



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

11.3.10

JULY 27, 2023

EFFECTIVE DATE

(07-27-2023)

PURPOSE

- (1) This transmits the revised Internal Revenue Manual 11.3.10, Disclosure of Official Information, Employee Plans Information.

MATERIAL CHANGES

- (1) IRM 11.3.10.1.4, Program Controls, were added in order to incorporate relevant internal controls. These items identify information about the program and procedures covered within this section.
- (2) Reviewed and updated the IRM where necessary for the following types of editorial changes: legal citations, published forms and documents and web addresses.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 11.3.10, Disclosure of Official Information, Employee Plans Information, dated September 23, 2020.

AUDIENCE

All Operating Divisions and Functions.

RELATED RESOURCES

- (1) The Disclosure and Privacy Knowledge Base Site can be found at: <https://portal.ds.irsnet.gov/sites/vl003/pages/default.aspx>

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11.3.10

Employee Plans Information

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11.3.10.1
(09-23-2020)
Program Scope and Objectives

- (1) Purpose: Internal Revenue Code (IRC) 6104(a)(1)(B) requires that certain employee plans documents maintained by the Internal Revenue Service (IRS), be open to inspection at such times and in such places as the Secretary of Treasury may prescribe.
- (2) Audience: These procedures apply to all IRS employees and contractors.
- (3) Policy Owner: The Director of Governmental Liaison, Disclosure and Safeguards (GLDS) is responsible for oversight of Disclosure policy.
- (4) Program Owner: The Disclosure office, under GLDS, is responsible for the Disclosure program and guidance. Each IRS organization is responsible for ensuring its employees are aware of and follow Servicewide Disclosure policy.
- (5) Primary Stakeholders: The following office has the responsibility for Employee Plans:
 - Tax Exempt and Government Entities (TE/GE), Employee Plans

11.3.10.1.1
(11-12-2019)
Background

- (1) Consistent with statutory disclosure requirements, the IRS tries to keep the public informed about its operations.
- (2) When a request for information is received, the requested material is made available to the extent that disclosure is not prohibited by statute and tax administration is not impaired by releasing the requested data.
- (3) IRC 6104 requires the IRS to make certain information from applications and returns filed by exempt organizations and employee plans be available for inspection. IRM 11.3.9 discusses exempt organizations. This IRM discusses employee plans.
- (4) TE/GE has formal access procedures in place to comply with the statute. Disclosure is not the primary point of contact for these types of requests.

11.3.10.1.2
(11-12-2019)
Authority

- (1) The following items govern the authority pertaining to the inspection/release of employee plans:
 - 26 USC 6104
 - 26 CFR 301.6104
 - 26 USC 6103
 - Freedom of Information Act (FOIA) 5 USC 552
 - 26 USC 401(a)
 - 26 USC 403(a)
 - 26 USC 408(a) and (b)
 - 26 USC 501(a)
 - 26 USC 6058

11.3.10.1.3
(11-12-2019)
Responsibilities

- (1) This Internal Revenue Manual (IRM) is used by all IRS employees and contractors to help comply with the disclosure provisions of IRC 6104 pertaining to Employee Plans.

11.3.10.1.4
(07-27-2023)
Program Controls

- (1) Business Units are responsible for establishing and documenting the program controls developed to oversee their program as well as ensuring employee compliance with all applicable elements of this IRM.

11.3.10.1.5
(11-12-2019)

**Terms/Definitions/
Acronyms**

- (1) The following is a list of the Terms and Definitions that are used in this IRM section:

Term	Definition
Application for a Determination Letter	Includes the documents that the applicant files with respect to the qualification of a pension, profit-sharing, or stock bonus plan under IRC 401(a) or IRC 403(a), and individual retirement accounts and annuities under IRC 408(a), IRC 408(b), and IRC 408(c). This includes only applications for determination letters filed with the IRS after September 2, 1974.
Authorized Representative	The representative of a plan participant designated by the plan participant in a written authorization to inspect material described in IRC 6104(a)(1)(B). The written authorization should specify that the representative is authorized to inspect the material.
Disclosure	The making known to any person in any manner whatever a return or return information. See IRC 6103(b)(8) for the statutory definition.
Inspection	The terms “inspected” and “inspection” mean any review of a return or return information. See IRC 6103(b)(7) for the statutory definition.
Participant	Any employee or former employee of an employer or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan that covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit. See 29 USC 1002(7). Note: The availability of material for inspection to a plan participant pursuant to this definition does not constitute a determination by the IRS that such person is a plan participant for any purpose other than the disclosure of documents.

