



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

7.11.11

DECEMBER 5, 2024

## EFFECTIVE DATE

(12-05-2024)

## PURPOSE

- (1) This transmits revised IRM 7.11.11, Employee Plans Determination Letter Program, Proposed Adverse Cases.

## MATERIAL CHANGES

- (1) Updated IRM 7.11.11.1 (5), Program Scope and Objectives, to include Stakeholders.
- (2) Added IRM 7.11.11.1.3, Roles and Responsibilities.
- (3) Added IRM 7.11.11.1.4, Program Management and Review.
- (4) Added IRM 7.11.11.1.5, Program Controls.
- (5) Added IRM 7.11.11.1.7, Related Resources.
- (6) Updated Exhibit 7.11.11-2 (Table) for current Dates of Correspondence.
- (7) Updated throughout for current revenue procedures and editorial and plain language changes.

## EFFECT ON OTHER DOCUMENTS

This supersedes IRM 7.11.11 dated November 9, 2023.

## AUDIENCE

Tax Exempt and Government Entities  
Employee Plans

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Director, Employee Plans  
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7.11.11

Proposed Adverse Cases

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7.11.11.1  
(09-11-2017)  
**Program Scope and Objectives**

- (1) Purpose: This IRM describes the procedures and technical guidance for processing Employee Plans (EP) Determination Letter (DL) applications when you're proposing a potential adverse action.
- (2) Audience: EP Determinations and Quality Assurance (QA) staff.
- (3) Policy Owner: Director, EP.
- (4) Program Owner: EP.
- (5) Stakeholders:
  - a. Internal - Director, Employee Plans, Director, Rulings and Agreements, EP Determinations and Quality Assurance managers and staff, TE/GE Referrals Group.
  - b. External - Plan sponsors, plan representatives, plan participants.
- (6) Program Goals: EP Determinations' goal is to ensure that plans are in compliance with the tax laws by reviewing applications for DLs and opinion letters, and to protect the public interest by applying the tax law with integrity and fairness to all.

7.11.11.1.1  
(09-11-2017)  
**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) To help taxpayers ensure their plans are in compliance with the tax law, EP issues DLs, opinion letters, and advisory letters on whether the form of the plan meets the qualification requirements. (IRM 7.11.1).
- (3) Use proposed adverse procedures when you find disqualifying defects and can't resolve them.
- (4) Adverse procedures are used in only a few cases because there are alternative methods to handle unagreed plan language or qualification issues. (IRM 7.11.11.3 (1)).

7.11.11.1.2  
(09-28-2021)  
**Authority**

- (1) Delegation Order 7-1 and 7-14 delegate the authority to issue favorable and adverse 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 and IRM 1.2.2.8.14).
- (2) A complete list of delegation orders governing EP Rulings and Agreements can be found at *Delegation Orders and Policy Statements by Process*.
- (3) See IRM 7.1.1, Exhibit 7.1.1-1, for a complete list of the major EP revenue procedures currently in effect.

7.11.11.1.3  
(12-05-2024)  
**Roles and Responsibilities**

- (1) The mission of Employee Plans is to provide EP's customers top quality service by helping them understand and comply with applicable tax laws and to protect the public interest by applying the tax laws with integrity and fairness to all.
- (2) The Director, EP, reports to the Deputy Commissioner, TE/GE, and is responsible for planning, managing, directing and executing nationwide EP activities.
- (3) EP responsibilities include:

## 7.11 Employee Plans Determination Letter Program

- a. Employee plans (including the qualification of pension, annuity, profit-sharing, and stock bonus plans, simplified employee pensions, saving incentive match plans for employees, and tax-sheltered annuities) and related trusts.
  - b. Tax treatment of participants and their beneficiaries and deductions for employer contributions.
  - c. Procedural and administrative provisions with respect to such plans.
- (4) The Director, EP R&A, reports to the Director, EP, and is responsible for three types of services for retirement plans— voluntary compliance, determination letters, and technical guidance.
- (5) Responsibilities of the EP R&A staff include:
- a. Processing determination letter requests from employers regarding the qualified status of their pension, annuity, profit sharing and stock bonus plans.
  - b. Issuing opinion and advisory letters to specific requestors regarding pre-approved pension, annuity, and profit-sharing plans, including individual retirement accounts, simplified employee pensions and savings incentive match plans for employees, and tax sheltered annuities.
  - c. Developing and operating voluntary correction programs, such as the EPCRS program and issuing compliance statements or entering into closing agreements under these programs.
  - d. Processing requests for changes in funding method and making other actuarial determinations and interpretations.
  - e. Coordinating with Chief Counsel on requests for funding waivers.
  - f. Developing and maintaining responsibility for actuarial publications and other standards for the valuation of transfers of future interests for income, estate and gift tax purposes.
  - g. Coordinating with TE/GE Division Counsel, Associate Chief Counsel and the DOJ on litigation issues and declaratory judgment cases under the Internal Revenue Code (IRC 7476).

