



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.71.3

MARCH 18, 2022

## EFFECTIVE DATE

(03-18-2022)

## PURPOSE

- (1) This transmits revised IRM 4.71.3, Employee Plans Examination of Returns, Unagreed Form 5500 Examination Procedures and EP Examinations Closing Agreements.

## MATERIAL CHANGES

- (1) Revised IRM 4.71.3.1.3, Related Resources, to add information regarding the location of exhibits and examples on TE/GE Connect and the Virtual Library.
- (2) Updated the table in IRM 4.71.3.3(2) to comply with 508 requirements.
- (3) Updated the table in IRM 4.71.3.5.1(9) to comply with 508 requirements.
- (4) Revised IRM 4.71.3.5.2 (7) for clarification.
- (5) Revised IRM 4.71.3.5.4, Electronic Payments of Closing Agreement Sanctions, to conform to the requirement of Rev. Proc. 2021-30, Correction on Audit (Audit CAP) Section 13.02, Payment of Sanction, which provides that the plan sponsor must pay the sanction using Pay.gov, unless the plan sponsor doesn't have the capability.
- (6) Updated the table in IRM 4.71.3.6.4.1(7) to comply with 508 requirements.
- (7) Editorial changes were made throughout this IRM to update for broken links.

## EFFECT ON OTHER DOCUMENTS

This supersedes IRM 4.71.3 dated November 12, 2021.

## AUDIENCE

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4.71.3

Unagreed Form 5500 Examinations and EP Examinations Closing Agreements

## Table of Contents

4.71.3.1 Program Scope and Objectives

4.71.3.1.1 Program Controls

4.71.3.1.2 Acronyms, Forms, and Publications

4.71.3.1.3 Related Resources

4.71.3.1.4 Overview of Unagreed Form 5500 Examinations and EP Examinations Closing Agreements

4.71.3.1.5 Definitions

4.71.3.2 Safeguarding Personally Identifiable Information (PII)

4.71.3.3 Addressing Issues that Effect Plan Qualification

4.71.3.4 Tax Effect of Plan Revocation/Non-Qualification

4.71.3.5 EPCRS and Closing Agreements

4.71.3.5.1 EPCRS - SCP

4.71.3.5.2 EPCRS Closing Agreements

4.71.3.5.3 DO 8-3 Closing Agreements

4.71.3.5.4 Electronic Payments of Closing Agreement Sanctions

4.71.3.6 Unagreed Form 5500 Procedures

4.71.3.6.1 Solicitation of Form 1041

4.71.3.6.1.1 Obtaining a Trust EIN

4.71.3.6.2 30-Day Letter Package

4.71.3.6.3 Revenue Agent Report

4.71.3.6.4 Administrative Record

4.71.3.6.4.1 Maintaining the Administrative Record File

4.71.3.6.4.2 Exchange of Documents

4.71.3.6.4.3 Examiner's Responsibility

4.71.3.6.4.4 Group Manager's Responsibility

4.71.3.6.5 Statute Considerations

4.71.3.7 Case Closing

4.71.3.7.1 Completion of the RCCMS Closing Record

4.71.3.7.2 Disposal Codes



# Unagreed Form 5500 Examinations and EP Examinations Closing Agreements 4.71.3

page 1

## 4.71.3.1 (12-04-2018) Program Scope and Objectives

- (1) The Employee Plans (EP) examination program was established to ensure compliance with the provisions of Internal Revenue Code (IRC) 401(a).
- (2) **Purpose:** IRM 4.71.3, Employee Plans Examination of Returns, Unagreed Form 5500 Examination Procedures and EP Examinations Closing Agreements, provides the basic examination procedures that will enable Employee Plans (EP) examiners and their managers to properly process EP case files when they discover an issue during a Form 5500 series examination that could potentially disqualify the plan.
- (3) **Audience:** This IRM provides procedures for examiners, managers, and support staff in EP Examinations.
- (4) **Program Owner:** Director, EP Examinations.
- (5) **Program Authority:** EP Examinations' authority to conduct examinations, resolve issues and determine tax liability is derived from Title 26, Internal Revenue Code, Subtitle F – Procedure and Administration, which includes but is not limited to:

Cite	Specific authority
IRC Section 7602, Examination of books and witnesses, which falls under Chapter 78 - Discovery of Liability and Enforcement of Title	<ul style="list-style-type: none"><li>• Examine any books, papers, records or other data necessary to complete an examination.</li><li>• Take testimony under oath to get additional information needed.</li><li>• Issue summons for information necessary to complete an examination.</li><li>• Ask about any offense connected to the administering or enforcing of the Internal Revenue laws.</li></ul>
IRC Section 6201, Assessment authority, which falls under Chapter 63 - Assessment.	Resolve issues based on authority to make determinations of tax liability under IRC 6201.

## 4.71.3.1.1 (11-12-2021) Program Controls

- (1) There are two review groups to make sure examiners conduct examinations per technical, procedural and administrative requirements:
  - a. Mandatory Review, see IRM 4.71.14, Employee Plans Examination of Returns, EP Mandatory Review.
  - b. Special Review, see IRM 4.70.7, Special Review (SR) and Tax Exempt Quality Measurement System (TEQMS) Procedures.
- (2) EP Examinations uses the Tax Exempt Quality Measurement System (TEQMS) quality control system to oversee the examination program. For more information on TEQMS, see IRM 4.70.7.1.3, Program Overview.
- (3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.

## 4.71 Employee Plans Examination of Returns

- (4) 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*.
  - For questions on privacy, send an email to *\*Privacy*.
  - For question on disclosure, send an email to *\*Disclosure*.

4.71.3.1.2  
(12-17-2020)

### Acronyms, Forms, and Publications

- (1) This manual uses the following acronyms and references the following forms.

#### Acronyms

Acronym	Definition
AIMS	Audit Information Management System
BMF	Business Master File
CAP	Closing Agreement Program
CCR	Case Chronology Record
CECA	Checksheet for Employee Plans Compliance Activities
DO 8-3	Delegation Order 8-3
DOL	Department of Labor
EEFax	Enterprise Electronic Facsimile
EFU	Exam Functional Unit
EIN	Employer Identification Number
EP	Employee Plans
ERISA	Employee Retirement Income Security Act of 1974
EPCRS	Employee Plans Compliance Resolution System
FAC	Functional Assignment Coordinator
FICA	Federal Insurance Contributions Act
HCE	Highly Compensated Employee
IDR	Information Document Request (Form 4564)
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
IRA	Individual Retirement Account
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
LB&I	Large Business and International
MFT	Master File Tax

Acronym	Definition
MPA	Maximum Payment Amount
NHCE	Non-highly Compensated Employee
PBGC	Pension Benefit Guaranty Corporation
POA	Power of Attorney
POD	Post of Duty
RAR	Revenue Agent Report
RCCMS	Reporting Compliance Case Management System
SARSEP	Salary Reduction Simplified Employee Pension
SB/SE	Small Business/Self-Employed
SCP	Self-Correction Program
SEP	Simplified Employee Pension
SIMPLE IRA	Savings Incentive Match Plan for Employees
TE/GE	Tax Exempt & Government Entities Division
TEQMS	Tax Exempt Quality Measurement System
VCP	Voluntary Correction Program
W&I	Wage and Investment

## **Forms and Pubs**

Form	Name
Form 872-H	Consent to Extend the Time to Assess Tax on a Trust
Form 990-T	Exempt Organization Business Income Tax Return
Form 1040	U.S. Individual Income Tax Return
Form 1041	U.S. Income Tax Return for Estates and Trusts
Form 1120	U.S. Corporation Income Tax Return
Form 2363	Master File Entity Change
Form 2848	Power of Attorney and Declaration of Representative
Form 3198-A	TE/GE Special Handling Notice
Form 3210	Document Transmittal
Form 3244-A	Payment Posting Voucher - Examination
Form 4442	Inquiry Referral

## 4.71 Employee Plans Examination of Returns

Form	Name
Form 4549-E	Income Tax Discrepancy Adjustments
Form 4564	Information Document Request (IDR)
Form 5330	Return of Excise Taxes Related to Employee Benefit Plans
Form 5456	Reviewer's Memorandum - EP/EO
Form 5464	Case Chronology Record
Form 5500	Annual Return/Report of Employee Benefit Plan
Form 5500-EZ	Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan
Form 5500-SF	Short Form Annual Return/Report of Small Employee Benefit Plan
Form 5650	EP Examined Closing Record
Form 5666	TE/GE Referral Information Report
Form 5734	Non-Master File Assessment Voucher
Form 5773-A	Employee Plans (EP) Workpaper Summary
Form 6212-B	Examination Referral Checksheet B
Form 6533	Examination Referral Worksheet
Form 9814	Request for Mail/Shipping Service
Form 13133	Expedite Processing Cycle
Form SS-4	Application for Employer Identification Number
Pub 1	Your Rights as a Taxpayer
Pub 594	The IRS Collection Process
Pub 1020	Appeal Procedures EP Examinations

4.71.3.1.3  
(11-12-2021)

### Related Resources

- (1) The Employee Plans page of TEGE Connect provides procedural information, such as, but not limited to:

- a. IRM 4.71 Exhibits

**Example:** Contact information for individuals and business units referenced in IRM 4.71 is located in IRM 4.71.1 Exhibit 13, Contact Information.

- b. Guidelines for drafting a Revenue Agent Report (RAR) and an example of a draft RAR for a form defect.  
c. *Centralized list of program coordinators.*

- (2) The Retirement Plans Knowledge Base located on the *IRS Virtual Library* is a resource for learning more about retirement plan concepts and procedures.

**Example:** There is information specifically for "EPCRS".



You can:

- a. Review information by selecting topics in the Retirement Knowledge Base or type in key words in the "Search the Virtual Library" search box at the top of the page.
- b. Submit questions by selecting "Contact an Expert" located at the top of the page on the far right.

**Caution:** When submitting questions, do not submit actual taxpayer entity information.

(3) IRM 4.70.3, TE/GE Examinations, Promoter Investigations.

