



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

7.11.4

JULY 24, 2024

EFFECTIVE DATE

(07-24-2024)

PURPOSE

- (1) This transmits revised IRM 7.11.4, *Employee Plans Determination Letter Program*, IRC 401(a) and 403(b) Pre-Approved Plans Program.

MATERIAL CHANGES

- (1) Updated this IRM to reflect the changes set forth in Rev. Proc. 2023-37, which outline the procedures for obtaining IRC 401(a) opinion letters for Cycle 4 (or later), as well as IRC 403(b) plan opinion letters for Cycle 3 (or later).
- (2) Updated the definition of “provider” at IRM 7.11.4.1.3 to indicate that, for Cycle 4 IRC 401(a) plans, the 30 Employer-client requirement where multiple plans are submitted is eliminated.
- (3) Updated the Note at IRM 7.11.4.2 (2), and throughout the IRM, to indicate that the IRS will begin accepting opinion letter applications and payments on Pay.gov beginning in mid-2024.
- (4) Updated the IRM throughout for plain language and current revenue procedures.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 7.11.4, dated October 19, 2023.

AUDIENCE

Tax Exempt and Government Entities
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7.11.4

IRC 401(a) and 403(b) Pre-Approved Plans Program

Table of Contents

7.11.4.1 Program Scope and Objectives

7.11.4.1.1 Authority

7.11.4.1.2 Acronyms

7.11.4.1.3 Definitions

7.11.4.2 Submitting a Pre-Approved Plan

7.11.4.2.1 Late Submissions

7.11.4.2.2 Impermissible Plan Types

7.11.4.2.3 Issuance of Opinion Letters

7.11.4.2.4 Expediting the Issuance of Opinion Letters in Certain Instances

7.11.4.2.5 Minor Modification

7.11.4.3 Duties of the Pre-Approved Plans Clerk (Clerk)

7.11.4.3.1 Establishing the Record on TRAC (Clerk)

7.11.4.3.2 Transmitting User Fee to Florence, KY(Clerk)

7.11.4.3.3 Creating an Electronic Case File (Clerk)

7.11.4.3.4 Creating Acknowledgement Letters (Clerk)

7.11.4.3.5 Case Status Updates (Clerk)

7.11.4.3.5.1 First-Level Case Assignment (Clerk)

7.11.4.3.5.2 Second-Level Case Assignment (Clerk)

7.11.4.3.5.3 Case Assigned Both First and Second-Level (Clerk)

7.11.4.3.5.4 Review and Issuance of the Opinion Letter (Clerk)

7.11.4.3.5.5 Case Closing (Clerk)

7.11.4.4 Case Processing Procedures

7.11.4.4.1 First-Level Review Process

7.11.4.4.2 Second-Level Review Process

7.11.4.5 Administrative Procedures

7.11.4.5.1 Prepare all Documents Electronically

7.11.4.5.2 Tracking Sheet

7.11.4.5.3 Monthly Report

7.11.4.5.4 Information Necessary in Electronic Case File

7.11.4.6 Coordinators' Duties

7.11.4.6.1 Assist with Guidance, Forms, LRMs, etc.

7.11.4.6.2 Developing and Conducting Training

7.11.4.6.3 Developing and Updating Desk Guide Procedures and Worksheets

7.11.4.6.4 Assigning Cases to Reviewers

7.11.4.6.5 Assisting with Technical Aspects of Case

-
- 7.11.4.6.6 Discretionary Coordinator Review
 - 7.11.4.6.7 Preliminary Notifications
 - 7.11.4.6.8 Assisting Management & Compliance Planning & Classification
 - 7.11.4.6.9 Providing Technical Assistance to Counsel
 - 7.11.4.6.10 Issuing Opinion Letters
 - 7.11.4.6.11 Verify Correct User Fee Received
 - 7.11.4.6.12 Oversee Pre-Approved Plans Correspondence
 - 7.11.4.6.13 Review Referrals for Plan Language Correction
 - 7.11.4.7 Manager, Pre-Approved Plans Program
 - 7.11.4.8 Processing Plans Involving Special Circumstances
 - 7.11.4.8.1 Withdrawing a Pre-Approved Plan
 - 7.11.4.8.2 Assumption of Sponsorship
 - 7.11.4.8.3 Name and/or Address Changes
 - 7.11.4.8.4 Grossly Deficient Plans and Innovative Plan Designs

Exhibits

- 7.11.4-1 Referral for Pre-Approved Language

7.11.4.1
(09-08-2022)
Program Scope and Objectives

- (1) Purpose: This IRM provides procedures and guidance to employees who process and review Opinion Letter applications from pre-approved plan providers and mass submitters.
- (2) Audience:
 - a. Pre-approved plans program clerk (clerk).
 - b. First and Second-Level Reviewers who work pre-approved plans.
 - c. Pre-approved plans Coordinators (Coordinators).
 - d. Pre-approved plans Program manager.
- (3) Policy Owner: Director, EP
- (4) Program Owner: EP
- (5) Program Goals: The goal of EP Determinations is to ensure that plans comply with the tax laws. We do this by reviewing applications for determination and opinion letters and protecting the public interest by applying the tax law with integrity and fairness to all.
- (6) The IRS adopted the Taxpayer Bill of Rights (TBOR) in June 2014. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3). For additional information about the Taxpayer Bill of Rights, see TBOR and IRM 1.2.1.2.36, Policy Statement 1-236.

