure 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 I.R.B. 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 certain provisions implemented pursuant to the CARES Act.

(e) Notice 2020-51, 2020-29 I.R.B. 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 2020-68, 2020-38 I.R.B. 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 M and O, respectively, under the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, including setting forth deadlines to amend certain retirement plans for provisions of the SECURE Act, the regulations thereunder, and section 104 of the Miners Act (relating to a reduction in the minimum age for in-service distributions).

(g) Announcement 2020-14, 2020-36 I.R.B. 549, announces increases to user fees relating to certain requests to Employee Plans Rulings and Agreements for letter rulings and determination letters that will take effect on January 4, 2021. These increases are reflected in Appendix A of this revenue procedure.

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 2020-4?

In general

.01 This revenue procedure is a general update of Rev. Proc. 2020-4, 2020-1 I.R.B. 148, 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 contained in Rev. Proc. 2021-5, this Bulletin.

Changes made to Revenue Procedure 2020-4

.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 6.02 and 30.07 are revised to provide that Form 5310 may be submitted electronically beginning on April 16, 2021, and must be submitted electronically beginning on August 1, 2021, and to describe the procedures for submitting Form 5310, including payment of the user fee.

(2) Sections 8.02(4) and 8.04 are modified to delete language that provided that the Service would accept determination letter applications for statutory hybrid plans, which were eligible to submit for a determination letter only from September 1, 2019, to August 31, 2020.

(3) Section 8 is modified to delete the category of adopting employers that can submit determination letters pursuant to Rev. Proc. 2015-36 with respect to cycles prior to the third six-year remedial amendment cycle, since the deadline for adopting employers to submit determination letters with respect to the second six-year remedial amendment cycle has expired.

(4) Section 9.08 is modified to provide that, in order to request a determination on leased employees, taxpayers should attach a cover letter to Form 5300 in addition to the information contained in section 17.

(5) Section 10.06(1) is modified to provide that if a submitted plan is the result of a merger of two or more plans, the applicant must include a copy of the prior determination letter for each of the plans and a copy of the prior plan document or, if applicable, the adoption agreement and

the opinion or advisory letter for each of the plans, and to describe the amendments that must be included with the application.

(6) Section 12A, describing determination letter application procedures for adopting employers of pre-approved plans with respect to cycles prior to the third six-year remedial amendment cycle, is deleted because the deadline for submitting a determination letter with respect to such cycles has expired. Section 12B is redesignated as section 12.

(7) Section 12.01 (formerly section 12B.01) is modified to provide that the adoption period for defined benefit pre-approved plans with respect to the third six-year remedial amendment cycle will not occur in 2021.

(8) Section 12.02 through 12.04 (formerly section 12B.02 through 12B.04) is modified to add a category for a determination request with respect to a governmental pension plan that does not satisfy any of the safe harbors described in § 1.401(a)-1(b)(2) of the proposed regulations and requests reliance, including the conditions under which such a request may be submitted, the applicable form, and the scope of review.

(9) Section 12.03(1) (formerly section 12B.03(1)) is clarified to specify that the controlling member of a multiple employer plan is the adopting employer sponsoring a plan that submits the application as the lead employer of the multiple employer plan. Section 14 is also clarified to provide that 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).

(10) Section 13.03 is modified to provide additional information for applications with respect to ESOPs submitted on Form 5307.

(11) Sections 16.01 and 16.02 are revised to add a reference to section 336(e) of the PATH Act.

(12) Section 30.11, with respect to a request for reconsideration of user fee, is revised to provide that certain requests must be submitted to the Area Manager, EP Determinations.

(13) Section 31.03 is revised to clarify that EP Determinations accepts requests for M&P word-for-word opinion letters and VS word-for-word advisory letters with respect to pre-approved defined benefit plans for the second six-year remedial amendment cycle.

(14) Appendix A, sections .01 and .06 are revised to update user fees, as set forth in Ann. 2020-14.

(15) Appendix A, section .05 is modified to add two additional categories of opinion letters (carried over from the second six-year remedial amendment cycle to the third (and subsequent) six-year remedial amendment cycles) with respect to a) an assumption of sponsorship of a pre-approved plan without any amendment to the plan document, and b) a change of name or address of a pre-approved plan provider.

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 of the Code 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 made with sponsors of M&P plans and practitioners of VS plans.

A closing agreement may also be entered into with respect to retirement plan failures corrected under EPCRS, as set forth in Rev. Proc. 2019-19.

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).

Opinion letter

.05

(1) For applications submitted with respect to cycles prior to the third six-year remedial amendment cycle for qualified defined contribution and qualified defined benefit plans, an “opinion let-

ter” is a written statement issued by Employee Plans Rulings and Agreements to a sponsor or an M&P mass submitter as to the acceptability of the form of an M&P plan under § 401(a), § 403(a), or both §§ 401(a) and 4975(e)(7) and, in the case of a master plan, the acceptability of the master trust under § 501(a). See Rev. Proc. 2015–36.

(2) For applications submitted with respect to the third (and subsequent) six-year remedial amendment 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.

