



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

7.11.10

JULY 2, 2024

EFFECTIVE DATE

(07-02-2024)

PURPOSE

- (1) This transmits revised IRM 7.11.10, Employee Plans Determination Letter Program, EP Examinations and Fraud Referral Procedures.

MATERIAL CHANGES

- (1) Updated this IRM for editorial changes and plain language and current revenue procedures.
- (2) Updated a hyperlink in IRM 7.11.10.3.1

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 7.11.10 dated July 24, 2023.

AUDIENCE

Tax Exempt and Government Entities
Employee Plans

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EP Examination and Fraud Referral Procedures

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7.11.10.1
(08-14-2017)
Program Scope and Objectives

- (1) **Purpose:** This IRM describes guidelines and procedures to make referrals to Employee Plans Examinations (EP Exam) and criminal fraud referrals to Criminal Investigation Division (CID).
- (2) **Audience:** EP Determinations and Quality Assurance (QA) staff
- (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 by reviewing applications for determination letters, opinion letters and advisory letters, and to protect the public interest by applying the tax law with integrity and fairness to all.

7.11.10.1.1
(08-14-2017)
Background

- (1) A plan is qualified if it meets the requirements of IRC 401(a) or 403(b) in form and operation. A qualified plan is entitled to favorable tax treatment.
- (2) To help taxpayers ensure that their plans comply with the tax law, EP reviews applications for determination letters and opinion letters on whether the form of the plan meets the qualification requirements. IRM 7.11.1.

7.11.10.1.2
(09-17-2019)
Authority

- (1) Delegation Order 7-1 delegates the authority to issue determination letters on the qualified status of pension, profit-sharing, stock bonus, annuity and employee stock ownership plans to the Director, EP. (IRM 1.2.2.8.1(1)).
- (2) Find a complete list of delegation orders for EP Rulings and Agreements at *Delegation Orders by Process* <http://www.irs.gov/uac/Delegation-Orders-by-Process1>
- (3) Review IRM 7.1.1, Exhibit IRM 7.1.1-1 for a complete list of the major EP revenue procedures currently in effect.

7.11.10.1.3
(11-30-2018)
Acronyms

- (1) These acronyms are used in this IRM:

Acronym	Term
CID	Criminal Investigation Division
EPDFR	EP Determinations Fraud Reviewer
EP	Employee Plans
EP Exam	EP Examinations
EP SME	EP Fraud Subject Matter Expert
FTA	Fraud Technical Advisor
QA	Quality Assurance
SB/SE	Small Business/Self-Employed Operating Division
TFS	TE/GE Fraud Specialist

Acronym	Term
TEDS	Tax Exempt Determination System
WebETS	Web-based Employee Technical Time System

7.11.10.2

(10-06-2022)

**EP Examinations
Referral Overview**

- (1) If, during the review of a determination letter application, you find a potential Qualification Failure as defined in Rev. Proc. 2021-30, Section 5.01(2), and your manager agrees that a Qualification Failure exists, the plan sponsor must correct the failure.
- (2) If the potential Qualification Failure is limited to a Plan Document Failure (defect in plan language) as defined in Rev. Proc 2021-30, Section 5.01(2)(a):
 - a. Don't refer the plan for examination.
 - b. Discuss the issue with your manager and whether a closing agreement is needed to fix the defects and avoid disqualification.
 - c. See IRM 7.11.8, EP Determinations Closing Agreement Program.
- (3) IRM 4.70.11.15, Collateral Examinations and Referrals, shows how EP Examinations (EP Exam) processes referrals.

7.11.10.2.1

(03-18-2014)

**Issues that Do Not
Affect Plan Qualification**

- (1) You may find potential issues that require a plan examination but don't affect plan qualification. These are issues that don't cause the plan to fail to meet IRC 401(a) but could result in excise taxes or other issues. Prepare a Form 5666, TE/GE Referral Information Report per IRM 7.11.10.2.3, Examination Referral Procedures, for the types of issues listed below:
 - a. Prohibited transactions.
 - b. Unrelated business income.
 - c. Deemed distributions.
 - d. Reversion of excess assets upon termination.
 - e. Minimum funding deficiency.