7.11.4.1.1
(07-24-2024)
Authority

- (1) The IRC 401(a) pre-approved plans Program is described in Rev. Proc. 2023-37.
 - a. Rev. Proc. 2023-37 clarifies, modifies, and supersedes Rev. Proc. 2017-41 with respect to a Cycle 4 and later IRC 401(a) pre-approved plan.
 - b. Rev. Proc. 2017-41 modifies and supersedes Rev. Proc. 2015-36.
 - c. Rev. Proc. 2015-36 modifies and supersedes Rev. Proc. 2011-49.
 - d. Rev. Proc. 2020-40 and Rev. Proc. 2021-38, both of which modify Rev. Proc. 2016-37, give additional information on this program prior to Cycle 4.
 - e. The program's scope has certain limitations as described in Rev. Proc. 2023-37, section 10.
- (2) The IRC 403(b) pre-approved plans Program is described in Rev. Proc. 2023-37.
 - a. Rev. Proc. 2023-37 clarifies, modifies, and supersedes Rev. Proc. 2021-37 with respect to a Cycle 3 and later IRC 403(b) pre-approved plan.
 - b. IRC 403(b) Program History: Under Rev. Proc. 2013-22 as modified by Rev. Proc. 2014-28, and Rev. Proc. 2015-22, and clarified by Rev. Proc. 2017-18, the IRS established a pre-approved plans program for IRC 403(b) plans and an initial remedial amendment period (RAP) for retroactive correction to January 1, 2010, of plan form defects. This was in response to the formal plan document requirement created by the 2007 final regulations under IRC 403(b). Most opinion and advisory letters were issued on March 31, 2017, to the first cycle of prototype 403(b) plans and volume submitter 403(b) plans respectively. Rev. Proc. 2017-18, as modified by Notice 2020-35, gave employers until June 30, 2020, to adopt a prototype or volume submitter 403(b) plan or otherwise amend

their plan and correct any form defects retroactive to January 1, 2010. Rev. Proc. 2019-39 establishes recurring remedial amend periods (RAPs) for correcting form defects after the expiration of the initial RAP.

- c. Rev. Proc. 2021-37 modifies and supersedes Rev. Proc. 2013-22 and modifies Rev. Proc. 2019-39 (which was also modified by Rev. Proc 2020-40). It sets forth the procedures for the issuance of opinion letters to IRC 403(b) pre-approved plans for the second remedial amendment cycle (Cycle 2) and provides rules for determining when remedial amendment periods expire. It also modifies the procedures for the IRC 403(b) Pre-Approved Program to be similar to procedures applicable to the IRC 401(a) Pre-Approved Program. The on-cycle submission period for the second pre-approved 403(b) plan cycle began on May 2, 2022, and ended on May 1, 2023.

7.11.4.1.2
(09-26-2018)
Acronyms

(1) Acronyms used in this IRM:

Acronym	Term
BPD	Basic Plan Document
DB	Defined Benefit
DC	Defined Contribution
EIN	Employer Identification Number
EP	Employee Plans
IT	Information Technology
LRM	Listing of Required Modifications
POA	Power of Attorney
POD	Post of Duty
RAC	Remedial Amendment/Approval Cycle
RAP	Remedial Amendment Period
TRAC	TE/GE Rulings and Agreements Control System
WebETS	Web-Based Employee Technical Time System

7.11.4.1.3
(07-24-2024)
Definitions

(1) The following table lists several definitions used in this IRM:

Term	Definition
Adoption Agreement	The part of the plan that lists the options an adopting employer may select.

Term	Definition
Basic Plan Document (BPD)	The part of a plan containing all the non-elective provisions applicable to all adopting employers. The basic plan document may not have any options.
Eligible Employer	An employer described in IRC 403(b)(1)(A).
Identical Adopter	Any person with an established place of business in the U.S. that is accessible during every business day who sponsors a plan as a word-for-word identical adopter of a mass submitter, regardless of the number of employers expected to adopt the plan.
Investment Arrangements	<p>A funding arrangement under an IRC 403(b) plan. It may be an annuity contract under Treas. Regs. 1.403(b)-2(b)(2), a custodial account under IRC 403(b)(7), or a Retirement Income Account under IRC 403(b)(9).</p> <p>Note: The Investment Arrangement must be in a document separate from the rest of the plan and must not be submitted. The IRS will not review, and the Opinion Letter will not cover any provisions included in Investment Arrangements.</p>
Mass Submitter	<p>For a 401(a) plan, any person that (1) has an established place of business in the United States where it is accessible during every business day, and, (2) submits Opinion Letter applications on behalf of at least 30 unaffiliated providers, each of which is offering, on a word-for-word identical basis, the same plan document. The mass submitter may also be treated as an unaffiliated provider as well as any providers offering a Flexible Plan. See Rev. Proc. 2017-41, section 4.04.</p> <p>Note: For a 403(b) plan, the requirements are the same except the unaffiliated provider requirement is 15. See Rev. Proc. 2021-37 section 4.14.</p> <p>Note: Beginning for Cycle 4 IRC 401(a) plans, the unaffiliated provider requirement is also lowered to 15. See Rev. Proc. 2023-37, section 4.01.</p>
Minor-Modifier	A minor-modifier is a plan that only has minor changes to an otherwise identical word-for-word mass submitter's pre-approved plan. These plans don't require an in-depth technical review.
Opinion Letter	For a 401(a) plan, a written statement issued by the IRS to a provider or mass submitter as to the qualification in form of a plan under IRC 401, IRC 403(a), IRC 409 and IRC 4975(e)(7). For a 403(b) plan, a written statement issued by the IRS to a provider or mass submitter that the form of a 403(b) pre-approved plan satisfies the 403(b) requirements.

Term	Definition
Pre-Approved Plan	<p>It may be an Adoption Agreement Plan or a Single Plan Document.</p> <p>An Adoption Agreement Plan consists of a Basic Plan Document and an Adoption Agreement.</p> <p>The Single Plan Document consists of a single plan document offered by a provider without an adoption agreement.</p>
Provider	<p>For IRC 401(a) plans, any person (including, if applicable, a mass submitter) that, (1) has an established place of business in the United States where it is accessible during every business day, and, (2) represents to the IRS in its application for an Opinion Letter that it has at least 15 employer-clients, each of which is reasonably expected to adopt the same pre-approved plan of the provider. A provider may request an Opinion Letter for more than one plan provided it represents to the IRS that it has at least 30 employer-clients in the aggregate, each of which is reasonably expected to adopt at least one of the provider's plans. For Cycle 4 IRC 401(a) plans, the 30 Employer-client requirement where multiple plans are submitted is eliminated. See Rev. Proc. 2023-37 section 4.01.</p> <p>For IRC 403(b) plans, any person (including, if applicable, a mass submitter) that (1) has an established place of business in the United States where it is accessible during every business day and, (2) represents to the IRS in its application for an Opinion Letter that it has at least 15 Eligible Employers, each of which is reasonably expected to adopt one of the pre-approved plans of the provider. Notwithstanding the preceding sentence, a person that is otherwise eligible to be a provider generally may apply for an Opinion Letter for a plan that is intended to be a Retirement Income Account without satisfying the 15 Eligible Employer requirement with respect to that plan. However, if that person also applies for an Opinion Letter with respect to a IRC 403(b) pre-approved plan that is not a Retirement Income Account, the person would need to meet the 15-Eligible-Employer requirement for the plan that is not a Retirement Income Account. Beginning with Cycle 3, this definition is changed to reference "Employer-clients" instead of "Eligible Employers" in order to more closely match the rules of the IRC 401(a) plans. See Rev. Proc. 2023-37 section 4.01.</p>