7.11.11.1.4  
(12-05-2024)

### Program Management and Review

- (1) Programs reports:
- a. The EP Determinations program uses Business Objects to view, create, and modify inventory and employee records. Business Objects uses tools to provide a built-in interface to query and analyze data and to build reports.
  - b. Monthly reports detailing the current inventory of cases by area and their status are produced and provided to the Director, EP Rulings and Agreements, Area Managers, and frontline managers.
  - c. Ad hoc reports are produced as requested by determinations personnel with appropriate permission.
  - d. Each quarter, EP Determinations Quality Assurance issues reports to summarize the results of their TEQMS reviews. See IRM 7.11.3, Tax Exempt Quality Measurement System (TEQMS).
- (2) Program effectiveness:
- a. EP Determinations monitors business unit progress toward completing and closing cases in inventory. They provide status and progress reports to IRS leadership on a regular, recurring basis. Effectiveness is measured by analysis of compliance trends and results.

7.11.11.1.5  
(12-05-2024)  
**Program Controls**

- (1) The IRS receives EP determination letter applications and user fees from taxpayers on Pay.gov.
- (2) The user fee information is then transferred to LINUS to ensure it is properly recorded.
- (3) The application information from Pay.gov is transferred to Tax Exempt Determination System (TEDS) and EP/EO Determination System (EDS) which are the systems that EP Determinations uses to control their inventory.
- (4) TEDS contains roles and permissions to ensure proper separation of duties. See IRM 7.15.4.
- (5) The EP Determinations Area Managers coordinate the assignment of inventory.
- (6) In order to ensure a consistent level of managerial engagement in the process of making key strategic decisions during a determination letter review, the specialist submits requests for approval by their manager through TEDS.
- (7) The manager approves or rejects any request through the TEDS.
- (8) EP Determinations QA reviewers perform reviews on mandatory review cases and for cases selected for the Tax Exempt Quality Measurement System (TEQMS) to ensure that specialists are conducting their determination letter reviews per technical, procedural and administrative requirements. See IRM 7.11.3 and IRM 7.11.9 for more information.
- (9) The IRS is fully committed to protecting the privacy rights of taxpayers and employees. Privacy laws are included in the IRC, the Privacy Act of 1974, the Freedom of Information Act, and IRS policies and practices. For more information about these laws, visit the IRS Electronic Freedom of Information Act Reading Room.
  - a. For questions about privacy, email **\*Privacy**.
  - b. For question about disclosure, email **\*Disclosure**.

7.11.11.1.6  
(09-28-2021)  
**Terms and Acronyms**

- (1) This table lists commonly used terms and acronyms and their definitions:

Terms and Acronyms	Definition
Appeals	Independent Office of Appeals
CCR	Case Chronology Record
DL	Determination Letter
DOJ	Department of Justice
EP	Employee Plans
DOL	Department of Labor
IRC	Internal Revenue Code
IRS	Internal Revenue Service
LINUS	Letter Information Network User-Fee

Terms and Acronyms	Definition
Appeals	Independent Office of Appeals
CCR	Case Chronology Record
PBGC	Pension Benefit Guaranty Corporation
POA	Power of Attorney
QA	Quality Assurance
R&A	Rulings and Agreement
Tax Court	United States Tax Court
TEDS	Tax Exempt Determination System
TE/GE	Tax Exempt and Government Entities

7.11.11.1.7  
(12-05-2024)

#### Related Resources

- (1) Pub 5153, Appeal Procedures - Adverse Determination Letter on Qualification of a Retirement Plan.
- (2) Rev. Proc. 2017-4, Contains consolidated and revised procedures for determination letters and letter rulings.
- (3) IRM 7.11.1, Employee Plans Determination Letter Program.
- (4) IRM 7.11.8, Employee Plans Determination Letter Program, EP Determinations Closing Agreement Program.
- (5) IRM 7.11.9, Employee Plans Determination Letter Program, Mandatory and TEQMS Case Review.

7.11.11.2  
(09-16-2022)

#### Administrative Record - Procedural Requirement

- (1) The administrative record is the written record of the administrative proceedings between the IRS and the plan sponsor in connection with a DL application.
- (2) Create an electronic administrative record from the TEDS file. Download all documents in accordance with this section of the IRM and IRM 7.11.11.3.
- (3) Tax Court Rule 210(b)(12) defines the administrative record as including “all documents and materials received, developed, considered or exchanged in connection with the administrative determination.” Such documents would include:
  - a. The request for a DL.
  - b. All documents submitted to the IRS by the applicant for the DL request.
  - c. All protests and related papers submitted to the IRS.
  - d. All written correspondence between the IRS and the applicant about those protests.
  - e. All pertinent returns filed with IRS.
  - f. The notice of determination by the Commissioner.

**Note:** In general, the administrative record doesn’t include internal documents, such as interoffice memorandums, notes from an actuary, reviewer’s memo-



randums, the specialist's workpapers, the Case Chronology Record, or summaries of telephone conferences. Incorporate these internal documents into the administrative record only when the content/issue is specifically pertinent and has been shared in writing between the IRS and the plan sponsor.

