Oversight of Nonbank Trustees Has Improved, but Resources Expended on the Program Should Be Reevaluated

May 11, 2012

Reference Number: 2012-10-055

Redaction Legend:
1 = Tax Return/Return Information

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OVERSIGHT OF NONBANK TRUSTEES HAS IMPROVED, BUT RESOURCES EXPENDED ON THE PROGAM SHOULD BE REEVALUATED

Highlights

Issued on May 11, 2012

Highlights of Reference Number: 2012-10-055 to the Internal Revenue Service Acting Commissioner for the Tax Exempt and Government Entities Division.

IMPACT ON TAXPAYERS

A nonbank trustee is a financial entity that is not a bank or insurance company, but acts as the custodian for tax-exempt retirement and savings accounts. The Employee Plans function expanded its nonbank trustee program to ensure that nonbank trustees were meeting the requirements outlined in the tax regulations. However, with fewer than 100 nonbank trustees and the IRS's experience that most are complying with the regulations, TIGTA believes the IRS should reevaluate the level of coverage for this program and determine how it can best balance limited resources with other programs. If the Employee Plans function does not reevaluate its use of limited resources, it may not know whether it is using taxpayer funds in the most productive manner.

WHY TIGTA DID THE AUDIT

This audit was initiated based on a congressional inquiry and subsequent TIGTA investigation in the aftermath of the Bernard L. Madoff scandal and addresses the major management challenge of Tax Compliance Initiatives. The overall objective was to determine whether the IRS is ensuring nonbank trustees meet tax regulation requirements and whether there are any opportunities for cost savings within this program.

WHAT TIGTA FOUND

In the aftermath of the Madoff scandal, the Employee Plans function expanded its nonbank trustee program by strengthening processes for approving nonbank trustee applications and conducting investigations to ensure nonbank trustees meet applicable tax regulations. Most investigations determined that nonbank trustees either were in full compliance with tax regulations or had minor violations that were correctable.

While the actions taken by the Employee Plans function because of the Madoff scandal improved the IRS's oversight of nonbank trustees, TIGTA determined that nonbank trustee investigations focus on compliance with tax regulations and do not independently determine whether the securities exist. As a result, it is unlikely that nonbank trustee investigations would uncover a scheme, such as the one perpetrated by Madoff.

Because investigations have not uncovered widespread noncompliance and would not likely uncover a Madoff-like scheme, Employee Plans function management needs to evaluate how it can best balance limited resources between efforts to oversee nonbank trustees and examining retirement plans.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Director, Employee Plans, reevaluate the balance of nonbank trustee program and regular examination program work, and ensure that the published list of nonbank trustees is accurate.

In their response to the report, the IRS agreed with the recommendations. The IRS plans to evaluate the number of nonbank trustee investigations to determine the proper balance between such investigations and regular retirement plan examinations. In addition, the IRS plans to continuously monitor the changes to the list of approved nonbank trustees throughout the year and annually publish an announcement that contains the current list of approved nonbank trustees.

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

May 11, 2012

MEMORANDUM FOR ACTING COMMISSIONER, TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

FROM: Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Oversight of Nonbank Trustees Has Improved, but Resources Expended on the Program Should Be Reevaluated (Audit # 201110015)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) is ensuring nonbank trustees meet tax regulation requirements and whether there are any opportunities for cost savings within this program. This audit is included in the Treasury Inspector General for Tax Administration's Fiscal Year 2012 Annual Audit Plan and addresses the major management challenge of Tax Compliance Initiatives (Tax-Exempt Entities).

Management's complete response to the draft report is included in Appendix V.

Copies of this report are also being sent to the IRS managers affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions or Russell P. Martin, Acting Assistant Inspector General for Audit (Management Services and Exempt Organizations), at (202) 622-8500.

Table of Contents

Background

A nonbank trustee is a financial entity that is not a bank or insurance company,[1] but acts as the custodian for the tax-exempt retirement and savings accounts shown in Figure 1.

Figure 1: Retirement and Savings Accounts That Can Be Administered by a Nonbank Trustee

Tax-Exempt Retirement Accounts	Tax-Exempt Savings Accounts
Traditional Individual Retirement Arrangements	Health Savings Accounts
Roth Individual Retirement Arrangements	Archer Medical Savings Accounts
Qualified Retirement Plans or Trusts	Coverdell Education Savings Account
Deferred Compensation Plans of State and Local Government and Tax Exempt Organizations Custodial Accounts	
Tax Sheltered Annuity Plans	

Source: Internal Revenue Service (IRS) Internet site.