Term	Definition
Remedial Amendment/Approval Cycle (RAC)	Rev. Proc. 2005-66, as modified and superseded by Rev. Proc. 2007-44, as clarified, modified, and superseded by Rev. Proc. 2016-37, as clarified, modified, and superseded by Rev. Proc. 2023-37, established a system of cyclical remedial amendment periods under IRC 401(b) for IRC 401(a) plans. Rev. Proc. 2013-22 as modified by Rev. Proc. 2014-28, and Rev. Proc. 2015-22, and clarified by Rev. Proc. 2017-18, and further modified by Rev. Proc. 2019-39, and later modified and superseded by Rev. Proc. 2021-37, and later modified and superseded by Rev. Proc. 2023-37 established a system of cyclical remedial amendment periods for 403(b) plans. Under this system, pre-approved plans have a RAC. The cycles stagger the submission of Opinion Letter applications so that defined benefit, defined contribution, and IRC 403(b) plans are submitted at different times.
Trust or Custodial Account Document	The separate portion of an IRC 401(a) plan that contains the trust agreement or custodial account agreement and includes provisions covering matters such as the powers and duties of trustees, investment authority and the kinds of investments that the plan sponsor may make. Note: The trust agreement or custodial account agreement must be in a document separate from the rest of the plan. Copies of trusts or other funding mediums must not be submitted. The IRS will not review, and the Opinion Letter will not cover, any provisions included in trust documents.

7.11.4.2
(07-24-2024)
**Submitting a
Pre-Approved Plan**

- (1) Pre-approved plan providers and mass submitters submit Opinion Letter requests on:
 - a. Form 4461, *Application for Approval of Standardized or Nonstandardized Pre-Approved Defined Contribution Plans*.
 - b. Form 4461-A, *Application for Approval of Standardized or Nonstandardized Pre-Approved Defined Benefit Plan*.
 - c. Form 4461-B, *Application for Approval of Standardized or Nonstandardized Pre-Approved Plans (Mass Submitter Adopting Provider)*.
 - d. Form 4461-C, *Application for Approval of Standardized or Nonstandardized 403(b) Pre-Approved Plans*.
- (2) Pre-approved plan providers and mass submitters mail applications to the EP Determinations pre-approved plans program at:

7.11 Employee Plans Determination Letter Program

Mailing Address	Express Mail or a delivery service
Internal Revenue Service P.O. Box 2508 Cincinnati, OH 45201 Attn: Pre-Approved Plans Coordinator Room 6-403, Group 7521	Internal Revenue Service 550 Main Street Cincinnati, OH 45202 Attn: Pre-Approved Plans Coordinator Room 6-403, Group 7521

Note: The IRS will begin accepting applications on Pay.gov beginning in mid-2024. There may be a transition period where the IRS will accept applications by mail or Pay.gov.

- (3) Pre-approved plans have a recurring Remedial Amendment Cycle (RAC) as explained in Rev. Proc. 2016-37, Section 14 and Rev. Proc. 2023-37, Section 5 for IRC 401(a) plans and Rev. Proc. 2019-39, Section 10, Rev. Proc. 2021-37, and Rev. Proc. 2023-37, Section 5 for IRC 403(b) plans. Providers may apply for new opinion letters for each cycle. The IRS reviews the plans for compliance with IRC 401(a) or IRC 403(b) during the middle of each RAC. The period given to providers and mass submitters to submit pre-approved plans for a particular RAC will be announced by the IRS and will normally be a one-year period. The IRS may, when necessary, announce appropriate adjustments to the start and/or end dates to a cycle, as well as any relevant time frames occurring within that cycle.
- (4) Pre-approved plan Opinion Letter applications must include:
 - a. Applicable user fee per Rev. Proc. 2024-4, Appendix A, as adjusted annually.
 - b. Form 8717-A, *User Fee for Employee Plan Opinion Letter Request* (unless Pay.gov was used).
 - c. Form 2848, *Power of Attorney and Declaration of Representation*, if applicable.
 - d. Application form (the applicable Form 4461).
 - e. Cover letter.
 - f. Plan document.
 - g. Adoption Agreement, if applicable.
 - h. Certification Regarding Interim Amendments.

Note: If the pre-approved plan provider or mass submitter does not submit their application using Pay.gov, they are encouraged to submit items “c” through “h” on a thumb or flash drive in lieu of paper documents. **The thumb or flash drive provided by the taxpayer shall be handled with the security controls set out in IRM 10.8.1.3.10.6(4).**

7.11.4.2.1
(07-24-2024)

Late Submissions

- (1) Pre-approved providers or mass submitters with valid opinion/advisory letters from the immediately preceding cycle are expected to submit applications for each RAC on time. The same is true for a new provider or mass submitter unless they didn't exist during the general deadline to file.

- (2) If providers or mass submitters don't submit by the scheduled due date, it could result in a delay in processing the application and issuing a favorable letter.
- (3) An employer adopting a late-submitted pre-approved plan could have less than the normal two-year adoption period. See Rev. Proc. 2017-41, Section 11, and Rev. Proc. 2016-37, Section 21, for more details on Cycle 3 IRC 401(a) off-cycle submissions and Rev. Proc. 2021-37, Section 12 for Cycle 2 IRC 403(b) off-cycle submissions. The off-cycle rules remain the same but are consolidated in Rev. Proc. 2023-37, Section 16 for Cycle 4 and later IRC 401(a) plans and Cycle 3 and later for IRC 403(b) plans.
- (4) Once the two-year period starts for employers to adopt and possibly submit determination letter applications for a particular RAC, the pre-approved plans Program doesn't accept late submissions except for word-for-word Identical Adopter plan applications described in Rev. Proc. 2017-41, Section 11, Rev. Proc. 2021-37, Section 12, and Rev. Proc. 2023-37, Section 16.