Term	Definition
Plan Participant	Includes, but is not limited to: <ol style="list-style-type: none"> A current plan participant. Former employees, such as certain retired and terminated employees who have a non-forfeitable right to benefits under the plan. A beneficiary of a deceased former employee who is receiving benefits or entitled to receive future benefits under the plan. An administrator, executor, trustee, or trustee of the estate of a deceased participant.
Supporting Document	Any statement or document submitted in support of an application for a determination letter that is not specifically required by the application form or the IRS.

(2) The following is a list of the Acronyms that are used in this IRM section:

Acronym	Definition
CAS	Customer Account Services
CFR	Code of Federal Regulations
DOL	Department of Labor
ERISA	Employee Retirement Income Security Act
FOIA	Freedom of Information Act
GLDS	Governmental Liaison, Disclosure and Safeguards
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
PBGC	Pension Benefit Guaranty Corporation
PGLD	Privacy, Governmental Liaison and Disclosure
TE/GE	Tax Exempt/Government Entities
USC	United States Code

11.3.10.1.6
(11-12-2019)

Related Resources

(1) The following table lists other sources of guidance on Employee Plans:

Resource	Title	Guidance
IRM 7.11.4	IRC 401(a) Pre-Approved Plans Program	Provides guidance to employees who process and review opinion letter applications from Pre-Approved Providers
IRM 11.3.2	Disclosure to Persons with a Material Interest	Provides guidance when other return and return information that cannot be disclosed pursuant to IRC 6104 can be disclosed
IRM 11.3.3	Disclosure to Designees and Practitioners	Provides guidance when other return and return information that cannot be disclosed pursuant to IRC 6104 can be disclosed
IRM 11.3.4	Congressional Inquiries	Provides guidance when Members of Congress can have access to tax information under IRC 6103(c) and 6103(f)
IRM 11.3.21	Investigative Disclosure	Provides guidance when IRS employees are authorized by IRC 6103(k)(6) to disclose return and return information to extent necessary to gather data relating to their tax administration duties.
IRM 11.3.22	Disclosure to Federal Officers and Employees for Tax Administration Purposes	Provides guidance where tax administration involves nontax disclosures
IRM 11.3.29.6	Disclosures to the Department of Labor (DOL) and Pension Benefit Guaranty Corporation (PBGC) for Administration of the Employee Retirement Income Security Act (ERISA) per IRC 6103(l)(2)	Provides guidance on disclosures to DOL and PBGC pursuant to the provisions of IRC 6103(l)(2)
IRM 21.3.8	Taxpayer Contacts - Tax Exempt/Government Entities (TE/GE) Customer Account Services (CAS) Telephone Operations	Provides guidance for TE/GE telephone assistants

11.3.10.2
(11-12-2019)

**Authority for Inspection
of Material Relating to
Pension and Other Plans**

- (1) Title 26 Code of Federal Regulations (CFR) 301.6104 sets forth the IRS' interpretation of the provisions and procedures for making Title 26 U.S. Code (USC) 6104 information available for inspection.
- (2) The Freedom of Information Act, 5 USC 552, IRC 6104(a)(1)(B), and IRC 6104(b) all make certain documents available for inspection. This overlap presents no direct statutory conflict since the disclosure of information or documents as required by IRC 6104 preempts the disclosure requirements of the FOIA.
- (3) IRC 6104(a)(1)(B) and 26 CFR 301.6104(a)-2 require that the following employee plans documents be open to inspection at such times and in such

places as the Secretary of Treasury may prescribe if maintained by the IRS but only with respect to plans having more than 25 participants:

- a. Any application filed with respect to the qualification of a pension, profit-sharing, or stock bonus plan under IRC 401(a), or IRC 403(a), an individual retirement account or annuity described in IRC 408(a), or an individual retirement annuity described in IRC 408(b) .
- b. Any application filed with respect to the exemption from tax under IRC 501(a) of an organization forming part of a plan or account referred to above.
- c. Any application filed with respect to a request for approval of a master, prototype, or other such plan or account.
- d. Any papers submitted in support of the applications referred to above.
- e. Any letter or other document issued by the IRS and dealing with the qualification referred to above or the exemption from tax referred to above.