4.71.3.1.4  
(12-17-2020)  
**Overview of Unagreed  
Form 5500 Examinations  
and EP Examinations  
Closing Agreements**

- (1) Unless specifically stated otherwise, this IRM is written to provide specific instructions to EP examiners who discover an issue during a Form 5500 series examination that could potentially disqualify the plan.
  - (2) Plan qualification issues (IRC 401(a) failures) discovered through a Form 5500 examination can be resolved through:
    - a. The Employee Plans Compliance Resolution System (EPCRS).
    - b. A DO 8-3 closing agreement.
    - c. The unagreed case process.
  - (3) Most qualification issues discovered on EP examinations are resolved under EPCRS. EPCRS guidelines are covered in IRM 4.71.3.5.2, EPCRS Closing Agreements, and Rev. Proc. 2021-30.
  - (4) When qualification issues can't be resolved through EPCRS, they are either:
    - a. Resolved through a DO 8-3 closing agreement, or
    - b. Processed as an unagreed case.
  - (5) Determine if the issue requires a **Mandatory Technical Advice**. Certain issues such as violations of the exclusive benefit rule under IRC 401(a)(2) (for plans that fall under Title I of ERISA) require mandatory technical advice.
- Note:** See Rev. Proc. 2021-2 (as updated annually) and IRM 4.71.13.4.1, Mandatory Technical Advice, for a complete list of issues requiring mandatory technical advice.
- (6) When examining a Form 5500 series return, follow the guidelines and procedures in IRM 4.71.1, Overview of Form 5500 Examination Procedures, up to the point the issues in the case become unagreed. This IRM covers procedures to process a case from the time it becomes unagreed until it's closed to EP Mandatory Review.

**Note:** See IRM 4.71.3.1.5, Definitions, for the definition of an unagreed case.

- (7) This IRM also has procedures for:
  - a. Closing agreements - See IRM 4.71.3.5.2, EPCRS Closing Agreements.
  - b. Agreed revocation and non-qualification cases resolved through DO 8-3 closing agreements. See IRM 4.71.3.5.3, DO 8-3 Closing Agreements.

4.71.3.1.5  
(12-04-2018)  
**Definitions**

- (1) An unagreed Form 5500 examination is one that involves a qualification issue that we can't resolve via EPCRS or a DO 8-3 closing agreement.
- (2) The term "revocation" refers to the proposed disqualification of a plan that has a prior determination letter issued in the plan's name.
- (3) The term "non-qualification" refers to the proposed disqualification of a plan that has no prior determination letter.
- (4) Any reference to Form 5500 in this IRM also includes Form 5500-EZ and Form 5500-SF.

4.71.3.2  
(12-04-2018)  
**Safeguarding Personally  
Identifiable Information  
(PII)**

- (1) When possible, mask the first five digits of a taxpayer's SSN on letters, forms, notices, workpapers and emails.

**Example:** XXX-XX-9999

4.71.3.3  
(03-18-2022)  
**Addressing Issues that  
Effect Plan Qualification**

- (1) When you discover an issue during an examination of a plan that could potentially result in a plan revocation or non-qualification, discuss the issue with your group manager before formally advising the taxpayer that the IRS is proposing disqualification of the plan.
  - a. The purpose of this discussion with your group manager is to confirm that you're properly analyzing the facts, to determine which issues you should pursue and to determine whether we can resolve the issues through EPCRS. See IRM 4.71.3.5., EPCRS and Closing Agreements.
  - b. You shouldn't proceed with the proposed revocation/non-qualification until you and your group manager have determined that the issue can't be resolved through EPCRS.
  - c. Audit CAP is available to correct egregious failures.
- (2) When you determine a qualification issue exists, in most cases, you should expand the examination to include additional years.

Year	Required Actions
Subsequent	Review the subsequent year return unless the return hasn't been filed. <b>Note:</b> If a Form 5500 return is due but hasn't been filed, solicit a delinquent return from the plan sponsor. See IRM 4.71.1.21, Amended, Substitute and Secured Forms 5500, for delinquent and substitute Form 5500 procedures.
Prior	Review prior year returns to determine if a similar qualification issue exists. Establish prior year returns if you secured records and reviewed them. <b>Note:</b> It is possible to have change closure in one year and no change closure in another year.

Year	Required Actions
Affected	<p>Establish all years affected on AIMS/RCCMS. The group manager must make sure additional years are established if correction is secured in those years or if the EP examiner reviewed records to verify compliance. Sometimes, this may lead to an 02 closure in a prior year.</p> <p><b>Caution:</b> If you review records, you must issue a closing letter.</p>

**Note:** See IRM 4.71.1.14.1, Prior Year, Subsequent Year and Related Returns, for procedures to open an examination of a related Form 5500 that has been filed.

- (3) Document managerial involvement and guidance on Form 5464 (CCR).
- (4) Use the CCR (or similar document) to record in clear, legible form, a factual accounting of all conferences and/or telephone conversations you had with the taxpayer or taxpayer's representative (representative).
  - a. Since the administrative record in declaratory judgment cases (which includes proposed revocation/non-qualification cases) consists only of the documentation that was submitted in writing and exchanged between the parties, it is vital that you formally document all discussions and conferences for the record and share them with the taxpayer/representative.
  - b. If you want pertinent portions of the CCR or similar documentation included in the administrative record, you must send them to the taxpayer/representative in letter format. The pertinent portions should include, but are not limited to, any discussions you had with the taxpayer or representative that are relevant to the examination scope, affirmation of tax liability or the plan's qualified status.
- (5) After you fully develop the relevant issues, present proposals for resolution to the taxpayer/representative in light of the information provided to date.
  - a. This allows the taxpayer/representative an opportunity to agree with your proposals, make changes to resolve the issues, present additional facts for consideration, and/or present his/her position.
  - b. Make every effort to resolve the issues at the lowest possible level.
  - c. Advise the taxpayer/representative that their additional facts won't be considered a part of the administrative record, unless they submit them to the IRS in writing.
- (6) If the plan qualification issue can be resolved through EPCRS or through a DO 8-3 closing agreement, offer the taxpayer the opportunity to enter into negotiations for a closing agreement.
  - See Rev. Proc. 2021-30 for EPCRS.
  - See IRM 4.71.3.5.1, EPCRS-SCP.
  - See IRM 4.71.3.5.2, EPCRS Closing Agreements.
  - See IRM 4.71.3.5.3, DO 8-3 Closing Agreements.

- (7) When you have a qualification issue, you must clearly explain the qualification issues to the taxpayer in writing by issuing a preliminary Revenue Agent's Report (RAR).

**Note:** The preliminary RAR should satisfy parts "a" through "d" of the final RAR, but should be clearly notated as a "Draft" or "Preliminary" copy. See IRM 4.71.3.6.3, Revenue Agent Report.

The preliminary RAR is important for two reasons:

- a. It's written documentation that the IRS clearly discussed (and cited adequate authority) specific issues with the taxpayer.
  - b. It places the document in the administrative record for declaratory judgment purposes.
- (8) Mail the preliminary RAR with an individually designed cover letter to the taxpayer and give them sufficient time to provide a response before you close the case unagreed to Mandatory Review.

**Note:** Mandatory Review will mail the final RAR with the 30-Day Letter (Letter 1756). See IRM 4.71.3.6.2, 30-Day Letter Package.

- (9) If the qualification issues can't be resolved, propose plan revocation/non-qualification and process the case unagreed, following the procedures in IRM 4.71.3.6, Unagreed Form 5500 Procedures.

4.71.3.4  
(12-17-2020)  
**Tax Effect of Plan  
Revocation/Non-  
Qualification**

- (1) Disqualification of a plan in any given year causes the plan to be disqualified in that year and in all subsequent years.
- a. In general, once a plan is disqualified, it remains non-qualified until the qualification issues are corrected and the plan is re-qualified through a closing agreement.
  - b. A plan may be disqualified in a year for which the Form 5500/1041 statute has already expired. Although IRS can't assess tax in a barred year, the consequences of disqualification continue for all subsequent years and IRS can assess tax in subsequent years for which the statute is still open.
  - c. The IRS' ability to pursue a qualification issue in any year is not impacted by the Form 1041 statute of limitations. The expiration of the statute of limitations for Form 1041 for any given year doesn't prevent the IRS from pursuing a qualification issue in that year (see *Yarish Consulting, Inc. v. Commissioner*, T.C. Memo 2010-174).
- (2) The tax effect of revocation/non-qualification includes the following:
- a. **Trust assets' realized earnings** are taxable each year the plan is not qualified (if the tax assessment is not barred by statute). Trust earnings must be reported on Form 1041, which the trustee must file annually, on a calendar year basis.
  - b. **HCE income tax** - if the plan is disqualified for failure to meet IRC 401(a)(26) (participation failure) or 410(b) (coverage failure), each highly compensated employee (HCE) must include in income his/her entire vested accrued benefit (or account balance) not yet included in income per IRC 402(b)(4).

- c. **Nonforfeitable contributions are taxable** - If the plan is disqualified for any reason, plan contributions allocated in a given year to any plan participant (HCE or NHCE) in a defined contribution plan, (in a defined benefit plan the increase in the present value of the accrued benefit) are taxable on the plan participant's Form 1040 to the extent they become nonforfeitable in that year per IRC 402(b)(1).

**Reminder:** Normally, discrepancy adjustments are limited to only the HCEs. However, you and your group manager may determine that an NHCE discrepancy adjustment is appropriate.

**Note:** If a participant is not fully vested, amounts that become vested in a subsequent year will be taxable in the subsequent year to the extent they become vested.

- d. **Forfeitable contributions are non-deductible** - In a defined contribution plan, contributions allocated to participant accounts aren't deductible on the plan sponsor's tax return (for example, Form 1120) to the extent they are forfeitable by the participant.
- e. **Contributions are non-deductible** - In a defined benefit plan, in most cases, none of the contributions made are deductible on the plan sponsor's tax return (for example, Form 1120), because separate accounts are not maintained in a defined benefit plan. If there's only one participant, the employer can deduct the contribution to the extent the participant includes the contribution into income.

**Note:** The employer can deduct the amount of the employer's contribution in the non-qualified year to the extent that the amount is includible in the employees participating in the plan gross income, only if separate accounts are maintained for each employee where there is more than one employee (IRC 404(a)(5) and 26 CFR 1.404(a)-12).

- f. **Ineligible rollover distributions** - distributions made from the plan are ineligible for rollover to another qualified plan or to an IRA, and therefore, are taxable to the individual on his/her Form 1040 in the year of the distribution per IRC 402(b)(2).
- g. **Excise tax on ineligible rollovers** - Any funds rolled into an IRA from a plan determined to be not qualified under IRC 401(a) are subject to excise tax on excess contributions under IRC 4973.

**Note:** IRC 4973 excise tax is due each year until the excess contributions are distributed from the IRA.

- h. **Rollovers from non-qualified to qualified plan taints the qualified plan** - Any funds rolled from a non-qualified plan to a qualified plan can potentially cause the recipient plan to be non-qualified.
- i. **FICA taxes due** - Employer contributions allocated to each participant's account in a defined contribution plan become subject to FICA taxes.

- (3) Compute the tax effect of the revocation/non-qualification for all open years, beginning with the year under examination and going forward and include a copy of the tax calculations in the case file with the RAR when you close the case to Mandatory Review.