(3) An opinion letter will also be issued as to the acceptability of the form of a prototype plan under § 403(b). See Rev. Proc. 2013–22, as modified by Rev. Proc. 2014–28, Rev. Proc. 2015–22, and Rev. Proc. 2019-39; and clarified by Rev. Proc. 2017-18. Rev. Proc. 2017-18 and Rev. Proc. 2019-39 were modified by Notice 2020-35.

(4) An opinion letter will also 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 C.B. 647; Rev. Proc. 91–44, 1991–2 C.B. 733; Rev. Proc. 92–38, 1992–1 C.B. 859; Rev. Proc. 97–29, 1997–1 C.B. 698; Rev. Proc. 98–59, 1998–2 C.B. 729; Rev. Proc. 2002–10, 2002–1 C.B. 401, and Rev. Proc. 2010–48, 2010–50 I.R.B. 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 taxpayer Service representative 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); accounts described in § 403(b)(7); individual retirement arrangements (IRAs) established under § 408(a), (b), or (h); Roth IRAs established under § 408A; 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).

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. 2019-19.

Advisory letter

.09

(1) An “advisory letter” is a written statement issued by Employee Plans Rulings and Agreements to a VS practitioner or a VS mass submitter as to the acceptability of the form of a specimen plan and any related trust or custodial account under § 401(a) or § 403(a) for an application submitted with respect to cycles prior to the third six-year remedial amendment cycle. See Rev. Proc. 2015–36.

(2) An advisory letter is also issued as to the acceptability of the form of a specimen plan under § 403(b). See Rev. Proc. 2013–22, as modified by Rev. Proc. 2014–28, Rev. Proc. 2015–22, and Rev. Proc. 2019-39; and clarified by Rev. Proc. 2017-18. Rev. Proc. 2017-18 and Rev. Proc. 2019-39 were modified by Notice 2020-35.

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

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.

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 the status for exemption of any related trusts or custodial accounts under § 501(a). See Rev. Proc. 2016–37, which contains a description of the determination letter program, including when to submit a request for a determination letter, for individually designed and pre-approved plans.

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.

Employee Plans Rulings and Agreements considers voluntary closing agreement requests to resolve certain income or excise tax issues (including, effective January 2, 2019, waiver under § 4980F(c)(4) of all or part of the excise tax imposed for failure to satisfy the notice requirements described in § 4980F(e)) that are ineligible for resolution under EPCRS. See www.irs.gov/retirement-plans/employee-plans-voluntary-closing-agreements.

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 below and Rev. Proc. 2021-1, 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 M&P plans and advisory letters for VS plans, and any related trusts or custodial accounts under §§ 401(a), 403(a), and 501(a), for applications submitted with respect to cycles prior to the third six-year remedial amendment cycle are contained in Rev. Proc. 2015-36.

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

(3) The procedures for obtaining opinion letters for prototype trusts, custodial accounts, or annuities under § 408(a), (b), (k), or (p), or § 408A, are contained 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.

(4) The procedures for obtaining opinion and advisory letters for prototype plans and VS plans under § 403(b) are contained in Rev. Proc. 2013-22, as modified by Rev. Proc. 2014-28, Rev. Proc. 2015-22, and Rev. Proc. 2019-39; and clarified by Rev. Proc. 2017-18. Rev. Proc. 2017-18 and Rev. Proc. 2019-39 were modified by Notice 2020-35.

Employee Plans Compliance Resolution System

.02 The procedures for obtaining compliance statements, etc., for certain failures of plans qualified under § 401(a), § 403(b) plans, SEPs, SIMPLEs, and § 457(b) plans under EPCRS are contained in Rev. Proc. 2019-19.

Chief Counsel

.03 The procedures for obtaining letter rulings, information letters, etc., 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 contained in the following revenue procedures:

(1) Chief Counsel's letter rulings, information letters, etc.: See Rev. Proc. 2021-1, this Bulletin.

(2) Technical Advice Requests: See Rev. Proc. 2021–2, this Bulletin.

(3) Chief Counsel’s no-rule positions: See Rev. Proc. 2021–3, 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 C.B. 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. 2021-1, 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 contain 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 will usually 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 (other than Form 5310, Application for Determination for Terminating Plan)

Determination letter submissions must be submitted on paper. However, the user fee may be submitted electronically on www.pay.gov, as described in section 30.07(1). In order to more efficiently process determination letter request applications, the following documents (as applicable to a particular submission) should be submitted in the following order:

- Form 8717, User Fee for Employee Plan Determination Letter Request
- Form 2848, Power of Attorney and Declaration of Representative or Form 8821, Tax Information Authorization
- Prior Determination Letter
- Opinion/Advisory Letter
- Form 5300 series
- Cover Letter
- Amendments (any prior plan documents being submitted along with any applicable amendments)
- Current Plan Document
- Adoption Agreement
- Trust Document
- Other Applicable Documents (any additional documents not listed above)

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.

(b) Documents for determination letter submissions on Form 5310

(i) Before April 16, 2021: Applicants must submit Form 5310 submissions on paper. Applicants have the option of submitting the user fee electronically on www.pay.gov, as described in section 30.07(1), and should attach the payment confirmation to the paper Form 8717.