Taxpayers can make tax-deductible contributions to these retirement and savings accounts, as long as the custodian of the accounts is a bank, insurance company, or an approved nonbank trustee.

The Employee Plans function of the Tax Exempt and Government Entities Division is responsible for ensuring that entities are qualified to operate as a nonbank trustee. Prospective entities submit a written application to demonstrate that they meet the requirements outlined in the Internal Revenue Code.[2] However, these entities can accept funds for tax-exempt retirement and savings accounts only after receiving written notice of approval from the IRS. The notice of approval will remain in effect until revoked by the IRS or withdrawn by the applicant.

Revenue agents within the Employee Plans function's examination program examine retirement plans and investigate nonbank trustees. Retirement plans[3] are examined to ensure that retirement plan sponsors contribute to the plan as required, assets truly exist to satisfy liabilities and are

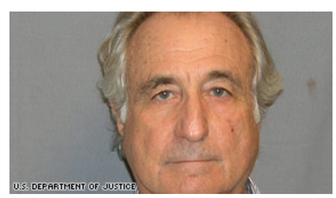
[1] Examples of nonbank trustees from the publically available list of approved nonbank trustees include Charles Schwab and Co., Inc.; Goldman Sachs and Co.; and Merrill, Lynch, Pierce, Fenner and Smith, Inc.
[2] § 1.408-2(e)2 through (e)(5)(viii)(F).
[3] There are more than 867,000 retirement plans in existence with assets totaling approximately $5.3 trillion.

properly classified, and retirement plans are operating in accordance with the plan design. If a retirement plan is not in compliance, Employee Plans function examiners work with retirement plan officials to resolve examination issues and bring the retirement plan back into compliance. Nonbank trustee investigations[4] are important because nonbank trustees do not file annual information returns and the IRS needs to ensure that nonbank trustees continue to comply with applicable tax regulations. These investigations include: 1) checking to ensure nonbank trustees can account for distributing income between many individual accounts, 2) checking to ensure nonbank trustees have had their financial statements audited by a Certified Public Accountant, and 3) checking to ensure that nonbank trustee employees are insured on a bond of no less than $250,000.

Based on the work the Employee Plans function conducts to evaluate written applications and investigate nonbank trustees, the IRS publishes a list of entities approved to operate as nonbank trustees on its Internet website. This list assists taxpayers who may wish to invest funds with a nonbank trustee by providing assurance that the IRS has approved the trustee to accept funds for tax-exempt retirement accounts and savings accounts. In addition, the nonbank trustee program is important because the taxpaying public perceives that the IRS is being vigilant and is looking at the integrity of the retirement system in order to keep the public's trust.

This audit was initiated based on a congressional inquiry and a subsequent Treasury Inspector General for Tax Administration investigation in the aftermath of the Bernard L. Madoff (hereafter referred to as Madoff) scandal. In March 2009, Madoff pleaded guilty to several felony charges including securities fraud, investor advisor fraud, mail fraud, wire fraud, money laundering, false statements, perjury, false filings with the U.S. Securities and Exchange Commission, and theft from an employee benefit plan. During the period leading up to Madoff's guilty plea, it was determined that the IRS approved Madoff's limited liability corporation as a nonbank trustee for individual retirement arrangements.

This audit was initiated based on a congressional inquiry and a subsequent Treasury Inspector General for Tax Administration investigation in the aftermath of the Bernard L. Madoff scandal.



This review was performed at the Employee Plans Rulings and Agreements office in Washington, D.C., during the period April 2011 through January 2012. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions

[4] As of September 2011, there were 93 nonbank trustees on the IRS-approved nonbank trustee list.

based on our audit objective. For one portion of our audit, the scope was limited to reviewing three of four new nonbank trustee applications approved by the Employee Plans function during Fiscal Year 2010 because the IRS was unable to locate one of the case files. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

Results of Review

In the aftermath of the Madoff scandal, the Employee Plans function expanded its nonbank trustee program by strengthening processes for approving nonbank trustee applications and conducting more investigations to ensure nonbank trustees meet applicable tax regulations. The IRS has received only a few new applications and most investigations determined that nonbank trustees either were in full compliance with tax regulations or had minor violations that were correctable. As a result of strengthening its processes, the Employee Plans function has better ensured that entities were operating as nonbank trustees and that approved entities were meeting the requirements outlined in the tax regulations.