## 4.71 Employee Plans Examination of Returns

**Note:** With your manager's approval, you may also consider prior years in your calculations.

### 4.71.3.5 (12-17-2020) EPCRS and Closing Agreements

- (1) You may resolve qualification issues discovered on examination via the Self-Correction Program (SCP) or closing agreements according to the Employee Plans Compliance Resolution System (EPCRS).
- (2) SCP is designed to allow the plan to retain its qualified status for:
  - a. Insignificant issues found on examination.
  - b. If the operational failures is significant, SCP is available only if the correction is completed or substantially completed by the date the plan or the sponsor is notified of a pending examination. Substantially completed generally means that: the correction is completed for 65% of all participants affected before the sponsor is notified of your exam, and is completed thereafter in a diligent manner or during the correction period the failure is identified, correction initiated and completed within 120 days after the last day of the correction period.
  - c. SCP is only available if the taxpayer has practices and procedures in place to promote compliance.

**Note:** See Rev. Proc. 2021-30, Part IV for a description of SCP.

- (3) Qualification issues may be resolved through different types of closing agreements:
  - a. Audit Closing Agreement Program (Audit CAP) Closing Agreements – Designed to allow the plan to retain its qualified status and developed under the EPCRS principles outlined in Rev. Proc. 2021-30. Audit CAP is available for plans under IRC section 401(a), 403(b), SEPs, SARSEPs and SIMPLE IRAs, for correction of all qualification failures found on examination that haven't been corrected under SCP or VCP. See Rev. Proc. 2021-30.
  - b. DO 8-3 Closing Agreements – Designed to resolve issues that do not fall under EPCRS. In most cases, the taxpayer(s) and the Commissioner formally agree that the plan under examination is not qualified, officially making the proposed revocation or proposed non-qualification an "agreed revocation" or "agreed non-qualification." These closing agreements often include income tax, penalties and interest as part of the sanction, and in some limited instances, can be used to resolve excise tax matters.
- (4) If the plan qualification issue can't be resolved through SCP, offer the taxpayer the opportunity to enter into negotiations for a closing agreement. See IRM 4.71.3.5.2, EPCRS Closing Agreements, and IRM 4.71.3.5.3, DO 8-3 Closing Agreements.

**Note:** Find additional information on EPCRS on the *Retirement Knowledge Management Base* site or contact your group manager for help.

### 4.71.3.5.1 (03-18-2022) EPCRS - SCP

- (1) The EPCRS SCP allows a plan sponsor to correct plan errors without contacting the IRS or paying a fee.



- (2) Find important resources on SCP on the *Retirement Knowledge Management Base* site:
- Rev. Proc. 2021-30
  - *EPCRS Self-Correction Program*
  - *Self-Correction Program Desk Guide*
  - *Self-Correction Program Checklist*
- (3) To be eligible for SCP, the plan sponsor or administrator must have established practices and procedures (formal or informal) reasonably designed to promote and facilitate overall compliance with the law.

**Note:** Having a plan document alone doesn't constitute evidence of established procedures.

- (4) Plan sponsors may fix certain operational failures and plan document failures through SCP as described in Part IV of Rev. Proc. 2021-30. Plan sponsors satisfy the SCP requirements for an:
- a. **Operational Failure** if the plan sponsor of a qualified plan (an IRC 401(a) plan), a 403(b) Plan, a SEP, or a SIMPLE IRA Plan satisfies the requirements of Rev. Proc. 2021-30, Section 7.02, and either section 8 (for insignificant Operational Failures) or section 9 (for significant Operational Failures).
  - b. Eligible **Plan Document Failure** if the plan sponsor of a qualified plan or a 403(b) Plan satisfies the requirements of section 7.03 and section 9.
- (5) As soon as you discover operational failures that affects the plan qualification, you must fully develop the facts surrounding the failures before discussing the case with your group manager.
- (6) After you develop the facts, review and become familiar with the requirements of SCP. The *Self-Correction Program Desk Guide* is a great resource for understanding SCP procedures. If you determine that:
- a. SCP is appropriate to resolve the failures, before the plan sponsor corrects the operational failures, prepare the *Self-Correction Program Checklist* for review and approval by your group manager.
  - b. The failure is ineligible to be corrected under SCP, contact your group manager to determine whether the failures can be resolved under the Audit CAP procedures.
- (7) A key factor in SCP is the method of correction of the failure.
- a. Determine whether or not correction of the failure is in accordance with Appendix A or B of Rev. Proc. 2021-30.
  - b. Follow the procedures in IRM 4.71.3.5.1 (8) and IRM 4.71.3.5.1 (9) below as applicable.
- (8) Follow these procedures if the plan sponsor uses a correction method in accordance with Rev. Proc. 2021-30 Appendix A or B:

Step	Responsible employee	Required action
1	Group manager	<p>If the case is otherwise eligible for SCP, and the plan sponsor is using a proposed correction methods strictly in accordance with Rev. Proc. 2021-30, Appendix A or Appendix B, you may approve the correction method for the case being closed under SCP.</p> <p><b>Note:</b> The plan's eligible operational failure is that the plan sponsor didn't follow the plan document and correction of this failure is to retroactively follow the plan document and put the participants in the <b>exact</b> position they would be had no violation had occurred. You may approve the case for SCP and don't need the Manager, EP Mandatory Review's approval.</p>
2	Group manager	<p>Confirm that all years affected were established on AIMS and RCCMS. This means all years the examiner reviewed are established per IRM 4.71.1.14.1 paragraphs (6) &amp; (8).</p>
3	Group manager	<p>Approve the SCP proposal by signing the EP examiner prepared <i>Self-Correction Program Checklist</i>, return a copy to the EP examiner and forward a copy the Area Manager within five business days of receipt.</p> <p><b>Caution:</b> You can't close the case until after five days from when you sent the checklist to the Area Manager.</p>
4	Examiner	<p>If there are no other issues outstanding, verify that the agreed correction has been <b>fully completed</b>, record in the CCR (Form 5464) that you've verified correction, and close the case.</p>
5	Examiner	<p>Close the case using:</p> <ol style="list-style-type: none"> <li>the appropriate closing letter (Letter 1744, Letter 1744A or Letter 1744B as applicable) containing a statement specifically indicating the operational failure was resolved under SCP.</li> <li>disposal code 404 in RCCMS (SCP - Self Correction), and follow the closing procedures in IRM 4.71.1.22, Report Writing and Closing Procedures.</li> </ol>

- (9) Follow these procedures if the correction method is **not** in Rev. Proc. 2021-30, Appendix A or Appendix B:



Step	Responsible employee	Required action
1	Group manager	<p>If the plan sponsor is using a proposed correction method that isn't strictly according to Rev. Proc. 2021-30, Appendix A or B, sign the <i>Self-Correction Program Checksheet</i> within five business days of receiving it from the EP examiner, and secure email to the manager, EP Mandatory Review for approval.</p> <p><b>Exception:</b> You don't have to send an SCP checksheet to Mandatory Review and can approve the SCP if the correction of the operational failure is to follow the plan document and put the participants in the exact position they would've been, had no violation occurred.</p> <p><b>Example:</b> The plan sponsor has an eligible operational failure of not following the plan document and corrects it by retroactively following the plan document and putting the participants in the <b>exact</b> position they would be had no violation occurred. You can approve the case for SCP and don't need the manager, EP Mandatory Review's approval.</p>
2	Mandatory Review	<p>Respond to the group manager/examiner within seven business days of receiving the checksheet with a recommendation of an acceptable correction method or that the examiner resolve the issues through Audit CAP.</p> <p><b>Note:</b> In certain cases, Mandatory Review may determine, after discussions with the group manager/examiner, and in order to achieve consistency, that the case is inappropriate for SCP and recommend resolving the failures under the Audit CAP procedures.</p> <p><b>Reminder:</b> The area manager resolves any disagreement between the group manager/examiner and Mandatory Review on the correction methods or the appropriateness of SCP.</p>
3	Examiner	<p>When you receive the approved SCP checksheet as agreed to by your manager, you should present the correction methods to the plan sponsor and/or POA within seven days.</p>
4	Examiner/manager	<p>If the plan sponsor or POA disagree with the recommended correction method, notify your manager, who will help you as needed, to reach an agreement on an acceptable correction method. If the parties still don't agree on the correction method, the group manager will discuss the issue with the area manager with case jurisdiction.</p>

Step	Responsible employee	Required action
5	Examiner	If the issues can't be resolved through SCP under this section, consider an Audit CAP closing agreement. See IRM 4.71.3.5.2, EPCRS Closing Agreements, or IRM 4.71.3.5.3, DO 8-3 Closing Agreements. <b>Note:</b> If correction is not secured using a closing agreement, close the case unagreed. See IRM 4.71.3.6, Unagreed Form 5500 Procedures.
6	Examiner	When all issues are resolved under SCP, verify that the agreed correction has been <b>fully completed</b> , record in the CCR (Form 5464) that you verified correction, and prepare the case for closing.
7	Group manager	When closing the case under SCP, send a copy of the SCP Checksheet to the area manager for their review. Hold the case five business days before closing the case.
8	Examiner	When you close the case under SCP: a. issue the appropriate closing letter (Letter 1744, Letter 1744A or Letter 1744B as applicable) with a statement specifically indicating the plan sponsor resolved the operational failures under SCP. b. use disposal code 404 in RCCMS (SCP - Self Correction), and follow the closing procedures in IRM 4.71.1.22, Report Writing and Closing Procedures.

4.71.3.5.2  
(03-18-2022)  
**EPCRS Closing  
Agreements**

(1) Audit CAP closing agreements are available to:

- a. Plans under IRC 401(a), IRC 403(b), SEPs, SARSEPs and SIMPLE IRAs, for correction of all qualification failures examiners find on examination that haven't been corrected under SCP or VCP.

**Caution:** IRC 457 plans are not eligible for correction using an EPCRS Audit CAP closing agreement. A DO 8-3 closing agreement must be used to correct IRC 457 plan failures per IRM 4.71.3.5.3.

- b. Correct egregious failures.

**Caution:** Audit CAP may not be available to correct abusive transactions.

**Note:** See Rev. Proc. 2021-30 Part VI, sections 13 and 14.

(2) Find important resources on Audit CAP on the *Retirement Knowledge Management Base* site:

- Rev. Proc. 2021-30
- *Audit CAP Desk Guide*
- *Audit CAP Checksheet*
- *Audit CAP MPA Worksheet*

(3) Examiners: Follow these initial Audit CAP processing procedures:

**Caution:** Discuss all potential EPCRS resolutions with your group manager before you discuss them with the taxpayer.

- a. Fully develop the issues before you discuss the facts with your group manager.
- b. Prepare the *Audit CAP Checksheet* listing case information.
- c. Spell out correction methods in writing, including any proposing retroactive amendments.