(ii) *On or after April 16, 2021, and before August 1, 2021*: Applicants may submit Form 5310 either on paper or electronically through www.pay.gov. If Form 5310 is submitted on paper, applicants still have the option of submitting the user fee electronically on www.pay.gov, as described in section 30.07(1), and should attach the payment confirmation to the paper Form 8717. However, if Form 5310 is submitted electronically, applicants must submit the user fee and all documents electronically on www.pay.gov. (and should not submit a paper Form 8717).

(iii) *On or after August 1, 2021*: Paper submissions of Form 5310 will no longer be accepted. As of August 1, 2021, applicants must submit the Form 5310 application electronically through www.pay.gov. and may not submit any documents on paper, including the Form 8717. Any Form 5310 applications submitted on paper on or after August 1, 2021, will be returned to the applicant, including any paper checks.

In order to more efficiently process determination letter applications, including, as applicable, electronic submissions through pay.gov, the following documents (as applicable to a particular submission) should be submitted in the following order:

- Form 8717, User Fee for Employee Plan Determination Letter Request (for paper submissions only). For Form 5310 electronic submissions, www.pay.gov should be utilized for payment.
- Form 2848, Power of Attorney and Declaration of Representative or Form 8821, Tax Information Authorization
- Prior Determination Letter
- Opinion/Advisory Letter
- Form 5310
- Cover Letter
- Amendments (any prior plan documents being submitted along with any applicable amendments)
- Current Plan Document
- Adoption Agreement
- Trust Document
- Other Applicable Documents (any additional documents not listed above)

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

Pay.gov can allow for submissions up to 15MB. If your submission is over the 15MB threshold, contact EP Customer Service (877) 829-5500 (toll-free number) to receive additional instructions about how to submit the remaining portion of your submission.

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.

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

(9) Statement identifying information to be deleted from copy of letter ruling for public inspection. The text of private letter rulings 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 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 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.

(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 (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. 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 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 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. 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, 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. Neither a stamped signature nor a faxed signature is permitted.

Authorized representatives

(11) Authorized representatives. To sign the request or to appear before the Service in connection with the request, the representative must be one of the following:

Attorney

(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.

Certified public accountant

(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.

Enrolled agent

(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.

Enrolled actuary

(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.

Enrolled retirement plan agent

(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 Circular No. 230 of the U.S. Department of the Treasury and is administered by the Office of Professional Responsibility.

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 Circular No. 230.

A person with a “Letter of Authorization”

(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 Circular No. 230 authorizes the Commissioner 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) below.

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 power of attorney form, 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 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.

(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 fees for each type of request under the jurisdiction of Employee Plans Rulings and Agreements. Section 30 of this revenue procedure provides guidance for administering 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 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 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 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.

Neither Employee Plans Rulings and Agreements nor any other office issues determination letters on plans under § 403(b). However, for information regarding the procedures for obtaining opinion and advisory letters for prototype plans and VS plans under § 403(b), see Rev. Proc. 2013–22, as modified by Rev. Proc. 2014–28, Rev. Proc. 2015–22, and Rev. Proc. 2019–39; and clarified by Rev. Proc. 2017–18. Rev. Proc. 2017–18 and Rev. Proc. 2019–39 were modified by Notice 2020–35.

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
1. Initial Qualification		
a. Individually-designed plans (including collectively bargained plans)	5300	11
b. Pre-approved plans	5300, 5307	12
c. Employee Stock Ownership Plans (“ESOPs”)	5300, 5309	11
d. Multiple employer plans	5300	14
e. Group trusts	5316	16
f. § 414(x) combined plans	5300	11
2. Termination		
a. In general	5310, 6088	6, 15
b. 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.		
3. Certain Merged Plans Eligible to be Submitted under Rev. Proc. 2019-20	5300	10.06(2), 11
4. Standardized and Nonstandardized Pre-approved Plans (applicable to determination letter requests submitted pursuant to Rev. Proc. 2017-41, with respect to the third (and subsequent) six-year remedial amendment cycles)		
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 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)	5300	12
c. Adoption of a standardized plan, including a multiple employer plan, if the adopting employer (or, in the case of a multiple employer plan, the controlling member) has made any modifications	5300	12
d. Adoption of a nonstandardized plan including a multiple employer plan (if the adopting employer has made extensive modifications)	5300	12
e. Adoption by the controlling member of a nonstandardized multiple employer plan (if the controlling member has made any modifications)	5300	12

TYPE OF REQUEST	FORMS	REV. PROC. SECTION
f. Adoption of a multiple employer standardized plan (if the controlling member requests a determination solely on overriding plan language added to satisfy §§ 415 or 416)	5300	12
g. Adoption of a standardized or nonstandardized pension plan, including a 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
5. Special Types of Requests		
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, 403 (other than 403(a)), 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 19 of Rev. Proc. 2015-36, or section 7 of Rev. Proc. 2017-41;		
(3) Plan amendments described below (these amendments will, to the extent provided, be deemed not to alter the qualified status of a plan under § 401(a)):		
(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 C.B. 326, as clarified and modified by Rev. Rul. 2004-67, 2004-2 C.B. 28; Rev. Rul. 2011-1, 2011-2 I.R.B. 251; Notice 2012-6, 2012-3 I.R.B. 293, and Rev. Rul. 2014-24, 2014-37 I.R.B. 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; and		
(c) An amendment solely to include language pursuant to § 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;		

(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 covered by section 8.03(4) of this revenue procedure 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. 2016-37. As of September 1, 2019, the Service accepts applications for certain individually designed merged plans on an ongoing basis, provided the conditions described in Rev. Proc. 2019-20 are met.

