



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

7.1.6

JULY 24, 2024

## EFFECTIVE DATE

(07-24-2024)

## PURPOSE

- (1) This transmits revised IRM 7.1.6, TE/GE Administrative Procedures and Programs, Employee Plans Technical - Case Processing Procedures.

## MATERIAL CHANGES

- (1) Updated IRM 7.1.6.1.6, to include the provisions of TEGE-07-0224-0004, Digital Taxpayer Communications.
- (2) Updated IRM 7.1.6.2.9 (1)c), and throughout the IRM, to reference Classification and Case Assignment (C&CA) rather than Classification and Compliance.
- (3) This IRM is updated for plain language and to make editorial changes and reflect current versions of annual revenue procedures and case processing IRM procedures.

## EFFECT ON OTHER DOCUMENTS

This supersedes IRM 7.1.6, dated July 25, 2023 and incorporates the provisions of TEGE-07-0224-0004, Digital Taxpayer Communications.

## AUDIENCE

Tax Exempt and Government Entities  
Employee Plans

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Director, Employee Plans  
Tax Exempt and Government Entities



7.1.6

Employee Plans Technical - Case Processing Procedures

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7.1.6.1  
(02-04-2021)  
**Program Scope and Objectives**

- (1) **Purpose:** This IRM describes procedures, as noted in Rev. Proc. 2024-4, for processing:
  - a. Private letter rulings requests.
  - b. Non-bank trustee applications, notifications of change, and revocations.
  - c. Congressional, White House and other executive inquiries.
  - d. Applications for approval of prototype IRAs.
  - e. Change in plan year requests.
  - f. Assistance requests.
  - g. Closing agreements.
  - h. Other inquiries and requests.
- (2) **Audience:** Employee Plans Technical employees.
- (3) **Policy Owner:** Director, Employee Plans.
- (4) **Program Owner:** Employee Plans (EP).
- (5) **Program Goals:** The goal of EP Technical's programs is to encourage plan sponsors to voluntarily comply with the income tax laws while avoiding plan disqualification.

7.1.6.1.1  
(09-30-2019)  
**Background**

- (1) A plan is qualified if it meets the requirements of IRC 401(a) in form and operation. A qualified plan is entitled to favorable tax treatment.
- (2) The office of EP is made up of:
  - a. EP Rulings and Agreements (R&A), which includes EP Technical, EP Voluntary Compliance (VC), and EP Determinations,
  - b. EP Program Management Office and
  - c. EP Examinations.
- (3) The administrative procedures for EP R&A and EP Examinations are in IRM 7.1.1. This IRM lists the EP Technical case processing procedures.
- (4) EP Technical:
  - a. Issues certain letter rulings, opinion letters and non-bank trustee approvals.
  - b. Provides technical and actuarial advice to help taxpayers understand the applicable tax laws and ensure that their plans are in compliance. (Rev. Proc. 2023-4, Section 24.01).
  - c. Provides technical and actuarial help to IRS employees through the Knowledge Management (KM) Networks and the *Servicewide KM Library*. (IRM 1.4.7).
  - d. Helps other government employees administer retirement plan laws.
  - e. Enters into closing agreements to help sponsors avoid plan disqualification.

7.1.6.1.2  
(09-30-2019)  
**Authority**

- (1) See the annually-revised procedures that apply to taxpayers requesting private letter rulings, determination letters and other advice under the jurisdiction of EP, and the user fees for these requests in Rev. Proc. 2024-4.
- (2) The Tax Exempt and Government Entities Division (TE/GE) is authorized to issue letter rulings and closing agreements per Rev. Proc. 2024-4 and Delegation Order 30.7 IRM 1.2.2.16.6 (5).

## 7.1 TE/GE Administrative Procedures and Programs

- (3) Exhibit 7.1.1-1 lists the major EP revenue procedures currently in effect.

### 7.1.6.1.2.1 (09-30-2019)

#### **Roth IRA Recharacterization**

- (1) Relevant authorities for Roth IRAs are:
- IRC 408A governs Roth IRAs.
  - 26 CFR 1.408A-4 has rules on converting a traditional IRA to a Roth IRA.
  - 26 CFR 1.408A-5 has rules on recharacterizing IRA and Roth IRA contributions.

**Note:** Section 1.408A-5 has not been updated to reflect changes made by the Tax Cuts and Jobs Act of 2017, P.L. 115-97 (TCJA).

- (2) A traditional IRA conversion to a Roth IRA, and a rollover from any other eligible retirement plan to a Roth IRA, made in tax years beginning after December 31, 2017, can't be characterized as having been made to a traditional IRA (TCJA). A conversion made in the 2017 tax year can be recharacterized up until the due date (with extensions) for filing the return for the 2017 tax year.
- (3) TCJA didn't affect recharacterizations of regular contributions to Roth IRAs and traditional IRAs. A regular contribution is the annual contribution an individual can make to an IRA.
- (4) The IRS may grant a taxpayer a reasonable extension of time to make certain elections, including one for a Roth IRA recharacterization (26 CFR 301.9100-3). Group managers in EP Technical are authorized to grant reasonable extensions of time to make this election. (IRM 1.2.2.16.3(8) and IRM 1.2.2.16.3(9)). (Delegation Order 30-3).

### 7.1.6.1.2.2 (09-30-2019)

#### **Non-Bank Trustees**

- (1) An entity that is not a bank must satisfy requirements to receive IRS approval to become a trustee or custodian of certain tax-qualified accounts. (26 CFR 1.408-2(e)).

### 7.1.6.1.2.3 (09-30-2019)

#### **60-Day Waivers for Rollovers**

- (1) Generally, to be excluded from gross income, an individual must complete plan and IRA rollovers within 60 days after the individual receives the funds. (IRC 402(c)(3) and IRC 408(d)(3)).
- (2) A taxpayer may apply to EP Technical for a waiver of the 60-day rollover requirement under Rev. Proc. 2003-16 and Rev. Proc. 2024-4. As an alternate, Rev. Proc. 2020-46 provides a self-certification procedure that may be used by a taxpayer claiming eligibility for a waiver.

### 7.1.6.1.2.4 (07-20-2020)

#### **Preapproved IRAs**

- (1) The procedures to obtain opinion letters for prototype trusts, custodial accounts or annuities under IRC 408(a), IRC 408(b), IRC 408(k), IRC 408(p) and IRC 408A are described in the following Revenue Procedures (as modified by Rev. Proc. 2024-4):
- Rev. Proc. 87-50
  - Rev. Proc. 91-44
  - Rev. Proc. 92-38
  - Rev. Proc. 97-29
  - Rev. Proc. 98-59
  - Rev. Proc. 2002-10
  - Rev. Proc. 2010-48

7.1.6.1.2.5  
(06-27-2022)

**Actuarial Requests,  
Letter Rulings and  
Closing Agreements**

- (1) See the table below for EP Delegation Orders, authorized persons, and their authority.

Delegation Order	Authorized Person and IRM reference:	Acts Authorized:
8-3	Director, EP. (IRM 1.2.2.9.3(5) and IRM 1.2.2.9.3(6)).	Enter and approve a written closing agreement with any person for their federal tax liability.
7-7	Director, EP. (IRM 1.2.2.8.7(6) and IRM 1.2.2.8.7(7)).	Waive all or part of the excise tax under IRC 4971(f) for liquidity shortfalls per IRC 412(m)(5)(E).
7-9	Manager, EP Technical, and Manager, EP Technical Actuarial Group. (IRM 1.2.2.8.9(2) and IRM 1.2.2.8.9(3)).	To determine that a plan amendment is reasonable and provides only de minimis increases in the plan liabilities per: IRC 412(c)(7)(B)(i) and ERISA 302(c)(7)(B)(i), IRC 401(a)(33)(B)(ii), and ERISA 204(i)(2)(A).
7-10	Manager, EP Technical Actuarial Group. (IRM 1.2.2.8.10(2) and IRM 1.2.2.8.10(3)).	To extend the period of years required to amortize any plan unfunded liability per IRC 431(d) and ERISA 304(d).
30-3	Group Managers authorized to issue letter rulings in EP Technical, R&A, (IRM 1.2.2.16.3(8) and 9).	To grant for IRC 408A(d)(6) matters, a reasonable extension of time fixed by regulations for making an election or application for relief in respect of tax under Subtitle A of the Code, subject to the requirements of 26 CFR 301.9100-1.

## 7.1 TE/GE Administrative Procedures and Programs

Delegation Order	Authorized Person and IRM reference:	Acts Authorized:
30-7	TE/GE Division (IRM 1.2.2.16.6(5))	Authority to issue letter rulings, closing agreements, and information letters as provided in Rev. Proc. 2024-4 and successor annual revenue procedure or other revenue procedures.

- (2) Find the complete list of Delegation Orders governing EP R&A at <http://www.irs.gov/uac/Delegation-Orders-by-Process1>.

### 7.1.6.1.3 (07-24-2024)

#### Responsibilities

- (1) The Manager, EP Technical, supervises group managers and employees in EP Technical.
- (2) The EP Technical group managers supervise employees in EP Technical.
- (3) EP Technical employees work on assignments from their group managers. EP Technical employees who are appointed members of the Joint Board for the Enrollment of Actuaries (Board) also receive work assignments from the Board.
- (4) An EP Technical employee who finds indications of fraud while processing a case will discuss the facts with the group manager. If the manager concurs, the EP Technical employee and their group manager will contact the EP Fraud Subject Matter Expert (SME) and/or the TE/GE Fraud Specialist to discuss the first indications of fraud and possible further development. If the EP Fraud SME and/or the TE/GE Fraud Specialist agree that there are sufficient indicators to warrant fraud development, they will contact the National Fraud Program Fraud Technical Advisor and together follow the fraud development procedures prescribed in IRM 25.1.2, *Fraud Handbook, Recognizing and Developing Fraud*.
- (5) An EP Technical employee who finds indications that an enrolled actuary failed to discharge his duties under Section 3042 of the Employee Retirement Income Security Act of 1974 (ERISA), violated any of the standards of performance, or displayed any misconduct under Part 901 of the Board regulation governing the performance of actuarial services under ERISA, will discuss the facts with the group manager. Examples include fraud, dishonesty, breach of trust, knowingly filing false or altered documents, affidavits, financial statements, making false or misleading representations, either orally or in writing, on matters relating to employee benefit plans or actuarial services. Further information is available at *Enrolled actuaries / Internal Revenue Service (irs.gov)*. If the manager concurs, the EP Technical employee will send a referral directly to the Executive Director, Joint Board for the Enrollment of Actuaries.
  - a. The EP Technical employee's referral, at a minimum, should contain the enrolled actuary's name, enrollment number (if known), contact information, and a detailed description of the allegations with all supporting documentation. Email to [NHQJBEA@irs.gov](mailto:NHQJBEA@irs.gov), or use intradepartmental mail. If using intradepartmental mail, address the envelope to:



Joint Board for the Enrollment of Actuaries  
 SE:RPO; Room 3422/IR; Attn: Executive Director  
 1111 Constitution Avenue, NW  
 Washington, DC 20224

b. The manager will maintain a record of all potential referrals discussed and referrals made by their group. At a minimum, the record will contain the enrolled actuary's name, enrollment number (if known), the enrolled actuary's employer, impacted plan name, EIN and Plan number, and a detailed description of the allegations. The manager will look for patterns, including evidence of emerging schemes, and appropriately make additional referrals.

(6) EP Technical employees are responsible for following the procedures in IRM 10.5.1, *Privacy and Information Protection, Privacy Policy*.