**Note:** This may involve directing the plan sponsor to amend the plan retroactively.

- d. Determine the Maximum Payment Amount (MPA). See the *Audit CAP MPA Worksheet*.

(4) Send the completed *Audit CAP Checksheet*, *Audit CAP MPA Worksheet*, and any relevant work papers to your group manager.

(5) Group manager: follow these procedures:

- a. Rev. Proc. 2021-30 Appendix A & B Failures: Within five business days from receiving the Audit CAP Checksheet, contact the examiner to discuss the issues for the failures, proposed correction methods, and the sanction. Prepare the CAP Sanction Memo (See Exhibit 4 of the *Audit CAP Desk Guide*) and return it to the examiner (with a copy to the area manager) with the approved Audit CAP Checksheet within five business days of receipt.
- b. Rev. Proc. 2021-30 Non-Appendix A & B Failures: Within five business days from receiving the Audit CAP Checksheet, forward the checksheet to the Manager, EP Mandatory Review.

**Note:** Mandatory Review will return the checksheet to the group manager within seven business days outlining the proposed correction methods.

Return the CAP Sanction Memo and correction methods to the examiner within three business days of when you received it from Mandatory Review (with a copy to the area manager).

**Reminder:** The area manager with jurisdiction will resolve any disagreements between Mandatory Review and the group on the recommended sanction and/or the correction method(s).

- c. Plan Document Failures: You may approve prototype late or non-amenders and do not have to send them to Mandatory Review. Also, you do not have to send non-amender cases coordinated with or approved by EP Determinations to Mandatory Review.
- d. For Operational Failures for not following the terms of the plan document and related corrections made by retroactively following the terms of the plan document, putting the participants in the **exact** position they would be had no violation occurred, you do not have to send to Mandatory Review.

(6) EP examiner:

- Note:** If the taxpayer doesn't agree on both the corrections and sanction, document the case chronology record and the workpapers with the reason an agreement was not reached and close the case unagreed per IRM 4.71.3.6, Unagreed Form 5500 Procedures.

- Reminder:** Example agreement templates are located on the *Retirement Knowledge Management base*

- Note:** The group manager will help prepare the closing agreement.

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- (9) If the taxpayer/POA requests changes to the closing agreement language, get the group manager's approval.

**Note:** Area Counsel is available to review and approve any changes to the agreement's standard language.

- (10) Secure documentation that the plan sponsor has corrected the qualification issues before you send the final closing agreement to the taxpayer/POA.
- (11) Send one copy of the final closing agreement to the taxpayer/POA using Letter 1595-A along with execution and payment instructions (if appropriate).
- (12) You may receive the signed closing agreement from the taxpayer in hard copy (via mail) or electronic via EEFax or secured email.

**Note:** You can accept them by EEFax if you have contacted the taxpayer by phone or in-person and documented the case chronology record with the contact date and noted that the taxpayer wishes to send the closing agreement by EEFax.

- (13) Tax Examiner: Follow these steps **only** for electronic payments made through Pay.gov.
- When payments are submitted through Pay.gov, use Pay.gov/agency to access data/documents needed to process the sanction payment.
  - You'll receive an email when payments are received with the Pay.gov tracking ID number.
  - Make sure that the payment has been validated and give the EP examiner/group manager the deposit ticket number that they must insert on the Form 3210 to the Kansas City Submissions Processing Center in place of a check number.
  - Send the following items to the EP Examiner working the case:

- Form 3244-A Pay.gov that was completed by the taxpayer
- Detailed record entitled "ACH Transaction Detail"

- (14) EP Examiner/group manager: When you receive the executed closing agreement and sanction (in the form of a cashier's check, certified check made payable to the U.S. Treasury or ACH payment) from the plan sponsor, inspect both for errors.

**Note:** If the representative signs the closing agreement, there must be a valid Form 2848 specifically authorizing him/her to do so.

- If you discover any errors, return the documents and the monetary sanction to the plan sponsor for correction.
- If there are no errors with the documents or the sanction payment, scan and EEFax or email the executed closing agreement, the check and completed Letter 1595-C to the area manager for signature.

**Note:** The plan years listed on Letter 1595-C are the plan years covered by the closing agreement.

## 4.71 Employee Plans Examination of Returns

- (15) Area manager/designee: Within five business days:
- Sign the closing agreement and Letter 1595-C.
  - Secure email the signed closing agreement and Letter 1595-C to the EP examiner and group manager.
- (16) Group manager/examiner: Process the check within one business day of receiving the signed agreement from the area manager.
- Follow your group's procedures for payments and remittances via overnight delivery, including using the log book.
  - Prepare the following package:

- Form 3210 with package contents listed
- Cover memorandum
- A fully executed copy of the closing agreement
- Form 5734
- Form 3244-A (if a physical check was received) or Form 3244-A Pay.gov (if electronic payment was received)
- Remittance (check or ACH Transaction Detail)

**Note:** Examples of the items listed above can be found at *Audit CAP Resources*

- Send the package listed above to the Manual Deposit Unit located at the Kansas City Submissions Processing Center:

If the payment was made using:	Then send package using:
a physical check	next day, express mail
an electronic payment	encrypted email

**Note:** See IRM 4.71.1 - Exhibit 13, Contact Information, for the physical address and email address to use.

- (17) Examiner: Within three business days of receiving the fully executed closing agreement from the area manager, send a fully executed copy of the closing agreement to the plan sponsor/POA with Letter 1595-C.
- (18) Examiner: Save all documents, forms and letters in the RCCMS Office Documents folder using the RCCMS Naming Convention. See IRM 4.71.1 - Exhibit 2, RCCMS Naming Convention.
- (19) Examiner: Prepare the examination for closing. Include the following entries on the RCCMS Closing Record:
- General Tab - Disposal Code - Enter 106 – Closing Agreement.
  - Details Tab – Closing Agreement Result - Enter the amount of the closing agreement monetary sanction.
- Note:** If more than one year is on RCCMS, enter the amount of the sanction on the earliest year and for each of the subsequent years enter \$1.
- General Tab - ARDI Code - Enter 1- Fully Paid.

### 4.71.3.5.3 (11-12-2021) DO 8-3 Closing Agreements

- (20) Prepare and mail the applicable closing letter per IRM 4.71.1.22.1(6), Closing Procedures for Agreed Form 5500 Examinations.
- (21) Close the case as an agreed case per IRM 4.71.1.22, Report Writing and Closing Procedures, and its subsections.

- (1) TE/GE Directors are delegated the authority “to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he or she acts) for a taxable period or periods ended before the date of agreement and related specific items affecting other taxable periods.” (Delegation Order (DO 8-3)).
- (2) DO 8-3 closing agreements are used to resolve issues that aren’t permitted through EPCRS.

**Note:** The *Audit CAP Desk Guide* has a section on DO 8-3 Closing Agreements.

- (3) In most DO 8-3 closing agreements, the taxpayers and the Commissioner formally agree that the plan under examination is not qualified, officially making the proposed revocation or proposed non-qualification an “agreed revocation” or “agreed non-qualification.”
  - a. The taxpayer is legally forgoing their right to an Appeals hearing and their right to petition the Tax Court.
  - b. When a DO 8-3 closing agreement is fully executed by the taxpayer and the IRS, the case becomes an agreed case in every respect, just like a case resolved under EPCRS.

**Note:** In very limited situations, excise tax and/or unrelated business income (UBI) issues may be resolved through a DO 8-3 closing agreement; however, you must obtain pre-approval from the Director, EP Examinations.

- (4) As with EPCRS closing agreements, you must closely coordinate DO 8-3 closing agreements with the group manager.
- (5) When doing a DO 8-3 closing agreement, follow EPCRS closing agreement procedures in IRM 4.71.3.5.2, EPCRS Closing Agreements, with these exceptions:
  - a. The Director, EP Examinations signs the closing agreement for the IRS.
  - b. You must get approval from your group manager, area manager, and the Director, EP Examinations before you propose a DO 8-3 agreement.

**Note:** Do not offer or discuss resolution using a DO 8-3 closing agreement with the taxpayers until steps 3 through 5 are completed.

- c. Return a fully executed closing agreement with Letter 1595-D instead of Letter 1595-C.
  - d. When closing agreements are fully executed, use closing Letter 1745 or Letter 1745-A, as applicable.
- (6) Contact the group manager to discuss resolution of the case under DO 8-3.
- (7) Group Manager: Within five business days of discussing the case with the examiner, contact your area manager to discuss the facts of the case. If the



## 4.71 Employee Plans Examination of Returns

area manager disagrees with the processing of the case under a DO 8-3 closing agreement, contact the examiner to inform him or her that a DO 8-3 closing agreement is not an option.

- (8) EP Examiner: When the area manager determines that a DO 8-3 closing agreement is appropriate:
- Prepare a calculation of all applicable taxes, penalties and interest (including Form 4549-E).
  - Draft the *DO 8-3 Transmittal Checksheet*.
  - Prepare an Executive Summary (Includes: background, facts, issues, resolution and must address penalties (especially if not assessing)).
  - Prepare the draft DO 8-3 closing agreement. Include appropriate plan and Code sections. Include all responsible parties in the draft.

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

- Secure email items a – d to your group manager for approval.
- (9) Group manager: If the DO 8-3 closing agreement is for an IRC 457(b) plan, as early in the process as possible, contact the EO-FSL Review function for comment if there is an open, concurrent examination of the sponsor or if any proposed changes will affect employment taxes.
- (10) Group manager: If you agree that the case should be resolved through a DO 8-3 closing agreement, within five business days of receiving the documents listed in IRM 4.71.3.5.3 (8) from the examiner, sign the transmittal and secure email all of the documents to your area manager with your recommendation.
- (11) Area manager: If you agree with the recommendation, sign the transmittal and forward all documents you received from the group manager to the functional assignment coordinator (FAC) and the Director, EP Examinations.
- (12) The Director, EP Examinations or the FAC either signs and return the Transmittal Check Sheet indicating acceptance of the draft closing agreement or responds to the area manager with any questions or concerns.
- (13) Use these letters in the DO 8-3 process:
- Letter 1595 - to mail draft closing agreements to the taxpayer/representative.
  - Letter 1595-A - to mail closing agreements to the taxpayer/representative to formally sign the closing agreement.
  - Letter 1595-D - to mail fully executed DO 8-3 closing agreements back to the taxpayer/representative.
  - Letter 1745 - as the closing letter for the 5500 examination when a DO 8-3 closing agreement is secured and IRS determined the plan is disqualified from inception and remains disqualified.

