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What's Happening with Audits?

An Interview with Monika A. Templeman, Director, Employee Plans Examinations

by Nicholas J. White



Monika Templeman and Nick White have known each other approximately 20 years and worked together in the past in the Employee Plans Division of the IRS, out of the Los Angeles Key District office, in what was then known as the IRS's Western Region. Recently, Nick interviewed Monika to get her insights on audits.

Monika has been with the Internal Revenue Service since 1988 and has more than 15 years of experience in IRS management positions. Her previous position was as the EP Area Manager, Great Lakes, and she acted as the Director EP Rulings and Agreements in 2005 after graduating from the Executive Readiness Program. A native of California, Monika earned a JD Degree from California Institute of Law in 1980 and was admitted to the California Bar.

The following is a reprint of the interview:

Nick: *Given our history, it's an honor and a special opportunity for me to interview you today. Thank you for agreeing to speak with me.*

Monika: Nick, it is a pleasure to speak with you today.

Nick: *What are your responsibilities as Director of Examinations?*

Monika: As Director of EP Examinations, my primary responsibility is to ensure compliance by developing and implementing enforcement programs that have a positive impact on the retirement plan system. As you know, there are over one million plans, not counting 403(b)



and 457 plans and IRAs, and approximately \$12 trillion invested in these retirement plans. Now, more than ever, it is crucial to ensure that plans are operating in accordance with their terms and providing appropriate benefits to the plan participants. Obviously, when our examination presence diminishes, the opportunity for non-compliance increases and current economic factors make people more susceptible to promoter schemes. Thus, it is important to maintain an active and vigorous examination program that protects and preserves our retirement system. I feel it is equally

important to ensure the right balance between service and enforcement. My goal is to develop and deliver compliance programs that strike that balance. I am responsible for five Area Offices with examination groups nationwide. I am also responsible for EP Examination Planning and Review (EP&R) that handles the case selection, case processing and two separate review functions, as well as program planning, analysis and monitoring. In addition, the EP Field Actuarial Group and the Employee Plans Compliance Unit (EPCU) are part of EP Exam. In short, I am responsible for a complex function with approximately 500 employees and many multi-faceted compliance programs. In a broader sense, I am also responsible for working closely with EP Rulings and Agreements and Customer Education and Outreach, in what I call a holistic approach, to preserve and enhance the retirement system in America. Employee Plans has regulatory responsibility that extends beyond tax collection to ensure that the huge expenditure in the benefits arena (estimated \$119 billion annually) contributes to retirement security of American workers. The EP Examinations function is part of this equation.

Nick: For some time now EP has offered online compliance assistance for 401(k) plans through the “401(k) Fix-It Guide.” and EP has recently added the “SEP Fix-It Guide” for sponsors of Simplified Employee Pension plans. What information do you have regarding the use and effectiveness of these online resources, and is EP planning on providing additional “Fix-It Guides” for other types of retirement programs?

Monika: The IRS Fix-It Guides are great tools to help plan sponsors and their advisors to find, fix and avoid common retirement plan mistakes. The Fix-It Guide is the brain child of Joyce Kahn, Manager, Voluntary Compliance, who worked with EP Customer Education and Outreach (CE&O) to produce a terrific Web-based product that illustrates how and when plan sponsors can use the Employee Plans Compliance Resolution System (Self Correction Program, Voluntary Correction Program and Audit Closing Agreement Program)

to correct plan errors and keep their plans qualified. Best of all, they provide ways to avoid mistakes in the first place and explain legal requirements related to tax favored retirement plans and emphasize the importance of proper maintenance and internal controls. The “401(k) Fix-It Guide” was the first one produced and posted to the Web at www.irs.gov/ep. A Retirement Plans Pitfall Workshop was delivered at each of the IRS Nationwide Tax Forums this summer to encourage the use of online IRS Fix-It Guides to keep plans in compliance. The “SEP Fix-It Guide” is currently available online. To answer the second part of the question, additional guides are being developed for SIMPLE IRA plans, SARSEPs and 403(b).

Nick: What is the Employee Plan’s Compliance Unit (EPCU) and what should plan sponsors and their advisors know about it?