7.1.6.1.4  
 (07-24-2024)  
**Acronyms**

(1) The following table lists commonly used acronyms and their definitions.

C&CA	Classification and Case Assignment
CCR	Case Chronology Record
DUT-TPFE	Document Upload Tool for Taxpayer Facing Employees
EP	Employee Plans
ERISA	Employee Retirement Income Security Act of 1974
ESCO	Executive Secretariat Correspondence Office
e-TRAC	e - TE/GE Rulings and Agreements Control System
IRA	Individual Retirement Account
IRC	Internal Revenue Code
IRS	Internal Revenue Service
KM	Knowledge Management
MAPICS	Master and Prototype Inventory Control System
R&A	Rulings and Agreements
SEP	Simplified Employee Pension Plan
SIMPLE	Savings Incentive Match Plan for Employees
TCJA	The Tax Cuts and Jobs Act of 2017
TDC SM	Taxpayer Digital Communications Secure Messaging
TE/GE	Tax Exempt and Government Entities
TEGEDC	Tax Exempt and Government Entities Division Counsel

## 7.1 TE/GE Administrative Procedures and Programs

### 7.1.6.1.5 (09-30-2019) Definitions

- (1) **Taxpayer's Authorized Representative:** The person the taxpayer designates to represent them before the IRS. The taxpayer makes this authorization on Form 2848, Power of Attorney and Declaration of Representative, although there are other acceptable forms of authorization per Circular 230. IRS employees are prohibited from discussing taxpayer information with any party who is not specifically authorized by the taxpayer unless the taxpayer is present.
- (2) **Case File:** Incoming requests and all correspondence between the IRS and the taxpayer or the taxpayer's authorized representative, including,
  - a. Copies of letters, faxes and emails
  - b. Workpapers, conference reports and technical case history sheets; and
  - c. Any memos that reflect the rationale for the case result.
- (3) **Initiator:**
  - a. Tax law specialist, agent or actuary assigned the case or assistance request.
  - b. Main point of contact with the taxpayer or the taxpayer's authorized representative.
  - c. Person responsible for developing the case and drafting any correspondence.
- (4) **Reviewer:** Tax law specialist or actuary assigned to work with the initiator on a case. The reviewer's function is to guide and to help the initiator develop the case, by
  - a. Reviewing correspondence for technical, procedural and editorial accuracy; and
  - b. Providing technical expertise on the case issue(s).

**Note:** The group manager signs and dates private letter rulings, non-bank trustee approvals and changes in plan year (Form 5308).

### 7.1.6.1.6 (07-24-2024) Digital Taxpayer Communications

- (1) The IRS has implemented Taxpayer Digital Communications Secure Messaging (TDC SM) as a more efficient way for taxpayers and their authorized representatives, to exchange information and documents with the IRS. Taxpayers and representatives will use the TDC SM platform by invitation only. The procedures apply to all compliance activity types (cases) that include taxpayer contact with a start date on or after June 22, 2022. An alternative secure method, the Document Upload Tool for Taxpayer Facing Employees (DUT - TPFE) is now available for use within EO and EP Rulings & Agreements on and after February 22, 2024.
- (2) You must offer either TDC SM or DUT – TPFE to all taxpayers and their representatives with the initial contact letter. If the interaction with the taxpayer is expected to be a series of multiple exchanges of documents or communications, it is recommended that you offer TDC SM at initial contact. If the interaction with the taxpayer is expected to be limited to receipt of certain documents requested, it is recommended that you offer DUT - TPFE at initial contact. If taxpayer interaction changes while working the case, you may use the alternative tool.
- (3) TE/GE has revised many initial contact letters to include language that advises taxpayers and their representatives of the availability of TDC SM and DUT –

TPFE to provide a safe means for exchanging information with the IRS online. The revised letters use selectable paragraphs that you must choose. Use the TDC SM or DUT – TPFE paragraph and include a copy of Pub 5295 with the letter on all new contacts.

- (4) Taxpayers and representatives participating in the TDC SM must consent to receive and send information and documents via the TDC SM platform. Secure from the taxpayer and their representatives electing to participate with the TDC SM platform a signed Form 15314, TE/GE Secure Messaging Taxpayer Agreement Authorization of Disclosure to Designated Users. When returned, submit the signed form to the BSP shared mailbox (\*TEGE TDC TP Provisioning) for taxpayer and representative account creation. Once established, the system will notify the taxpayer and their representative through email with instructions on how to access their TDC SM account. Send a welcome message to the taxpayer and their representative.
- (5) Document your invitation to use TDC SM or DUT – TPFE and the response of the taxpayer and their representative in your CCR.
- (6) Upon closure of your case, send a message to the taxpayer that you are closing your case and future communications within TDC SM or DUT – TPFE will not be possible for this case.
- (7) To offer use of the DUT - TPFE, after a phone conversation or through correspondence, provide the taxpayer or their representative an access code and URL, granting access to the upload tool. The user can upload and submit information to the TE/GE employee through DUT - TPFE. Once submitted, the taxpayer receives a confirmation, and the employee can review the transmitted documents.
- (8) To offer the DUT - TPFE, use the following language with the request for information:
  - a. IRS Documentation Upload Tool provides a safe means for exchanging information with IRS online at [www.irs.gov/sendmyreply](http://www.irs.gov/sendmyreply).
  - b. Your unique one-time use code is: [insert code].
- (9) The unique access code expires after 70 days. If you need another code relating to this case, contact the specialist listed in the top right corner of the letter.

7.1.6.2  
(07-20-2020)  
**Letter Ruling Requests**

- (1) This section discusses general procedures for processing letter ruling requests. A letter ruling is a written statement that applies the tax laws or other non-tax employee benefit laws to the taxpayer's specific set of facts.
- (2) EP Technical processes a letter ruling only if it complies with the procedural requirements listed in Appendix E of Rev. Proc. 2024-4. (See Appendix D of Rev. Proc. 2024-4 for a sample private letter ruling request).
- (3) A taxpayer must submit a letter ruling request with the correct user fee listed in Appendix A of Rev. Proc. 2024-4.

## 7.1 TE/GE Administrative Procedures and Programs

### 7.1.6.2.1 (11-15-2021) User Fee

- (1) The user fee screener (screener) is a tax law specialist designated by the Manager, EP Technical, to review user fees that come in with a letter ruling request.
- (2) Screener: If the user fee amount,
  - a. Is correct, forward the case to the Manager, EP Technical (or the Manager's designee), to assign to a group.
  - b. Exceeds the required amount, forward the case for assignment. The tax law specialist or actuary and manager must complete a User Fee Refund form.
- (3) Screener: If the taxpayer submits an insufficient user fee under Rev. Proc. 2024-4,
  - a. Send a letter to the taxpayer requesting payment of the full user fee within 30 calendar days. The letter states that we'll close the case, take no further action, and refund the paid deficient fee if we don't receive the full amount within 30 days. Send a copy of the letter and a cover letter to the authorized representative if requested on the Form 2848.
  - b. If the taxpayer does not pay the full fee in 30 calendar days, prepare a letter to the taxpayer informing them that we closed the case and will refund the user fee separately. Send a copy and cover letter to the authorized representative if requested on the Form 2848.
  - c. Prepare the user fee refund form "REQUEST FOR REFUND OF USER FEE (Rev. March 25, 2015)."

**Note:** The Manager, EP Technical or group manager signs the letter, User Fee Refund form, and TRAC Correspondence Control Record (Control Sheet) and sends them with the case file to the administrative staff to mail and close.

  - d. Send the signed User Fee Refund Form to the TE/GE EO Adjustments Unit in Cincinnati, OH, to process.
- (4) If the file has a procedural or jurisdictional deficiency under Rev. Proc. 2024-4, then EP Technical can't issue a letter ruling and will refund the user fee.
  - a. Initiator: Prepare a letter to the taxpayer and prepare the REQUEST FOR REFUND OF USER FEE form. Send a copy of the signed letter to the taxpayer and signed cover letter to the authorized representative, as per the Form 2848.
  - b. Manager, EP Technical or group manager: Sign the letters to the taxpayer and authorized representative, the User Fee Refund form, and the TRAC Control Sheet and transmit the letters, refund form, and case file to the administrative staff to mail and close.
  - c. Screener: Send the User Fee Refund Form to the TE/GE EO Adjustments Unit in Cincinnati, OH, to process.

### 7.1.6.2.2 (07-20-2020) Group Manager Review

- (1) When the group manager receives a taxpayer's letter ruling request:
  - a. **Review the file.** Verify the correct user fee was received, the case was timely submitted, the request is substantially complete, and the issues are within EP's jurisdiction to rule.
  - b. **Expedited handling.** Verify whether the taxpayer has requested expedited handling under Rev. Proc. 2024-4, Section 6.03(3). Decide whether to grant the request.

**Example:** It may be appropriate to use expedited case handling when: i) a court or government agency has imposed a specific deadline; or ii) a transaction must be completed expeditiously to avoid an imminent business emergency, if the taxpayer can show that the deadline or business emergency and need for expedited handling resulted from circumstances that they couldn't have reasonably anticipated or controlled.

- c. **Sensitive case.** Determine whether the case involves a sensitive issue that needs higher level review. If so, discuss the issue with the Manager, EP Technical, to determine whether to prepare a Sensitive Issue Report for the TE/GE Commissioner.
- d. **Assign to initiator.** Assign the case to an initiator and reviewer within one week of the group assignment.

7.1.6.2.3  
(07-24-2024)  
**Initiator Review**

- (1) **Acknowledgment letter.** Within one week of assignment, send an acknowledgment letter using Letter 6366, Case Submission Acknowledgement, to the taxpayer and a copy and cover letter to the authorized representative. Letter 6366 identifies:
  - a. The control date.
  - b. The case control number.
  - c. Your name and telephone number.

**Exception:** An acknowledgment letter does not need to be sent if, within one week of assignment, the initiator sends written correspondence to the taxpayer and authorized representative that contains the initiator's name and telephone number. For example, a case is closed administratively, a letter responding to the taxpayer's request is issued, or the initiator requests additional information or compliance with the procedures of Rev. Proc. 2024-4.

- (2) **Technical Case History Sheet.** Create a Technical Case History Sheet to record case actions. The initiator, reviewer, and group manager will make entries on the Technical Case History Sheet, as appropriate. The Technical Case History Sheet should be updated for any case actions taken and show:
  - a. Your last name.
  - b. Case control number and ESCO number if applicable.
  - c. Detailed descriptions and dates of relevant actions.
  - d. Hours worked.
  - e. Other IRS employees' actions.
- (3) **Prepare for three-week meeting.** Begin reviewing the request to:
  - a. Ensure it complies with the requirements of Rev. Proc. 2024-4 and other relevant procedures.
  - b. Identify any issues you need to discuss with the reviewer.
- (4) The group manager may or may not assign a reviewer to the case depending on available resources, the initiator's expertise, and the group manager's role in the case. If a reviewer isn't assigned to the case, the initiator will keep the group manager current on the case issues and development.