7.11.4.2.2
(07-24-2024)
Impermissible Plan Types

- (1) There are certain situations for which the IRS won't issue opinion letters. For Cycle 3 IRC 401(a) plans, see Rev. Proc. 2017-41, Section 6.03. For Cycle 2 IRC 403(b) plans, see Rev. Proc. 2021-37, Section 6.03. For future cycles (Cycle 4 and later IRC 401(a) plans and Cycle 3 and later IRC 403(b) plans), see Rev. Proc. 2023-37, Section 10.

7.11.4.2.3
(09-26-2018)
Issuance of Opinion Letters

- (1) The IRS:
 - a. Issues all opinion letters at the same time for pre-approved providers and mass submitters who file their plans timely.
 - b. Publishes a uniform 2-year timeframe in an announcement during which adopting employers must adopt the newly approved plans.

7.11.4.2.4
(07-24-2024)
Expediting the Issuance of Opinion Letters in Certain Instances

- (1) If a provider or mass submitter wishes to expedite the issuance of an Opinion Letter for the situations described in IRM 7.11.4.8.2, *Assumption of Sponsorship* or IRM 7.11.4.2.1 (4), *Late Submissions*, they should submit user fees by a cashier's check or certified check made payable to the United States Treasury. Paying the user fee with a business or personal check will delay the IRS issuing the letter by approximately four to six weeks.

Note: The IRS will begin accepting payments on Pay.gov beginning in mid-2024. There may be a transition period where the IRS will accept payments by a cashier's check, certified check, and/or Pay.gov.

7.11.4.2.5
(07-24-2024)
Minor Modification

- (1) A Minor-Modifier is a plan that only has minor changes to an otherwise identical word-for-word mass submitter's pre-approved plan. These plans don't require an in-depth technical review.
- (2) For Minor-Modifier plans: The mass submitter submits the Form 4461-B for 401(a) plans or the Form 4461-C for 403(b) plans. When the mass submitter plan receives its preliminary notification (see IRM 7.11.4.6.7, *Preliminary Notifications*), they prepare a plan document for each Minor-Modifier application and submit them to the IRS within 21 calendar days. For Cycle 3 IRC 401(a) plans, the mass submitter follows the directions in Rev. Proc. 2017-41, Section 10.03(2). For Cycle 2 IRC 403(b) plans, the mass submitter follows the direc-

7.11 Employee Plans Determination Letter Program

tions in Rev. Proc. 2021-37, Section 11.03(2). For future cycles (Cycle 4 and later IRC 401(a) plans and Cycle 3 and later IRC 403(b) plans), see Rev. Proc. 2023-37, Section 15.03(2).

- (3) Minor-Modifier applications are generally assigned to the first-level reviewer who reviewed the mass submitter lead plan.
- (4) The first-level reviewer only reviews the changes that differ from the lead plan. If the reviewer determines the changes aren't minor, he/she stops reviewing and offers the applicant the opportunity to file as a provider (i.e., non-mass submitter).
- (5) Typically, the Minor-Modifiers don't go through the second or discretionary Coordinator review process.

7.11.4.3 (03-23-2016) **Duties of the Pre-Approved Plans Clerk (Clerk)**

- (1) The pre-approved plans Program clerk helps manage the case flow.
- (2) Clerk duties include:
 - a. Establishing inventory records.
 - b. Transmitting the user fee.
 - c. Creating an electronic case file.
 - d. Updating case status.

7.11.4.3.1 (09-26-2018) **Establishing the Record on TRAC (Clerk)**

- (1) As soon as you receive the application, create a record of it on the TE/GE Rulings and Agreements Control System (TRAC). Enter the following information into the system:
 - a. Provider or mass submitter name and address.
 - b. Employer Identification Number (EIN).
 - c. Applicable user fee year.
 - d. Fee type.
 - e. Check information.
 - f. Special comments, if any.
 - g. Plan name, plan number, plan form, plan type, mass submitter status, law code, and filing status.
 - h. Power of attorney (POA) information, if any.
 - i. Control date.

7.11.4.3.2 (07-24-2024) **Transmitting User Fee to Florence, KY(Clerk)**

- (1) The IRS will begin accepting payments on Pay.gov beginning in mid-2024. There may be a transition period where the IRS will accept payments by a check, cashier's check, certified check, and/or Pay.gov.
- (2) The IRS will create procedures for payments on Pay.gov prior to the date that payments are accepted. For user fees that are paid by a check, cashier's check, or certified check, complete the following procedures.
- (3) Print the TRAC user fee screen and make one copy of each check.
- (4) Prepare a Form 3210, Document Transmittal listing:
 - a. The number of checks, if more than one.
 - b. Each check number and corresponding EIN.
- (5) Create four copies of each Form 3210.

- (6) Attach the actual checks and copies of the TRAC user fee screens to copies one and three of the Form 3210 and put this package into an envelope and seal it.
- (7) Put the sealed envelope into an USPS mailing envelope along with a completed Form 9814 and mail it to Florence, KY to process and deposit the checks:

Internal Revenue Service
 7940 Kentucky Drive
 Attn: TEGE Campus Support Stop 31A
 Team Number AW 105
 Florence, KY 41042

- (8) When Florence, KY returns the Forms 3210, put them in the user fee master file binder.
- (9) Put copies two and four of the Form 3210, along with copies of checks, into the user fee master file binder kept by the Coordinators in Cincinnati.
- (10) Put copies of the check and the TRAC user fee screen in the applicable pre-approved plan paper case file with the banking information sanitized.
- (11) Don't hold checks unprocessed for more than three business days.

7.11.4.3.3
 (09-08-2022)
**Creating an Electronic
 Case File (Clerk)**

- (1) Once the TRAC record and case number are created and the user fee is transmitted, the clerk creates an electronic case file. The clerk scans the paper Opinion Letter submission and adds the PDF to the shared folder designated for storage of all the electronic case files. If the pre-approved plan provider or mass submitter used a flash or thumb drive for the submission or submitted the application using Pay.gov, simply transfer or copy the documents to the shared folder.

Reminder: The thumb or flash drive provided by the taxpayer shall be handled with the security controls set out in IRM 10.8.1.3.10.6(4).

- (2) The case is now ready for assignment to a first-level reviewer.
- (3) Place each paper Opinion Letter submission in its own folder and keep in the pre-approved plans Program storage room until determined to be purgeable. Keep flash or thumb drives in the folder with the paper documents.