- (4) It's extremely important that you fully develop, clearly document and include in the record:
  - a. All pertinent facts.
  - b. Relevant guidance.
  - c. The IRS' position.
  - d. Analysis and arguments supporting the IRS' position.
  - e. The plan sponsor's position.
  - f. The effect of the plan sponsor's comments on IRS conclusions.
- (5) Include all information obtained or exchanged during the determination ruling in the administrative record. Information must be **exchanged** between the plan sponsor and the IRS (or vice versa) before you can include it in the administrative record.
  - a. If there's any doubt a document has been exchanged, send it to the plan sponsor with an explanatory cover letter identifying the correspondence.
  - b. Include pertinent information you discussed with the plan sponsor/representative in the administrative record only if reduced to writing and exchanged with the plan sponsor/representative.
- (6) Organize the electronic record documents in a zip file in the order shown in Exhibit 7.11.11-1, Sample Proposed Adverse Case Assembly.
  - a. Organize all items in the administrative record in chronological order, oldest on top, most recent on bottom.
  - b. Rename any documents to correspond to the items in the administrative record index and **not** to the original documents. Form 5464 should be updated to explain the original names of the renamed items.
- (7) The first document in the administrative record must be the administrative record index. Notate the date you received documents from the plan sponsor in the administrative record index. See Exhibit 7.11.11-2, Sample Administrative Record Index.
- (8) Don't modify or edit any documents you received from the plan sponsor/representative in any way (such as comments, highlighting, or redacting. If you need to add comments or notes to a document, make a copy of the document first and only add them to the copied document.
- (9) Include copies of attachments you refer to in any correspondence in the administrative record and associate them with the related document. This includes publications and notices that you attached to outgoing correspondence.
- (10) Clarify incorrect computations, misinterpretations of law (of the IRC, regulations, or revenue rulings) or incorrect conclusions you made in writing to the plan sponsor in subsequent correspondence.

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- a. Any information that's been provided to the plan sponsor becomes a part of the administrative record; therefore, include incorrect information that's been put in writing and sent to the plan sponsor/representative in the administrative record.
- b. To correct a mistake, **don't remove** the document from the administrative record. Instead, submit a corrected statement or revised calculation to the plan sponsor/representative in writing.

7.11.11.3  
(11-09-2023)

### Proposed Adverse Case - Specialist's Responsibilities

- (1) Consider these other methods to resolve an unagreed or qualification issue before you begin the adverse determination procedures:
  - a. Encourage the plan sponsor to discuss the issues in a conference with you and your group manager.
  - b. Try to resolve plan language deficiencies using the Closing Agreement Program. See IRM 7.11.8, EP Determinations Closing Agreement Program.
  - c. Follow technical advice procedures if the disputed plan language is unusual or complex or hasn't been treated with uniformity throughout the IRS. You must also submit a request for relief from retroactive disqualification under IRC 7805(b) for technical advice. See IRM 7.11.12, Preparing Technical Advice Requests.
  - d. The plan sponsor may elect to withdraw their application. See IRM 7.11.1.17, Withdrawal of Applications.
- (2) Clearly document the case to show you've considered or attempted to use all appropriate resolution methods.
  - a. Include your conclusions or reasons for not using alternative methods.
  - b. Document the plan sponsor's denial of a closing agreement offer or that offering a closing agreement isn't appropriate.
- (3) Resolve any other outstanding issues and prepare the case for closing.
- (4) If the issue still can't be resolved using the methods, obtain your group manager's concurrence to propose closing the case as adverse. Document the case.
- (5) Inform the plan sponsor of the proposed adverse DL process and their appeal rights. Prepare and send "Letter of Notification for Potential Proposed Adverse Closure" and Pub 5153. See Exhibit 7.11.11-4 for a sample of the letter. Mail a copy to the POA, if applicable.

**Note:** This letter describes the steps (such as, the pre-issuance review and possible referral to EP Examinations) that EP Determinations takes before sending the Letter 1755, EP Proposed Adverse Letter. Pub 5153 explains the appeal process.

- (6) Prepare the electronic administrative record before you forward the case to QA. The Tax Court uses the administrative record if the plan sponsor files a petition for a declaratory judgment under IRC 7476, so you must prepare it according to IRM 7.11.11.2, Administrative Record - Procedural Requirement.
- (7) Prepare a draft Letter 1755 using the letter template in the *Forms/Pubs/Products Repository* and import the letter into the disclosable folder in TEDS but don't mail the letter. Complete the letter by selecting:

- a. The beginning of plan year the potential adverse action takes place.
- b. The certified letter mailing options.

**Note:** QA mails the letter later after reviewing and concurring with the proposed adverse action.

- (8) Electronically complete the following referral documents using the *Forms/Pubs/Products Repository* templates and import them into the non-disclosable folder in TEDS. QA emails all the forms to the TE/GE Referrals Group mailbox per IRM 7.11.10, EP Examination and Fraud Referral Procedures.