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. 2021-2, 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 qualification 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 the qualified status of 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 In general, employee plans are reviewed by Employee Plans Rulings and Agreements for compliance with the form requirements (that is, those plan provisions that are required as a condition of qualification under § 401(a)). For terminating plans, the requirements are those that apply as of the date of termination. See Rev. Proc. 2016–37 for further details on the scope of Employee Plans Rulings and Agreements’ review of determination letter applications.

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) and 1.401(a)(4)–3(b) (relating to nondiscrimination in amount of contributions and 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 qualification 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 qualification 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 An applicant that is otherwise eligible to submit an application for a determination letter 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, including the Form 5300.

Partial terminations

.09 An applicant that desires a determination as to whether a partial termination has occurred must file a determination letter application electing such a determination using Form 5300, Application for Determination for Employee Benefit Plan. 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 sections 11.01 or 12.03(3)(b) of this revenue procedure with respect to the third (and subsequent) remedial amendment 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 an M&P or a VS plan (or, if the plan is a multiple employer plan, the controlling member) may request a determination limited to whether a partial termination has occurred. Applicants may not also 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 <http://www.irs.gov/Forms-&-Pubs>.

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

Scope

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

Complete information required

.02 An applicant requesting a determination letter must file the material 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 determination 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. This includes applicable attachments or model schedules and copies of corrective amendments.

Complete copy of plan and trust instrument and applicable amendments required

.03 In addition to a copy of the plan and trust documents and other material required by the 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 VS plan by the practitioner that sponsors the employer's VS plan) even if these amendments are dated earlier than a previous determination letter issued with respect to the plan. 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

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

.06

(1) If the submitted plan is the result of a merger of two or more 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. See Section 11.03 for additional documents to be submitted.

(2) Rev. Proc. 2019-20 describes special circumstances under which a determination letter may be submitted with respect to an individually designed plan on an ongoing basis, when that plan results from a merger of two or more plans maintained by previously unrelated entities, occurring in connection with a corporate merger, acquisition or other similar business transaction among unrelated entities. The submission requirements set forth in section 10.06(1) apply to a determination letter request for merged plans whether or not the special circumstances in Rev. Proc. 2019-20 apply. See also section 11 of this revenue procedure for general submission requirements and section 11.03 for documents required to 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, if the user fee for a determination letter request is paid through www.pay.gov, a copy of the payment confirmation must be submitted along with Form 8717. If the criteria for the user fee exemption are met in accordance with Notice 2017-1, 2017-2 I.R.B. 367, the certification on Form 8717 must be signed. Stamped signatures are not acceptable. See sections 6.02(2)(b) and 30.07 for procedures related to electronic submissions made on Form 5310 (which are permitted beginning on April 16, 2021, and are mandatory as of August 1, 2021).

Interested party notification and comment

.08 Before filing an application, 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 19 and 20 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 on the qualification of a plan, 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 on the qualified status of the plan. See section 12.04 of Rev. Proc. 2021-1.

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 section 6.02(2)(b) for procedures related to electronic submissions made on Form 5310 (which are permitted beginning on April 16, 2021, and are mandatory as of August 1, 2021).

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. 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. However, 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 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 which 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. Determination letters will be issued with respect to individually designed plans solely in the following circumstances:

- (1) Initial qualification. See Rev. Proc. 2016–37, section 4.03(1), for a description of which plans may be submitted on a Form 5300, Application for Determination for Employee Benefit Plan, for initial qualification;
- (2) Plan termination. See section 15 of this revenue procedure for additional procedures for requesting determination upon plan termination;
- (3) Individually designed plan resulting from merged plans of previously unrelated entities, under the conditions set forth in section 5 of Rev. Proc. 2019-20; and
- (4) Certain other circumstances as may be set forth in guidance published in the Internal Revenue Bulletin.

Forms

.02 A determination letter request for the items listed in section 11.01 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 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. 2016–37, section 4.03(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. Employers submitting requests on behalf of individually designed plans should file the most recent version of the 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 for procedures related to electronic submissions made on Form 5310 (which are permitted beginning on April 16, 2021, and are mandatory as of August 1, 2021).

(4) Form 8717, User Fee for Employee Plan Determination Letter Request (and the payment confirmation from www.pay.gov as described in section 10.07, 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 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 and trust instrument, 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 for further detail on information required for plans involving mergers.

Restatements required

.04 If a sponsor of an individually designed plan has previously obtained a determination letter with respect to the plan, the 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 2021 must be restated for compliance with the 2019 Required Amendments List as well as any prior Required Amendments Lists, and Cumulative Lists issued prior to 2016.