7.11.4.3.4
 (10-19-2021)
**Creating
 Acknowledgement
 Letters (Clerk)**

- (1) After cases are added to TRAC, print and mail acknowledgement letter 6366 to the providers and mass submitters to notify them that we received their initial submission. The acknowledgment letters may be printed either on a singular basis or in a bulk run based on the input date in the TRAC system.

7.11.4.3.5
 (11-06-2019)
**Case Status Updates
 (Clerk)**

- (1) Update the status code of the TRAC record for the assignment/transfer of pre-approved plan cases to reviewers and/or Coordinators when necessary.

7.11 Employee Plans Determination Letter Program

- 7.11.4.3.5.1
(11-06-2019)
First-Level Case Assignment (Clerk)
- (1) When the Coordinators notify the clerk that a case is being assigned to a first-level reviewer, the first-level reviewer should access the assigned electronic case file in the designated shared folder, the clerk will update the case record in TRAC indicating the first-level reviewer's TRAC I.D. number and the "first-level review" status code. The clerk will then email the Coordinators and the first-level reviewer letting them know that TRAC was updated.
- 7.11.4.3.5.2
(09-08-2022)
Second-Level Case Assignment (Clerk)
- (1) When a first-level reviewer emails you that a case is ready for second-level assignment, update the case record in TRAC to the "awaiting assignment for second-level review" status code.
 - (2) When the Coordinators notify you that a case is being assigned to a second-level reviewer and that the reviewer should access the assigned electronic case file in the designated shared folder, update the case record in TRAC indicating the second-level reviewer's TRAC I.D. number and the "assigned to second-level reviewer" status code. Then email the Coordinators and the second-level reviewer letting them know you updated TRAC.
- 7.11.4.3.5.3
(11-06-2019)
Case Assigned Both First and Second-Level (Clerk)
- (1) Once an electronic case file is assigned to both a first-level reviewer and a second-level reviewer, it isn't returned to the Coordinators until their reviews are complete. Whenever the two reviewers need to exchange the electronic case, they should notify the clerk in an email.
 - (2) Update the case record on TRAC to reflect the change in the current reviewer's TRAC I.D. number and indicate first or second-level review status.
- 7.11.4.3.5.4
(09-08-2022)
Review and Issuance of the Opinion Letter (Clerk)
- (1) After both reviewers complete their reviews, the second-level reviewer emails the clerk indicating the case is ready for discretionary final review and eventual issuance of the Opinion Letter.
 - (2) Once the Coordinators receive each reviewer's final Form 5464, *Case Chronology Record* (CCR) electronically, one of the Coordinators emails the clerk the total case hours (first and second-level reviewer) to input into TRAC. Update the case on TRAC to show the case is in discretionary final review status and put it in the Coordinator's TRAC I.D. number.
 - (3) See IRM 7.11.4.6.10 regarding the issuance of opinion letters.
- 7.11.4.3.5.5
(09-08-2022)
Case Closing (Clerk)
- (1) After the Coordinators do a discretionary final review and have sent a notification giving preliminary approval (see IRM 7.11.4.6.7, Preliminary Notifications), update the case in TRAC:
 - a. Change the status code to show that the discretionary final review is completed.
 - b. Enter the preliminary notification date.
- 7.11.4.4
(09-08-2022)
Case Processing Procedures
- (1) Management-selected Determinations specialists work Applications for pre-approved plans.
 - a. Generally, only grade 12 and 13 EP specialists from EP Determinations are selected.
 - b. All lead plans go through a first-level of review with a specialist and then a second-level of review with another specialist.

- c. All grade 12 specialists work as first-level reviewers and all grade 13 specialists perform first or second-level review at the direction of the pre-approved plans Program manager.
- (2) To ensure consistency, all of a provider's or mass submitter's lead plans are assigned to one reviewer.
- (3) The first and second-level reviewers email the Coordinators and their group manager when they need work. The Coordinators assign all work electronically.

7.11.4.4.1
(09-08-2022)
**First-Level Review
Process**

- (1) First-Level Reviewer: When the Coordinators notify you of a case assignment, access the electronic case file in the designated shared folder. Complete the following as part of your initial review:
 - a. Update the time sheet (WebETS) and the pre-approved plans monthly report (See IRM 7.11.4.5.3, *Monthly Report*).
 - b. Prepare an electronic case assignment letter (see the Pre-Approved folder on the shared server for a template) and send (fax, mail, or email) it to the provider or mass submitter. Include your name and contact information on the letter. Complete an electronic Form 5464, *Case Chronology Record* (CCR). Complete one Form 5464 for each case file. Include your name on the form and enter **assigned for the first-level review** as the first entry under the section **Topics Discussed, Information Requested or Other Action Taken**. If more than one page, number each page accordingly, or include the year in the first date entry of each page. Don't upload the CCR to the electronic case file stored in the designated shared folder.
 - c. Complete your review using the applicable Cumulative List and Listing of Required Modifications (LRMs). Your review must include: Form 4461 series application, the cover letter, any plan documents, and adoption agreements. Complete the applicable Alert Guidelines Workbook when the plan doesn't follow the LRM.
 - d. When you complete all case files for a provider or mass submitter, prepare an electronic draft Letter 6448 to request any additional information. Explain each change request or comment and cite the appropriate legal authority.
 - e. Update the electronic tracking sheet to show that the case(s) are ready for second-level assignment and upload it along with the draft Letter 6448, the case assignment letter and your completed worksheets to the electronic case file on the designated shared folder. Email the clerk and Coordinators with the case name(s) and the TRAC case number(s) to notify them of case movement.
- (2) Clerk: Update the case record in TRAC for the proper status code.
- (3) Second-level reviewer: Begin your review of the case(s) per IRM 7.11.4.4.2, *Second-Level Review Process*. When you're finished, upload your comments to the electronic case file stored on the designated shared folder and email the clerk and first-level reviewer that you've completed your review. The TRAC case number(s) should be included in the email.
- (4) First-level reviewer: When the second-level reviewer notifies you of their completed review:
 - a. Review their comments in the electronic case file and incorporate them into the draft 6448 letter as appropriate.