Referral Agency	Form	Preparation Instructions
TE/GE Referrals Group	Form 5666, TE/GE Referral Information Report	See IRM 7.11.10 for instructions. On line O, include the phrase See Attachment A and on line P, include the phrase Proposed Adverse package submitted by QA.
DOL	Form 6212-B, Examination Referral Checksheet B	Follow the normal instructions. On line 17, include the phrase See Attachment A. See June 3, 2003 IRS/DOL Coordination Agreement and the October 24, 2013 Addendum.
PBGC	Form 6533, Examination Referral Worksheet	Follow the form instructions. Prepare only for plans subject to PBGC insurance.

- (9) Create an electronic proposed adverse package. Prepare the package with copies of these documents:

Item	Explanation	See a sample
Index of attached items	Use to organize.	N/A
Summary Memorandum to QA	Short overview of the case history, current adverse issue(s), and case development up to current date. In memo, alert the reviewer of any special case considerations.	Exhibit 7.11.11-6, Sample Summary Memorandum to QA.
Attachment A	Explanation of detailed IRS assertion of why the plan is not qualified. Include facts/background, issue (the reason for the proposed adverse action), law violated, government's position, and plan sponsor's position.	Exhibit 7.11.11-5, Sample Attachment A. <b>Note:</b> Keep an electronic copy and email it to QA after the case is assigned to a QA reviewer.

Item	Explanation	See a sample
Draft Letter 1755 showing the beginning of the affected year and certified mailing selective options	Gives the plan sponsor 30 days to file an appeal of the proposed adverse action.	<i>Forms/Pubs/Products Repository</i>
Pub 5153, Appeal Procedures: Adverse Determination Letter on Qualification of a Retirement Plan	Explains appeals procedures and the effects of an adverse determination letter on the qualification of a retirement plan.	<i>Forms/Pubs/Products Repository</i>
Notice 1214, Helpful Contacts for Your "Notice of Deficiency "	Lists Taxpayer Advocate Service phone numbers by state.	<i>Forms/Pubs/Products Repository</i>

- (10) Prepare Form 3198-A, TE/GE Special Handling Notice, write "Proposed Adverse, Pre-Issuance Review Request."
- (11) Ask your manager to sign and date the Form 5464-A, EP/EO Case Chronology Record, after they review the case and the proposed adverse package.
- (12) Prepare the case for Mandatory Review by setting the TEDS mandatory review indicator option to "Proposed Adverse."
- (13) Update TEDS and attach the electronic administrative file and electronic proposed adverse package file (organize per the assembly guide in Exhibit 7.11.11-1 Sample Proposed Adverse Case Assembly) to the email that is sent by the specialist.

#### 7.11.11.4 (09-11-2017)

#### **QA Responsibilities - Pre-Issuance Review**

- (1) When QA receives the case, the EP QA manager reviews the proposed issue. Within five business days, the manager decides to accept the case or return the case to the specialist.
- (2) If the case is accepted, the QA group clerk updates the case to a QA reviewer.
- (3) QA reviewer will follow these steps:
  - a. Evaluate the case to ensure the specialist considered all possible alternative methods.
  - b. Review the government's position for technical soundness and uniformity. The case may require technical advice if the IRS has been inconsistent on a qualification issue.
  - c. Evaluate the case and proposed adverse package for completeness, clarity, and adequacy of documentation.
  - d. Make any necessary changes to the Attachment A and Form 5666.
  - e. Return the case to specialist with Form 5456, Reviewer's Memorandum - EP/EO, if it needs to be developed further. See IRM 7.11.9.2.2, Reviewers' Case Return Procedures. Include instructions to update the administrative record to reflect any additional correspondence between the plan sponsor and specialist.
  - f. Secure approval from the EP QA manager to send the Letter 1755 using the same QA procedures for approving Form 5456 if you agree with the proposed adverse letter.
  - g. Review and complete Letter 1755. Use an electronic date and signature of EP Director, Rulings and Agreements on the letter. Copy the letter for the case file.

- h. Copy Attachment A and attach it to the Letter 1755.
- i. Initial and date the file copy of Letter 1755 and Attachment A: both QA reviewer and QA manager.
- j. Mail the original Letter 1755 and Attachment A by certified mail to the plan sponsor with a copy to the representative. Update all copies of the administrative record to reflect the new correspondence.
- k. Update the case to status 35 (Letter 1755 Sent) when you mail the letter.
- l. Discuss with the EP QA manager whether it's appropriate to make a referral to EP Examinations at this time and follow their instructions. Normally, a referral is sent when the **final** adverse DL is mailed, but the EP QA manager may decide to send it now depending on the issues.