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 pre-approved plan under Rev. Proc. 2017-41

.01 Rev. Proc. 2017-41 is applicable to providers of pre-approved plans that submit requests for opinion letters with respect to the third (and subsequent) six-year remedial amendment 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. Announcement 2020-7 provides that the Service intends to issue opinion letters with regard to the third six-year remedial amendment cycle for pre-approved defined contribution plans by June 30, 2020, or soon thereafter. Announcement

2020-7 also provides that an employer adopting a newly approved plan will be required to adopt the plan document by July 31, 2022, and that, from August 1, 2020, to July 31, 2022, the Service will accept applications for determination letters from employers who adopt such plans under the third six-year remedial amendment cycle and are otherwise eligible to submit a determination letter request. The adoption period for defined benefit pre-approved plans with respect to the third six-year remedial amendment cycle will be announced later, and will not occur in 2021. The application of this section is limited to applications filed on Form 5307, Application for Determination for Adopters of Modified Volume Submitter Plans, or 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.

**Determination letter
applications on Form 5307**

.02

(1) Except as provided in section 12.02(2), an adopting employer of a nonstandardized plan that has modified the terms of the pre-approved plan, if the employer has not made extensive modifications to the language of the pre-approved plan, may file on a Form 5307.

(2) Determination letter requests for the following plans must be filed on Form 5300, regardless of whether they are otherwise described in section 12.02(1):

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

(ii) A request for a nonstandardized pension plan that is not a governmental plan (within the meaning of § 414(d) of the Code) 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) 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.

(3) 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 describes the procedures for adopting employers of pre-approved plans requesting determination letters on Form 5307.

**Determination letter
applications on Form 5300**

.03

(1) The following adopting employers may file on Form 5300 if the plan is submitted on initial qualification, as described in section 4.03(1) of Rev. Proc. 2016-37, as long as a favorable determination letter (based on Form 5300 or Form 5307) has never been issued with respect to the plan:

(a) An adopting employer or in the case of a multiple employer plan, the controlling member (an adopting employer sponsoring a 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 section 8.06 of Rev. Proc. 2017-41, an adopting employer of a standardized plan that makes any changes other than those considered “identical” (as described in section 8.03 of Rev. Proc. 2017-41) to the standardized plan is considered to be an individually designed plan and will be reviewed on the basis of the applicable Required Amendments List. See section 12.04(3);

(b) An adopting employer (or, if the plan is a multiple employer plan, the controlling member) that makes extensive modifications to a nonstandardized plan;

(c) An adopting employer (or, if the plan is a multiple employer 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 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) 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 plan that makes modifications to the nonstandardized multiple employer plan that are not extensive;

(b) An adopting employer of a standardized plan (or, if the plan is a multiple employer plan, the controlling member) if the terms of the standardized plan have been modified solely by adding overriding language necessary to coordinate the application of the limitations of § 415 or the requirements of § 416 because the employer maintains multiple plans;

(c) An adopting employer (or, if the plan is a multiple employer 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

(d) An adopting employer (or, if the plan is a multiple employer 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) 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)(b), (c) or (d) 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 described below:

(a) Leased employees – an adopting employer of a standardized or nonstandardized pre-approved 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. 2016-37 may also request a determination regarding leased employee status (see section 17.05 of this revenue procedure).

(b) Partial terminations – an adopting employer of a standardized or nonstandardized pre-approved 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 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 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), determination letter applications filed with respect to a standardized plan on Form 5300 as described in section 12.03 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) 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

.05 An adopting employer must submit an application for a determination letter (whether on a Form 5300 or Form 5307) during the period announced by the Service, 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).

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?**Scope**

.01 This section contains 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 Volume Submitter Plans. An adopting employer of a nonstandardized plan that received, or will receive, an opinion letter for the third six year remedial amendment cycle pursuant to Rev. Proc. 2017-41, in situations in which the employer has made modifications to the pre-approved plan that are not extensive, is eligible to file on Form 5307, except as provided in section 12.

Form 5307 filing procedures

.02 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 (and the payment confirmation from www.pay.gov as described in section 10.07 of this revenue procedure, if applicable);

(2) Form 5307, Application for Determination for Adopters of Modified Volume Submitter 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 advisory or 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.

.03 Additional information with respect to ESOPS submitted on Form 5307:

The Form 5307 is being updated for the addition of ESOPs to the program. 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 that:
 - o the submission is for an ESOP,
 - o whether the plan sponsor is a S or C corporation, and
 - o whether there was a change to the corporate status (from S to C or C to S revocation/election). If so, the cover letter should provide the effective date of such change.

Providing the information above will minimize the need for follow up correspondence when reviewing applications on the current Form 5307. This request is limited to ESOP applications submitted on the current Form 5307 until the revised Form 5307 is available.

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 and pay the higher user fee, if otherwise eligible to file. 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 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 two-year window. Applications submitted outside of the two-year window will be returned.

SECTION 14. WHAT ARE THE DETERMINATION LETTER FILING PROCEDURES FOR INDIVIDUALLY DESIGNED MULTIPLE EMPLOYER PLANS?

Scope

.01 This section contains 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 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 employer maintains or has ever maintained another plan, §§ 415 and 416.

Where to file requests

.03 The application is to be sent to the address provided in section 31. See Appendix A, section .06(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 contains 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.

Forms

.02 Required Forms

(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. See section 6 for procedures on submitting Form 5310, including electronic submissions (which are optional beginning April 16, 2021, and mandatory beginning August 1, 2021).