7.1.6.2.4  
(07-20-2020)**Three-Week Meeting**

- (1) Schedule the three-week meeting within three weeks after case assignment. The three-week meeting enables the initiator, reviewer, and the group manager, if needed, to become familiar with the case's basic facts, perform a preliminary review of the procedural and substantive issues, and make initial case processing decisions.
- (2) The initiator and reviewer address the following topics at the Three-Week Meeting:
  - a. **Acknowledgment letter.** Confirm that IRS sent the acknowledgment letter, Letter 6366.
  - b. **User fee.** Confirm that the taxpayer paid the correct user fee listed in Rev. Proc. 2024-4.
  - c. **Jurisdiction to rule.** Confirm that EP Technical has the jurisdiction to issue a letter ruling. (Rev. Proc. 2024-4, Sections 24 and 25).
  - d. **Procedural requirements.** Determine whether the request satisfies the procedural requirements of Rev. Proc. 2024-4 and other relevant procedures. If not, consider requesting additional information to resolve. If a taxpayer requests a ruling on other transactions, instead of automatically issuing a procedural closing, the taxpayer may withdraw one of the requested rulings. In other cases, you may need to prepare a procedural closing letter.

**Example:** When the request involves a topic on which the IRS lacks jurisdiction, has a “no-rule” position, or is inherently hypothetical or factual, prepare a procedural closing letter.

- e. **Expedited handling.** Verify whether the taxpayer has requested expedited handling under Rev. Proc. 2024-4, Section 6.03(3). Decide, with your manager's approval, whether to grant the request. See examples of when it's appropriate to expedite handling in IRM 7.1.6.2.2.
- f. **Sensitive case.** Determine whether the case involves a sensitive issue that needs higher level review. If so, the initiator should consult with the group manager and the Manager, EP Technical, to determine whether to prepare a Sensitive Issue Report for the Commissioner, TE/GE.
- g. **Sufficient information.** Determine whether the case file contains sufficient information. If you need additional information/documentation, decide whether to: (1) issue a 30-Day Letter using Letter 6420, Request for Information, to get the information, or (2) schedule a Conference of Right and get the information through the conference and the taxpayer's post-conference submission.
- h. **Preliminary ruling position.** Discuss the merits of the case, including whether the preliminary ruling position appears to be favorable or adverse to the taxpayer.
- i. **Technical issue meeting.** Determine whether to recommend scheduling a Technical Issue Meeting. The group manager may want to schedule a Technical Issue Meeting when the issues are unique or complex. Managers, reviewers and other employees may be asked to attend the meeting. Its purpose is to discuss the issues in depth and decide on appropriate case action.
- j. **Conference of Right.** If the preliminary position is adverse, discuss scheduling a Conference of Right per IRM 7.1.6.2.6 and Rev. Proc. 2024-4, Section 28.01.
- k. **Memo to the file.** It is important to document the analysis used in processing a case. For this purpose, the initiator may need to prepare a memo to the file.



- I. **TE/GE Division Counsel (TEGEDC) referral.** Determine whether the case involves an issue that you should refer to TEGEDC for help.

**Example:** Refer cases that:(i) raise issues of first impression, or (ii) involve the interpretation of a new statutory provision or new regulation.

7.1.6.2.5  
(07-20-2020)  
**30-Day Letter**

- (1) Prepare the 30-Day Letter. Initiator and reviewer: if you determine at the three-week meeting that you need additional information, the initiator prepares and sends a 30-Day Letter to the taxpayer requesting the information. Use Letter 6420, Request for Information, for the 30-Day Letter. Prepare a copy of the letter and a cover letter to the authorized representative if copies of correspondence are requested on the Form 2848. Take the following steps:
  - a. Set a response due date of 30 calendar days after the letter's date. The letter should state (in the Information Needed section of Letter 6420) that, pursuant to section 27.05 of Rev. Proc. 2024-4, if the information is not received within 30 calendar days and an extension of time is not granted, the taxpayer's request will be closed and no further action taken. Also inform the taxpayer that generally an extension of time must be justified in writing prior to the close of the 30-day period.
  - b. Consider requesting the information by phone and following up with the 30-Day Letter.
  - c. Consider calling the taxpayer or authorized representative to identify the information that would help to resolve the request and avoid multiple requests.
  - d. Fax or mail the 30-Day Letter as soon as possible to the taxpayer with a copy to the authorized representative, if applicable.
- (2) Multiple requests. Request additional information and documentation in a single 30-Day Letter when possible. In complex cases, the initiator may want to consult with the reviewer or manager before sending the 30-Day Letter.
  - a. Try to avoid multiple 30-Day Letters which could delay case processing and be burdensome to the taxpayer.
  - b. Gather additional information at the Conference of Right and through the taxpayer's Post-conference submission.
- (3) Taxpayer fails to respond. If neither the taxpayer nor the authorized representative responds to the 30-Day Letter, contact the taxpayer or authorized representative by phone to check the status. Consult the reviewer and group manager to decide the next action. (See Rev. Proc. 2024-4, Section 27.10 for procedures to extend the 30-day deadline). Appropriate action might be:
  - a. Send a follow-up request with a firm due date (generally 10 calendar days). State in the follow-up letter that we may close the case if they don't respond to the follow-up request within 10 calendar days and that a request to extend the time to respond must be made in writing and approved.
 

**Note:** The appropriate IRS official must approve a taxpayer's request for an extension of time. The approval or denial must be confirmed in writing.
  - b. Schedule a Conference of Right.
  - c. Issue a letter ruling based on the information on hand.

- d. Close the case with no action.
- (4) Discuss response with reviewer. When you receive the response to the 30-Day Letter, meet with the reviewer to discuss the response and determine the next step. If you both:
  - a. Conclude that the ruling position is favorable, prepare a favorable letter ruling.
  - b. Confirm that the preliminary ruling position is adverse, schedule the Conference of Right with the taxpayer or authorized representative.
  - c. Determine, in consultation with your manager, to hold a Technical Issues Meeting to discuss the case further, prepare a short memo summarizing the case and send the memo to your group manager.
- (5) When appropriate, the group manager schedules a Technical Issues Meeting and distributes the memo and any appropriate background material to the attendees.

7.1.6.2.6  
(07-20-2020)

**Conference of Right**

- (1) Schedule a Conference of Right, if requested by the taxpayer, when the IRS' preliminary ruling position on the taxpayer's request is adverse. Rev. Proc. 2024-4, Section 28 sets out the procedures.
- (2) Schedule a conference. The initiator will:
  - a. Contact the taxpayer or the taxpayer's authorized representative to schedule the Conference of Right. The conference is held within 21 calendar days after contact, unless the taxpayer or the authorized representative requests an extension of time and the group manager approves the extension. Send a written confirmation of the conference to the taxpayer with a copy and cover letter to the authorized representative identifying the case issues with the caveat that other issues may be raised at the conference.
  - b. Send written confirmation to the taxpayer and authorized representative that a request for an extension of time has been approved or denied.
  - c. When scheduling the conference, advise the taxpayer or authorized representative that only individuals the taxpayer has authorized in writing to represent them may attend (unless the taxpayer will authorize other persons or will attend the conference). The signed Forms 2848 must be received from all representatives before the conference unless the taxpayer attends the conference and agrees to having additional representatives present.
  - d. Schedule the conference by sending a letter setting the date, time and location or telephone number if the taxpayer or authorized representative doesn't respond to the request to schedule a conference. State in the letter that not attending waives the Conference of Right. Send a copy of the letter to the authorized representative if applicable.
  - e. The taxpayer is entitled to only one Conference of Right on the issues, so address all case issues at the conference to avoid the need for additional conferences. (Rev. Proc. 2024-4, Section 28.05.) However, the IRS may hold additional conferences in its discretion.
- (3) Hold "Pre-conference Meeting" with the reviewer (and others as appropriate) to prepare for the conference as appropriate. Distribute relevant information, an outline, and/or an explanatory memo to attendees to help them prepare for the conference.



## (4) Conference Attendees:

- a. Only individuals for whom the initiator has received a signed Form 2848 may attend the conference on behalf of the taxpayer if the taxpayer is not present. Individuals listed on a properly executed Form 8821 may also attend, but only to the extent permitted by Form 8821.
- b. Conferences are typically held by telephone. Obtain the names of those in attendance and confirm that all attendees are listed on the Form 2848.
- c. Generally, the initiator, reviewer and the group manager represent the IRS. A person who has the authority to sign the letter ruling must attend the conference. Other IRS or government representatives may attend in particular cases. However, see IRM 10.5.1, Privacy and Information Protection, Privacy Policy.

## (5) Conference of Right. Initiator:

- a. Confirm that all attendees are listed on the Form 2848. However, if the taxpayer attends the conference, anyone may attend with the taxpayer's permission.
- b. Inform the taxpayer or authorized representative, at the beginning of the conference, that this is the "Conference of Right" under Rev. Proc. 2024-4. Rev. Proc. 2024-4, Section 28.06, requires that any additional information is due within 21 calendar days after the conference date. The conference is informal, and no party may make a tape, stenographic, or other verbatim recording of a conference.
- c. Present all the reasons for the IRS' preliminary adverse position, including all technical and factual issues presented by the ruling request.
- d. Summarize the outstanding issues and the information or documentation that could resolve the issues in the case, as appropriate.

## (6) Prepare Conference Report. Prepare a conference report within two business days after the conference and submit it to the reviewer and group manager for comments or concurrence. The initiator and reviewer sign the conference report and include it in the case file.

## (7) When appropriate, prepare a follow-up letter/request to send to the taxpayer and authorized representative.

7.1.6.2.7  
(07-20-2020)  
**Post-Conference  
Submission**

- (1) 21-Day Due Date. The taxpayer or authorized representative must submit any post-conference information within 21 calendar days after the conference date absent an approved extension of time. Inform the taxpayer and make a note of any approved extensions of time in the Technical Case History Sheet. Send a written confirmation of approval or denial of the requested extension to the taxpayer and the taxpayer's authorized representative.
- (2) Post-conference Information. When you receive the post-conference submission, discuss it with the reviewer to determine the case's final recommended disposition.
- (3) Final Disposition
  - a. If the group manager, in consultation with the initiator and reviewer, concludes that the final disposition of the case is favorable to the taxpayer, the initiator prepares a favorable letter ruling.
  - b. If the decision is adverse, the initiator offers the taxpayer or authorized representative an opportunity to withdraw the ruling request, noting that

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we cannot refund the user fee as per Section 30.10 of Rev. Proc. 2024-4. If the request is not withdrawn, the initiator prepares a ruling denying the requested ruling and an adverse ruling is issued.

7.1.6.2.8  
(07-20-2020)

### **Referral to Division Counsel**

- (1) You may need to refer certain cases to TEGEDC for their comments or concurrence. For these cases, the initiator and reviewer prepare a Technical Assistance Request to TEGEDC which:
  - a. Summarizes the case.
  - b. Explains TE/GE's position.
  - c. Attaches a copy of the proposed letter ruling and other background information.
- (2) Prepare the Technical Assistance Request for signature by the Director, EP R&A or Manager, EP Technical. Send the Technical Assistance Request through the reviewer, group manager, and Manager, EP Technical, who may transmit the request to the Director, EP R&A. The Manager, EP Technical or Director, EP R&A, signs and dates the Technical Assistance Request and forwards the case to TEGEDC for consideration.