7.11.11.5  
(09-11-2017)  
**Proposed Adverse Letter  
1755 (30-day letter)**

- (1) Letter 1755 gives the plan sponsor 30 days (or possibly longer if requested in writing) to appeal the proposed adverse action. Once the QA reviewer mails Letter 1755, the plan sponsor may:
  - a. Provide additional information.
  - b. File an appeal.
  - c. Not respond timely or at all.
  - d. Agree, in writing, to the proposed adverse DL.
- (2) If QA receives additional information from the plan sponsor, QA prepares a Form 5456 and returns the case to the specialist to consider the information.
  - a. If the issue remains unresolved, the specialist updates all copies of the administrative record and the proposed adverse package to reflect the new information. Prepare a revised Attachment A and Letter 1755 if the additional information results in a change to the IRS' position. Return the case to QA for processing using Form 5457, Response to Reviewer's Memorandum-EP/EO.
  - b. QA mails the new Letter 1755 and Attachment A per IRM 7.11.11.4 (3)(j).
- (3) If the plan sponsor:
  - a. Files a written appeal or protest within 30 days after the date of the Letter 1755, QA forwards the case to Appeals following the procedures in IRM 7.11.11.6.
  - b. Doesn't file a timely written protest or agrees in writing to the proposed adverse DL, QA forwards the case to the Area Counsel office per IRM 7.11.11.7.
  - c. The QA manager will inform the EP R&A technical advisor that the case is being sent to Division Counsel.

7.11.11.6  
(09-11-2017)  
**Submit Case to Office of  
Appeals**

- (1) If QA receives a timely written protest per IRM 7.11.11.5 (3), they review it for completeness and accuracy. See Pub 5153 for a description of the parts of the protest, including the declaration statement. After review, QA returns the case to the specialist with Form 5456, directing them to prepare the case for QA to submit to Appeals, preferably within five workdays.
- (2) QA: Update the case status to 33 on TEDS, Returned to Specialist from QA to work.
- (3) Specialist: Complete or respond to QA instructions. Scan or upload the plan sponsor's protest and any additional correspondence into TEDS and make a

## 7.11 Employee Plans Determination Letter Program

copy for the electronic administrative record bundle. Update the administrative record for the new items. Assemble the case in the following order and create a zip file:

Item	Explanation
Index of attached items	Use to organize.
Note to File	The note is a short synopsis and commentary on the case history up to the current date. Include an assessment of the plan sponsor's protest and why the government's position remains unchanged. Include comments as to why you aren't protecting statutes of limitation, e.g., why there are no consent forms in the case. <b>Note:</b> Generally, you don't have to protect the statute of limitations for determination cases.
Administrative Record	All items that are part of the administrative record. See Exhibit 7.11.11-1.
Other Case File Documents	All items in the case that aren't part of the administrative record. See Exhibit 7.11.11-1.

- (4) Specialist: Prepare Form 5457, get your group manager's agreement and send the case and zip file to QA. Attach Form 3198-A and note in the Other box: Response to Letter 1755. Update Status on TEDS.
- (5) QA reviewer:
  - a. Review the Form 5457 comments, case file documentation and case file assembly for proper content.
  - b. Submit to the EP QA manager for approval.
  - c. Transfer the case to Appeals.
  - d. Update the case to status 54 (Transferred to Appeals).
  - e. Attach a new Form 3198-A, TE/GE Special Handling Notice, and note in the Other box: Adverse Determination Case.
- (6) Appeals Officer: Review the case and make a final decision on whether to issue an adverse DL or a favorable DL. Prepare and mail the appropriate letter or return the case to QA with instructions to issue the applicable letter.
- (7) QA: Update TEDS and return the case to the specialist with any relevant case closing instructions or Appeals directions.
- (8) Specialist: Close the case according to any Appeals or QA instructions.

7.11.11.7  
(09-11-2017)  
**Submit Case to Division  
Counsel**

- (1) The QA reviewer follows these directions if the plan sponsor doesn't timely file a written protest to the Letter 1755 or agrees in writing to the proposed adverse DL.

**Note:** If the plan sponsor submits a letter agreeing with the proposed adverse DL, scan or upload the document into TEDS and update the administrative record to include their letter.

- (2) Prepare Letter 1724, Final Adverse (No Appeal Requested).
- (3) Update the Attachment A:
  - a. Change the title, "Attachment A" to read "Determination Explanation."
  - b. Change the title of the "Government's Position" to "Conclusion."
  - c. Remove the "Plan Sponsor's Position" section (if present).
  - d. Attach the Determination Explanation to the Letter 1724.
- (4) Prepare a "Memorandum to Area Counsel" to include in the case. See Exhibit 7.11.11-7, Sample Summary Memorandum to Area Counsel. Copy the Memo for the case.
- (5) Assemble the case per IRM 7.11.11.6 (3), Submit Case to Office of Appeals.
  - a. Add the file copies of the Memo and Letter 1724 with the Determination Explanation attached after the index.
- (6) Update the case to status 91, Awaiting Division Counsel Approval, on TEDS.
- (7) Forward the zip file of the case to the Area Counsel closest to the plan sponsor's address for a pre-issuance review using a secured email. See *TEGEDC-Area Counsel Offices* for the address.
- (8) After Area Counsel returns the case:
  - a. Consider the suggested changes and proceed as appropriate.
  - b. Get the EP QA manager's approval to issue the final adverse Letter 1724.
  - c. Mail the Letter 1724 with Notice 1214 by certified mail.
  - d. Update the administrative record to include the Letter 1724, Determination Explanation, and Notice 1214. Include any certified mailing information, including return receipt.
  - e. If you didn't send a referral to EP Examinations per IRM 7.11.11.4, send one now with a copy of the Letter 1724. See IRM 7.11.10, EP Examination and Fraud Referral Procedures.
- (9) The plan sponsor has 92 days from the date on the letter to file a timely petition with the Tax Court.
- (10) If Area Counsel:
  - a. Requests the case once the plan sponsor files a petition and the case is docketed in Tax Court, transfer the zipped case file to the appropriate Area Counsel office.
  - b. Doesn't request the case by 120 days after docketing, or if the plan sponsor name doesn't appear on the docket list, close the case, update it to status 02 (Final Adverse) on TEDS.