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

- (14) You may accept the signed closing agreements from the taxpayer in hard copy or by EEFax.



**Note:** You can accept them by EEFax, if you have contacted the taxpayer by phone or in-person and documented the CCR with the contact date and noted that the taxpayer wishes to send the closing agreement by EEFax.

- (15) Group manager: When the taxpayer/POA returns the signed closing agreement to the examiner:
    - a. Notify the FAC and the Director, EP Examinations that you're forwarding a closing agreement to be countersigned.
    - b. Secure email the closing agreement, cover memorandum and Transmittal Checksheet to the Director, EP Examinations and the FAC.
  - (16) The Director, EP Examinations or FAC will return the fully executed closing agreement within five business days to the group manager via secure email.
  - (17) Group manager: Secure email the fully executed closing agreement to the examiner.
  - (18) Group manager/examiner: Process the check within one business day of receiving the signed agreement from the area manager.
    - a. Follow your group's procedures for payments and remittances via overnight delivery, including using the log book.
    - b. Prepare and forward a closing agreement package per IRM 4.71.3.5.2 (16).
- Note:** See IRM 4.71.1 - Exhibit 13, Contact Information, for the physical address and email address to use.
- (19) EP examiner: mail the following to the taxpayer/representative:
    - Letter 1595-D
    - Copy of the fully executed closing agreement
    - If the DO 8-3 agreement is secured and the plan is determined to be disqualified from inception and remains disqualified, Letter 1745 or Letter 1745-A, as applicable.

4.71.3.5.4  
(11-12-2021)  
**Electronic Payments of  
Closing Agreement  
Sanctions**

- (1) Taxpayers should pay the sanction electronically in lieu of a check on Pay.gov by completing the IRS TEGE EP Closing Agreement Payment Posting Voucher as follows:
  - a. Answer the question – “Was the closing agreement the result of an employee plans audit or determination letter application?”.
  - b. Input the social security number or business EIN as listed in the closing agreement.
  - c. Click the “Continue to the Form” button to get to the F3244-A.
  - d. Complete the highlighted portions of the on-line Form 3244-A.

**Note:** Give the taxpayer the *Form 3244-A Pay.gov instructions*.
  - e. Submit the payment.
- (2) The taxpayer receives a tracking number when they complete the submission process. They must record the tracking number and provide this number to the EP examiner with the executed closing agreement.

4.71.3.6  
(12-17-2020)  
**Unagreed Form 5500  
Procedures**

- (3) EP examiner: include the tracking number in lieu of the check when you send the closing agreement package to your group manager per IRM 4.71.3.5.2, EPCRS Closing Agreements.
- (1) If the qualification issue is not resolved through EPCRS or a DO 8-3 closing agreement, follow the procedures in this subsection.
- (2) Solicit Forms 1041 from the trustee. See IRM 4.71.3.6.1, Solicitation of Form 1041.
- (3) Pick up prior and subsequent year Forms 5500 for examination (at your group manager's discretion, and in some cases, the area manager's or the Director, EP Examinations' discretion). See IRM 4.71.1.14.1, Prior Year, Subsequent Year and Related Returns.
  - a. In general, expand the examination to include subsequent year Forms 5500 that are due.
  - b. If you do not include the subsequent year returns in the examination, the group manager prepares a written statement in the case chronology, memo, or email to include in the workpapers, giving the reasons the subsequent years are not included.
  - c. You may need to open an examination of a year in which the normal statute of limitations has expired. This happens when the IRS has determined that an **operational** issue has occurred that retroactively disqualifies the plan.
  - d. The IRS' ability to pursue a qualification issue in any year is not impacted by the Form 1041 statute of limitations. The Form 1041 statute of limitations expiration for any given year doesn't prevent the IRS from pursuing a qualification issue in that year (see *Yarish Consulting, Inc. v. Commissioner*, T.C. Memo 2010-174).
  - e. If you solicit plan or trust records for a given plan year, that year is considered to be under examination and you must establish the Form 5500 on AIMS and RCCMS even if the Form 5500/1041 statute has expired. If the statute of limitations has already expired, update the statute to alpha code "PP" per IRM 4.71.9.10, Use of Alpha Codes.
  - f. Document your decision to examine (or not) related years in the CCR.
  - g. Include your group manager's agreement to examine prior years via a confirmation email or by signing the CCR.
  - h. See IRM 4.71.1.14.1, Prior Year, Subsequent Year and Related Returns, for procedures to open an examination of a related Form 5500 that has been filed and IRM 4.71.1.21, Amended, Substitute and Secured Forms 5500, for delinquent and substitute Form 5500 procedures.
- (4) Begin (at your manager's discretion) Form 1040 discrepancy adjustments (when there is a taxable event) on all or some plan participants or at a minimum, those individuals with substantial tax impact, depending on workload considerations. See the discrepancy adjustment procedures in IRM 4.71.4, Employee Plans Examination of Returns, Discrepancy Adjustments.
  - a. Before starting a discrepancy adjustment, secure an AMDISA print to determine if a Form 1040 examination is already in process.
  - b. If you don't do a discrepancy adjustment, explain why on the CCR.

- (5) Begin (at your manager's discretion) a Form 1120 discrepancy adjustment on the plan sponsor per the discrepancy adjustment procedures in IRM 4.71.4, Employee Plans Examination of Returns, Discrepancy Adjustments.
  - a. Before starting a discrepancy adjustment, secure an AMDISA print to determine if a Form 1120 examination is already in process.
  - b. You may need to ask SB/SE for help to generate the income tax adjustment on Form 4549-E.
  - c. Normally, the EP examiner mails the 30-Day Letter (Letter 3605) for Forms 1040/1120 discrepancy adjustments (See IRM 4.71.4.4.5, Preparation of the Discrepancy Adjustment Package). However, when you do a discrepancy adjustment with (or because of) a proposed revocation/non-qualification, you prepare the adjustment (Form 4549-E) and all reports, but Mandatory Review mails Letter 3605 with Form 4549-E and attachments to the taxpayer. You work the discrepancy adjustment files with the proposed revocation/non-qualification. The discrepancy adjustment file continues to be part of the proposed revocation/non-qualification package and you close it with the case to Mandatory Review.
  - d. If you do not pursue a discrepancy adjustment, explain why on the CCR.
- (6) Make timely referrals to the applicable EFU (LB&I, SB/SE, and W&I) on Form 5666, if either:
  - a. The trustee does not file the solicited Forms 1041.
  - b. You do not do Forms 1040 or 1120 discrepancy adjustments.

**Note:** See IRM 4.71.6.6, EP Group Procedures – Making Referrals to Examination Functional Units, for referral procedures.

- (7) Make a referral to DOL on Form 6212-B through the FAC/EP DOL Coordinator. See IRM 4.71.3.1.3, Contact Information for Business Units.

**Note:** If applicable, also make a referral to PBGC on Form 6533. See IRM 4.71.6.8, EP Group Procedures – Making Referrals to Pension Benefit Guaranty Corporation (PBGC), for referral procedures.

- (8) Prepare the 30-Day Letter package for the unagreed Form 5500 examination per IRM 4.71.3.6.2, 30-Day Letter Package.
- (9) Prepare a final RAR per IRM 4.71.3.6.3, Revenue Agent Report. Update the preliminary RAR that you mailed to the taxpayer (as discussed in IRM 4.71.3.3, Addressing Issues that Effect Plan Qualification) for:
  - a. Any necessary clarification to parts “a” through “d” (Issue, Facts, Law, or Government's Position)
  - b. The taxpayer's response (if provided)

**Note:** Add a Taxpayer's Position section to the RAR after the Government's Position section.
  - c. The IRS's rebuttal of the taxpayer's response (if the taxpayer provided a response).

**Note:** Add an IRS Rebuttal section to the RAR after the Taxpayer's Position section addressing each point the taxpayer raised.

- (10) Prepare the administrative record per IRM 4.71.3.6.4, Administrative Record.

**Note:** All cases subject to declaratory judgment (which includes unagreed Form 5500 examinations) require you to prepare an administrative record and index to the administrative record.

- (11) Complete the Unagreed Plan Disqualification Checksheet before you close the case to Mandatory Review. See IRM 4.71.3 - Exhibit 1, Unagreed Plan Disqualification Checksheet, for an example of the Unagreed Plan Disqualification Sheet.
- (12) Prepare Form 5773-A to document examination procedures and findings and save them in the RCCMS Office Documents folder using the RCCMS Naming Convention, see IRM 4.71.1 - Exhibit 2, RCCMS Naming Convention.
- (13) Include current copies of IDRS prints in the case file and in the RCCMS Office Documents folder of:
- AMDISA prints for all cases under examination
  - EMFOLT prints for all Forms 5500 examined
  - IMFOLT prints for any Forms 1040 picked up as a result of the revocation
  - BMFOLT prints for any Forms 1120 picked up as a result of the revocation
- (14) Follow the closing instructions outlined in IRM 4.71.3.7, Closing Case.

4.71.3.6.1  
(12-17-2020)  
**Solicitation of Form  
1041**

- (1) If your examination results in the proposed revocation/non-qualification of a trust's tax exempt status and the issue couldn't be resolved under EPCRS (per IRM 4.71.3.5.1, EPCRS - SCP, or IRM 4.71.3.5.2, EPCRS Closing Agreements) or a DO 8-3 closing agreement (per IRM 4.71.3.5.3, DO 8-3 Closing Agreements), the trust becomes taxable and the trustee must file Form 1041 for all open years.

- a. Forms 1041 are filed on a calendar year basis per IRC 644(a).
- b. The statute of limitations on the trust year runs with the filing of the Form 5500 for the plan year in which the trust year ends.

**Note:** See IRM 4.71.9.6.1, Securing Consents for Forms 5500/1041, for a detailed explanation.

- c. Use Form 4564 to solicit Forms 1041 for all open trust years that correspond with the plan years being disqualified.
- d. Sometimes, these years may be short years.

**Example:** You're examining plan year ending June 30, 2019, and disqualifying the plan for the plan year ending June 30, 2019, and all subsequent years. The effective date of disqualification is July 1, 2018. On November 1, 2020, you solicit Forms 1041. You should solicit Forms 1041 for the trust tax year beginning July 1, 2018 and ending December 31, 2018; the trust tax year beginning January 1, 2019 and ending December 31, 2019 and the trust tax year beginning January 1, 2020 and ending December 31, 2020.

- e. See IRC 443(b) for the required computation of taxable income for a taxable entity that is required to file a tax return for a short tax year.