Monika: The EPCU has proven to be an extremely successful innovation that allows us to leverage our resources and expand our compliance contacts. The Unit was established to focus on areas of potential non-compliance by using methods to pinpoint specific problem areas or anomalies either in data or identified trends. The EPCU is in its fourth year and has made more than 8,000 compliance contacts and completed several important compliance projects since its inception. In the EP Exam function we utilize the EPCU to leverage compliance in several ways. The typical way is to conduct compliance checks, which allow us to reach out and touch a larger portion of the EP universe with minimal taxpayer burden, positively impact compliance and increase our enforcement presence. Compliance checks are not audits and are limited to a single issue. Since many questions/problems can be resolved without an audit, using the EPCU to conduct compliance checks leverages resources and significantly increases compliance coverage. A compliance check is usually handled through correspondence and can involve determining whether a record keeping or reporting requirement is being met. They are also utilized to match information from a return to other information to resolve errors or discrepancies to help educate taxpayers at the same time. A compliance check contact does not preclude the use of our voluntary compliance programs under EP Compliance Resolution System (EPCRS) to correct plan errors in an inexpensive and non-draconian way, unless the issue cannot be resolved and is referred for audit. We also use the EPCU to conduct questionnaire studies and to assist in identifying abusive emerging issues. So you can see how the EPCU is an excellent way for us to reach a lot more folks. Detailed information about the EPCU and current projects are available at our EPCU Web page, www.irs.gov/ep.



Nick: What is your highest profile EPCU Project?

Monika: The 403(b) Universal Availability Project is the highest volume and most visible EPCU Project to date. The EPCU contacted more than 3,000 school Districts in more than 40 states and more than 20% had universal availability problems that were voluntarily corrected. This outreach resulted in not only teachers, but also school bus drivers, cafeteria workers, janitors and substitute teachers being included in these plans. The project is continuing in FY 2009 and a future follow-project is in the planning stages. New for FY 2009 is a Multiemployer Certification Project to comply with new requirements for annual certification under PPA 2006 and a 401(k) Questionnaire Project.

Nick: What steps should a plan sponsor take if he or she receives a letter or phone call from a revenue agent notifying him or her of an EP examination of his or her plan? And, once the examination has commenced, what do you see as the best practices for seeing the examination through to its conclusion?

Monika: The most important thing for an employer to do to prepare for an audit after receiving an initial contact letter is to review the included list of items that an agent would like to examine. It is important to contact the agent and ask questions about the particular request and the form of documentation that he or she will need for the audit. The items requested should be available and organized for the agent's visit. This organization helps eliminate delays and may negate the need for follow-up visits. Good internal controls are crucial for a well run plan. Self audits allow a plan sponsor to find and fix mistakes and prevent the much higher costs of correcting mistakes as a result of an audit. Employers will find Web-based tools at www.irs.gov/ep that provide a wealth of information about the audit process, including an examination process guide that explains the audit from start to finish and a specific audit efficiency guide that was developed with a lot of input from pension practitioners. It includes the top tips to prepare for an efficient audit and a flowchart that takes you through the process. I also recommend checking out Exam Trends and Tips on the Web to find out the issues we've seen when examining specific plan types. This information also helps when conducting internal self audits.

For most audits we use a focused examination approach with three to five issues to examine based on analysis and industry type. After the initial focused review, an agent could conclude that the plan is compliant, resolve identified issues or expand the audit scope. Again, I would like to stress the importance of good internal controls and good preparation. Requested records should be organized, not stacked in boxes or piled all over the place. You need to be able to explain the terms of the plan, the operation of the plan and the

administrative processes. Having the appropriate people available makes a lot of difference. Identify any plan errors that you fixed. If you solved something through a VCP, provide the Compliance Statement. If you used Self Correction, be able to show that you have practices and procedures in place to prevent the problem. You will need to verify what you did.

Remember, our goal is to keep qualified plans qualified. If a plan is intended as a legitimate retirement vehicle, as opposed to a tax evasion scheme, then we want to work with you to keep it qualified.

Nick: Speaking of tax evasion schemes, please generally describe your program for addressing Abusive Tax Avoidance Transactions (ATATs). What are you looking for and how are you going about it, and what are you finding in terms of new/emerging abusive transactions?

Monika: It is no secret that the IRS is committed to detecting and deterring abusive schemes. In Employee Plans we continue to take a very strong stand against promoter schemes involving retirement plans. EP Exam is doing very meaningful and complex enforcement work, with very good results that positively impact compliance, deter promoter schemes and abuses and are clearly reflected in our success in detecting and deterring S Corporation ESOPs that violate IRC 409(p) and IRC 412(i) abusive plans that take deductions for excessive insurance. It is troubling that tax schemes are using retirement vehicles and in doing so are tainting and jeopardizing the private retirement system in America. Accordingly, we do not treat these abusive cases the way we normally treat legitimate, qualified plans that make mistakes. As I previously said, we are committed to shutting down abusive schemes. If an abusive plan actually provides meaningful benefits for rank and file employees, we might eliminate the abuse and save the plan. However, we treat it very differently than plans that make honest mistakes. We continue to look for the next big scheme to stop it dead in its tracks.