7.1.6.2.9  
(09-30-2019)

### **Final Letter Ruling and Related Correspondence, Initiator**

- (1) Draft correspondence, which includes the:
  - a. Letter ruling.
  - b. Redacted letter ruling for disclosure purposes as appropriate (prepare after the reviewer and group manager approve the final draft of the letter ruling). Letter 437 (Notice of Intention to Disclose), Control Sheet, and letter ruling will need to be completed before the ruling is sent to Disclosure.
  - c. Letter ruling for Classification and Case Assignment (C&CA), as appropriate.
  - d. Cover letter to the authorized representative.
- (2) Prepare the letter ruling as follows:
  - a. Always address a letter ruling to the taxpayer; send a copy to the taxpayer's authorized representative.
  - b. Type the appropriate index number(s) from the Uniform Issue List in the upper left-hand corner, as appropriate.
  - c. State, in the first paragraph, that it is in response to a ruling request received from the taxpayer. List the dates of all correspondence from the taxpayer or authorized representative.
  - d. State, in the second paragraph, that the following facts and representations have been submitted under penalties of perjury in support of the ruling requested.
  - e. List in the next paragraph(s) the relevant and necessary facts presented by the taxpayer's correspondence. It may be appropriate to use the taxpayer's own language.
  - f. After listing the relevant facts and representations, the next paragraph states that, "based on the above facts and representations, you request a ruling that..." Insert the taxpayer's ruling request here.
  - g. The next section provides the legal sources upon which the ruling is based. Generally, cite in this order: Code sections, Treasury regulations, and other IRS published guidance.

- h. After stating the legal sources, begin a new paragraph applying the law to the facts and stating the conclusion. If more than one ruling is requested, consider addressing each ruling in a separate paragraph.
  - i. After the conclusion, insert the following:
    - 1. A statement that no opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or Treasury regulations which may be applicable thereto, as appropriate.
    - 2. Any caveats, or assumptions on which the ruling is based, as appropriate. For example, "This ruling does not apply to amounts required to be distributed under section 401(a)(9) of the Code."
    - 3. A statement that this letter is directed only to the taxpayer who requested it. IRC 6110(k)(3) provides that it may not be used or cited as precedent.
    - 4. If you're sending a copy of the ruling to the authorized representative, add the following paragraph: Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.
    - 5. The next paragraph provides the initiator's contact information: If you wish to inquire about this ruling, please contact [Name of Initiator] (ID Badge Number [\*\*-\*\*\*\*\*]) at [telephone number]. Please address all correspondence to SE:T:EP:RA: [Group Symbol].
  - j. At the end of the letter, after the signature block, list these enclosures:
    - 1. Letter 437, Notice of Intention to Disclose - Rulings, and
    - 2. A deleted copy of the ruling.
  - k. After the list of enclosures, make sure to copy the authorized representative(s).
- (3) Prepare a redacted version, as appropriate, of the ruling letter for the taxpayer, the taxpayer's representative, and the IRS Disclosure Office, after the reviewer and manager have approved the unredacted ruling letter, as follows:
- a. Create an electronic copy of the unredacted letter ruling and then remove all identifying references to names, addresses, plan names, states, cities, persons to contact, telephone numbers, courtesy copies, and any other identifying information that the taxpayer has requested be "deleted" in the taxpayer's deletion statement. Use blank spaces to ensure that the pages do not change.
  - b. Do not delete group symbols, the Uniform Issue List number, or the manager's name in the signature block. The group manager is not required to sign the redacted letter ruling.
  - c. Delete your name and the name(s) of the authorized representatives (retain the cc).
  - d. Print two originals of the redacted letter ruling on TE/GE letterhead for Disclosure and the taxpayer.
- (4) Prepare a cover letter(s) to the authorized representative(s) if the taxpayer has one. Indicate on the reference line that it refers to a Letter Ruling Request for

[name of the taxpayer]. The letter then states: The enclosed documents are being provided to you under the provisions of a power of attorney currently on file with the Internal Revenue Service.

- a. Include your contact information.

b. List as enclosures a copy of the original ruling letter, a copy of the redacted ruling and a copy of Letter 437, Notice of Intention to Disclose - Rulings.
- (5) Complete the Letter 437 using the current year’s dating schedule obtained from the Disclosure Office.
- (6) Initiator and Reviewer: final review. Review all final correspondence before sending the case to the group manager for signature, dating, closing, and mailing. The group manager also signs the Control Sheet and includes the initiator’s and reviewer’s hours on the Control Sheet. The group manager may also insert comments on the Technical Case History Sheet. The case file must be scanned for archiving.

7.1.6.2.10  
(07-20-2020)  
Procedural Closing

- (1) See table below for explanations of types of ruling request closings and initiator procedures:

Type of closing	Initiator procedures
Administrative closing: It's inappropriate to issue a letter ruling because <ul style="list-style-type: none"><li>The subject is an area generally not ruled on as listed in Section 24 of Rev. Proc. 2024-4, or</li><li>The request satisfies the criteria for declining to rule per Section 25.</li></ul>	Closing letter: <ol style="list-style-type: none"><li>Prepare a closing letter (no action) addressed to the taxpayer on TE/GE letter-head.</li><li>Explain the reasons why the IRS is unable to issue a ruling.</li><li>State that the user fee will be refunded separately.</li><li>Refer to Rev. Proc. 2024-4, Section 7.</li><li>The group manager signs the letter.</li><li>Send a copy and cover letter to the authorized representative, if applicable.</li></ol>

Type of closing	Initiator procedures
Administrative closing	<p>User fee refund</p> <ol style="list-style-type: none"> <li>1. Complete a Request for Refund of User Fee form.               <ol style="list-style-type: none"> <li>a. Part I - fill out based on file's user fee input sheet.</li> <li>b. Part II - your manager fills out at case closing.</li> </ol> </li> <li>2. Refund user fee:               <ol style="list-style-type: none"> <li>a. Entirely, when closed as administrative closing.</li> <li>b. Partially, when taxpayer overpaid the required fee.</li> </ol> </li> </ol>
<p>Ruling request withdrawn. The taxpayer or authorized representative withdraws a letter ruling request; they must do so before a ruling is issued.</p>	<ol style="list-style-type: none"> <li>1. Prepare a letter to the taxpayer acknowledging that the request has been withdrawn.</li> <li>2. State that as explained, the user fee won't be refunded.</li> <li>3. The group manager signs the letter.</li> <li>4. Send a copy of the letter to the authorized representative, if applicable.</li> </ol> <p><b>Note:</b> Even if the letter ruling request is withdrawn, the IRS may prepare a memo on the case and refer it to the appropriate EP Examinations Area Manager, if the facts and circumstances so warrant.</p>

Type of closing	Initiator procedures
Closing case with no action. Case closed due to lack of procedural compliance (refund user fee) or lack of information (don't refund user fee).	<ol style="list-style-type: none"> <li>1. Prepare a letter to the taxpayer.</li> <li>2. Explain the reasons why the IRS is unable to issue a ruling.</li> <li>3. State, if applicable, that the user fee will be refunded under a separate cover letter.</li> <li>4. The group manager signs the letter.</li> <li>5. Send a copy to the authorized representative, if applicable.</li> </ol>

- (2) User fees are refunded through the reviewer, group manager, and manager, TE/GE EO Adjustments Unit in Cincinnati, OH. The refund request may be mailed, securely emailed or faxed.
- (3) Reviewer: final review. Review all final correspondence before sending the case to the group manager for signature and closing.

7.1.6.2.11  
(07-25-2023)

#### **Assemble Case File for Signature and Closing**

- (1) When the case is ready for signature and closing, assemble the case file in this order and send to your group manager for signature and closing:
  - a. Documents for manager's signature - TRAC Control Sheet, User Fee Refund Sheet (if any), Original Letter Ruling to taxpayer. Original Cover Letter to authorized representative. Include for the manager's review the Deleted Letter Ruling, routing slip to Disclosure and the Letter 437.
  - b. Routing slip or email, as appropriate, to Disclosure and the Letter 437.
  - c. Administrative documents - User Fee Case Input Sheet, Technical Case History Sheets (initiator and reviewer showing total hours), conference reports, memo to reviewer and selected drafts (if any).
  - d. Correspondence - Taxpayer's Incoming Letter and subsequent correspondence.
  - e. Any other documents (research, emails from reviewers, etc.).
- (2) EP Technical Group Manager:
  - a. Sign the TRAC Control Sheet, the User Fee Refund Form (if any which also must be approved by the TE/GE EO Adjustments Unit), and all outgoing correspondence (except the Deleted Letter Ruling). Date outgoing letters.
  - b. Close the case on TRAC.
  - c. Return file to the initiator.
- (3) Initiator: Final Closing Steps:
  - a. After the letters are signed and dated, make copies of the deleted and undeleted letter ruling, the TRAC Control Sheet, and the letters to the authorized representative.
  - b. Send Disclosure a routing slip, an original deleted ruling, a copy of the undeleted ruling, a copy of the completed TRAC Control Sheet and a

copy of the Letter 437 as appropriate. Email is preferred to 6110.  
disclosure@irs.counsel.treas.gov or use intradepartmental mail. Include  
the taxpayer's name, EIN, the initiator's name, the date, and the group  
symbols. If using intradepartmental mail, address the envelope to:

Chief, Disclosure and Litigation Support Branch CC:PA:LPD:DLS  
1111 Constitution Ave., NW, Room 5201  
Washington, DC 20224

- c. Send C&CA a copy of the undeleted ruling with a transmittal memo describing the ruling, as appropriate. Email is preferred to tege.ep.classification@irs.gov, or use intradepartmental mail. If using intradepartmental mail, address the envelope to:

Manager, Classification Group 4  
SE:T:HQ:CPC:CCA:C4  
8701 S. Gessner, MC 4900 HAL  
Houston, TX 77036

- d. Mail the taxpayer the original undeleted ruling, an original of the redacted letter ruling and the Letter 437.  
e. Mail copies of the documents sent to the taxpayer, to the authorized representative, if any, with the original cover letter to the authorized representative.  
f. Assemble and label copies for the case file, the initiator and the reviewer.  
g. Return case file to group manager who sends the case file to the administrative staff for scanning.  
h. Properly discard duplicate copies of any documents containing taxpayer information. (See IRM 10.5.1, *Privacy and Information Protection, Privacy Policy*).

7.1.6.3  
(07-20-2020)  
**60-Day Waiver Letter  
Rulings**

- (1) EP Technical issues letter rulings extending the 60-day period for rolling over a distribution from an IRA under IRC 408, IRC 403(a) annuity, IRC 403(b) plan, IRC 457 eligible governmental plan, or qualified plan under IRC 401(a) if the requirements under IRC 402(c)(3)(B) and IRC 408(d)(3)(I) are satisfied.
- a. Internal Revenue Code requirements. IRC 402(c)(3) and IRC 408(d)(3) generally require that any amount distributed from a qualified trust or individual retirement plan must be transferred to an eligible retirement plan by the 60th day after the day of receipt to be excludable from gross income.
- b. The Secretary may waive the 60-day rollover requirement. (IRC 402(c)(3)(B) and IRC 408(d)(3)(I)). The waiver authority only applies to the 60-day requirement and not to other requirements that apply to rollovers.
- c. Rev. Proc. 2003-16 and Rev. Proc. 2024-4 provide guidance on applying to the IRS for a waiver of the 60-day rollover requirement.
- d. Rev. Proc. 2020-46 provides a self-certification procedure that may be used by a taxpayer who qualifies for a waiver and does not require an application to the IRS.

**Note:** Self-certification is not a waiver.

- (2) IRS issues a ruling waiving the 60-day rollover requirement when not waiving the requirement would be against equity or good conscience, including



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casualty, disaster or other events beyond the reasonable control of the taxpayer. In determining whether to grant a waiver, IRS considers all relevant facts and circumstances, including:

- a. Errors committed by a financial institution.
- b. Inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error.
- c. The use of the amount distributed (for example, in the case of payment by check, whether the check was cashed).
- d. The time elapsed since the distribution occurred.

- (3) Automatic approval. Taxpayers have automatic approval in specific limited circumstances for errors committed by a financial institution. Taxpayers do not have to apply to the IRS for automatic approval. (Rev. Proc. 2003-16, Section 3.03).
- (4) Rather than request a letter ruling from EP Technical and pay a user fee, a taxpayer may want to use the self-certification procedure under Rev. Proc. 2020-46. However, self-certification doesn't constitute a waiver.