- f. The **plan sponsor can't use its EIN** to file Form 1041. The trust must obtain its own EIN. See IRM 4.71.3.6.1.1, Obtaining a Trust EIN, for instructions on how to get an EIN for the trust.
- (2) Do **not** establish Forms 1041 on AIMS or RCCMS whether or not received from the taxpayer because EP does not have jurisdiction over Forms 1041. Apply time spent on the examination to Forms 5500 examined, or if you're doing discrepancy adjustments, apply time to those cases.
- (3) If you receive solicited Forms 1041:
1. Enter on the top margin in bold face print "FORM 5500 CONVERTED TO FORM 1041 BY TEGE:EP."
  2. Date stamp Form 1041 to establish the date actually received.
  3. Attach Form 3198-A with the following items completed:
    - List your name, ID number, phone number, POD and group number in the "Required Entries" section.
    - List the trust EIN, return MFT (05), year of the attached Form 1041, taxpayer's name and name control in the "Required Entries" section.
    - List all years for the same taxpayer that are being processed simultaneously, with the applicable statute date.
    - Recommend the assessment or non-assessment of failure to pay and failure to file penalties in the "Other Instructions" section. Highlight your instructions for penalties on the form.
  4. Attach Form 13133 with the following completed:
    - List your name, phone number and mail code.
    - Check "Delinquent Return."
    - Check "See attached Form 3198-A."
    - If penalties should not be assessed, check "Penalties" and insert "Do not assess penalties" in the space provided.
  5. If you receive payment, prepare Form 3244-A for each Form 1041 received. Complete these items with comments as noted:
    - EIN
    - Form number/MFT: Enter 1041/05
    - Tax period
    - Plan number
    - Transaction date: Enter the date the payment was received.
    - Taxpayer name, date, address and zip code
    - Transaction Data: List the entire amount received for the year under transaction code 610 (Remittance With Return) and the same amount under "Total payment."
    - Remarks: List the check number and the amount of the check. If the payment is to be broken out over more than one year, list each year and the amount applied to each year.
    - Prepared by: Enter the EP examiner's name, group number and phone number.
  6. Make a copy of the Form 1041, Form 3198-A, Form 13133, the check and Form 3244-A (if applicable) for the case file.
  7. Prepare Form 3210
    - List all Forms 1041 being forwarded.
    - If you received payment, list all check numbers and the amounts.

8. Mail Form 1041 packages without remittance to:

IRS  
1973 N. Rulon White Blvd.,  
Mail Stop 6052  
Ogden, UT 84404

9. Mail Form 1041 packages with remittance less than \$100,000 to:

IRS  
Attn.: Teller Unit  
1973 N. Rulon White Blvd.,  
Mail Stop 1999  
Ogden, UT 84404

**Note:** If you receive remittance of \$100,000 or more, mail the Form 1041 package to Mail Stop 2003 instead of Mail Stop 1999.

10. When you address Form 9814, type "Mail Supervisor" for the recipient and (801) 620-3750 for recipient phone number, whether or not you receive payment.

(4) Your receipt of a Form 1041 from the taxpayer doesn't make the case agreed. You must continue to:

- a. Close the case to Mandatory Review.
- b. Give the taxpayer Appeal rights and the right to petition Tax Court.
- c. Process the case as an unagreed revocation/non-qualification (except you do not have to make a Form 1041 referral to SB/SE or LB&I).
- d. Prepare the 30-Day package (including the RAR) and the administrative record.

(5) If the trustee doesn't agree to complete and sign Form 1041, prepare Form 5666 for Form 1041 to send to SB/SE or LB&I (as applicable), since EP does not have examination jurisdiction over Forms 1041. Unless the trust has its own EIN, prepare the referral using the plan sponsor's EIN.

- a. Send the referral to Classification at *tege-cpc-classification@irs.gov*. If SB/SE or LB&I is directly involved in the case, send the referral to SB/SE (or LB&I). If you send the referral to SB/SE (or LB&I), send a copy of it to Classification.
- b. Attach a copy of the RAR to the Form 5666 along with a rough calculation of Form 1041 tax due.
- c. Make copies of all referral packages (Form 5666, the RAR and tax calculations) for the paper case file and include as part of the workpapers.

**Reminder:** Also make similar referrals for Forms 1040 and 1120, if you do not do discrepancy adjustments. Include a copy of the RAR and an estimate of tax due with these referrals.

4.71.3.6.1.1  
(07-09-2019)

#### Obtaining a Trust EIN

(1) When you solicit a Form 1041 for a plan that is being disqualified, request the trust EIN from the plan sponsor.

**Note:** If the trust doesn't have an EIN, request the plan sponsor to complete Form SS-4, and email or EEFax it to the appropriate IRS office listed on the Form SS-4 instructions.



- (2) If the plan sponsor agrees to file a Form 1041 and provides a trust EIN, get a BMFOLI print to make sure the EIN isn't being used to file non-trust returns.

**Note:** The Ogden Campus won't process a Form 1041 with an EIN used for any purpose other than for filing a trust Form 1041 or Form 990-T; the return will reject and a new trust EIN will be assigned.

- (3) When a plan sponsor voluntarily files a Form 1041, but uses an erroneous EIN (such as the plan sponsor's EIN), obtain an EIN for the trust by EEFaxing Form 4442 to the EO Entity Unit at Ogden Campus. The EEFax number is 855-306-0953. See IRM 4.71.3 - Exhibit 10, Form 4442 for an example of a completed Form 4442. Give the taxpayer the trust's newly assigned EIN.

**Note:** Obtaining a new EIN for the trust will automatically establish an entity module. You do not need to prepare Form 2363 or Form 4442 to establish the entity.

- (4) When a plan sponsor refuses to file a Form 1041, there is no need to request a trust EIN. It is up to the Business Unit receiving the referral to obtain the EIN.

### 4.71.3.6.2 (12-17-2020) 30-Day Letter Package

- (1) The 30-Day Letter package for a proposed revocation/non-qualification consists of:
- Letter 1756 (for proposed revocation or proposed non-qualification)
  - Pub 1, generated by Mandatory Review
  - Pub 594, generated by Mandatory Review
  - Pub 1020, generated by Mandatory Review
  - Revenue Agent Report
  - Return envelope
- (2) EP examiner: prepare the applicable 30-Day Letter (Letter 1756 leaving the contact information in the upper right of the letter blank; Mandatory Review mails them after they review the case.)
- (3) Name all prepared forms and letters using the RCCMS Naming Convention and save them in the RCCMS Office Documents folder. See IRM 4.71.1 - Exhibit 2, RCCMS Naming Convention.

### 4.71.3.6.3 (12-17-2020) Revenue Agent Report

- (1) Fully explain the qualification issues in the RAR. Include only items that are relevant to the issues in the RAR. Organize the RAR into the following sections:

- a. **Issues**— Clearly state and number each separate issue.

**Example:** During an examination of the plan year ending December 31, 2018, you determined that the plan didn't comply with the top-heavy minimum contributions requirements and didn't make distributions to participants who separated from service under the top-heavy vesting schedule. Issue One would be: "Whether minimum contributions per IRC 416(c)(2) were made for a top-heavy plan for the plan year ending December 31, 2018." Issue Two would be: "Whether the accelerated vesting provisions under IRC 416(b) were applied to all plan participants or former participants who received distributions during the plan year ending December 31, 2018."

- b. **Facts**— Include in the RAR facts section a brief history of the plan and provide pertinent details surrounding the qualification issues. Cite any plan provisions relevant to the issues raised. For the top-heavy issues stated above, you'd describe the plan sections dealing with top-heavy contributions and accelerated vesting. Examples of information that would be included (as applicable to the issues) are:

- The plan years under examination
- Type of business of the plan sponsor
- Date business started/incorporated
- Ownership of business sponsoring the plan
- Type of tax return filed by the plan sponsor and the tax year end
- Effective date of plan
- Type of plan
- Latest determination letter
- Number of plan participants
- Plan participants affected
- Contributions made to the plan for the years under examination
- Specific applicable plan sections and
- Other relevant case specific details.

- c. **Law**— In the law section, cite the authority for the qualification issues. You can cite the following sources that relate to the issues raised as authority for the government's position: the Internal Revenue Code (IRC), Temporary and Final Regulations, Revenue Rulings, Revenue Procedures, Court Decisions and Congressional Committee Reports.

**Note:** You can reference Proposed Regulations for interpretive purposes, but can't cite them as authority. Do not cite General Counsel Memos (GCMs), Private Letter Rulings (PLRs), or the Internal Revenue Manual (IRM) as sources of authority in the RAR.

- d. **Government's Position**— Discuss in this section each issue separately and apply the law and the facts relevant to each specific issue. Also list in this section, the date on which the plan failed to qualify and explain why EPCRS was not used. Conclude this section by clearly stating the government's position.
- e. **Taxpayer's Position**— In this section, reflect the taxpayer's position including any rebuttals the taxpayer has made on the government's position. If the taxpayer hasn't provided a position on the issues, write a simple statement to the effect that the taxpayer has not provided a response.
- f. **Rebuttal/Conclusion**— Include a rebuttal if the taxpayer provides a position on the issues during the examination or in response to the draft RAR. Restate the government's position as a conclusion in all cases.

- (2) In general, **do not include** Form 1040, Form 1120, or Form 5330 information in the RAR for the revocation/non-qualification, because they involve separate legal entities. If you open a:

- a. Discrepancy adjustment of a related Form 1040 and/or 1120 discrepancy adjustment, prepare a separate RAR(s) and a separate examination file(s).
- b. Form 5330 examination, prepare a separate RAR and a separate examination file.

**Note:** Do not include the above information in the administrative record.



**Note:** See IRM 4.71.4.6, Unagreed Case Procedures, for unagreed Form 1040/1120 discrepancy adjustments, and IRM 4.71.5.9, Unagreed Cases, for unagreed Form 5330 procedures.

- (3) See IRM 4.71.3 Exhibit 3, Form 886-A - Sample RAR, for an example of a detailed RAR covering several possible qualification issues.
- (4) Name the RAR using the RCCMS Naming Convention and save it in the RCCMS Office Documents folder.

### 4.71.3.6.4 (11-12-2021) Administrative Record

- (1) The administrative record is the written record of the administrative proceedings between the IRS and the taxpayer.
- (2) Examiners must include in the administrative record all documents exchanged between the IRS and the taxpayer during examination of the continuing qualification of the plan.
- (3) Although not documents, items such as electronic disks or all other media are considered physical evidence; don't include them in the administrative record. If a disk is:
  - a. Sent by letter, the disk is deemed part of that written document.
  - b. Received at a conference, stamp and mark the disk appropriately, then reference it in a summary of the conference you send to the taxpayer.
- (4) For documents to be considered exchanged with the IRS, the material(s) must go to or from the taxpayer or its representative by:
  - a. Hand delivery
  - b. Mail
  - c. Email
  - d. Fax

**Note:** Don't include documents you reviewed on site in the administrative record unless the taxpayer gives you copies or you make copies for the exam files.