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**Exhibit 7.11.11-1 (08-22-2016)****Sample Proposed Adverse Case Assembly**

To find a pdf of this chart, go to the QA Guidance folder and click on the Adverse Cases folder on the shared server (Internal Use Only).

<b>Non-disclosable documents NOT exchanged with plan sponsor</b>	<b>Administrative Record Bundle All documents shared with or received from the plan sponsor</b>	<b>Disclosable documents NOT exchanged with plan sponsor</b>
Form 5666, TE/GE Referral Information Report  Form 6212-B, Examination Referral Checksheet B  Form 6533, Examination Referral Worksheet  Form 5464-A, EP/EO Case Chronology Record  Form 6088, Distributable Benefits from Employee Pension Benefit Plans  Form 5621, Technical Analysis Control Sheet  Interested Party Letters and Related Items Workpapers Form 5456, Reviewer's Memorandum - EP/EO	Administrative Record Index  Form 8717, User Fee for Employee Plan Determination Letter Request  Form 2848, Power of Attorney and Declaration of Representative  Last Favorable Determination Letter or Opinion/Advisory Letter  Application form with all attachments *including any attachments that may contain non-disclosable information (for example, a demo 6)  Final letters for interested parties  All correspondence shared with or received from the plan sponsor (1196 letter, 1955 letter, faxes received) *Oldest on top, newest on bottom	Proposed Adverse Package: <ul style="list-style-type: none"> <li>Printed index of attached items</li> <li>Summary Memorandum to QA</li> <li>Attachment A</li> <li>Draft Letter 1755</li> <li>Publication 5153</li> <li>Notice 1214</li> </ul> <p><b>Note:</b> Once any of these items have been shared with the plan sponsor/POA, incorporate them into the administrative record.</p>
Form 5402, Appeals Transmittal and Case Memo	Interested party items	Memorandum to Appeals
Other Internal Documents NOT Exchanged with plan sponsor	Amendments  Plan Document/Adoption Agreement  Trust	Memorandum to Area Counsel  Purge items

**Exhibit 7.11.11-2 (12-05-2024)****Sample Administrative Record Index**

Create an administrative record index.

- a. The Description of Document part of the administrative record index should contain a full description of the document, not just a form number or letter number.
- b. Prepare the administrative record index in a way so that the subsequent reviewer may readily find any document or correspondence in TEDs or the attached administrative file.

The dates listed on the administrative record index should be:

- a. For letters: the date that appears on the letter.
- b. For documents received with a letter: the date that appears on the associated letter.

<b>Administrative Record Index</b>				
<b>Index #</b>	<b>Date of Correspondence</b>	<b>Recipient</b>	<b>Originator</b>	<b>Description of Document</b>
1	January 31, 2022	Your Name, Specialist	Plan sponsor's name	Form 8717, User Fee for Employee Plan Determination Letter Request.
2	January 31, 2022	Your Name, Specialist	Plan sponsor's name	Form 2848, Power of Attorney and Declaration of Representative.
3	October 14, 2013	Your Name, Specialist	Plan sponsor's name	Last Favorable Determination Letter.
4	January 31, 2022	Your Name, Specialist	Plan sponsor's name	Form 5300, Application for Determination for Employee Benefit Plan.
5	January 31, 2022	Your Name, Specialist	Plan sponsor's name	Cover Letter.
6	August 19, 2023	Plan sponsor's name	Your Name, Specialist	Letter 1196, Information Request Letter.
7	August 19, 2023	Representative's name, POA	Your Name, Specialist	Letter 1196, Information Request Letter
8	August 28, 2023	Your Name, Specialist	Plan sponsor's name / Representative's name, POA	Plan sponsor's or POA's response to Letter 1196 dated August 19, 2023, responding to items 1-4. Failed to respond to items 5-7.
9	August 28, 2023	Plan sponsor's name	Your Name, Specialist	Letter 1955, Second Information Request. Requested response for missing items.
10	August 28, 2023	Representative's name, POA	Your Name, Specialist	Letter 1955, Second Information Request. Requested response for missing items.