While the actions taken by the Employee Plans function because of the Madoff scandal improved the IRS's oversight of nonbank trustees, we determined that nonbank trustee investigations focus on compliance with tax regulations and do not independently determine whether the securities exist. As a result, it is unlikely that nonbank trustee investigations would uncover a scheme, such as the one perpetrated by Madoff.

Because investigations have not uncovered widespread noncompliance and would not likely uncover a Madoff-like scheme, Employee Plans function management needs to evaluate how it can best balance limited resources between overseeing nonbank trustees and examining retirement plans. The Employee Plans function may not know whether it is using taxpayer funds in the most productive manner if it does not reevaluate its use of limited resources.

In addition, we identified entities that either erroneously appeared on or were erroneously absent from the IRS's list of approved nonbank trustees. If the Employee Plans function does not focus on ensuring the accuracy of the lists it publishes, the public cannot be assured which nonbank trustees are approved to be custodians over tax-exempt retirement and savings accounts.

The Employee Plans Function Took Action to Better Ensure Nonbank Trustees Are Complying With Tax Regulations

Based on the Madoff scandal, the Employee Plans function reviewed its nonbank trustee program and determined it could do more to ensure that nonbank trustees are complying with applicable tax regulations. The Employee Plans function instituted new processes, revised procedures, conducted training, and increased the number of nonbank trustee investigations to ensure nonbank trustees are complying with tax regulations.

- **The Employee Plans function instituted new processes to determine an accurate number of entities that are operating as nonbank trustees**. On May 14, 2007, the IRS published a list of 255 approved nonbank trustees. After the Madoff scandal unfolded, the Employee Plans function contacted by mail each nonbank trustee that it had on record to ensure that the entity was continuing to operate. In addition, the Employee Plans function instituted a new procedure on March 15, 2010, to establish contact with every approved nonbank trustee in some manner each fiscal year. As a result, the IRS revised the number of approved nonbank trustees to 93, as of September 1, 2011.

- **The Employee Plans function revised existing procedures to better ensure tax regulations were met.** Because of the Madoff investigation, the Employee Plans function updated its procedures to ensure application and investigation processes were standardized. Specifically, the Employee Plans function began requiring the use of a new workpaper/checksheet in Fiscal Year 2010 to better ensure tax regulations were met. We reviewed all three Fiscal Year 2010 closed applications that were available and determined that the standardized workpaper was being used. We also reviewed all closed Fiscal Year 2011 investigations and determined the standardized checksheet was used when appropriate.[5] More importantly, we determined that the use of the standardized workpaper/checksheet enabled revenue agents to verify that all tax regulations were met before approving applications for new nonbank trustees and completing investigations of ongoing nonbank trustees.

New standardized workpapers and checksheets assist Employee Plans officials in ensuring they address all tax regulations when reviewing nonbank trustee applications and conducting investigations.

- **The Employee Plans function conducted training and increased the number of nonbank trustee investigations.** In Fiscal Year 2008, the Employee Plans function did not complete any nonbank trustee investigations. As the Madoff scandal began to unfold, the IRS developed training for revenue agents on how to conduct these investigations and began conducting a large number of investigations as shown in Figure 2.

[5] The Employee Plans function closed 27 investigations in Fiscal Year 2011. However, in nine cases, information obtained during the initial phase of the investigation indicated that the entity no longer wanted to operate as a nonbank trustee. Another case was closed without action and postponed to another year. The standardized checksheet is required only for those investigations of nonbank trustees that wish to retain their nonbank trustee status.

Figure 2: Number of Closed Nonbank Trustee Investigations (Fiscal Years 2008 through 2011)

Fiscal Year	Number of Closed Investigations
2008	0[6]
2009	31
2010	21
2011	27

Source: Employee Plans function.[7]

Overall, we concluded that the actions the Employee Plans function took because of the Madoff scandal provided better assurance that nonbank trustees are meeting tax regulations.