7.11 Employee Plans Determination Letter Program

- b. Discuss any disagreements or questions about the comments with the second-level reviewer by phone or email.
- c. Once you resolve all questions and/or comments, finalize the Letter 6448 and send (fax, mail, or email) it to the mass submitter/provider with a 30-day response time. You may grant an extension of the response time, but typically not more than an additional 24 days.
- d. Continue to work the case until the plan is perfected (ready to close). If necessary, send (fax, mail, or email) a 1955 letter to request additional items after the initial request. Limit the response date in the 1955 letter to 14 days or less as needed.
- e. Contact the Coordinators if no response is received or if you receive a mostly incomplete response after you send a 6448 or 1955 letter. The Coordinators may decide that a 6535 letter should be sent (certified mail) with a response due date of 10 days. If there still isn't a sufficient response, return the case to the Coordinators who will close the application as incomplete.
- f. When the plan is perfected, secure a final clean copy of the plan document and adoption agreement (if applicable). Mark as "Final" with the date received (e.g. FINAL BPD xx-xx-xxxx).
- g. Upload the final clean copy of the plan, all 6448/1955/6535 letters, all provider response letters, and, if applicable, an explanation why you did not secure certain amendments, to the electronic case file stored on the designated shared folder.
- h. Update the electronic tracking sheet to show you're sending the case(s) for final second-level review and email the clerk, Coordinators, and the second-level reviewer with the case name(s) and the TRAC case number(s) to notify them of case movement.

7.11.4.4.2
(09-08-2022)

Second-Level Review Process

- (1) When the Coordinators notify you of a case assignment, access the electronic case file in the designated shared folder, and complete the following as part of your initial review:
 - a. Update the time sheet (WebETS) and the pre-approved plans monthly report (See IRM 7.11.4.5.3, Monthly Report).
 - b. Prepare an electronic case assignment letter (see the Pre-Approved folder on the shared server for a template) and send (fax, mail or email) it to the provider or mass submitter. Include your name and contact information on the letter.
 - c. Complete an electronic Form 5464, *Case Chronology Record*, for each case file. Your Form 5464 should be separate from the first-level reviewer's Form 5464. Include your name on the form and under the section "Topics Discussed, Information Requested or Other Action Taken," enter "assigned for second-level review" as the first entry. If more than one page, number each page accordingly, or include the year in the first date entry of each page. **Don't upload the CCR to the case file stored in the designated shared folder.**
 - d. Include in your review the same items reviewed at the first-level and the items listed on the draft 6448 letter.
 - e. When you complete your review, prepare a summary of any additional amendments needed, clarifications, and/or comments. Explain each change request or comment and cite the appropriate authority. In your comments, distinguish between items that are required and items that are suggestions.

- f. Upload your second-level review comments and the case assignment letter to the electronic case file in the designated shared folder.
 - g. Email the clerk, the Coordinator, and the first-level reviewer informing them you're returning the case to first-level reviewer and include the plans' names and the TRAC case number(s).
 - (2) First-level reviewer: Complete your review of the case(s) per IRM 7.11.4.4.1 (4) and return the case(s) to the second-level reviewer.
 - (3) Second-level reviewer: When you receive the case file from the first-level reviewer for a final second-level review:
 - a. Compare the final version of the plan with the 6448, 1955 and/or 6535 letters.
 - b. If you determine that the plan needs additional amendments, prepare a typed list of comments and discuss with the first-level reviewer. If you both agree changes are still needed, generally the second-level reviewer secures the remaining changes.
 - c. If you determine the plan is finished and ready for approval:
 1. Upload any final changes and associated material secured to the electronic case file in the designated shared folder.
 2. Email the clerk, first-level reviewer, and Coordinators stating the case file is ready for a discretionary final review (see IRM 7.11.4.6.6, Discretionary Coordinator Review).
 3. Send (fax, mail, or email) the "Completed Review (moving to 3rd) Letter" to the provider to inform them that the case has moved to discretionary final review.
 4. A copy of this letter should be uploaded to the electronic case file in the designated shared folder.
 5. At this point, the first and second-level reviewers should update the tracking sheet to add their time and to show that the case is being closed to the coordinators and email it and their completed CCRs to their group manager, the manager of the pre-approved plans program, and the Coordinators.

7.11.4.5
(10-19-2021)
**Administrative
Procedures**

- (1) Pre-Approved Plans reviewers also follow these miscellaneous administrative procedures:
 - a. All documents must be prepared electronically.
 - b. Tracking sheet.
 - c. Monthly report.
 - d. Case file assembly.

7.11.4.5.1
(10-19-2021)
**Prepare all Documents
Electronically**

- (1) All Pre-Approved Plan case files are scanned into the computer system and worked electronically. Prepare all forms, letters, Alert Guidelines, and any supporting notes electronically and upload them into the case file in the designated shared folder.

7.11.4.5.2
(04-04-2012)
Tracking Sheet

- (1) The electronic tracking sheet is used to show the movement dates of the case between the first and second-level reviewers.

7.11 Employee Plans Determination Letter Program

7.11.4.5.3 (09-08-2022) Monthly Report

- (1) At the end of each WebETS cycle, reviewers email a case status report to the:
 - a. Coordinators.
 - b. Manager of the pre-approved plans Program.
 - c. Group manager of the reviewer.
 - d. Applicable tax examiners.
- (2) Include on the monthly report:
 - a. Whether the case is assigned as a first or second-level review.
 - b. Case name.
 - c. Form of plan (for example, AA (adoption agreement) or SD (single document)).
 - d. Date of assignment.
 - e. Comments on the status of the case.
 - f. Date of last contact with the provider or mass submitter.
 - g. Number of hours on the case to date.
 - h. Estimated date of completion (agreed upon between the first and second-level reviewers).
 - i. Name of other reviewer (first or second-level) assigned to the case.

7.11.4.5.4 (09-26-2018) Information Necessary in Electronic Case File

- (1) When first and second-level review is complete, ensure the case file includes the following documents, **not** necessarily in this order:
 - a. Pre-Approved Plan Tracking Sheet.
 - b. Certification Regarding Interim Good Faith Amendments.
 - c. All worksheets completed.
 - d. Form 8717-A, *User Fee for Employer Plan Opinion Letter Request* (unless Pay.gov was used).
 - e. Form 2848, *Power of Attorney and Declaration of Representation* (if applicable).
 - f. Copy of last opinion or advisory letter (if applicable).
 - g. Copy of application (form 4461 series, if applicable).
 - h. Copies of all correspondence labelled with the date that they were sent/received.
 - i. Final clean copy of Adoption Agreement (if applicable).
 - j. Final clean copy of Plan Document.