**Caution:** Don't email Sensitive but Unclassified (SBU) information to the taxpayer.

- (5) The administrative record does **not** include any internally generated materials, such as:
  - a. Exam workpapers
  - b. IDRS prints
  - c. Counsel memos
  - d. Field actuary memos
  - e. Reviewer memos
- (6) The administrative record does **not** include materials obtained from third-party sources, such as:
  - a. Referral packages
  - b. Claims
  - c. Summoned records from third parties

- d. Summoned third party testimony
- e. Records received from city, county, state or federal agencies

- (7) You can include any document that is generated for internal use or obtained from a third-party in the administrative record by giving a copy of the document to the taxpayer.

**Note:** Consult your group manager and Area Counsel as to what parts of the document(s), if any, you may share, and how to share them.

- (8) Any statements made in correspondence (by either side) is deemed true if there's no conflicting or clarifying evidence. Therefore, if the taxpayer sends or otherwise provides something that doesn't appear to be correct, get written clarification. Confirm clarification you receive by telephone either by requesting the information in writing or by sending a letter which explains what was discussed on the phone.

4.71.3.6.4.1  
(03-18-2022)  
**Maintaining the  
Administrative Record  
File**

- (1) Several subsequent users review the administrative record and must be able to identify all documentation that supports the examination results of a plan qualification examination. Subsequent users include management, Mandatory Review, Appeals, and Counsel in preparation of records to be submitted to US Tax Court.
- (2) The administrative record contains all items exchanged between the IRS and the taxpayer throughout the examination. This may include forms filed prior to the examination which are relevant to the issues raised.
- (3) Scan and/or save all administrative record items into the Administrative Record File in RCCMS using the RCCMS Naming Convention using appropriate sub-folders.

**Note:** The RCCMS Naming Convention now includes section 4.XX for administrative record items. List items in order of the administrative record index. The naming convention for the administrative record would start with the administrative index and proceed in order of the listed items.

- (4) The naming convention for the administrative record would start with the administrative index and proceed in order of the listed items. For example:
- 4.0 Administrative Record Index
  - 4.001 Forms W-2 for 2019 tax year (when relevant to the qualification issues)
  - 4.002 Form 1120 for 2019 tax year (when relevant to the qualification issues)
  - 4.003 Form 5500 for 2019 Plan Year
  - 4.004 Letter 6031, TEGE Opening Examination Letter
  - 4.0004a Publication 1
  - 4.0004b Notice 609
  - 4.0004c Publication 3498
  - 4.0004d Publication 4324
  - 4.0004e Initial Information Document Request

**Note:** Consult your group manager on cases with unique circumstances that might justify processing with a paper case file.

- (5) Organize the administrative record file in chronological order, based on when the documents were exchanged and/or filed.
- (6) Prepare an index to the administrative record that will allow users to easily locate documents. See IRM 4.71.3 - Exhibit 4, Administrative Record Index with Coversheet.
- (7) The index must have the following columns:

Column	Note
Index	<ul style="list-style-type: none"> <li>This column is for the sequential number designation of each item in the Administrative Record.</li> <li>The index should be numeric and should begin with "1". Item 1 will be the first written contact between the IRS and the taxpayer. Generally, that will be Letter 6031, TEGE Opening Examination Letter and enclosures of Publication 1, Notice 609 and your initial IDR.</li> <li>Do not skip any numbers and do not use letters or Roman numerals. If you have scanned attachments or enclosures in separate PDF documents, you may choose to name them sub numbers such as 1a, 1b, 1c.</li> </ul>
Date	<ul style="list-style-type: none"> <li>This column should identify the date of the document, if it has one. For example, the file copy of the Letter 6031, TEGE Opening Examination Letter, should be dated with the date that the original Letter 6031 was mailed to the taxpayer.</li> <li>If you receive a document that is not dated from the taxpayer. Note the date received on the face of the document and use that received date on the Administrative Record Index.</li> </ul>

Column	Note
Recipient/Originator	<ul style="list-style-type: none"> <li>This column should identify the person who received the document and the person who sent it. The person should be identified by both name and title or position.</li> <li>Using the example of an appointment letter, identify the recipient by the name and title of the person to whom the appointment letter was addressed, for example, "Mr. Bear, President of Peach, Inc." The originator will be the person sending the letter, which is not necessarily the name printed on the signature line. This will most likely be the name and title of the Person to Contact listed in the heading of the letter, e.g., "Emma Rabbit, EP Specialist".</li> <li>For consistency, the name and title should be identified for every entry on the Administrative Record Index, even if the same person is identified several times.</li> <li>Use specific names rather than generic entries like, "the Service" or "Taxpayer".</li> <li>Some plan examinations will have more than one representative. Specify the representative by name followed by "Attorney", "Accountant", "Actuary", "Representative" or whatever title applies.</li> </ul>
Description of Document	<ul style="list-style-type: none"> <li>This column should identify everything that is received or sent together.</li> <li>Type the number and full name of each letter, form and publication numbers.</li> <li>Identify all attachments.</li> <li>Use enough detail to ensure that anyone reading the Administrative Record Index could identify and locate the documents listed.</li> </ul>

- (8) Clearly describe all attachments to correspondence in the index. If it helps to clarify the index, give multiple attachments sub-numbers in an outline format (for example, 4.001a, 4.001b, 4.001c).
- (9) If you have a partial paper case file for your administrative record, index each item in order (such as 1, 2, etc.). Generally, number tabbed folder dividers or write the corresponding number of each item on a post-It note affixed to a blank sheet of paper placed before the first page of each document.

- (10) If you deviate from a strict chronological order, consult Area Counsel for other assembly considerations, and document the discussion in the CCR.

**Example:** You secure half of the year's bank statements at the initial audit, a few more by IDR a month later, and the rest by bank summonses two months later. You subsequently exchange the summoned bank statements with the taxpayer to include them in the administrative record. Counsel advises you to keep all bank statements for a given year together as one exhibit. Index the dates and methods describing the documents that were exchanged. Identify the number of pages of each set of documents in the description of the documents.

- (11) If the taxpayer ultimately agrees to revocation or non-disqualification, an administrative record is required, but an index is not.
- (12) Keep all original paper records after scanning and saving in RCCMS until the issues are resolved.

### 4.71.3.6.4.2 (11-12-2021)

#### Exchange of Documents

- (1) In general, if a document is related to the disqualification of the plan, and it's a document that you haven't exchanged with the taxpayer, mail, or otherwise provide a copy of the document to the taxpayer with a cover letter asking for any comments or clarification the taxpayer may wish to provide.
- (2) Even if a document is not related to the qualification issues, if it has been exchanged, include it in the administrative record file with an explanation in the administrative record index.
- (3) For documents received from the taxpayer:
- Do not** deface documents in any way (writing, highlighting, noting or scribbling, etc.). If you need to write information on a document, make a copy for that purpose.
  - If you have a partial paper file for your administrative record, **do not** write the item numbers from the Administrative Record Index on the documents. Instead, use tabbed folder dividers or Post-It notes attached to a blank sheet of paper, because Area Counsel prepares the final index and will place the final exhibit numbers on the documents.
  - Before scanning into an electronic record, date stamp documents and other items you received from the taxpayer on the cover memo or first page. Use the same stamp your office uses to stamp incoming mail.
  - Keep any original documents, such as Forms 872, Consent to Extend the Time to Assess Tax, and Forms 2848, Power of Attorney and Declaration of Representative, in the workpaper file. Scan into an electronic copy for the administrative record.
- (4) For documents IRS provided to the taxpayer:
- Outgoing correspondence and enclosures included in the administrative record file will inevitably be copies, because you've sent the originals to the taxpayer.
  - Verify copies for exactness against their originals including the same dates and signatures. Scan the signed letter before you mail it, and keep the copy in the administrative record.

## 4.71 Employee Plans Examination of Returns

- c. Don't forget to scan enclosures or attachments you sent with correspondence (or delivered by hand) and keep the copies in the administrative record.
- d. Verify that the scanned copies are identical (front and back) to the correspondence or attachments you sent to the taxpayer.

**Example:** In the opening appointment letter, Pub. 1, Your Rights as a Taxpayer, must be given or sent to the taxpayer, and must also be included in the administrative record.

- e. Clarify incorrect computations, misinterpretations of law (IRC, Regulations, Revenue Rulings, etc.) or incorrect conclusions in writing via subsequent correspondence to the taxpayer.
  - f. Any information you previously shared with the taxpayer becomes a part of the administrative record; therefore, include incorrect information that you put in writing and sent to the taxpayer/representative in the administrative record.
  - g. To correct a mistake, **do not** remove the document from the administrative record. Rather, acknowledge the mistake and send a corrected statement or revised calculation to the taxpayer/representative.
- (5) To place information into the administrative record that was communicated orally with the taxpayer or POA in the initial interview or a subsequent telephone conversation, create a transcript or summary of the discussion using Form 4564, Information Document Request.
- a. Document the Form 4564 with whom the conversation was held, and the matters discussed.
  - b. Send Form 4564 (with an individually designed letter as cover) to the taxpayer and ask them to confirm that the summary is an accurate representation of the information it contains, and if not, to provide specific clarification.
- (6) If you have any doubt that a document has been exchanged, mail it to the taxpayer with an individually designed cover letter.

### 4.71.3.6.4.3 (11-12-2021) Examiner's Responsibility

- (1) Always track documents exchanged with the taxpayer and the dates the documents are exchanged. Be careful you don't deface any documents (such as making notes or highlighting text using highlight markers).

**Caution:** If a document is defaced, you may need to exchange it with the taxpayer again, with the markings on it. Discuss this situation with your group manager or Area Counsel.

- (2) By carefully tracking all documents exchanged by date, it's easier to compile the administrative record and prepare the index if the case goes unagreed. It's recommended you compile an administrative record file at the same time as the various exchanges so that when items are exchanged, you scan that item and put it in the electronic administrative record file.
- (3) Tax Court Rule 217 imposes short deadlines for filing the administrative record. Further, Counsel reviews all unagreed cases subject to declaratory judgment before IRS issues the final adverse letter. The administrative record **must** be well-organized and complete when Counsel receives it.