The Employee Plans Function Is Investigating a High Percentage of Nonbank Trustees

The Madoff investigation prompted the Employee Plans function to make several changes, including implementing a policy to conduct at least 20 nonbank trustee investigations each year and to investigate each nonbank trustee at least once every five years. Due to the concerns regarding the integrity of the retirement system after the Madoff scandal, this is understandable. However, the Employee Plans function may need to reconsider how it can best balance its responsibility for overseeing nonbank trustees with other high priority workload. There are fewer than 100 nonbank trustees and the Employee Plans function now has experience with its expanded nonbank trustee program. It is unlikely that the scope of nonbank trustee investigations would uncover a future scheme such as the one perpetrated by Madoff, and investigations completed in Fiscal Year 2011 determined nonbank trustees either were in full compliance with tax regulations or had minor violations that were correctable, indicating that there is a low risk of widespread noncompliance with these entities.

The Employee Plans function is conducting a higher percentage of nonbank trustee investigations compared to retirement plan examinations

While the policy of increasing the number of nonbank trustee investigations has provided increased assurance that nonbank trustees are complying with tax regulations, it has come at a

[6] While no investigations were closed in Fiscal Year 2008, there were several ongoing investigations that had not been completed.
[7] We did not validate these figures because we had no independent source against which to validate. However, we did validate that at least 27 investigations were closed in Fiscal Year 2011 by obtaining all 27 closed case files. We attempted to perform the same validation for Fiscal Year 2010, but the Employee Plans function could not locate all the case files.

cost to other high-priority work in the Employee Plans function. In Fiscal Year 2011, the Employee Plans function spent 1,473 labor hours to conduct 27 nonbank trustee investigations and incurred estimated travel costs of approximately $12,000 for site visits associated with the investigations. The 27 investigations represent nearly 30 percent of the nonbank trustee population. In contrast, the Employee Plans function examined approximately 1 percent of all retirement plans.

It is unlikely that the scope of nonbank trustee investigations would uncover a scheme, such as the one perpetrated by Madoff

In reacting to the Madoff scandal, Employee Plans function officials determined that the program needed improvements. While these improvements were beneficial, based on discussions of the scope of nonbank trustee investigations with Employee Plans function officials and review of investigation procedures, we determined that it is unlikely that the Employee Plans function's investigation of Madoff's nonbank trustee status would have uncovered his scheme. Specifically, the Employee Plans function's nonbank trustee investigations focus on compliance with tax regulations and do not independently determine whether the securities exist. Instead, nonbank trustee investigations check to ensure nonbank trustees have audited financial statements. In the Madoff case, his company had audited financial statements. However, the results of the audit were not reliable because the Certified Public Accounting firm stated it had conducted a legitimate audit, when in fact it had not.

Nonbank trustee investigations focus on compliance with tax regulations, and it is unlikely that a scheme, such as the one perpetrated by Madoff, would be uncovered.

The results of increased nonbank trustee investigations reveal the nonbank trustee sector is generally compliant with tax regulations

While the Madoff scandal prompted the Employee Plans function to increase its emphasis on the nonbank trustee program because of potential vulnerabilities, the results of increased investigations revealed that nonbank trustees were generally complying with tax regulations. In Fiscal Year 2011, all completed investigations resulted in favorable closing letters, noting only minor violations that were correctable.

In contrast, we have reported[8] that retirement plan examinations result in uncovering noncompliance more than 60 percent of the time, and some high-priority examinations result in uncovering noncompliance 80 percent of the time.

Due to the unprecedented nature of the Madoff scheme and the fact that the Employee Plans function had not conducted many nonbank trustee investigations at the time the scandal broke, it is understandable that Employee Plans function management decided to increase the percentage of nonbank trustee investigations. However, the Employee Plans function now has experience with its revamped program and needs to determine whether adjustments are needed. Because the same revenue agents that conduct nonbank trustee investigations also conduct retirement plan examinations, any reduction to the number of nonbank trustee investigations could lead to a greater number of retirement plan examinations. If the Employee Plans function does not reevaluate its use of limited resources, it may not know whether it is using taxpayer funds in the most productive manner.