Note: Name each file according to its contents, for example, Final Plan Document, and date received (XYZ LAW FIRM FINAL PLAN DOCUMENT 10/09/2019).

7.11.4.6 (10-19-2021) Coordinators' Duties

- (1) Reviewers may contact the pre-approved plans Coordinators with questions.
- (2) The Coordinators' duties include:
 - a. Assisting with the development of guidance, forms, LRMs, etc.
 - b. Developing and conducting training.
 - c. Developing and updating Desk Guide Procedures and Worksheets.
 - d. Assigning cases to reviewers.
 - e. Helping with the technical aspects of a case.
 - f. Conducting the discretionary final review.
 - g. Sending preliminary notifications.
 - h. Helping management and Compliance, Planning & Classification as needed.

- i. Providing technical assistance to Counsel, as needed.
- j. Issuing opinion letters.
- k. Verifying the correct user fees received.
- l. Determining grossly deficient plans and innovative plan designs.
- m. Overseeing pre-approved plans correspondence.

7.11.4.6.1
(10-19-2021)
**Assist with Guidance,
Forms, LRMs, etc.**

- (1) The Coordinators provide aid to multiple business units to help update and publish guidance, forms, etc. for each pre-approved RAC. Some of the assistance that they provide include helping:
 - a. The Technical Advisor and Counsel to publish the Cumulative List and other guidance relating to the opening and closing of each RAC.
 - b. To update the Form 4461 series on Pay.gov.
 - c. EP Technical update the applicable LRM.
 - d. The Office of Taxpayer Correspondence and Counsel approve the content of the Opinion Letter.
 - e. Information Technology (IT) programmers to ensure that TRAC is updated for each RAC.
 - f. Write newsletters, hold provider conference calls, and update the IRM/IRS.gov site to keep the public informed of changes to the program.

7.11.4.6.2
(01-21-2015)
**Developing and
Conducting Training**

- (1) Pre-approved plans submitted for each cycle must satisfy the Cumulative List of Qualification Changes for that particular cycle.
- (2) To ensure a quality and consistent review, the reviewers receive training for each new cycle. The training enables the reviewers to understand:
 - a. What's expected of them.
 - b. The statutory and regulatory changes the pre-approved plans must satisfy.
- (3) During training, reviewers also receive plan document review tools the Coordinators developed.

7.11.4.6.3
(10-19-2021)
**Developing and
Updating Desk Guide
Procedures and
Worksheets**

- (1) The Coordinators develop and update the procedures and worksheets that the specialists use to review plan documents.
- (2) Worksheets should start being prepared nine months before the review period for a cycle.

7.11.4.6.4
(01-21-2015)
**Assigning Cases to
Reviewers**

- (1) Reviewers email the Coordinators and their group manager when they need work. The Coordinators assign cases to the first and second-level reviewers. The Coordinators select the cases from the unassigned inventory and send a list to the reviewer, and clerk, who updates TRAC.

7.11.4.6.5
(01-21-2015)
**Assisting with Technical
Aspects of Case**

- (1) The Coordinators give technical guidance, present in TEAMS sessions, and help to resolve new and emerging issues.

7.11 Employee Plans Determination Letter Program

7.11.4.6.6 (03-23-2016) **Discretionary Coordinator Review**

- (1) The Coordinators (or one of their delegates) at their discretion do a final review of pre-approved plan applications after the first and second-level reviewers agree that an application has been perfected.
- (2) The purpose of the final review is to ensure certain key issues were addressed and consistently applied.
- (3) After they complete the final review, the Coordinators either:
 - a. Issue a preliminary notification. See IRM 7.11.4.6.7, *Preliminary Notifications*.
 - b. Return the case electronically to the first or second-level reviewer for further development.
 - c. Secure additional information/amendments from the provider or mass submitter.
- (4) If the Coordinator secures additional changes, they are uploaded to the electronic case file in the designated shared folder.

7.11.4.6.7 (03-23-2016) **Preliminary Notifications**

- (1) A preliminary notification is a notice Coordinators send to the provider or mass submitter to inform them that the IRS has completed its review of their pre-approved plan.
- (2) The preliminary notification only informs the provider/mass submitter that the Coordinators, upon initial review, determined that the plan meets the applicable Cumulative List qualification requirements. It isn't an official opinion letter.
- (3) The Coordinators prepare and send the notification to the provider or mass submitter and inform the first and second-level reviewers it has been sent. At this time, the first and second-level reviewers can close the case off their WebETS time sheets and monthly reports.
- (4) Coordinators upload preliminary notifications to the electronic case file in the designated shared folder.

7.11.4.6.8 (09-26-2018) **Assisting Management & Compliance Planning & Classification**

- (1) The Coordinators prepare monthly and interim reports detailing the progress of the pre-approved inventory.

7.11.4.6.9 (09-26-2018) **Providing Technical Assistance to Counsel**

- (1) Counsel consults the Coordinators for input on various forms of guidance related to the EP Determinations function of EP Rulings and Agreements.

7.11.4.6.10 (10-19-2021) **Issuing Opinion Letters**

- (1) The Coordinators generate, print, and mail the opinion letters for all completed applications on a designated day at the end of each review period. Most opinion letters are printed and mailed on the same day for providers and mass submitters who file their plans timely.
- (2) For late submissions, as described in IRM 7.11.4.2.1, the clerk is responsible for generating, printing, and mailing the opinion letters but the Coordinators provide assistance, as appropriate.