Note: If a sponsor of a terminated plan filed a Form 5310, Application for Determination for Terminating Plans, and the plan has a minimum funding deficiency, request a copy of their Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, and attach a copy of it and a copy of the Form 5310 to the Form 5666. If the plan sponsor hasn't filed a Form 5330, note it on the Form 5666.

- (2) For these issues unrelated to plan qualification, work the determination case under normal procedures after you refer the plan for examination. Don't hold the case open if it's ready to close.

7.11.10.2.2

(10-06-2022)

**Issues that Affect Plan
Qualification**

- (1) Some examples of examination referral issues that affect plan qualification include:
 - a. Any IRC 401(a) provision.
 - b. IRC 411(d)(6) cutbacks.

- c. Cases with potential Operational Failures (defined in Rev. Proc. 2021-30, section 5.01(2)(b)).
- (2) If the potential issue affects plan qualification, prepare a Form 5666 per IRM 7.11.10.2.3. For referrals due to only Operational Failures, close the case after you send the Form 5666 if there are no other issues. For all other referrals that involve plan qualification issues, hold the determination case in group suspense (status 37) until one of the following occur:

If:	Then:
EP Exam accepts the referral and examines the plan.	<p>The EP Exam agent will contact you. Contact the examiner monthly to stay informed of the case status. If, after 6 months, EP Exam:</p> <ul style="list-style-type: none"> a. Hasn't started their review, take the case out of suspense. Inform the EP Area Manager who will notify EP Exam that you are closing the determination case. b. Has started but not finished their review, and hasn't discovered issues that affect the determination case, take the case out of suspense. Inform the EP Area Manager who notifies EP Exam that you are closing the determination. c. Has started but not finished their review and has discovered issues that would affect the determination case, leave the case in suspense until exam conclusion.
The EP Classifier doesn't assign your referral to EP Exam.	<ul style="list-style-type: none"> a. Consult your Group Manager about possibly offering a closing agreement. b. See IRM 7.11.8, EP Determinations Closing Agreement Program.

7.11.10.2.3
(07-02-2024)
**Examination Referral
Procedures**

- (1) Complete the following boxes on the electronic Form 5666, TE/GE Referral Information Report, for all examination referrals. You can find Form 5666 in the *Forms/Pubs/Products Repository*.
- a. A - F
 - b. J (if applicable)

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- c. L - Add your electronic signature
- d. P1 - P12
- e. P40 - P42
- f. O

(2) Complete Form 5666 Box O, Information Obtained with these details:

- a. The full plan name.
- b. Your name and phone number.
- c. Clearly describe the defect in detail; for IRC section 401(a) violations, list the specific Code section. Explain your reasoning for referring the plan for examination (for example, "the potential for a prohibited transaction exists because..." or, "the plan has violated Code section because...". Include whether the determination case will remain open or closed.
- d. If the case is going to remain open add the following paragraph to request a response so you know how to dispose of the case: The determination application will remain open pending the result of the examination. Please have one of the following contact me: 1) EP Classifier if the referral is not accepted, or 2) the EP Exam examiner at the time he or she is assigned the referral.

(3) Attach copies of all relevant documentation from the case file for the potential issue to Form 5666.

(4) Place Form 5666 in the case file and send to your manager for review and approval. Your manager signs line M.

(5) Notify the plan sponsor of a potential examination before you send an exam referral to the TE/GE Referral Group.

(6) Keep a copy of Form 5666 in the case file's non-disclosable section.

Exception: You don't need to keep a copy of Form 5666 for referrals that involve taxability of distributions to beneficiaries upon termination.

(7) Secure email the electronic Form 5666 to the TE/GE Referral Group at **Manager EO Classification (EOclass@irs.gov)* and type in the subject line "EP Referral from EP Determinations".

(8) An EP Classifier reviews the Form 5666 within 30 days of receipt. If they agree an exam is necessary, they will establish the record on RCCMS and AIMS and transfer it to the Virtual Shelf. If you do not get a response within 30 days of sending the referral, send a follow-up email to **TE/GE-EP-Classification*.