Recommendation

Recommendation 1: The Employee Plans Director should reevaluate the balance of nonbank trustee program and regular examination program work to ensure the workload is in line with the Employee Plans function's compliance priorities.

> ***Management's Response:*** The IRS agreed with this recommendation and will evaluate the number of nonbank trustee investigations to determine the proper balance between such investigations and regular retirement plan examinations.

The Employee Plans Function Did Not Always Update the Approved Nonbank Trustees Master List

The Employee Plans function maintains a master list of all approved nonbank trustees on the IRS Internet website. The IRS posts periodic updates to the list on its website, as it adds or removes entities, and publishes the list in an Internal Revenue Bulletin. Based on the Madoff scandal, the IRS took action to update its master list of approved nonbank trustees and removed more than 150 entities from the master list. However, we determined the updated list was not accurate.

[8] Treasury Inspector General for Tax Administration, Ref. No. 2011-10-050, *The Employee Plans Function Has Improved the Process for Selecting Returns for Examination* p. 5 (May 2011).

The Employee Plans function improperly omitted and included entities on the approved nonbank trustee list provided on the IRS Internet.

Our review of Employee Plans function lists of closed nonbank trustee applications and investigations identified one entity that was issued a notice of approval in Fiscal Year 2007 but was not included on the September 1, 2011, master list on the IRS website and the September 12, 2011, Internal Revenue Bulletin. In addition, we discovered three entities that were on the IRS website and Internal Revenue Bulletin lists after the entities notified the IRS that they were no longer operating as nonbank trustees. The IRS should have removed each of these from the list.

These errors occurred because Employee Plans management did not ensure that the list was updated based on reviews of new applications and investigations of ongoing nonbank trustees. The list of approved nonbank trustees is important to people who may want to use a particular entity because it serves to demonstrate that the entity has met the statutory requirements to operate as a nonbank trustee. If the Employee Plans function does not focus on ensuring the accuracy of the lists it publishes, the public cannot be certain which nonbank trustees have been approved to be custodians over tax-exempt retirement and savings accounts.

Recommendation

Recommendation 2: The Employee Plans Director should ensure that the IRS's published lists of approved nonbank trustees are accurate based on the results of reviews of new applications and investigations of ongoing nonbank trustees.

> ***Management's Response:*** The IRS agreed with this recommendation and will continuously monitor the changes to the list of approved nonbank trustees throughout the year. The Employee Plans function will annually publish an announcement that contains the current list of approved nonbank trustees.

Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective was to determine whether the IRS is ensuring nonbank trustees meet tax regulation requirements and whether there are any opportunities for cost savings within this program. To accomplish this objective, we:

I. Obtained background information for the nonbank trustee program to determine the purpose of the program and the costs incurred for conducting investigations in Fiscal Year 2011.

II. Determined whether Employee Plans function management established the necessary processes for evaluating new applications for approval as nonbank trustees to ensure that nonbank trustees meet the requirements of Section (§) 1.408-2(e)(2) through (5)[1] of the tax regulations.

   A. Identified the Employee Plans function's procedures for controlling and evaluating nonbank trustee applications.

   B. Reviewed nonbank trustee applications for three of four entities[2] approved in Fiscal Year 2010 and determined whether the case files showed appropriate documentation that the applicant met the requirements of the tax regulations.

III. Determined whether Employee Plans function management established the necessary investigative processes for ensuring that approved nonbank trustees continued to meet the requirements under § 1.408(e) of the tax regulations after their applications were approved.

   A. Identified the Employee Plans function's procedures for investigating nonbank trustees for continued compliance with § 1.408(e) of the tax regulations.

   B. Evaluated the IRS's methodology for investigating nonbank trustees.

   C. Reviewed all closed investigation case files from Fiscal Year 2011 and determined whether the case files showed appropriate documentation that nonbank trustees met the tax regulation requirements.

   D. Determined whether there were any opportunities for cost savings by reducing the number of investigations.

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[1] § 1.408-2(e)2 through (e)(5)(viii)(F).