(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 multiemployer plan covered by PBGC insurance.

(3) Form 6088 (as applicable), Distributable Benefits from Employee Pension Benefit Plans, is filed in addition to Form 5310 or 5300 by a sponsor or plan administrator of a defined benefit plan or an underfunded defined contribution plan that files an application for a determination let-

ter regarding plan termination. For collectively bargained 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 as described in section 10.07 of this revenue procedure, if applicable). For electronic submissions on Form 5310, www.pay.gov should be utilized for payment. See section 6.

(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 make clear 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, which 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 fa-

avorable 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. 2016–37.

An application will be 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 twelve 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; 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 qualified 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 A request for a determination letter on the status of 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 Código de Rentas Internas para un Nuevo Puerto Rico de la Ley Núm. 1 de 31 de enero de 2011 (“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.

Forms

.03 Required Forms

(1) Form 8717, User Fee for Employee Plan Determination Letter Request (and the payment confirmation from www.pay.gov as described in section 10.07, if applicable).

(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?

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). For an individually designed plan, an applicant may file a determination letter 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.
Forms	.03 Form 5300, Application for Determination of Employee Benefit Plan, is submitted for a request on leased employee status. Form 5307, Application for Determination for Adopters of Modified Volume Submitter 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.
Employer is responsible for determining continuing status under § 414(n)	.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.
Pre-approved plans	.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 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, or on the basis of the Required Amendments List that was issued during the second calendar year preceding the submission of the determination letter application, whichever is applicable. See section 12.03(3) of this revenue procedure.
Required information for § 414(n) determination	.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:

- (1) A description of the nature of the business of the recipient organization;
- (2) A copy of the relevant leasing agreement(s);
- (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);
- (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
- (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).

SECTION 18. WHAT ARE THE PROCEDURES FOR REQUESTING SECTION 401(h) AND SECTION 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 is otherwise eligible to apply for a determination letter, and the 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 material

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 NOTICE AND COMMENT

SECTION 19. WHAT RIGHTS TO NOTICE AND COMMENT DO INTERESTED PARTIES HAVE?

Rights of interested parties

.01 Persons who qualify as interested parties under § 1.7476–1(b) have the following rights:

(1) To receive notice, in accordance with section 20 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 of 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 19.03 and 19.04 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)), 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 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 19.02 above;
 - (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 19.02(6) of this revenue procedure);
 - (d) Contain the information prescribed in section 19.02(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 19.03 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 19.07 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 19.02 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 19.02 or 19.04 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 19.01(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 a request to the DOL shall be deemed made when it is received by EP Determinations or the DOL. 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 20.01 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 shall not apply.

SECTION 20. WHAT ARE THE GENERAL RULES FOR NOTICE TO INTERESTED PARTIES?

Notice to interested parties

.01 Notice that an application for an advance determination regarding the qualification of a plan that is described in § 401, 403(a), 409, or 4975(e)(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 § 1.402(f)–1, Q&A–5.

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, 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 of this subsection would not be met.

Content of notice

.03 The notice referred to in section 20.01 of this revenue procedure shall 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) That an application for a determination as to the qualified status of the plan is to be made to EP Determinations at the address provided in section 31 of this revenue procedure, and stating whether the application relates to an initial qualification, termination, or partial termination;

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

(6) 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 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 19 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 informational material required to be made available by sections 20.05 through 20.09 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 20.04 of this revenue procedure). A sample notice setting forth the above information in a case in which the additional information required by sections 20.05 through 20.09 of this revenue procedure will be made available at places accessible to the interested parties is provided in Exhibit B to this revenue procedure.

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

.04 The procedure referred to in section 20.03(10) of this revenue procedure, whereby the additional informational material required by sections 20.05 through 20.09 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 available
to interested parties**

.05 Unless provided in the notice, or unless section 20.06 of this revenue procedure applies, there shall be made available to interested parties under a procedure described in section 20.04 of this revenue procedure:

- (1) An updated copy of the plan and the related trust agreement (if any); and
- (2) The application for determination.

**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 20.05 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 material required by section 20.05 or 20.06 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 20.04 of this revenue procedure any additional document dealing with the application which is 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 20.04 of this revenue procedure the material described in sections 19.02 through 19.07 of this revenue procedure.

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

.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 19.01(2), (3), and (4) of 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 19.01(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 sections 19.01(2), (3), and (4) of 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 retirement plan.

(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. The favorable determination letter will be sent by certified or registered 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 or registered 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.

Issuance of the notice of final determination

.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?

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 sections 22.02, 22.03, 22.04, or 22.05 subject, however, to sections 20.06 and 20.07 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 paragraph 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 Service in accordance with the procedures in section 23.08 of this revenue procedure. A request for relief under § 7805(b) must be submitted to the agent or specialist assigned to the case.

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 19.01(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 19.01(3) of this revenue procedure and, if the DOL declines to comment, submitting the comment in accordance with section 19.01(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). Such a determination letter is based on the facts and demonstrations 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. 2016-37.