Note: Only plan participants, the plan sponsor, or their authorized representatives are authorized to inspect plans of 25 or fewer participants.

- (4) Effective January 1, 1979, prohibited transaction functions with certain exceptions have been transferred to the Department of Labor (DOL) pursuant to the President's Employee Retirement Income Security Act (ERISA) Reorganization Plan No. 4, approved by Congress on October 13, 1978.
- (5) Generally, the Reorganization Plan gives the DOL the authority for fiduciary responsibility over prohibited transaction matters while giving the IRS authority to administer the minimum participation, vesting, and funding standards. Inquiries on Form 5500, Annual Return/Report of Employee Benefit Plan, return requirements and on return processing should be addressed to:

U.S. Department of Labor
Office of the Chief Accountant
Suite 400
200 Constitution Avenue, NW
Washington, D.C. 20210
- (6) Inquiries on applications and IRS determinations should be referred to TE/GE Customer Accounts Services. The toll-free telephone number is: **1-877-829-5500**. For additional information see IRM 21.3.8, Tax Exempt/Government Entity (TE/GE) Customer Account Services (CAS) Telephone Operations.
- (7) IRC 6104(a)(2) authorizes the IRS to disclose any application referred to in IRC 6104(a)(1)(B), and any other papers developed by the IRS that relate to such application, to Congressional committees in accordance with IRC 6103(f) .
- (8) To the extent that the requested information is not otherwise available for inspection under IRC 6104, the requirements of IRC 6103(f) must be complied with prior to release of information. For further instructions, see IRM 11.3.4, Congressional Inquiries.
- (9) IRC 6104(b) requires IRS personnel to make available for inspection the information that is required to be furnished to the IRS by IRC 6058 (annual information returns containing information with respect to the qualification,

financial condition, and operations of pension, annuity, stock bonus, or profit-sharing plans), together with the names and addresses of such organizations and trusts.

11.3.10.3
(11-12-2019)

Documents That May Be Inspected per IRC 6104(a)(1)(B) and 26 CFR 301.6104(a)-2

- (1) Generally, material open to inspection under IRC 6104(a)(1)(B) and 26 CFR 301.6104(a)-2 , includes the application for a determination letter filed after September 2, 1974 (if the plan has 26 or more participants), supporting documents, and letters or documents issued by the IRS after that date. See IRM 11.3.10.4, Withholding Certain Information per IRC 6104(a)(1)(C) and (D) for limitations on right of inspection.
- (2) Documents relating to plans with 25 or fewer participants are available only to plan participants, the plan sponsor, or their authorized representatives.
- (3) Letters or documents issued by the IRS that are open to inspection under IRC 6104(a)(1)(B)(iv), and are housed within the Exempt Organization Unit located in Cincinnati, include, but are not limited to the following:
 - a. Determination letters relating to the qualification of a plan, account, or annuity.
 - b. Technical advice memoranda relating to the issuance of such determination letters.
 - c. Technical advice memoranda relating to the continuing qualification of a plan, account, or annuity previously determined to be qualified or relating to the qualification of a plan, account, or annuity for which no determination letter has been issued.
 - d. Letters or documents revoking or modifying any prior favorable determination letter or denying the qualification of a plan, account, or annuity for which no determination letter has been issued.
 - e. Determination letters relating to the exemption from tax of a trust or a custodial account described in IRC 401(f).
 - f. Opinion letters or advisory letters relating to the acceptability of the form of any master, prototype, or volume submitter letter issued under the pre-approved program.