**Exhibit 7.11.11-2 (Cont. 1) (12-05-2024)**  
**Sample Administrative Record Index**

Index #	Date of Correspondence	Recipient	Originator	Description of Document
11	September 12, 2023	Your Name, Specialist	Plan sponsor's name / Representative's name, POA	Plan sponsor's or POA's response to Letter 1955. Plan sponsor / POA indicates can't find missing information.
12	September 15, 2023	Plan sponsor's name	Your Name, Specialist	Closing agreement offer letter outlining missing amendments and sanction amount.
13	September 15, 2023	Representative's name, POA	Your Name, Specialist	Closing agreement offer letter outlining missing amendments and sanction amount.
14	September 17, 2023	Your Name, Specialist	Plan sponsor's name / Representative's name, POA	Plan sponsor's / POA's response indicating that they are unwilling to enter into a closing agreement.
15	October 15, 2023	Your Name, Specialist	Plan sponsor's name	Amendment.
16	January 31, 2022	Your Name, Specialist	Plan sponsor's name	Plan Document.
17	January 31, 2022	Your Name, Specialist	Plan sponsor's name	Trust Document.

Plan Sponsor:	ZZZ, Inc.	Plan Number	001
Plan Name:	ZZZ, Inc. Retirement Plan	EIN:	00-0000000
Specialists Name:	Your name here	Plan Year(s) Beginning	201512 thru 202212

**Exhibit 7.11.11-3 (09-28-2021)****Mailing Address List**

<b>Division</b>	<b>Address</b>
EP Determinations Quality Assurance Staff express mail or delivery service	Internal Revenue Service TE/GE:EP:QA Group 7579 550 Main Street -Stop 6430 Cincinnati, OH 45202
EP Determinations Quality Assurance Staff mailing address	Internal Revenue Service TE/GE:EP:QA Group 7579 550 Main Street Cincinnati, OH 45202
Appeals Office	Internal Revenue Service Independent Office of Appeals 200 W. Adams Suite 600 Chicago, IL 60606-5208

**Exhibit 7.11.11-4 (08-22-2016)****Sample Letter of Notification for Potential Proposed Adverse Closure**

A sample Letter of Notification for Potential Proposed Adverse Closure is provided below. To find a template, go to the QA Guidance folder and click on the Adverse Cases folder on the shared server (Internal Use Only).

Internal Revenue Service

Department of the Treasury  
550 Main St. Room XXXX Cincinnati, OH 45202

Date:

Person to Contact:

ID#:

Plan sponsors Name &amp; Address

Telephone Number:

Plan Name:

Plan Number:

Dear Sir or Madam:

We noted certain defects in plan operation and/or form during our review of your determination application. We have attempted to resolve these defects but have been unsuccessful. Therefore, the case is being forwarded to our Quality Assurance staff for second level review to consider disqualification of the plan. Once this second level review is completed the case may take various routes, including:

1. Transfer to our Employee Plans Examination Function where an examination of the plan may be conducted.
2. Return to the specialist for additional development; or
3. A letter may be issued which will formally notify you of the proposed disqualification and explain your rights to an appeal.

The appeal process is outlined in the enclosed Publication 5153. If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours, Employee Plans Specialist

Encl. Publication 5153

CC:

**Exhibit 7.11.11-5 (08-22-2016)****Sample Attachment A**

A sample Attachment A is provided below. To find a template, go to the QA Guidance folder and click on the Adverse Cases folder on the shared server (Internal Use Only).

Attachment A

**FACTS:**

xxxxxx (the Employer), Employer Identification Number of (enter number), adopted the xxxx (the Plan) on (enter date). The Plan was originally effective (enter date). The Plan year ends on (enter date). (Choice: The Plan last received a favorable determination letter from the Internal Revenue Service (IRS) on (enter date). Or, the Plan has never received a favorable determination letter.)

Form (Choice: 5300 or 5310) was submitted to the EP Determinations Function of the IRS on (enter date). The Employer has requested a determination concerning the (Choice: qualification or continuing qualification or qualification on plan termination) of the Plan. Optional: In connection with the determination letter request, the Employer has submitted amendments signed on (enter date) with an effective date of (enter date) (and/or a restated Plan signed on (enter date) with an effective date of (enter date). These amendments and/or Plan re-statement attempted to bring the Plan into compliance with section 401(a) of the Internal Revenue Code of 1986 (the Code).

**ISSUE:**

Was the Plan timely amended for the changes required by the Tax Reform Act of 1986 (TRA '86)?

Would the failure to timely amend the Plan for the above law change result in the Plan failing to satisfy the requirements of section 401(a) of the Code?

**LAW:**

Section 401(a) of the Code states the requirements for qualification of a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries.

Section 401(b) of the Code states that a "stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof), or such later time as the Secretary may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period."