Effect of subsequent amendment by employer

.04 In general, a plan sponsor that maintains a qualified 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 by the employer or affected by a change in law. 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), 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 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) § 72 (involving computation of the exclusion ratio only);
- (2) Changes in funding methods (see Rev. Proc. 2017-57, 2017-44 I.R.B. 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 I.R.B. 359, as modified by Rev. Proc. 2016-47, 2016-37 I.R.B. 37);
- (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 C.B. 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 the 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 I.R.B. 927);
- (10) Requests for the return to the employer of certain nondeductible contributions (see Rev. Proc. 90-49, 1990-2 C.B. 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 I.R.B. 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 contained in Rev. Proc. 2021–1, 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 qualified status under §§ 401 through 420 and § 4975(e)(7). These matters are generally handled by the Employee Plans Determinations program pursuant to this revenue procedure and Rev. Proc. 2016–37. Occasionally these matters may be handled by the Office of Associate Chief Counsel (EEE). See section 4.02(12) of Rev. Proc. 2021–3.

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.

No “comfort” letter rulings

.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.

**Not on alternative plans or
hypothetical situations**

.03 A letter ruling will not be issued on alternative plans of proposed transactions or on hypothetical situations.

**Ordinarily not on part of
an integrated transaction**

.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.

**Not on partial terminations
of employee plans**

.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.

Law requires a letter ruling

.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.

**Issues under consideration
by the PBGC or the DOL**

.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.

**Domicile in a foreign
jurisdiction**

.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 subsection 25.08(1) above shall 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) of the Code, see Rev. Proc. 2010–52, 2010–52 I.R.B. 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 C.B. 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.

(5) For information about opinion and advisory letters for § 403(b) pre-approved plans (that is, § 403(b) prototype plans and § 403(b) VS plans), see Rev. Proc. 2013–22, as modified by Rev. Proc. 2014–28, Rev. Proc. 2015–22, and Rev. Proc. 2019–39; and clarified by Rev. Proc. 2017–18. Rev. Proc. 2017–18 and Rev. Proc. 2019–39 were modified by Notice 2020–35.

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 Employee Plans 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 num-

ber 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.

30-day or 21-day period may be extended if justified and approved

.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.

Under limited circumstances, may schedule a conference to be held by telephone

.08 A taxpayer may request that a conference of right be held by telephone. This request may occur, for example, if a taxpayer wants a conference of right but believes that the issue involved does not warrant incurring the expense of traveling to Washington, DC. If a taxpayer makes such a request, the group manager will decide if it is appropriate in the particular case to hold the conference of right by telephone. If the request is approved by the group manager, 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.

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 which 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 contained 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 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 C.B. 283, as amplified by Notice 2003–49, 2003–2 C.B. 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. 2019-19.

**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 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. 2021–1, this Bulletin, for the user fees applicable to issues under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (Passthroughs and Special Indus-

tries), the Associate Chief Counsel (Procedure and Administration), the Associate Chief Counsel (International), or the 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 (Form 5300 series only) may be paid either by a check, payable to the United States Treasury in the appropriate amount or by using www.pay.gov, utilizing the payment methods available on the website. Payment confirmations are provided through the 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.

This payment method also applies to paper submissions on Form 5310 submitted up through July 31, 2021. However, if Form 5310 is submitted electronically (which is an optional submission method from April 16, 2021, through July 31, 2021, in addition to the option to submit on paper, and which is the only submission method beginning August 1, 2021), applicants must submit the user fee and all documents electronically on www.pay.gov (and should not submit a paper Form 8717). See section 6 for Form 5310 submission requirements.

(2) *Payment of VCP user fees.* User fees should be made using the payment methods available on www.pay.gov. The Service no longer accepts paper submissions. See Rev. Proc. 2019-19 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.

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 as described in section 30.07(1), 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 paragraph 30.08(2) of this revenue procedure. For electronic submissions, www.pay.gov should be utilized for payment. See section 30.07(1) and section 6 for Form 5310 submissions.

(2) VCP submissions must be made to the Service using 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. 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, should be submitted to make the new payment. A duplicate Form 8950 should not be submitted.

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. 2019-19, section 10.06(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>If the matter involves primarily:</i>	<i>Mark for the attention of:</i>
Employee plans letter ruling requests and all other employee plans matters handled by Employee Plans Rulings and Agreements	Employee Plans Rulings and Agreements
Employee plans determination letter requests and opinion letter and advisory letter requests pursuant to Rev. Proc. 2015–36	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 to VCP are fixed, apply to all plan sponsors, and generally will not be refunded. However, if a taxpayer believes they 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. WHAT ARE THE MAILING ADDRESSES FOR REQUESTING LETTER RULINGS, OPINION LETTERS, ADVISORY LETTERS, AND DETERMINATION LETTERS 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 plans 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

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) and the exempt status of any related trust under § 501 are handled by the EP Determinations Office and should be sent to the Internal Revenue Service Center in Covington, Kentucky, at the address shown below. The address is:

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

Advisory and opinion 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 M&P word-for-word opinion letters and for VS word-for-word advisory letters on the form of pre-approved defined benefit employee plans under § 401 or 403(a) and the exempt status of any related trust under § 501, with respect to submissions made under cycles prior to the third six-year remedial amendment cycle, pursuant to Rev. Proc. 2015-36;

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

(c) 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

(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 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 through the www.pay.gov website. For further details, see Form 8950 instructions and sections 10 and 11 of Rev. Proc. 2019-19.