### 7.1.6.3.1 (07-20-2020) **Processing 60-Day Waivers**

- (1) Letter ruling procedures apply. To request a waiver from EP Technical, a taxpayer must apply for a waiver using the procedures for letter rulings and pay the user fee under Rev. Proc. 2024-4. Refer to the letter ruling procedures in IRM 7.1.6.2 as they apply to 60-day waiver requests.
- (2) Checklist. When evaluating whether the incoming request contains sufficient information on which to rule, use the Checklist for Letter Rulings from Employee Plans Rulings and Agreements, in Rev. Proc. 2024-4, Appendix E. Request any additional information and documentation you need to complete the request.
- (3) Self-certification. A taxpayer may mistakenly submit a self-certification form from the Appendix to Rev. Proc. 2020-46 to EP Technical. The initiator should prepare a response explaining that the self-certification form is submitted to the financial institution and not the IRS. The response is reviewed and submitted to the group manager for signature.
- (4) No user fee. A taxpayer may request a waiver of the 60-day rollover requirement but has not paid a user fee. The initiator should draft a response that explains the procedures for requesting a waiver and the self-certification option, as appropriate. The response is reviewed and submitted to the group manager for signature.

### 7.1.6.3.2 (09-30-2019) **Drafting 60-Day Waiver Letter Ruling**

- (1) Refer to the IRA pattern letter for rollovers from an IRA, and the plan pattern letter for rollovers from a qualified plan to prepare the letter ruling. The pattern letters can be found in EP Technical's shared folder.
- (2) The pattern letters help the review process and require you to focus on the reason for granting the waiver.

### 7.1.6.3.3 (10-01-2018) **Assemble Case File for Signature and Closing**

- (1) When the case is ready for signature and closing, assemble the case file and send it through the reviewer to the group manager for signature and closing per IRM 7.1.6.2.11.



7.1.6.4

(07-20-2020)

**Roth Recharacterization  
Letter Ruling**

- (1) Taxpayers can't recharacterize the below transactions, under P.L. 115-97, enacted December 22, 2017, made in tax years beginning after December 31, 2017:
  - a. A conversion of a traditional IRA to a Roth IRA.
  - b. A rollover from any other eligible retirement plan to a Roth IRA.

**Note:** A conversion made in the 2017 tax year could have been recharacterized up until the due date (with extensions) for filing the return for the 2017 tax year.
- (2) Recharacterizations of regular contributions to Roth IRAs and traditional IRAs weren't affected by P.L. 115-97. A regular contribution is the annual contribution that an individual makes directly to an IRA.
- (3) EP Technical issues letter rulings granting an extension of time to recharacterize contributions an individual made to a Roth IRA. (See Section 24.01(8) of Rev. Proc. 2024-4 and Section 301.9100 of the Procedure and Administration Regulations). EP Technical:
  - a. Only considers requests for an extension if the conversion or rollover to a Roth IRA occurred before January 1, 2018.
  - b. Considers requests for an extension of time to elect to recharacterize regular contributions to a Roth IRA.

**Note:** EP Technical only considers requests for relief under 301.9100 to recharacterize contributions to a Roth IRA and not contributions to a traditional IRA. See section 24.01(8) of Rev. Proc. 2024-4.
- (4) Applicable law:
  - a. IRC 408A deals with Roth IRAs.
  - b. 26 CFR 1.408A-4 has rules on converting a traditional IRA to a Roth IRA. Conversions and rollovers made after December 31, 2017, cannot be recharacterized.
  - c. 26 CFR 1.408A-5 explains recharacterization of contributions made to traditional IRAs and Roth IRAs.
  - d. 26 CFR 1, 408A-5 does not reflect the changes made by P.L. 115-97.
- (5) A taxpayer may elect to recharacterize an IRA contribution made to one type of IRA as having been made to another type of IRA. (IRC 408A(d)(6) and 26 CFR 1.408A-5).
- (6) A taxpayer must elect to recharacterize before the due date for filing the taxpayer's federal income tax return, plus extensions, for the year of the contribution.

**Reminder:** A taxpayer could have recharacterized a conversion or rollover to a Roth IRA made before January 1, 2018, up until the return due date (with extensions) for the tax year of the conversion or rollover.
- (7) To recharacterize a contribution made to a Roth IRA:
  - a. Taxpayer must notify the Roth IRA trustee of their intent to recharacterize the amount.

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- b. Taxpayer must provide the Roth IRA trustee (and the transferee trustee, if different from the transfer or Roth IRA trustee) with information that is sufficient to effectuate the recharacterization.
  - c. The Roth IRA trustee must make the transfer.
  - d. Net earnings on the contributions being recharacterized must be transferred.
- (8) See the sections of the Procedure and Administration Regulation below:
  - a. Sections 301.9100-1 through -3 govern a taxpayer's ability to make a retroactive election.
  - b. Section 301.9100-2 lists certain elections for which automatic extensions of time to file are granted. These elections are not letter rulings.
  - c. Section 301.9100-3 discusses applications for relief and requests for an extension of time to make a regulatory election. An election to recharacterize a Roth IRA contribution is considered a regulatory election. EP Technical issues letter rulings granting extensions of time to recharacterize Roth IRA contributions.
- (9) IRS grants relief under section 301.9100-3 of the Procedure and Administrative Regulations when the taxpayer provides sufficient evidence to establish that both the:
  - a. Taxpayer acted reasonably and in good faith, and
  - b. The grant of relief will not prejudice the interests of the government.
- (10) A taxpayer is deemed to have acted reasonably and in good faith if they:
  - a. Filed the request for relief before the IRS discovers the failure to make a timely election.
  - b. Inadvertently failed to make the election because of intervening events beyond the taxpayer's control.
  - c. Failed to make the election because, after exercising reasonable diligence, was unaware of the necessity for the election.
  - d. Reasonably relied upon the IRS' written advice, or
  - e. Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.
- (11) Ordinarily, the government's interests are treated as prejudiced and ordinarily the IRS won't grant relief when tax years that would have been affected by the election (had the taxpayer timely made it) are closed by the statute of limitations before the taxpayer receives a ruling granting relief.

### 7.1.6.4.1 (09-30-2019) **Processing Roth Recharacterization Ruling Requests**

- (1) Taxpayers must apply for a Roth recharacterization letter ruling using the letter ruling procedures and paying the user fee as explained in Rev. Proc. 2024-4. The letter ruling procedures in IRM 7.1.6.2 apply to Roth recharacterization requests.

### 7.1.6.4.2 (10-01-2018) **Assemble Case File for Signature and Closing**

- (1) When the case is ready for signature and closing, assemble the case file and send it through the reviewer to the group manager for signature and closing per IRM 7.1.6.2.11.

**7.1.6.5****(09-30-2019)****Technical Assistance–  
Non-Actuarial Requests**

- (1) Other IRS offices and government agencies may request TE/GE's technical assistance on issues within TE/GE's jurisdiction. If a written response is required, EP Technical helps by preparing a technical assistance memo.
- (2) Group administrator: When your group receives a technical assistance request:
  - a. Sign and date the Form 3210.
  - b. Send the form to the requesting office.
  - c. Add the case to the TRAC database.
- (3) Group manager review. Review the case and assign it to an initiator and reviewer.
- (4) Initiator review:
  - a. Review the request to determine whether the requesting office asked for a response by a firm due date.
  - b. Create a Technical Case History Sheet.
  - c. Schedule a Three-Week Meeting with the reviewer.
- (5) Three-Week Meeting. At the Three-Week Meeting, the initiator and reviewer discuss the case, and decide on:
  - a. A preliminary position,
  - b. The need for a Technical Issue Meeting, and,
  - c. The approach to processing the case (research, consultation with Division Counsel, etc.).
- (6) Initiator drafts the technical assistance memo.
  - a. Draft the technical assistance memo - address it to the requesting office, and prepare it for the signature of the Director, EP R&A.
  - b. Add an introductory statement in the memo: "This memorandum is in response to your request dated..."
  - c. List the issues, law, analysis, and conclusion.
  - d. List your contact information in the closing paragraph.
- (7) Initiator prepares the final response.
  - a. After the reviewer approves the draft technical assistance memo for closing, prepare the final version on TE/GE letterhead.
  - b. Send the signature package through the reviewer, group manager, and manager, EP Technical, to the Director, EP R&A, for signature.
  - c. Include attachments, if any.

**7.1.6.5.1****(09-30-2019)****Signature by R&A  
Director**

- (1) Signature. The Director, EP R&A, signs the technical assistance memo.
- (2) Mailing. The R&A Director's office either:
  - a. Dates the signed technical assistance memo, makes a copy, mails the memorandum to the requesting office and returns the copy to EP Technical for closing, or
  - b. Returns the signed technical assistance memo to EP Technical to mail to the requesting office and close the case.

## 7.1 TE/GE Administrative Procedures and Programs

7.1.6.5.2  
(07-20-2020)

### Assemble Technical Assistance File for Closing

- (1) When you're ready to close the technical assistance memo, assemble the case file as follows and send it to your manager for closing:
  - a. TRAC Control Sheet with hours listed separately for the initiator and the reviewer
  - b. Outgoing Correspondence - either:
    1. Copy of the signed and dated Technical Assistance Memo, the original of which the office of the Director, EP R&A mailed.
    2. Original Technical Assistance Memo signed by the Director, EP R&A, for the group to mail (make a copy of the signed and dated technical assistance memo after it is dated and keep in the case file).
    3. Technical Case History Sheet of initiator and reviewer.
    4. Conference Reports (if any).
    5. Incoming Technical Assistance Request.
    6. Miscellaneous Items.
- (2) Make copies of the Technical Assistance Memo for the case file and for:
  - a. The initiator
  - b. The reviewer

7.1.6.5.3  
(10-01-2018)

### Group Manager

- (1) The group manager signs the TRAC Control Sheet and sends the case file to the administrative staff to close and scan for archiving.

7.1.6.5.4  
(07-25-2023)

### Actuarial Assistance

- (1) Other IRS offices and government agencies may request TE/GE's actuarial help on issues within, or outside of TE/GE's jurisdiction. EP Actuarial prepares a technical assistance memorandum to respond to the request.
  - a. All requests for assistance must include a memorandum that presents: the description of the issue(s) and specify exactly where assistance is requested, the background, facts, relevant guidance, completed analysis, and any conclusion reached. Supporting information, including the case file and workpapers, may be requested by EP Actuarial to supplement the memorandum, as appropriate.
  - b. Requests for assistance with an audit will also include the scope of the audit, the name of the enrolled actuary servicing the plan and enrollment number (if known), the taxpayer's name, the plan name, EIN and Plan Number.
  - c. Review the request to determine whether the requesting office has asked for a response by a firm due date.
  - d. Create a Technical Case History Sheet.
  - e. Schedule a Three-Week Meeting with the reviewer if appropriate.
- (2) When EP Technical receives an actuarial assistance request, the actuary notifies the group manager who adds the request to the TRAC database.
- (3) Group manager review. Review the request and assign it to an initiator and reviewer, as appropriate.
- (4) Three-Week Meeting. At the Three-Week Meeting, the initiator and reviewer discuss the case and decide on:

- a. A preliminary position.
- b. The need for a Technical Issue Meeting.
- c. The approach to processing the case.