11.3.10.4
(11-12-2019)

Withholding Certain Information per IRC 6104(a)(1)(C) and (D)

- (1) Certain names and compensation shall not be open to inspection.
- (2) IRC 6104(a)(1)(C) provides that the IRS must withhold from inspection (including inspection by a plan participant or his/her authorized representative) information contained in any application/document or other documents filed by the applicant or issued by the IRS in which the compensation (including deferred compensation) of an individual can be ascertained.
- (3) IRC 6104(a)(1)(D) provides that, upon the request of the organization submitting any supporting papers described in IRC 6104(a)(1)(B), the IRS shall withhold from inspection any information that it determines relates to any trade secret, patent, process, style of work, or apparatus if the disclosure of such information would adversely affect the organization.
- (4) IRC 6104(a)(1)(D) also provides that the IRS shall withhold from inspection any information contained in supporting papers that the IRS determines would adversely affect the national defense.

11.3.10.5
(11-12-2019)
**Inspection by Plan
Participants**

- (1) In the case of a pension, profit-sharing, or stock bonus plan (or an individual retirement arrangement) referred to in IRC 6104(a)(1)(B) with 25 or fewer participants, the application for a determination letter filed after September 2, 1974, supporting documents, and letters or documents issued by the IRS after that date may only be inspected by a plan participant or his/her authorized representative.
- (2) When a plan with 25 or fewer plan participants files an application or annual return that shows that the number of participants has increased to 26 or more, all prior applications, or supporting documents, and other documents received or issued by the IRS after September 2, 1974, will be open to inspection regardless of the number of plan participants indicated on any prior application.
- (3) When a plan with 26 or more plan participants files an application that shows that the number of participants has decreased to 25 or fewer, supporting documents relating to such application, and any other documents received or issued by the IRS after the date of receipt of that application may only be inspected by a plan participant or his/her authorized representative.

Note: Materials that were previously open to inspection will remain open to inspection.

- (4) The application for a determination letter and supporting documents will be open to inspection by a plan participant or his/her authorized representative whether or not the application is withdrawn by the applicant and whether or not the IRS determines that the plan is qualified.
- (5) The application for termination of a plan, Form 5310, Application for Determination Upon Termination and the determination letter issued by the IRS is available for inspection by a plan participant or his/her authorized representative.

11.3.10.6
(11-12-2019)
**Inspection of
Documents**

- (1) Any material open to inspection under IRC 6104(a)(1)(B) will be available for inspection only upon written request to the IRS.
- (2) The DOL may establish their own requirements for public access.
- (3) Individuals may be advised that many Forms 5500, Annual Return/Report of Employee Benefit Plan submitted to the DOL are available on the website at the following: *Employee Retirement Income Security Act (ERISA)*.

11.3.10.7
(11-12-2019)
**Inspection of Annual
Information Returns**

- (1) The information required to be furnished by IRC 6058, together with the names and addresses of such organizations and trusts shall be made available for inspection as the Secretary of Treasury may prescribe.
- (2) Returns in this category include:
 - Form 5500, Annual Return/Report of Employee Benefit Plan
 - Form 5500-C/R, Return/Report of Employee Benefit Plan (with fewer than 100 participants)

Note: Form 5500-C/R and Form 5500 were combined as a new Form 5500 starting in 1999.

 - Form 5500-EZ, Annual Return of A One-Participant (Owners/Partners and Their Spouses) Retirement Plan or A Foreign Plan

- *Form 5500 Schedule A*, Insurance Information
- *Form 5500 Schedule B*, Actuarial Information

Reminder: Schedule B filed with is not available for inspection beginning with return year 1993.

Note: Schedule B was replaced by Schedule SB for Single Employer Plans and by Schedule MB for Multiple Employer and Certain Money Purchase Plans for 2008 filings.

- *Form 5500 Schedule C*, Service Provider Information
- *Form 5500 Schedule D*, Direct Filing Entity (DFE)/Participating Plan Information
- *Form 5500 Schedule G*, Financial Transaction Schedules
- *Form 5500 Schedule H*, Financial Information
- *Form 5500 Schedule I*, Financial Information Small Plan
- *Form 5500 Schedule P*, Annual Return of Fiduciary of Employee Benefit Trust

Note: The requirement to file Schedule P was eliminated by Announcement 2007-63 for 2005 Form 5500-EZ filers and 2006 for all other Form 5500 filers.