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

Rev. Proc. 2020-4 is superseded.

**SECTION 33. EFFECTIVE
DATE**

This revenue procedure is effective January 4, 2021.

**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, 10.11, 10.14, 10.15, 10.17, 11.04, 16, 17, 18, 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, and in Appendices C, E, and F. 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 17,382 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 2.02 hours for determination letter requests. The estimated number of respondents and/or recordkeepers is 128 for letter rulings and 8,605 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 presubmission 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 Arslan Malik 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 Rulings and Agreements, 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)	\$1,000
Note: 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 C.B. 769. In such a case, Form 5308 should not be submitted to the Service.	
(3) Five-Year Automatic Extension of the Amortization Period	\$6,500
(4) All other letter rulings under jurisdiction of the Employee Plans Office (see section 24.01)	\$10,000
<i>.02 Opinion letters on prototype individual retirement accounts and/or annuities, SEPs, SIMPLE IRAs, SIMPLE IRA Plans, Roth IRAs and dual-purpose IRAs</i>	\$2,500
Note: 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.	
<i>.03 Opinion letters on master and prototype plans submitted pursuant to Rev. Proc. 2015-36</i>	
(1) Sponsor's word-for-word identical adoption of an M&P mass submitter's basic plan document, per adoption agreement	\$300
(2) 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
(3) 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) A VS specimen plan that is word-for-word identical to a mass submitter specimen plan	\$300
(2) 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
(3) 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	\$700
(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 Determination letters</i>	
(1) Determination Letters:	
(a) Form 5300 (<i>Application for Determination for Employee Benefit Plan</i>)	\$2,700

CATEGORY	USER FEE
(b) Form 5307 (<i>Application for Determination for Adopters of Modified Volume Submitter Plans</i>)	\$1,000
(c) Form 5310 (<i>Application for Determination for Terminating Plan</i>)	\$3,500
(d) Multiple employer plans (Form 5300)	\$4,000
(e) Multiple employer plans (Form 5310), regardless of number of participants	\$4,000
(2) Group trusts contemplated by Rev. Rul. 81-100, 1981-1 C.B. 326, Rev. Rul. 2004-67, 2004-2 C.B. 28, Rev. Rul. 2011-1, 2011-2 I.R.B. 251, Rev. Rul. 2014-24, 2014-37 I.R.B. 529. Form 5316 is available for group trust submissions.	\$1,000
<i>.07 Opinion letters on § 403(b) prototype plans</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	\$700
(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>.08 Advisory letters on § 403(b) VS plans</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)	\$700
(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>.09 User Fees for VCP submissions under EPCRS Revenue Procedure 2019-19</i>	
(1) Regular submissions under VCP, including Anonymous Submissions. (For a special rule relating to terminating Orphan Plans see section 4.08 of Rev. Proc. 2018-52):	
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
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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 and Rev. Proc. 2019-19, sections 10.10 and 11.06.

APPENDIX B

SAMPLE NOTICE TO INTERESTED PARTIES

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

SAMPLE 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 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 it 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 19 and 20 of Rev. Proc. 2021-4. Additional information concerning this application (including, where applicable, an updated copy of the plan and related trust; the application for determination; any additional documents dealing with the application that have submitted to the Service; and copies of section 19 of Rev. Proc. 2021-4) are available at _____ during the hours of _____ for inspection and copying. (There is a nominal charge for copying and/or mailing.)

APPENDIX C

CHECKLIST FOR SECTION 401(h) AND SECTION 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) of the Code) 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		
2. Does the Plan limit transfers to “Excess Assets” as defined in § 420(e)(2) of the Code?	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) of the Code 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	___

PART I

CIRCLE SECTION

- | | | |
|---|--------|-------|
| 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) of the Code, 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) of the Code, 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).]

A. STATEMENT OF FACTS

1. Taxpayer Information

[Provide the statements required by sections 6.02(1)(a), (b), and (c) of Rev. Proc. 2021–4, 2021–1 I.R.B 157. Hereafter, all references are to Rev. Proc. 2021–4, 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. 2021–4 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. 2021–4 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. 2021–4, 2020–1 I.R.B. 157 for the list of issues on which Employee Plans Rulings and Agreements issues letter rulings. See section 5 of Rev. Proc. 2021–4, for issues under the jurisdiction of other offices. (Hereafter, all references are to Rev. Proc. 2021–4, unless otherwise noted.) |
| Yes No N/A
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
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
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
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
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 § 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

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
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
Page ____ | 2. Is each IRA identification number included? |
| Yes No N/A
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
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
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
Page ____ | 6. Is certification that the taxpayer or taxpayers timely filed the relevant federal tax return(s) included? |
| Yes No N/A
Page ____ | 7. Is there a short statement of facts with respect to the conversion? For example, if the ruling request involves a conversion attempted in 1998, there should be a statement of the facts that includes a representation of why the due date(s) found in Announcement 99-57 and Announcement 99-104 were not met. |
| Yes No N/A
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
Page ____ | 9. Does the request include the type of contribution (i.e., regular or conversion) and amount of the contribution being recharacterized? |