[2] Our scope was limited to reviewing three of four new nonbank trustee applications approved by the Employee Plans function during Fiscal Year 2010 because the IRS was unable to locate one of the case files.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined the following internal controls were relevant to our audit objective: nonbank trustee guidelines and procedures, the Internal Revenue Manual 4.72.18 (Employee Plans Technical Guidance, Nonbank Trustee Investigation Procedures), and the Nonbank Trustee Approval Checklist/Workpaper Exam Investigations. We evaluated these controls by interviewing management, reviewing documentation, and reviewing all available Fiscal Year 2010 nonbank trustee application case files and all Fiscal Year 2011 nonbank trustee investigation case files to ensure they contained appropriate documentation that the nonbank trustees met the tax regulation requirements.

Appendix II

Major Contributors to This Report

Nancy A. Nakamura, Assistant Inspector General for Audit (Management Services and Exempt Organizations)
Troy D. Paterson, Director
James V. Westcott, Audit Manager
Marjorie A. Stephenson, Lead Auditor
Andrew J. Burns, Senior Auditor
Carol A. Rowland, Auditor

Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Deputy Commissioner for Services and Enforcement SE
Acting Deputy Commissioner, Tax Exempt and Government Entities Division SE:T
Director, Employee Plans, Tax Exempt and Government Entities Division SE:T:EP
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaison: Director, Communications and Liaison, Tax Exempt and Government Entities Division SE:T:CL

Appendix IV

Outcome Measure

This appendix presents detailed information on the measurable impact that our recommended corrective action will have on tax administration. This benefit will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Reliability of information – Actual; three instances of entities incorrectly identified and one instance of an entity that was not included on the approved nonbank trustee master list on the IRS Internet and published in the Internal Revenue Bulletin (see page 8).

Methodology Used to Measure the Reported Benefit:

We reviewed Employee Plans function lists of closed nonbank trustee applications and investigations and identified one nonbank trustee that was issued a notice of approval in Fiscal Year 2007 but was not included on the September 1, 2011, IRS Internet list and the September 12, 2011, Internal Revenue Bulletin. We also identified three entities on these lists that had notified the IRS before it published the lists that they were no longer operating as nonbank trustees. The IRS should have removed each of these entities from the lists.

Appendix V

Management's Response to the Draft Report

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

RECEIVED
APR 23 2012
BY:

APR 20 2012

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Joseph H. Grant, Acting Commissioner,
Tax Exempt and Governmental Entities Division

SUBJECT: "Oversight of Nonbank Trustees Has Improved, but Resources Expended on the Program Should be Reevaluated"

I appreciate your review of the nonbank trustee program conducted by our Employee Plans function. The nonbank trustee program is designed to approve and monitor entities, other than banks or insurance companies, that act as custodians for assets of tax-qualified retirement plans and individual retirement accounts and annuities.

Your review considered whether the IRS was ensuring that nonbank trustees satisfy tax regulations, and whether there are opportunities for savings within the nonbank trustee program. As your report indicates, the IRS recently strengthened its processes for approving nonbank trustee applications, and conducted training and increased the number of nonbank trustee investigations.

We agree with the recommendations in the report. Employee Plans will continue to evaluate how it can best balance its limited resources between overseeing nonbank trustees and examining retirement plans. We will also continue to ensure appropriate monitoring of nonbank trustees and will ensure that the published list of approved nonbank trustees is accurate.

We concur with your assessment of the measurable benefit on tax administration of your recommendations.

I look forward to your continued interest in the Employee Plans function, and in our nonbank trustee program.

Our responses to your recommendations are in the attachment. If you have any questions, please contact Robert S. Choi, Director, Employee Plans, at 202-283-2100.

Attachment

Attachment

Recommendation 1

The Employee Plans Director should reevaluate the balance of nonbank trustee program and regular examination program work to ensure the workload is in line with the Employee Plans function's compliance priorities.

Corrective Action 1

Employee Plans will evaluate the number of nonbank trustee investigations to determine the proper balance between such investigations and regular plan examinations.

Implementation Date

December 1, 2012

Responsible Official

Director, Employee Plans

Recommendation 2

The Employee Plans Director should ensure that the IRS's published listings of approved nonbank trustees is accurate based on the results of reviews of new applications and investigations of ongoing nonbank trustees.

Corrective Action 2

Employee Plans will continuously monitor the changes to the list of approved nonbank trustees throughout the year. Employee Plans has decided that it will annually publish an Announcement that contains the current list of approved nonbank trustees.

Implementation Date

Completed April 12, 2012

Responsible Official

Director, Employee Plans