Section 1.401(b)-1(a) of the Income Tax Regulations (the Regulations) states as a general rule that "under section 401(b) a stock bonus, pension, profit-sharing, annuity, or bond purchase plan which does not satisfy the requirements of section 401(a) on any day solely as a result of a disqualifying provision (as defined in paragraph (b) of this section) shall be considered to have satisfied such requirements on such date if, on or before the last day of the remedial amendment period (as determined under paragraphs (c), (d) and (e) of this section) with respect to such disqualifying provision, all provisions of the plan which are necessary to satisfy all requirements of section 401(a), 403(a), or 405(a) are in effect and have been made effective for all purposes for the whole of such period. Under some facts and circumstances, it may not be possible to amend a plan retroactively so that all provisions of the plan which are necessary to satisfy the requirements of section 401(a) are in fact made effective for the whole remedial amendment period. If it is not possible, the requirements of this

**Exhibit 7.11.11-5 (Cont. 1) (08-22-2016)**  
**Sample Attachment A**

section will not be satisfied even if the employer adopts a retroactive plan amendment which, in form, appears to satisfy such requirements. Section 401(b) does not permit a plan to be made retroactively effective, for qualification purposes, for a taxable year prior to the taxable year of the employer in which the plan was adopted by such employer.”

Section 1.401(b)-1(b) of the Regulations defines a disqualifying provision as:

- a. A provision of a new plan, the absence of a provision from a new plan, or an amendment to an existing plan, which causes such plan to fail to satisfy the requirements of the Code applicable to qualification of such plan as of the date such plan or amendment is first made effective, or
- b. A plan provision which results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in such requirements -

Revenue Procedure 95-12, 1995-1, C.B. 508, discusses the various extensions granted, and the deadline, for amending plans for TRA '86.

**TRA '86**

Employers were granted an extension under section 401(b) of the Code and the Regulations thereunder to make the amendments required by Act Section 1140 of TRA '86. This TRA '86 remedial amendment period was extended to the last day of the first plan year beginning on or after January 1, 1994.

**GOVERNMENT'S POSITION:**

**For TRA '86**

The Plan should have been amended for the requirements of TRA '86 by (enter date); however, the Plan was not amended for TRA '86 until (enter date). OR (The Plan hasn't yet been amended for TRA '86).

See the last page of Attachment A for the Code sections violated because of failure to timely amend the Plan for TRA '86.

The Plan wasn't timely amended for TRA '86. Therefore, the Plan isn't qualified under section 401(a) for Plan years beginning on or after January 1, 1989. OR The Plan isn't qualified under section 401(a) of the Code since its inception on (enter date). Furthermore, this letter revokes our favorable determination letter dated (enter date) that held this Plan to be a qualified Plan under section 401(a) of the Code.

**PLAN SPONSOR'S POSITION: (If available).**

The representative of the employer believes that the amendments were adopted timely in accordance with the section 401(b) of the Code and the Plan is a qualified plan under section 401(a).

<b>Law Changes Required For Plan Years Beginning After 12/31/88</b>	<b>Citations to the Internal Revenue Code</b>
1. \$200,000 Compensation Limit & Family Aggregation.	401(a)(17)
2. Permitted Disparity.	401(a)(5)
3. Additional Participation Requirements.	401(a)(26)
4. Required Distributions.	401(a)(9)(C)

**Exhibit 7.11.11-5 (Cont. 2) (08-22-2016)****Sample Attachment A**

<b>Law Changes Required For Plan Years Beginning After 12/31/88</b>	<b>Citations to the Internal Revenue Code</b>
5. Minimum Participation Standards.	410(a)
6. Cash or Deferred Arrangements.	401(k)
7. Minimum Vesting Standards.	411(a)



**Exhibit 7.11.11-6 (08-22-2016)****Sample Summary Memorandum to QA**

A sample Summary Memorandum to QA is provided below. To find a template, go to the QA Guidance folder and click on the Adverse Cases folder on the shared server (Internal Use Only).

INTERNAL REVENUE SERVICE

MEMORANDUM

Date:

To: Manager, EP Determinations Quality Assurance

From: XXXX, Group Manager, EP Determinations Group YYYY

Subject: Proposed Adverse Determination Case for ZZZZ Retirement Plan

We are forwarding the attached case for pre-issuance review of a proposed adverse for the following plan defects:

*(Insert details including a short overview of the case history, current adverse issue(s), and case development up to the current point. Please also alert the reviewer to any special considerations in the case.)*

In accordance with IRM 7.11.11.1.2, this case is being forwarded for your review.

If there are any questions, please contact \_\_\_\_\_ at (XXX) XXX-XXXX.

**Exhibit 7.11.11-7 (08-22-2016)****Sample Letter for Pre-Issuance Review of Adverse Determination Letter**

A sample Letter of Notification for Potential Proposed Adverse Closure is provided below. To find a template, go to the QA Guidance folder and click on the Adverse Cases folder on the shared server (Internal Use Only).

INTERNAL REVENUE SERVICE

MEMORANDUM

Date:

To: Area Counsel, XXXXX XXXXX, TE/GE

From: Manager, EP Determinations Quality Assurance T:EP:RA:QA

Subject: Pre-Issuance Review of Final Adverse Determination Letter

In accordance with IRM 7.11.11.1.6 we are forwarding the case and final adverse determination letter for the \_\_\_\_\_ Plan for your pre-issuance review.

If there are any questions, please contact \_\_\_\_\_ at (XXX) XXX-XXXX.