(5) Assistance response. The initiator drafts the assistance response, as appropriate. Address the response to the individual/office requesting the assistance. The draft response generally contains,

- a. An introduction stating that "This is in response to your request dated...",
- b. The issues, law, analysis, and conclusion, and
- c. A closing paragraph with the initiator's contact information.

(6) Get your group manager's concurrence on unique requests and those having a significant impact.

7.1.6.6  
(07-20-2020)  
**Request for Technical Assistance**

- (1) EP Technical may request technical assistance from another office (such as a TEGEDC referral) for:
  - a. Issues in a letter ruling or assistance request within another office's jurisdiction. EP Technical asks the other office to provide a response to the issue to include in the ruling or assistance memorandum.
  - b. Other cases with unique issues. EP Technical gives TEGEDC a copy of its proposed response and requests TEGEDC's concurrence in the conclusion.

7.1.6.6.1  
(09-30-2019)  
**Preparing a Technical Assistance Request**

- (1) Prepare a technical assistance request for the Director, EP R&A or the Manager, EP Technical, as appropriate.
- (2) Format the technical assistance request:
  - a. Use memo format to briefly summarize the facts and issues that the other office should address.
  - b. If your memo requests TEGEDC's concurrence, also briefly describe EP Technical's finding on the issues and the reasons for the request.
  - c. Attach a copy of the draft ruling, if applicable, and a copy of the relevant portions of the background file.

7.1.6.6.2  
(09-30-2019)  
**Signature and Mailing**

- (1) Signature. Prepare the memo on TE/GE letterhead, send it for the approval of the reviewer, group manager, the Manager, EP Technical and, if applicable, the Director, EP R&A.
- (2) Mailing. After the memo is signed, the Director, EP R&A or the Manager, EP Technical, generally:
  - a. Sends it with a Form 3210 (Document Transmittal, if mailing the request),
  - b. Returns a copy of the signed, dated memo to the initiator. The initiator keeps this memo and the Form 3210 in the case file.
- (3) Scanned copy to TEGEDC. Send an electronic scanned copy of the technical assistance request to TEGEDC and other IRS Counsel as appropriate.

## 7.1 TE/GE Administrative Procedures and Programs

### 7.1.6.7 (11-15-2021) Congressional Correspondence

- (1) Members of Congress often ask the IRS for help in responding to their constituents on tax issues. The Executive Secretariat Correspondence Office (ESCO) receives a letter, controls it on e-Trak (a Service-wide document tracking application) and assigns it a response due date. ESCO then sends the letter to TE/GE for reply.
- (2) EP Technical prepares a response addressed to the member of Congress. Occasionally, the member of Congress asks the IRS to respond directly to the constituent and send a copy of the response to the member of Congress.
- (3) Congressional letters have strict due dates as listed on the e-Trak (ESCO's control card), so you must send the response to the member of Congress by the due date. ESCO sets the due date.

### 7.1.6.7.1 (09-30-2019) Assignment

- (1) Case receipt. The EP Technical e-Trak Coordinator receives Congressional correspondence on e-Trak and follows the steps in paragraphs 2 and 3 below.
- (2) Control Sheet. Create a TRAC control sheet and send the TRAC Control Sheet to an EP Technical Group.
- (3) Email manager. Send an email to the group manager that contains the ESCO case detail results (ESCO's control card), TRAC Control Sheet, and the incoming correspondence.
- (4) Assignment. The group manager then assigns the case to an initiator and forwards it to the initiator for response. Depending on the case, the group manager may also assign a reviewer.
- (5) Privacy. The initiator should confirm that the constituent's privacy release form is included in the file.

### 7.1.6.7.2 (07-20-2020) Letter Style and Format

- (1) In the first paragraph of the response:
  - a. Identify the constituent.
  - b. Summarize the nature of the constituent's inquiry.
- (2) Although the tone of the response should be informative, don't refer to IRC or Treasury regulations unless necessary. However, you may cite the law at the end of a sentence in brackets.

**Example:** The taxpayer or distributee must include amounts distributed from an IRA in their gross income. [IRC 408(d)(1)].

- (3) Prepare the response using active, not passive, language.

**Example:** Write that the taxpayer "received a letter from his employer" rather than "a letter was received from his employer," or his employer "informed him" rather than "he was informed" by his employer.

- (4) Write your response concisely and clearly address the taxpayer's question. At the same time, try not to state a conclusion when explaining the law that is relevant to the taxpayer's inquiry. Answer a Congressional inquiry similar to the way you answer a General Information Letter, calling attention to a well-established interpretation or principle of tax law. (IRM 7.1.6.8).

- (5) Prepare the response using the name and title of the Director, EP in the signature block (although the response is signed by the Technical Group manager on behalf of the Director, EP). For this reason, the proper closing is “Sincerely,” not “Sincerely yours,” which may be used for EP Technical’s other letters.
- (6) Initiator Review Process:
  - a. Prepare the draft. Refine it through each level of review. Submit it for review and approval as follows: the reviewer, if any; the group manager; the technical advisor to the Director, EP; and ESCO.
  - b. Email a copy of the draft and incoming submission to the technical advisor for approval.
  - c. Submit the draft to ESCO at least five business days before the due date.
  - d. Given the due dates for responses to Congressional inquiries, stay actively involved in making sure your proposed response moves smoothly through the chain of review.

7.1.6.7.3  
(07-20-2020)  
**Review by ESCO**

- (1) ESCO reviews proposed responses to Congressional inquiries before IRS issues them.
- (2) When the response is ready for ESCO’s review, email the draft response to: *ExecutiveSecretariatERReview@irs.gov*. Include the following information:
  - a. E-Trak number (in the subject line).
  - b. Draft response letter in Word format.
  - c. Correspondence from the member of Congress.
  - d. ESCO’s control card.
- (3) Occasionally, ESCO asks to review a revised draft after its initial review.

7.1.6.7.4  
(07-20-2020)  
**Obtain Final Signature**

- (1) After ESCO approves a draft letter, prepare the final version with ESCO’s changes on TE/GE letterhead. The initiator and reviewer must ensure that the final draft is accurate technically and grammatically before sending to the group manager. The initiator must specify any additional changes. Send the following documents through the reviewer and group manager for signature on behalf of the Director, EP:
  - a. Outgoing letter for signature and dating.
  - b. Incoming file.
  - c. Most recent draft of response showing ESCO’s revisions.
- (2) Group manager: when you receive a signature package, sign the letter for the Director, EP.

7.1.6.7.5  
(09-30-2019)  
**Case File Assembly**

- (1) Assemble the case file for closing as follows:
  - a. Email or cover sheet to group manager.
  - b. Outgoing correspondence to member of Congress.
  - c. Copy of signed and dated outgoing correspondence for the case file.
  - d. TRAC Control Sheet with the initiator’s and reviewer’s hours listed separately.
  - e. Technical Case History Sheets of initiator and reviewer.
  - f. Email approvals from the technical advisor.



- g. Incoming file.
- h. Miscellaneous items, if any.

(2) Group manager review:

- a. Sign the TRAC Control Sheet and send the case file to the administrative staff for closing and scanning.
- b. Tell initiator to email a copy of the response to the e-Trak coordinator who closes the case on e-Trak and TRAC.

(3) Initiator: Make copies of the signed and dated outgoing correspondence for the case file and the reviewer (which also includes a copy of the completed TRAC control sheet).

(4) Mail or fax the outgoing correspondence to the member of Congress.

(5) Send ESCO a scanned copy of the dated, signed correspondence, ESCO's control card, and the incoming correspondence.

7.1.6.8  
(11-15-2021)  
**Executive  
Correspondence**

(1) In addition to Congressional correspondence (IRM 7.1.6.7), ESCO receives, controls and assigns inquiries from taxpayers that are addressed to federal offices and executives (such as the White House, Treasury Secretary, IRS Commissioner, and Deputy Commissioners, etc.). ESCO forwards the inquiry to TE/GE for reply.

(2) Administrative staff: Where appropriate, add the case to the TRAC database and forward the file to a group manager for assignment.

(3) The file includes ESCO's e-Trak control card, which provides instructions and the due date for the response.

(4) The procedures in IRM 7.1.6.7 generally apply except that:

- a. The draft responses are not typically required to be cleared through ESCO. The initiator should consult the e-Trak control card to determine whether ESCO will review the response.
- b. The response is prepared for signature by the group manager rather than the Director, EP.

(5) Concise response. Be concise and clearly address the taxpayer's question. At the same time, do not draw any conclusions when explaining the law that relates to the taxpayer's facts, as a written response could constitute a ruling without the taxpayer having satisfied the procedural requirements of Rev. Proc. 2024-4.

(6) Where appropriate, include the caveat that the information is not a ruling and can't be relied on or used or cited as precedent.

(7) The draft response is reviewed by the reviewer, the group manager, and the technical advisor to the Director, EP.

(8) After the case is reviewed, the group manager signs and dates the letter. The initiator mails or faxes the letter and prepares the case file for closing and scanning.



7.1.6.9  
(07-20-2020)  
**Non-bank Trustee  
Program**

- (1) Approval. A business entity that is not a bank must receive IRS approval to be a trustee or custodian of certain fiduciary accounts. To receive IRS approval, the entity files an application under Rev. Proc. 2024-4. The application must demonstrate by clear and convincing proof that it meets the requirements of 26 CFR 1.408-2(e)(2) through 26 CFR 1.408-2(e)(5).
- (2) Request for non-bank trustee information. An entity may request information concerning the requirements for non-bank trustees. EP Technical in its discretion may provide information or schedule a pre-submission conference.
- (3) An approved non-bank trustee may handle these fiduciary accounts:
  - a. Archer Medical Savings Accounts.
  - b. Health Savings Accounts.
  - c. Qualified Retirement Plan Accounts.
  - d. 403(b)(7) Custodial Accounts.
  - e. Traditional IRA Accounts.
  - f. Simplified Employee Pension Plans (SEPs).
  - g. Savings Incentive Match Plans for Employees (SIMPLES).
  - h. Roth IRAs.
  - i. Deferred Compensation Plans of State and Local Governments.
  - j. Coverdell Education Savings Accounts.
- (4) Continued regulatory compliance. An approved non-bank trustee must continually comply with the requirements of 26 CFR 1.408-2(e).
- (5) A non-bank trustee must notify the IRS in writing of any change that affects the continuing accuracy of any representations the non-bank trustee made in their application (26 CFR 1.408-2(e)(6)(iv)).
- (6) EP Technical reviews this information and:
  - a. Updates the List of Approved Non-bank Trustees and Custodians and its electronic files.
  - b. Issues an acknowledgment letter in response to a notification of change.

**Note:** The letter states that it doesn't constitute a determination that the entity satisfies or continues to satisfy the requirements of the regulations.
  - c. May ask that the entity submit a new application or pursue revocation if the change clearly and necessarily will cause the entity to fail non-bank trustee requirements.

**Example:** An approved non-bank trustee merges into an entity that is not a bank or an approved non-bank trustee.
- (7) Investigations and revocation. If EP Examinations, in investigating approved non-bank trustees in accordance with the Non-bank Trustee Investigation Procedures Issue Resource Guide, and recommends revocation of non-bank trustee status because the entity can't or won't comply with the regulations, EP Examinations forwards the case to EP Technical for review. If EP Technical agrees, EP Examinations pursues revocation of the non-bank trustee approval per the requirements of 26 CFR 1.408-2(e)(6).