7.11.10.3 (03-18-2014) Fraud Referral Overview

(1) Tax fraud is often defined as an intentional wrongdoing on the part of a taxpayer, with the specific purpose of evading a tax known or believed to be owed. Tax fraud requires both:

- a. A tax due and owing.
- b. A fraudulent intent.

(2) Taxpayers who knowingly understate their tax liability often leave evidence in the form of indicators. Fraud indicators are divided into two categories:

- a. **Indications of Fraud** are a sign or symptom, or signify that actions may have been taken for the purpose of deceit, concealment or to make things seem other than what they are.
 - b. **Affirmative Acts (Firm Indications) of Fraud** are those actions that establish that a particular process was deliberately done for the purpose of deceit, subterfuge, camouflage, concealment, some attempt to color or obscure events, or make things seem other than what they are.
- (3) You can't pursue fraud unless affirmative acts are present. For examples, see IRM 25.1.1.3, Fraud Handbook, Indicators of Fraud vs. Affirmative Acts of Fraud.

7.11.10.3.1
(07-02-2024)
**Fraud Referral
Procedures**

- (1) Follow these procedures for potential fraud referrals:

If:	Then:
1. You discover potential fraud during a determination letter review	Discuss any possible issues with your manager.
2. Your manager agrees that potential fraud exists	Contact the EPDFR at: <i>TE/GE Connect - Fraud</i> , to discuss the case.
3. The EPDFR agrees that potential fraud exists	They contact the EP SME in EP Exam.
4. The EP SME agrees that potential fraud exists	They contact an FTA.
5. If the FTA agrees	The EP SME arranges a conference call to discuss the case with the: <ul style="list-style-type: none"> a. EP Determinations specialist b. EP Determinations manager c. EPDFR d. FTA e. EP SME

Note: Even if you don't refer or pursue fraud in a case, contact the TFS about possible referrals to other areas such as EP Exam, the Office of Professional Responsibility, or Small Business/Self-Employed (SB/SE) Lead Development Center, for possible abusive transactions or emerging issues. (See IRM 7.11.1.27, Abusive Transactions / Listed Transactions).

- (2) If all parties agree that the case should be developed for fraud, follow these steps:
- a. Determination specialist: Complete a Form 11661, Fraud Development Recommendation - Examination and secure email it to your manager for review and signature. The EPDFR and EP SME can help you prepare it. After your manager approves Form 11661, secure email it to the EP SME and the TFS.
 - b. EP SME: If you agree with the items on the Form 11661, secure email it to the FTA for review, approval and signature.

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- c. FTA: Get the EP Determinations specialist's, EPDFR's and EP SME's input and prepare an action plan to develop the potential fraud issue using the Form 11661, Form 11660, Fraud Development Checksheet, or a memo. Secure email a copy of the signed Form 11661 and action plan (if separate) to the EP Determinations manager, EP Determinations specialist, EPDFR, TFS and EP SME.

Note: The EP Determinations specialist or the EP Determinations manager should NOT contact CID at this stage.

- d. Determination specialist: When you receive the signed Form 11661, ensure that the FTA sent a copy to the EPDFR, EP SME and TFS. If not, secure email a copy to them because the TFS and QA both keep a log of all signed Forms 11661. Place the case in group suspense (status 37) and perform any additional actions the action plan requires.
- (3) Develop the potential fraud issues according to the action plan. It's important to act as soon as possible and appropriately if there's potential fraud. Update the EPDFR at least monthly with the case progress. Follow these procedures depending on your analysis of the case facts:

If:	Then:
You identify an affirmative act of fraud, notify your manager. If your manager agrees, contact the EPDFR.	<p>a. The EPDFR arranges a conference call with the EP SME, FTA, EPDFR, EP Determinations specialist and EP Determinations manager to discuss the case.</p> <p>b. The FTA may recommend that you:</p> <ul style="list-style-type: none"> • Refer the plan to CID for pursuit of criminal fraud. • Refer to EP Exam for further development, or • Continue developing the potential fraud issue. <p>c. Discuss any EP Exam referral recommendation with the EP SME before you send it. To refer the case to CID, see IRM 7.11.10.3.1.1, Criminal Fraud Procedures.</p>