- 7.11.4.6.11
(10-19-2021)
Verify Correct User Fee Received

- (1) Ensure that campus personnel deposit the user fees in a reasonable time after they are mailed and that Beckley Finance Center receives timely deposit reports within the first three business days of the month following the month for which the report is issued.
 - (2) For user fees that are paid on Pay.gov, the Coordinators will ensure that the payments received are correct by reviewing the appropriate reports and taking any necessary action to correct any incorrect user fee amounts.
-
- 7.11.4.6.12
(10-19-2021)
Oversee Pre-Approved Plans Correspondence

- (1) Log incoming pre-approved plan correspondence onto the log sheet.
 - (2) Ensure correspondence is being completed by the clerk on a timely basis.
-
- 7.11.4.6.13
(09-08-2022)
Review Referrals for Plan Language Correction

- (1) EP reviewers submit referrals to the Coordinators when errors are discovered in a pre-approved plan during an examination or determination letter application. See IRM 7.11.1.24.2, *Correction of Pre-Approved Plans Language*.
 - (2) The Coordinators review the referrals to determine if further action is necessary. Adopting employers of pre-approved plans may continue to rely on their plan's opinion or advisory letter in the operation of their plan. As a general rule, any correction obtained to pre-Approved language will only be required on a prospective basis.
 - (3) See a sample of the referral form in Exhibit 7.11.4-1, *Referral for Pre-Approved Language*.
-
- 7.11.4.7
(04-04-2012)
Manager, Pre-Approved Plans Program

- (1) The pre-approved plans Program manager, administers the program and ensures that all issues are timely resolved. The Coordinators may contact the manager with any issues that prevent an application from being processed.
-
- 7.11.4.8
(01-21-2015)
Processing Plans Involving Special Circumstances

- (1) Some pre-approved plan applications may have situations that require additional attention:
 - a. Withdrawal of a pre-approved plan application.
 - b. Assumption of sponsorship.
 - c. Name and/or address changes.
 - d. A grossly deficient plan or an innovative plan design.
 - (2) If a specialist has any additional questions or concerns, they should contact the Coordinators for applicable procedures.
-
- 7.11.4.8.1
(10-19-2021)
Withdrawing a Pre-Approved Plan

- (1) A provider or mass submitter may wish to withdraw his/her pre-approved plan application. When they notify you that they want to withdraw, specialists should:
 - a. Notify the pre-approved plans Coordinators immediately.
 - b. Inform the provider/mass submitter that the IRS must receive an official letter of withdrawal.
 - c. Inform the provider/mass submitter that the user fee is non-refundable unless the review has not been started or one of the exceptions in (3) or (4) below is met.

7.11 Employee Plans Determination Letter Program

- (2) Upon receipt of the official letter of withdrawal, the Coordinators consider the case withdrawn and issue a letter to the provider/mass submitter confirming the withdrawal.
- (3) If the withdrawal is of a submission of a/an:
 - a. Identical Adopter of a mass submitter plan, the IRS refunds the user fee if the request is made before IRS issues the Opinion Letter.
 - b. Minor Modification of a mass submitter plan, the IRS refunds the user fee unless the review has started.
- (4) If an Identical Adopter of a mass submitter requests a switch of its submission to another mass submitter, no additional user fee is due if the request is made before IRS issues the Opinion Letter.
- (5) The clerk updates the TRAC status code to show that the case was withdrawn and completes the explanation field on the plan screen to indicate whether a refund was set up on a particular date or that no refund applies.

7.11.4.8.2 (09-26-2018) **Assumption of Sponsorship**

- (1) In some instances, another entity may assume sponsorship of an existing pre-approved plan. If requested, the IRS reissues an Opinion Letter to the new entity if the following requirements are met:
 - a. No additional amendments are made to the plan document.
 - b. The assumption of sponsorship is documented by a change of EIN.
 - c. The new sponsor pays the required fee. See Rev. Proc. 2024-4 (revised annually).
 - d. The new entity submits any other documentation of the assumption of sponsorship as the IRS requests.
- (2) The reissued Opinion Letter is dated based on either:
 - a. The postmark date when the new sponsor pays with a certified or cashier's check.
 - b. A later date, after the check clears, when the new sponsor pays with a regular check.
 - c. The date payment is received on Pay.gov.
- (3) The clerk updates TRAC accordingly and issues the new Opinion Letter with the new sponsor's information.

7.11.4.8.3 (03-23-2016) **Name and/or Address Changes**

- (1) If a provider or mass submitter requests an updated Opinion Letter for:
 - a. Only an address change, they must include a cover letter indicating the change. No user fee is required.
 - b. A name change, they must include a cover letter and an updated application. No user fee is required.
- (2) The clerk updates TRAC accordingly and issues a new Opinion Letter with the updated information.

7.11.4.8.4

(03-23-2016)

**Grossly Deficient Plans
and Innovative Plan
Designs**

- (1) The IRS won't rule on grossly deficient plans and innovative plan designs.
- (2) A grossly deficient pre-approved plan is a plan that is either:
 - a. Substantially out of compliance with the applicable Cumulative List and other qualification requirements.
 - b. So deficient that the IRS can't review it in a reasonable amount of time.
- (3) If you find a grossly deficient plan, stop reviewing it and explain in an email to the Coordinators:
 - a. Why the plan is considered grossly deficient.
 - b. Any qualification issues you discovered.
- (4) The pre-approved plans Program is meant for traditional plan designs; therefore, innovative plan designs aren't accepted in the program. If you encounter something in a pre-approved plan that you don't recognize or for which you can't find clear supportive IRS guidance (excluding private letter rulings), stop your review and contact the pre-approved plans Coordinators immediately.
- (5) When a specialist informs the Pre-Approved Coordinators that they have a grossly deficient or innovative plan design, the Coordinators:
 - a. Review the document.
 - b. If the Coordinators agree with the specialist, they return the plan to the provider and give them 30 days to resubmit a substantially compliant document. The Coordinators closely analyze any resubmission for compliance before reassigning it for review.
 - c. If the Coordinators do not agree that the plan is grossly deficient or that it contains an innovative plan design, they return the case to the specialist to continue their review.

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Exhibit 7.11.4-1 (09-08-2022)
Referral for Pre-Approved Language

Referral for Pre-Approved Language

Complete boxes 2 through 8 and forward to the pre-approved plan coordinators.

1. To:	Pre-Approved Plan Coordinators	
	P.O. Box 2508, Room 6-403	
	Cincinnati, OH 45201	
2. From:	Name of originator (Print or Type)	Address of originator
3. Name and Address of Pre-Approved Plan Sponsor		4. Identify The Type of Pre-approved Plan (e.g., non-standardized 401(k) plan)
5. Date and Letter Serial Number From Approval Letter issued to Pre-approved Plan		
6. Explanation of issue (Include copies of the plan section(s))		
7. Signature of originator	Title	Date
8. Signature of manager		Date
For Coordinator Use		
9. Received by	Action Taken	Date Closed