## 7.1 TE/GE Administrative Procedures and Programs

7.1.6.9.1

(07-20-2020)

### **Application for Non-bank Trustee Approval**

- (1) An entity may request IRS approval to become a non-bank trustee by filing an application and paying a user fee under Rev. Proc. 2024-4. To process the request, EP Technical generally follows the procedures for letter rulings in IRM 7.1.6.2 (Three-Week Meetings, 30-Day Letters, conferences, etc.), except that a Notice of Approval or Notice of Disapproval is not published. The procedures for preparing deleted copies, a disclosure package, and Letter 437 do not apply.
- (2) Reviewing non-bank trustee applications. The initiator and reviewer review the non-bank trustee application as follows:
  - a. Acknowledgment Letter. Within one week of receipt, send an acknowledgment letter using Letter 6366 to the applicant and a copy of Letter 6366 and cover letter to the authorized representative.
  - b. Rev. Proc. 2024-4 Requirements. Confirm that the application complies with the procedural requirements in Rev. Proc. 2024-4, Section 26.
  - c. Substantive Requirements. Review the application for compliance with the requirements under 26 CFR 1.408-2(e)(2) through 26 CFR 1.408-2(e)(5). Use the Non-bank Trustee Investigative Procedures Resource Guide, and the Non-bank Trustee Guidelines which contains a checklist for non-bank trustee approvals.
  - d. Thirty-Day Letter or Conference of Right. If the application doesn't contain clear and convincing proof that the non-bank trustee requirements are satisfied as required by Rev. Proc. 2024-4, Section 3.07 take one of the following steps: (i) Send a 30-Day letter, using Letter 6420 or (ii) Schedule a Conference of Right, if requested by the taxpayer.
  - e. The Thirty-Day Letter should note the deficiencies and ask the applicant to submit appropriate information or documentation within 30 days. If the applicant doesn't send the required information or documentation, a letter ruling may be issued and the case may be closed in accordance with Rev. Proc. 2024-4, Section 27.11.
  - f. A Taxpayer's request for an extension of time to respond to the 30-Day Letter or hold a Conference of Right must be submitted in writing. The initiator will send written confirmation that the request is approved or denied.
- (3) Approval letter. Initiator: If EP Technical is satisfied that the applicant has demonstrated compliance with the non-bank trustee regulations, draft a Notice of Approval.
- (4) Assemble case file for signature and closing. Initiator: When you're ready to get the approval signed and close the case, assemble the case file and forward it through the reviewer to the group manager for signature and closing. The case file includes:
  - a. Cover sheet or email to group manager.
  - b. Outgoing correspondence for signature: original approval letter with original cover letter for the authorized representative (if any).
  - c. Administrative documents: TRAC Control Sheet with the initiator's and reviewer's hours listed separately, user fee case input sheet, user fee refund form (if any).
  - d. Case history documents, Technical Case History Sheet (reviewer and initiator), conference reports, memos to the file, and drafts of the Notice of Approval, as appropriate.
  - e. Taxpayer's application.
  - f. Other correspondence.

- g. Miscellaneous items.
- (5) Group manager signature. The group manager signs and dates the TRAC Control Sheet, the User Fee Refund Form (if any), and all outgoing correspondence.
- (6) Initiator. After your manager has signed and dated the Notice of Approval and case file documents:
  - a. Notify EP Examinations of the new approval.
  - b. Send a copy to the EP employee who is responsible for updating the List of Approved Non-bank Trustees. (They will forward the updated list (published quarterly) to Communications and Liaison to post on the TE/GE web page).
  - c. Mail the original Notice of Approval to the approved non-bank trustee, and if applicable, mail a cover letter and copy of the Notice of Approval to the authorized representative.
  - d. Update the electronic non-bank trustee files.
  - e. Prepare copies for the initiator, case file and reviewer. Return the case file to the manager, who sends it to the administrative staff for closing and scanning.
- (7) Notice of Disapproval letter. If the applicant has not demonstrated compliance with the non-bank trustee regulations, the applicant may withdraw the request. If the applicant does not withdraw, draft a Notice of Disapproval and follow the procedures outlined above for issuing a Notice of Approval, as applicable.

7.1.6.9.2  
(07-20-2020)

**Notification of Change in Information**

- (1) A non-bank trustee must notify the IRS in writing of any change that affects the continuing accuracy of any representation they made in the application, whether the change occurs before or after the applicant receives a Notice of Approval. (26 CFR 1.408-2(e)(6)(iv)). EP Examinations may also notify EP Technical by transmitting Form 15250, Non-bank Trustee/Custodian Status Notification. The change could be either:
  - a. A cosmetic change that doesn't adversely affect the entity's status as a non-bank trustee.
  - b. A substantive change, such as a merger or acquisition, which may adversely affect the entity's non-bank trustee status.
- (2) Notification. The non-bank trustee's notification or notice of change should:
  - a. Describe the change.
  - b. State the reason for the change (cosmetic or substantive).
  - c. State that no other representation made in its original application has materially changed.
- (3) IRS Review. The initiator and reviewer review the notice of change. Changes might include:
  - a. Name change.
  - b. Address change.
  - c. Acceptance of non-passive accounts.
  - d. Acceptance of accounts that were not described in the IRS Notice of Approval.
  - e. An acquisition, merger, consolidation, or other type of reorganization.
  - f. Withdrawal of non-bank trustee status.

- (4) IRS Response.
  - a. EP Technical generally acknowledges in writing receipt of the notice of change and informs the entity that the IRS is updating its files.
  - b. The acknowledgment letter states that it isn't a determination that the entity satisfies or continues to satisfy the requirements of 26 CFR 1.408-2(e). So, if the entity's notification of change also includes a request that the IRS determine that the change doesn't adversely affect its non-bank trustee status, EP Technical informs the entity that it should file a non-bank trustee application per Rev. Proc. 2024-4 to receive a determination. If it's clear that the change adversely affects the entity's non-bank trustee status, EP Technical may encourage a new application or pursue revocation.
- (5) Assemble File for Signature and Closing.
  - a. Initiator: When the case is ready for signature and closing, assemble the case file and forward it through the reviewer to your manager for signature and closing.
  - b. Group manager: Sign and date the TRAC Control Sheet and outgoing correspondence. Close the case on TRAC.
  - c. Initiator: Mail the outgoing correspondence, prepare copies, update the electronic file, and send the case file back to the group manager who sends it to the administrative staff for closing and archiving. Inform EP Examinations and the TE/GE employee who is responsible for updating the List of Approved Non-bank Trustees.

7.1.6.9.3  
(07-20-2020)  
**Investigations**

- (1) EP Examinations investigates approved non-bank trustees to ensure they're operating in compliance with the requirements of 26 CFR 1.408-2(e).
- (2) EP Technical offers technical support for investigations and reviews proposed revocations and other investigation cases as requested by EP Examinations.
- (3) EP Examinations may address and resolve deficiencies they find during the investigation process. If EP Examinations believes the issues are serious or can't be resolved, it should send the case to EP Technical, recommending revocation. See Non-bank Trustee Investigation Procedures Issue Resource Guide, for non-bank trustee investigations information.

7.1.6.9.4  
(07-20-2020)  
**Revocation of Non-bank  
Trustee Approval**

- (1) Based on EP Examinations' investigation and recommendation, EP Technical may need to revoke a non-bank trustee's Notice of Approval as a result of facts discovered in an investigation or for other reasons.
  - a. 26 CFR 1.408-2(e)(7)(iv) describes the grounds for revocation.
  - b. 26 CFR 1.408-2(e)(7)(v) provides the procedures to be followed for revoking a non-bank trustee's approval letter.
  - c. Revocation could result in the non-bank trustee fiduciary accounts losing their qualified status. To avoid this outcome, 26 CFR 1.408-2(e)(6)(v) requires that the non-bank trustee name a successor trustee.
- (2) Preliminary Review. Initiator: Review the facts of the case to determine whether the non-bank trustee complies with the requirements of the non-bank trustee regulations.

- a. Discuss the case with the reviewer. If you decide to recommend revocation of the non-bank trustee's Notice of Approval, discuss the case with the group manager.
  - b. If the group manager concurs, draft a "60-Day letter" which proposes to revoke the non-bank trustee's Notice of Approval.
  - c. If you pursue compliance rather than revocation, send a closing letter with deficiencies to the non-bank trustee or custodian and prepare a memo to C&CA. Send the appropriate EP Examinations area manager copies of the memo and the closing letter.
  - d. A non-bank trustee may decide to withdraw its non-bank trustee status rather than have its status revoked.
- (3) Proposed Revocation Letter. Prepare a "60-Day letter" for your manager's signature. For the letter:
- a. Explain the case's key facts and circumstances and explain how the entity failed to satisfy the requirements of the non-bank trustee regulations.
  - b. Notify the non-bank trustee that they may protest the proposed revocation per 26 CFR 1.408-2(e)(7)(v)(B) and request a conference with EP Technical.
  - c. Notify the non-bank trustee that the IRS must receive any protest within 60 calendar days of the date of the 60-day letter.
  - d. Ask your manager to sign and date the letter.
  - e. Fax and mail it with appropriate tracking to the non-bank trustee and authorized representative with a cover letter to the authorized representative.
- (4) Non-bank Trustee Agrees to Revocation. If the non-bank trustee consents to the proposed revocation:
- 1. Initiator: Prepare a letter for the manager's signature. The letter informs the non-bank trustee that it may no longer accept new fiduciary accounts as of the date that it receives the letter. The letter states that the non-bank trustee must:
    - a. Transfer its fiduciary accounts, within a specified time frame (usually 60 days), to a bank or an approved non-bank trustee.
    - b. Inform the IRS of the name of the transferee.
    - c. Inform the IRS of the date the transfer will be complete.
    - d. Provide written evidence that the transferee has agreed to accept its accounts.
    - e. Notify the IRS in writing when the transfer is complete.
  - 2. Group manager: sign and date the letter.
  - 3. Initiator: Call the non-bank trustee or authorized representative and discuss the letter's contents. Fax and mail the letter with appropriate tracking to the non-bank trustee and authorized representative.
- (5) Protest. Initiator and reviewer:
- a. Consider any protest you receive from the non-bank trustee and hold a conference as appropriate.
  - b. After considering all the information, including any information provided at the conference and the post-conference submission, discuss the case with the group manager.

## 7.1 TE/GE Administrative Procedures and Programs

- c. If you and your manager decide that revocation is appropriate, prepare a letter for the group manager's signature. (See IRM 7.1.6.9.4 (4) above).
- (6) Revocation Letter. When the non-bank trustee notifies you in writing that it has transferred fiduciary accounts, prepare a revocation letter for the signature of the Director, EP, and send it through your manager for the Director, EP's signature.
  - a. The revocation letter must reference the non-bank trustee's approval letter, state that the entity no longer meets the regulations' non-bank trustee requirements and notify the entity that the approval letter is revoked.
  - b. When the Director, EP signs the letter, make copies of the signed and dated letter. Fax and mail the letter with appropriate tracking to the non-bank trustee and authorized representative.
- (7) Prepare a memo to C&CA that refers to the investigation, the Notice of Approval, and any notices of change. Summarize the deficiencies and provide the rationale for revocation. Ask your manager to sign and date it. Send it to C&CA.
- (8) Case Assembly and Closing.
  - a. Initiator: Assemble the file for closing, include copies of outgoing correspondence, and send the file to your group manager. Assemble copies for the initiator and the reviewer.
  - b. Group manager: Sign the TRAC Control Sheet.
  - c. Initiator: Send copies of the revocation letter and memo to C&CA, the EP Examinations area manager and the agent who investigated the non-bank trustee, as appropriate.
  - d. Initiator: Notify the agent or tax law specialist who prepares the List of Approved Non-bank Trustees, update the electronic file, and return the closed file to the group manager who sends the case file to the administrative staff for closing.