If:	Then:
You identify issues that can be best addressed, or only addressed, by EP Exam, notify your manager. If your manager agrees, contact the EPDFR.	<ol style="list-style-type: none"> The EPDFR contacts the EP SME to discuss the need to refer the plan to EP Exam. If the EP SME agrees that the referral is appropriate, they'll notify the FTA and the FTA updates the action plan. EP Exam and/or SB/SE generally work issues that may result in asserting civil fraud or fraudulent failure to file penalties.
You determine that no fraud potential exists, notify your manager. If your manager agrees, contact the EPDFR.	<ol style="list-style-type: none"> The EPDFR arranges a conference call with you, your manager, the EP SME, FTA, and EPDFR to discuss the case. If you determine that fraud is no longer an issue, work the case as a routine case and return it to status 52.

7.11.10.3.1.1
(11-30-2018)
**Criminal Fraud
Procedures**

- (1) If you identify an affirmative act of fraud:
 - a. Immediately suspend all case activity.
 - b. Notify your manager.
- (2) If your manager agrees, contact the EPDFR. The EPDFR arranges a conference call with the EP SME, FTA, EPDFR, EP Determinations specialist and EP Determinations manager to discuss the case. If the FTA agrees that an affirmative act has been identified, make a criminal fraud referral to CID using Form 2797, Referral Report of Potential Criminal Fraud Cases. The EPDFR and EP SME can help you prepare this form.
- (3) Secure email the Form 2797 to the following individuals for their review and approval:
 - Your manager
 - FTA
 - FTA Manager
- (4) You, your manager or the FTA must secure email a complete copy of the approved Form 2797 to the EPDFR, TFS and EP SME.
- (5) If the criminal fraud referral is approved, the FTA manager secure emails the Form 2797 to the appropriate CID Field Office for consideration.
- (6) A CID supervisory special agent is assigned to evaluate the criminal fraud referral and arranges two disposition conferences. The first conference is held within 10 days of receiving the criminal fraud referral to discuss the merits of

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the case and the second within 30 days to discuss whether the criminal fraud referral is accepted or declined. The following individuals are invited to the conferences:

- EP Determinations specialist
- EP Determinations manager
- FTA
- Supervisory special agent
- Special agent

Note: The EP Determinations specialist and manager should invite the EPDFR and the EP SME to attend these conferences.

- (7) If CID accepts the criminal fraud referral, they may request help from an SB/SE cooperating agent and/or EP using Form 2797 or Form 6544, Request for Cooperating Examiner. Depending on the type of help needed, either an EP Determinations specialist or EP Examinations examiner is assigned. See IRM 4.70.13.13, Fraud and Abusive Transaction Procedures, IRM 25.1.9.5.4, Administrative (Non-Grand Jury) Investigations, and IRM 25.1.4, Fraud Handbook - Administrative Joint Investigations for further information.
- (8) At this point in the determination, any further instructions will be given by CID, the FTA, the EP SME, TFS or the EPDFR.
- (9) See IRM 4.70.13.13, Fraud and Abusive Transaction Procedures, IRM 25.1.3, Fraud Handbook, Criminal Referrals, and IRM 25.1.9, Fraud Handbook, Tax Exempt and Government Entities, for additional information.

7.11.10.3.1.2 (06-03-2021) Administrative Procedures

- (1) Update TEDS status code to 37 if the FTA approves Form 11661 or you refer the plan to EP Exam or CID. Keep the case in status 37 until the EPDFR advises you to change it.
- (2) Place a copy of the Form 11661 and Form 11660, or action plan memo (if separate), and any other document completed during the potential fraud investigation in the non-disclosable side of the case file. The EP SME, TFS and the EPDFR keep records of all submitted forms for potential fraud cases.
- (3) Use the following codes for WebETS:
 - a. EP Determinations specialist: continue to use the same Activity Code (AC 301) and Project Code (PC) to charge time to the case until otherwise instructed by the EPDFR.
 - b. The EPDFR consults the EP SME for correct activity and project codes.
 - c. EPDFR: use AC 155, PC 1550 for all time charged to case-related potential fraud activities and AC 155, PC 1551, for non-case related potential fraud activities.