- (4) When scanning documents, make sure that the copy is a clear identical copy of the original (aside from being in black and white versus color). This requires that you:
- Lay the document flat on the glass pane in lieu of using an auto feeder if the document is folded or bent.
  - Remove staples, paper clips, or other fasteners before scanning.
  - Scan the front and back of a document if information is present on the back.
  - Check that no portions of the document are eliminated or missing in the scan.
  - Double check each page scanned to ensure that it is a pristine identical copy of the original.

**Note:** When scanning double-sided documents, create two single-sided pages: one for the front, and one for the back.

**Caution:** Scans must be of high quality and resolution, as Counsel will redact the documents and submit copies of the redacted documents to court.

- (5) When sending correspondence, date the letter with the actual date you mail, fax or hand deliver it.
- (6) Ensure that all administrative record items have been scanned and/or saved into the RCCMS Office Documents folder using the RCCMS Naming Convention.

**Note:** The RCCMS Naming Convention now includes section 4.XX for administrative record items. List items in order of the administrative record index. The naming convention for the administrative record would start with the administrative index and proceed in order of the listed items.

- (7) The naming convention for the administrative record would start with the administrative index and proceed in order of the listed items. For example:
- 4.0 Administrative Record Index
  - 4.001 Forms W-2 for 2019 tax year (when relevant to the qualification issues)
  - 4.002 Form 1120 for 2019 tax year (when relevant to the qualification issues)
  - 4.003 Form 5500 for 2019 Plan Year
  - 4.004 Letter 6031, TEGE Opening Examination Letter
  - 4.0004a Publication 1
  - 4.0004b Notice 609
  - 4.0004c Publication 3498
  - 4.0004d Publication 4324
  - 4.0004e Initial Information Document Request
- (8) Keep all original paper records after scanning and saving in RCCMS until the issues are resolved.
- (9) Consult your group manager on cases with unique circumstances that might justify closing with a fully paper case file.



4.71.3.6.4.4  
(11-12-2021)

**Group Manager's  
Responsibility**

- (1) The group manager must ensure the following:
  - a. The administrative record is properly prepared, scanned into RCCMS and indexed according to this IRM's procedures.
  - b. All processing delays are fully explained on the CCR.
  - c. The case is flagged for Mandatory Review.
  - d. Paper records that can't be scanned are submitted to Mandatory Review.

4.71.3.6.5  
(12-04-2018)

**Statute Considerations**

- (1) The normal statute of limitations date expires three years from the later of the due date of the Form 5500 series return or the date the Form 5500 series return was filed.
- (2) Complete and place the Statute Expiration Chart in the Form 5500 RCCMS Office Documents folder. See IRM 4.71.3 - Exhibit 5, Form 1041 Statute Expiration Chart.
- (3) Solicit a Form 872-H if there is less than 12 months remaining on the statute of limitations on the Form 5500/1041.
- (4) See IRM 4.71.9, Statute Control Procedures, for Form 5500 statute of limitations procedures.

4.71.3.7  
(11-12-2021)

**Case Closing**

- (1) Close all cases fully electronically. See the July 28, 2020 Interim Guidance Memo (IGM) TEGE-04-0720-0014 with the subject line, Interim Guidance on Fully Electronic (100% Paperless) Cases, from the Director, EP Examinations.
- (2) Save all workpapers, returns, forms, letters, etc., in the RCCMS Office Documents folder using the RCCMS. See IRM 4.71.1 -Exhibit 2, RCCMS Naming Convention.
- (3) Make sure you scan and save all relevant case related documents you received from the taxpayer/POA in the RCCMS Office Documents folder using the RCCMS Naming Convention.
- (4) Make sure you save any other document necessary to document the examination trail in the RCCMS Office Documents folder.
- (5) Keep all records you upload into RCCMS or determine are no longer relevant to the case file per normal record retention requirements in IRM 1.15.2.
- (6) Fully document electronically all unagreed cases in the RCCMS Office Documents Folder.
- (7) Don't complete Form 5650 for any EP Examination case. Use the relevant RCCMS tabs for closing in lieu of Form 5650. See IRM 4.71.3.7.1.
- (8) Save the 30-Day Letter package, Closing Agreement documentation and fully executed agreement, all IDRS research and all forms and letters you prepared during the examination in the RCCMS Office Documents folder (for the Lead examination File) using the RCCMS Naming Convention.
- (9) Complete the CECA checksheet per IRM 4.71.1.22.5, Checksheet for Employee Plans Compliance Activities (CECA Checksheets).
  - a. The group manager should **not** email an "electronic copy" of the check-sheet to the CECA mailbox.



- b. Save the CECA checksheet in the RCCMS Office Documents folder.
- c. The group manager notes on the CCR (which the examiner saved in RCCMS) that he/she reviewed the EP examiner-completed CECA checksheet in RCCMS.

**Note:** EP Mandatory Review emails the CECA checksheet to the CECA mailbox for all unagreed cases.

- (10) Complete all required fields in RCCMS per IRM 4.71.3.7.1 before you close the case from the group. When you select “Validate for: Close” in RCCMS, complete all required fields highlighted in red font with the correct information.

**Note:** These fields correspond to the items that were required items on the optional Form 5650.

- (11) Make sure the statute of limitations shown in the RCCMS Compliance Activity, General tab (1 of 2), is completed and correct.
- (12) Complete the RCCMS Statute Validation Process if the statute date is 270 days or less:
  - a. Check the “Statute Valid” check box in the RCCMS Compliance Activity, General tab (1 of 2).
  - b. Select “Actions,” “Request Statute Validation,” complete the “Comment” box and submit the request for your group manager’s approval.
- (13) Follow the statute control procedures in IRM 4.71.9, Statute Control Procedures. See IRM 4.71.9.5.2, Statute of Limitations for Form 5330, for Form 5330 statutes.
- (14) Ensure that all administrative record items have been scanned and saved into the RCCMS Office Documents folder using the RCCMS Naming Convention.

**Note:** The RCCMS Naming Convention now includes section 4.XX for administrative record items. List items in order of the administrative record index. The naming convention for the administrative record would start with the administrative index and proceed in order of the listed items. See IRM 4.71.3.6.4.1 (4), Maintaining the Administrative Record File.

- (15) Keep a copy of all paper files that you scan and upload into the RCCMS Office Documents Folder until all issues are resolved.
- (16) Close all cases fully electronically to increase efficiency and reduce the need to mail paper case files. Consult your group manager on cases with unique circumstances that might justify closing with a paper case file.
- (17) Update the case to status 20 on AIMS and RCCMS and close the case to Mandatory Review.
- (18) Send any correspondence you receive after you close the case immediately to Mandatory Review to associate with the case file.

4.71.3.7.1  
(11-12-2021)

**Completion of the  
RCCMS Closing Record**

- (1) Validate the RCCMS Compliance and Closing Record for “Close.”
  - a. Complete any field that appears in red and other relevant tabs depending on the type of disposal code being used.
  - b. Select the “Update AIMS” box, if applicable.
- (2) Complete the RCCMS Closing Record General Tab “Disposal code” field per IRM 4.71.3.7.2, Disposal Codes.
- (3) Complete the RCCMS Closing Record General Tab “Closing with” field by selecting one of the following, as applicable:

Option	Reason for selection
1- Original Return	This is a rare selection for EP examination. Only select 1 if you’re closing an activity with an original return that has not been accepted, filed, or processed by any other function.
2- Taxpayer Return	Select this option when the return for the activity is a copy of a return you received from the taxpayer. Select 2 <u>if you get a delinquent Form 5500/5330 and submit a copy of return with your examination</u> (the original was processed through DOL or Classification or the Service Center).
3- Electronic Prints	Select this option if the return you used for the examination was the RCCMS return <u>and</u> you’re closing the examination with a paper file (or a partial paper file).
4- Paperless Examined	Select this option if the return you used for the examination was the RCCMS return <u>and</u> you are closing the examination fully electronically. Select 4 for NRU closures that are paperless.
5 - No Return	Select this option when there is no return for the activity, such as a non-filer substitute for return (SFR), an error closure (Form 10904), or a Non-Return Unit (NRU) examination with a paper file (or partial paper file).
7- Paperless Non Examined	Select this option for an all electronic case that is NOT examined, such as an all-electronic survey.

- (4) Complete these additional fields on the “General Tab” that are not highlighted if they apply:

Field	Required Action
“ARDI code”	Select the appropriate code from the pull down menu, if a closing agreement was secured.
“Fax Indicator”	Check if a closing agreement was secured via EEFax. If not, leave blank.

- (5) Complete the following fields on the RCCMS Closing Record, “Details tab” for all closures regardless of disposal code:

**Note:** These fields are highlighted in red.

- a. "Deductions Claimed" - enter deductions claimed for contributions to the specific plan and year to which the RCCMS record relates. Do not include salary deferrals. If "deductions" is not a selected issue, enter the employer contribution amount listed on line 2a(1) of Form 5500 Schedule I or Schedule H (as applicable). If the amount deducted is \$0 or \$1, enter \$1.

**Note:** If you're working an EP Large Case Support Examination coordinated with LB&I or EO and only one return is established on RCCMS and AIMS, enter the total deduction taken for all corporate tax years and for all deferred compensation arrangements qualified or otherwise.

- b. "Total Trust Assets" - enter total trust assets as of the end of the plan year. Must be at least \$1.
- c. "Number of Participants Affected" - enter the number of participants that were directly affected by the examination (for example, a change in account balance or vesting percentage). Must enter "0", if none are directly affected (cannot be left blank).

**Note:** A participant is not considered directly affected merely because the plan could have been disqualified.

- d. "Examiner's Time" - enter the examiner's time on the case.
- e. "Technique Code" - select the technique code from the pull down menu.
- f. "Examiner's Name" - select the examiner's name from the pull down menu.

(6) Close the RCCMS Case file record to the Mandatory Review Manager.

- a. Select the activity(s) you want to close from the list view.
- b. Select "Actions" from the top line menu.
- c. Select "Request Closure".
- d. Type comments in "request closure" dialog box, if necessary.

### 4.71.3.7.2 (12-17-2020) Disposal Codes

- (1) The disposal code indicates the examination's outcome to be reflected in the RCCMS closing record. Refer to Document 6476 for a list of disposal codes, disposal code reporting priority and the AIMS/RCCMS disposal code crosswalk.
- (2) Carefully select the correct disposal code to ensure that—
  - a. The accomplishments of the examination program are accurately reported for monitoring and reporting purposes, and
  - b. Returns with examination potential are identified for examination.
- (3) If the case is:
  - a. unagreed, close the case disposal code 604 = "Unagreed - Without Protest."
  - b. resolved through a closing agreement, close the case disposal code 106 = "Closing Agreement."
  - c. resolved through SCP, close the case disposal code 404 = "SCP - Self Correction."