7.1.6.10  
(10-01-2018)  
**IRA, SEP, SIMPLE  
Opinion Letter Program**

- (1) EP Technical issues opinion letters on the following:
  - a. Traditional IRA accounts and annuities under IRC 408(a) and IRC 408(b).
  - b. Roth IRA accounts (and annuities) under IRC 408A.
  - c. Dual IRA accounts (and annuities) covering traditional IRA and Roth IRA provisions.
  - d. SEP Plans under IRC 408(k).
  - e. SARSEP Plans established prior to January 1, 1997, under IRC 408(k)(6).
  - f. SIMPLE IRAs under IRC 408(p).
  - g. SIMPLE IRA Plans under IRC 408(p).

7.1.6.10.1  
(07-20-2020)  
**Assignment and Final  
Review**

- (1) Receipt of case by MAPICS (Master and Prototype Inventory Control System) administrator: After the case is controlled on TRAC, enter a request for an opinion letter on a prototype IRA, SEP, or SIMPLE into MAPICS, and prepare and send an acknowledgment letter using Letter 6366.
- (2) Group manager: Assigns the case to the initiator and a reviewer.



- (3) Initiator: After reviewing the IRA, SEP or SIMPLE, send the file and draft 30-Day letter, if any, to the reviewer. Use Letter 6420, Request for Information.
- (4) Reviewer: Review the file for legal accuracy and ensure all numerical identifications of annuity contracts and endorsements are accurate.
- (5) Initiator: When the reviewer returns the file with recommendations, incorporate their changes and, if necessary, send the 30-Day Letter to the sponsor and a copy with a cover letter to the authorized representative.
- (6) Review the revised document. Keep the earlier version of the IRA, SEP or SIMPLE in the file when you resubmit it to the reviewer.
- (7) Initiator: Send the file to the reviewer for final approval of additional changes.

7.1.6.10.2  
(09-30-2019)  
**Preparing Case for Closing**

- (1) Initiator: After the reviewer approves an IRA, SEP or SIMPLE, forward to the MAPICS administrator a copy of the unsigned and undated TRAC Control Sheet and a copy of the acknowledgment letter for preparation of the opinion letter.
- (2) MAPICS administrator: Create in MAPICS the opinion letter and forward the letters to the initiator. The letter is automatically signed and dated when created in MAPICS.
- (3) Initiator: Prepare the file for closing and submit the following package to the group manager for closing:
  - a. TRAC Control Sheet.
  - b. Initiator and reviewer hours.
  - c. Technical Case History Sheet of initiator and reviewer.
  - d. Original opinion letter and cover letter for the authorized representative.
  - e. Conference Report(s), if any.
  - f. Copy of 30-Day Letter, if any.
  - g. Taxpayer Documents:
    - Application Form 5306.
    - Associated Documents.
    - Incoming taxpayer correspondence.
    - Power of Attorney Form 2848.
  - h. EP User Fee Case Input Sheet.
  - i. Additional correspondence received while processing.
  - j. Discard all duplicate or unnecessary materials. If you're unsure whether a document is necessary, ask the reviewer.

7.1.6.10.3  
(09-30-2019)  
**Closing a Case**

- (1) Group manager. When receiving a closing package from the initiator:
  - a. Check the original opinion letter and any accompanying cover letter sent to the authorized representative. Inform the initiator that the letters can be mailed.
  - b. Sign and date the TRAC Control Sheet and hours worked by the initiator and reviewer.
  - c. Send the case file to the administrative staff for record retention.

- (2) MAPICS administrator: Close case on TRAC.

7.1.6.11  
(07-20-2020)

#### **Closing Agreements**

- (1) See IRM 7.2.1 for detailed procedures EP closing agreements. This IRM, section 7.1.6.11, highlights some of the key procedures in IRM 7.2.1.
- a. IRS uses closing agreements when there's an advantage in having a case permanently and conclusively closed.
  - b. EP Technical uses closing agreements when we can't satisfactorily resolve cases using other existing and available standard procedures.
  - c. A taxpayer generally requests a closing agreement as a way to resolve a case that can't be resolved by a favorable PLR, but the taxpayer can show it's appropriate to provide relief from adverse tax consequences.
  - d. In some cases, a taxpayer considers a closing agreement to resolve the tax liability.
- (2) See IRM 7.2.1.3 for obtaining approval to pursue a closing agreement.

7.1.6.11.1  
(10-01-2018)

#### **Processing a Request for a Closing Agreement**

- (1) A taxpayer requesting a closing agreement generally submits a draft agreement that the initiator evaluates. If the IRS suggests a closing agreement, the initiator prepares the initial draft.

7.1.6.11.2  
(09-30-2019)

#### **Format for a Draft Closing Agreement**

- (1) Prepare a closing agreement following the pattern language from Exhibit 7.2.1-1. The closing agreement has a heading, an opening paragraph, a series of "Whereas" clauses listing the facts and circumstances, and definitions of terms. (See IRM 7.2.1.4.1, *Preparing the Closing Agreement Document*.)

7.1.6.11.3  
(07-20-2020)

#### **Preparing the Approval Memorandum for the Director**

- (1) Initiator and reviewer: After you prepare a draft closing agreement, route it to the Director, EP R&A, or the Director, EP for approval. Prepare a memo:
- a. State in the introductory paragraph that we are seeking the Director, EP's or the Director, EP R&A's agreement in recommending a closing agreement.
  - b. Present the facts, a summary of the closing agreement, and explain why EP Technical is recommending the closing agreement.
  - c. Leave the signature blocks blank for the group manager, the Manager, EP Technical, the Director, EP R&A and the Director, EP.
  - d. Transmit the memo and the draft closing agreement with an action routing slip.
  - e. Enter the reviewer, the group manager, and the same names that are in the memo's signature block on the action routing slip.

7.1.6.11.4  
(09-30-2019)

#### **Obtaining the Taxpayer's Signature**

- (1) Initiator: After the Director, EP signs the approval memo and returns it:
- a. Prepare three execution copies of the closing agreement.
  - b. Send three copies with a cover letter to the taxpayer or authorized representative.
  - c. Explain that the taxpayer needs to sign all copies of the agreements and return them to the IRS with any sanction due.
  - d. Keep a copy of the cover letter in the case file. (See IRM 7.2.1.5.1, *TE/GE Closing Agreements, Closing Agreements Originating in EP Technical*, for instructions to the taxpayer, and IRM 7.2.1.6 for the procedures to execute closing agreements.)



7.1.6.11.5  
(09-30-2019)

**Obtaining the Director's  
Signature**

- (1) Initiator: When you receive the signed copies of the closing agreement from the taxpayer:
  - a. All payments must be made through the Pay.gov website.
  - b. Prepare another signature package with the three copies of the closing agreement.
  - c. Include the previously signed approval memo as background.
  - d. Transmit the signature package following the procedures in IRM 7.2.1.6.1.

7.1.6.11.6  
(09-30-2019)

**Distribution of Executed  
Copies**

- (1) Initiator: After the Director has executed the three copies of the closing agreement on behalf of the IRS:
  - a. Prepare a cover letter and mail one copy back to the taxpayer.
  - b. Keep a second copy in EP Technical and another copy in the case file to be scanned.
  - c. Send the third copy to the area office with jurisdiction over the taxpayer's plan if the taxpayer is a plan sponsor.
  - d. Prepare and send a fourth copy if the authorized representative requests an executed copy. Keep a copy of the cover letter in the case file.

7.1.6.11.7  
(07-20-2020)

**Assemble Case for  
Closing**

- (1) Initiator: After you send the executed copies, assemble the case file and send the following items to your group manager for closing:
  - a. Routing slip or email listing the case name stating the case is ready for closing and listing the initiator's and reviewer's hours worked.
  - b. TRAC Control Sheet.
  - c. Technical Case History Sheets of the initiator and reviewer.
  - d. Official File Copies.
  - e. Group Reading File Copies.
  - f. Case file, including the Action Routing Sheets, emails, etc., that indicate approval of the agreement and signature.
- (2) Group manager. Sign the TRAC Control Sheet and send the case file to the administrative staff to close and scan.

7.1.6.12  
(09-30-2019)

**Administrative Staff  
Case Closing  
Procedures**

- (1) Confirm the case is ready to close. When the group manager sends a case to you to close, check the following:
  - a. Signatures. Outgoing correspondence must be signed and dated.
  - b. TRAC Control Sheet. The TRAC Control Sheet must list the hours for the initiator and reviewer and be signed by the group manager or reviewer.
  - c. Technical Case History Sheet. Technical Case History Sheets should generally be included for all cases. Letter Rulings and Technical Advice case files must contain Technical Case History Sheets.
  - d. Send the User Fee Refund form, if any, to the TE/GE EO Adjustments Unit in Cincinnati, OH.
  - e. Scan and archive the case file.

## 7.1 TE/GE Administrative Procedures and Programs

### 7.1.6.12.1 (09-30-2019) **Closing Letter Ruling Cases**

- (1) Outgoing letters must be dated.
- (2) Print closing date on TRAC Control Sheet.
- (3) Close case on TRAC. Enter the following data on TRAC:
  - a. Case Closing Date.
  - b. The initiator's hours.
  - c. The reviewer's hours.
  - d. Change status to C1, etc.

### 7.1.6.13 (11-15-2021) **Requests for a Change in Plan Year**

- (1) Rev. Proc. 87-27 provides the standards for automatic approvals for a change in plan year. If the criteria for automatic approval are not met, a taxpayer may request a change in plan year by filing the Form 5308, Request for Change in Plan/Trust Year, with EP Technical. (See also Rev. Proc. 2024-4, Section 24.01(5)).

### 7.1.6.13.1 (11-15-2021) **Assignment and Review**

- (1) After the group manager assigns a request for a change in plan year, the Form 5308, attachments and copy of the Control Sheet are sent to the initiator.
- (2) The initiator:
  - a. Checks to make sure the submission is procedurally complete.
  - b. Reviews the Form 5308 and attachment explaining the requested change.
  - c. Sends the file to the actuarial group for assistance if the case involves an actuarial issue.
- (3) The initiator and actuary or other reviewer discuss the case to determine whether additional information is required.
- (4) The initiator sends a 30-Day Letter, as appropriate, using Letter 6420, Request for Information, to the taxpayer with a copy and cover letter to the authorized representative, if any.
- (5) After consulting with the reviewer or actuary and obtaining any additional information, the initiator recommends whether the request can be approved.
- (6) The initiator, reviewer or actuary, and group manager discuss the final disposition of the case.

### 7.1.6.13.2 (11-15-2021) **Closing the Case**

- (1) The initiator signs the Form 5308, and checks "Approved" or "Denied." The initiator notes the reason for a denial on the Form 5308.
- (2) The initiator sends the Form 5308, which the group manager signs and dates.
- (3) A copy of the signed form is retained in the file and the original is sent to the taxpayer. A cover letter and copy of the signed Form 5308 are also mailed or faxed to the authorized representative.
- (4) The following documents are included in the file:
  - a. The TRAC Control Sheet.
  - b. The signed and dated Form 5308.
  - c. The Technical Case History sheets (initiator and reviewer).
  - d. Any requests for additional information.

- e. Other relevant documents, such as emails and memos.
  - f. The incoming and additional submissions.
- (5) The initiator sends the case file to the group manager with initiator and reviewer hours.
- (6) The group manager signs the Control Sheet with total hours and forwards the case for closing on TRAC and scanning.

