



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Affected IRM: 4.70, 4.71.3

MEMORANDUM FOR EMPLOYEE PLANS EXAMINATION EMPLOYEES

FROM: Catherine L. Jones /s/ *Catherine L. Jones*
Director, Employee Plans Examinations

SUBJECT: Revisions to the DO 8-3 Closing Agreement Process

This memorandum updates the DO 8-3 Closing Agreement process procedures to incorporate new steps to the submission, review, and approval process for DO 8-3 cases.

Background:

Delegation Order (DO) 8-3 delegates the authority to TE/GE Directors "to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he or she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods." (IRM 4.71.3.5.3)

EP Examinations uses DO 8-3 closing agreements to resolve issues not allowed in EPCRS and the IRM outlines the procedural process to follow for submission, review, and approval of DO 8-3 agreement cases.

Procedural Change:

Effective at once, examiners must coordinate DO 8-3 closing agreements with Tax Exempt and Government Entities Division Counsel (TEGEDC), as noted below.

EP Examiner: Before making a submission for a DO 8-3 agreement, make sure that you took proper actions to protect the applicable statute of limitations for all relevant tax returns, such as Forms 1040, 1120, 1065 and 5330.

When doing a DO 8-3 closing agreement, follow EPCRS closing agreement procedures in [IRM 4.71.3.5.2](#), EPCRS Closing Agreements, with these exceptions:

1. The Director, EP Examinations signs the closing agreement for the IRS.
2. Get approval from your group manager, area manager, and the Director, EP Examinations before proposing a DO 8-3 agreement.

Note: You may discuss the D.O. 8-3 program as a potential option, but the specific terms and proposed resolution need to be cleared through management before offering it to the taxpayer.

3. Return a fully executed closing agreement with [Letter 1595-D](#).
4. When closing agreements are fully executed, use closing Letter 1745 or Letter 1745-A, as applicable.

Contact the group manager to discuss resolving case under DO 8-3.

Group Manager: Within five business days of the discussion above, contact your area manager to discuss the facts of the case. If the area manager disagrees with the processing of the case under a DO 8-3 closing agreement, inform the examiner that it is not an option.

EP Examiner: When the area manager decides that a DO 8-3 closing agreement is proper:

1. Calculate all applicable taxes, penalties, and interest (including Form 4549-E).
2. Draft the DO 8-3 transmittal check sheet. See Exhibit 20 of the Audit CAP Desk Guide.
3. Prepare an executive summary.

Note: This includes the case background, facts, issues, specific legal citations, proposed resolution. It must address the assessment/non-assessment of penalties. Do not include exhibits or attachments. The executive summary itself should have all the information needed to support the DO 8-3 request.

4. Prepare the draft DO 8-3 closing agreement. Include all responsible parties in the draft. Summarize the errors and proposed resolution. Name the violated statutory and regulatory requirements, but do not recite them. Ensure all parties to the agreement are also signatories to the agreement.

Note: Ask your group manager for sample DO 8-3 closing agreements or find an example on the EPCRS Knowledge Management site.

5. Secure email the Form 4549-E, DO 8-3 transmittal check sheet, executive summary, and draft DO 8-3 closing agreement to your group manager for approval. Do not include any other documents.

Group manager: For DO 8-3 closing agreements for IRC 457(b) plans, contact the FSL/ET Program Manager as early as possible in the process for comment if there is an open, concurrent examination of the sponsor or if any proposed changes will affect employment taxes.

If you agree with resolving the case through a DO 8-3 closing agreement, within five business days of receiving the documents listed in item 5 from the examiner:

1. Review the DO 8-3 agreement and executive summary.
2. Sign the transmittal
3. Secure email the four documents to your area manager with your recommendation.

Area manager: If you agree with the recommendation, review the draft DO 8-3 and executive summary. Forward the draft DO 8-3 closing agreement, Form 4549-E, and executive summary to the assigned contact points in TEGEDC by sending the request to *CC TEGEDC Employee Plans Counsel Assistance at CC.TEGEDC.Employee.Plans.Counsel.Assistance@irs.gov.

TEGEDC review: TEGEDC reviews the DO 8-3 closing agreement and executive summary for legal sufficiency and substantial legal error. TEGEDC does not review the entire case. The TEGEDC review is limited to the issues that the DO 8-3 agreement proposes to resolve. TEGEDC may approve the closing agreement package or return it to the examiner and group manager for further development.

Area manager: Upon receipt of TEGEDC's approval of the agreement and executive summary, sign the transmittal and send it, along with the executive summary, Form 4549-E, and draft DO 8-3 closing agreement, to the functional assignment coordinator (FAC) and the Director, EP Examinations. Do not include more than the four just-listed documents unless otherwise directed by the FAC.

Director, EP Examinations or the FAC: either sign and return the transmittal check sheet accepting the draft closing agreement or respond to the area manager with any questions or concerns.

All EP Examinations employees: Use these letters in the DO 8-3 process:

1. Letter 1595: to mail draft closing agreements to the taxpayer/representative for review and signature.
2. Letter 1595-B: to return a closing agreement to the taxpayer/representative because of improper payment or improper execution.
3. Letter 1595-D: to mail fully executed DO 8-3 closing agreements back to the taxpayer/representative.
4. Letter 1745: as the closing letter for the 5500 examination when a DO 8-3 closing agreement is secured, and IRS determined the plan is disqualified from inception and remains disqualified.

Note: Use Letter 1745-A when you're coordinating the examination with SB/SE or LB&I.

You may accept the signed closing agreements from the taxpayer by mail, fax, or secure mail. See Letter 1595 for details.

Group manager: When the taxpayer/POA returns the signed closing agreement and verification of the sanction payment (Form 3244-A) to the examiner:

1. Notify the FAC and the Director, EP Examinations that you're sending a closing agreement for countersignature.
2. Send via secure email the closing agreement, the cover memorandum, verification of the sanction payment and the transmittal check sheet to the Director, EP Examinations and the FAC.

Director, EP Examinations or the FAC: return the fully executed closing agreement within five business days to the group manager and examiner via secure email.

Group manager/examiner: Process the check/payment within one business days of receiving the signed agreement from the Director, EP Examinations or the FAC.

1. Follow your group's procedures for payments and remittances via overnight delivery, including using the logbook.
2. Prepare and forward a closing agreement package per IRM 4.71.3.5.2 (16).

Note: See IRM 4.71.1 Exhibit 13 at IRM 4.71: Employee Plans Examination Exhibits for the physical address and email address to use.

Group manager/examiner: Once you receive the signed closing agreement, email a copy of the agreement, the remittance (ACH transaction detail) and Form 3244-A to:

*cfo.cfm.pay.gov.closing.agreements.racs.anmf@irs.gov

EP examiner: mail the following to the taxpayer/representative:

1. Letter 1595-D along with a copy of the fully executed closing agreement.
2. Closing Letter 1745 or Letter 1745-A, as applicable, if the DO 8-3 agreement is secured, we determined the plan is disqualified from inception and it remains disqualified.

Effective Date

February 1, 2023

Contact:

If you have questions about this change in procedures, contact the Functional Audit Coordinator.

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