- *Form 5500 Schedule R*, Retirement Plan Information

Note: Schedule E was replaced 1/1/2009 with a new part IV on Schedule R

- *Form 5500 Schedule T*, Qualified Pension Plan Coverage Information

- (3) Pursuant to agreement between the IRS and the DOL, inspection of all categories of Form 5500 (except Form 5500-EZ, Schedule B that is not open for inspection) is handled by the DOL. See IRM 21.3.8.3.4.1.4 , Tax Exempt/Government Entity (TE/GE) Customer Account Services (CAS) Telephone Operations.

Note: The DOL does not receive copies of Form 5500-EZ.

- (4) Forms 5500 filed with respect to employee welfare benefit plans are not governed by IRC 6104. These reports are required by section 104(a)(1) of Title I of ERISA and are open to inspection under section 106 of Title I.

11.3.10.8
(11-12-2019)

**Disclosure of Returns
and Return Information
to the Department of
Labor and the Pension
Benefit Guaranty
Corporation**

- (1) In accordance with IRC 6103(l)(2) and 26 CFR 301.6103(l)(2)-1, the IRS may disclose certain returns and return information to the DOL or the Pension Benefit Guaranty Corporation (PBGC) for purposes of the administration of Titles I or IV of ERISA.
- (2) Returns and return information may also be disclosed to these agencies for the purpose of conducting research and studies authorized by ERISA. Instructions regarding such disclosures are described in IRM 11.3.29.6, Disclosures to the Department of Labor (DOL) and Pension Benefit Guaranty Corporation (PBGC) for Administration of the Employee Retirement Income Security Act (ERISA) per IRC 6103(l)(2).
- (3) Nothing in this text shall be construed to deny officers and employees of the DOL or the PBGC the right to inspect return information available for inspection under IRC 6104.

- (4) Disclosures under IRC 6103(l)(2) will require disclosure accounting under IRC 6103(p)(3). Such disclosures are also subject to the safeguarding requirements of IRC 6103(p)(4).

11.3.10.9
(11-12-2019)
**Information Not
Governed by IRC 6104**

- (1) Pursuant to IRC 6103(a), any information that the IRS gathers, receives, or develops regarding an employer plan or trust is confidential and may not be disclosed except as authorized by the Internal Revenue Code.
- (2) Any information obtained or developed by the IRS during its examination of a pension plan's and/or trust's tax-exempt status is not available for inspection under IRC 6104. This information would include such documents as work papers, correspondence, reports, and informants' letters.
- (3) If these documents contain information that should have been filed with the IRS and would have been made available for inspection if filed, then those specific portions of the documents may be disclosed.
- (4) In connection with official duties, it may become necessary for IRS personnel to contact an officer of the employer plan and/or trust, their employees, or other third parties. These officers, employees, or third parties may also contact IRS personnel. The disclosure of information in these situations will generally be governed by IRC 6103(c), IRC 6103(e), IRC 6103(h)(4), or IRC 6103(k)(6). For additional information on each code section see IRM 11.3.3, Disclosure to Designees and Practitioners; IRM 11.3.2, Disclosure to Persons with a Material Interest; IRM 11.3.22, Disclosure to Federal Officers and Employees for Tax Administration Purposes; IRM 11.3.21.7, Disclosure by Certain Officers and Employees for Investigative Purposes - IRC 6103(k)(6).
- (5) With the exception of information available for inspection under IRC 6104(a)(1)(B) and IRC 6104(b), the disclosure of tax information concerning employee plans may be governed by other provisions of the IRC (e.g., IRC 6103).
- (6) The discussions in other sections of IRM 11.3, Disclosure of Official Information, concerning the disclosure of returns and return information, also apply to the treatment of employee plans when outside of the purview of IRC 6104(a)(1)(B) and IRC 6104(b). Consult the Table of Contents of IRM 11.3, Disclosure of Official Information, for a description of the coverage of those sections.

