



# ACI Advisors Corner

## “What is the IRS Thinking when it Audits your Prospect’s 401(k) Plan” (And how this might help you grow your business)

By Pat Byrnes  
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In 1992 I co-founded and co-chaired the Los Angeles Benefits Conference which just finished its 17<sup>th</sup> year. The Conference is co-sponsored by the IRS, ASPPA (American Society of Pension Professionals and Actuaries) and NIPA (National Institute of Pension Administrators). It ended on Friday January 30, 2009.

Monika Templeton (formerly Monika Butcher) was one of the original co-chairs. She is now the Director of Employee Plans Examinations for the TEGE Division of the IRS. She also spoke at this year’s conference. Here is what I learned:

1. **401(k) Survey:** The IRS is commencing an in-depth survey of several hundred 401(k) plans. These are not audits, but rather detailed questionnaires that employers are invited to complete (note that it is not polite to not accept the invitation...and would probably cause an audit). The questionnaire will explore in-depth plan operating questions including fee disclosure. The IRS is now focused on fee transparency in advance of the 2009 change in Schedule C to the 5500 form for those plan sponsors with over 100 eligible participants.
2. **LESE:** They also have a program nick-named LESE (Learn, Educate, Self-Correct, Enforce Examinations). These are audits based on judgment calls by the IRS. Information can come from IRS agents, referrals from the public or other government agencies, the media, Determination Letter applications, etc.
3. **EPTA:** Employee Plans Team Audits are audits of plans with over 2,500 participants. The IRS is looking for written internal processes and procedures and is sticking around to see that they are in existence and well done. While they are there they might just look at a hot button list of typical infractions in the plan.
4. **IRS/EBSA Coordination Agreement:** We have known it for awhile; but the IRS and the DOL’s Employee Benefit Security Administration have been coordinating (i.e. they refer each other into matters that they are looking into). It is becoming more common that when you settle with the IRS on an audit, in may walk the DOL right after you get the IRS closing letter.
5. **EPCRS and VFCP:** Both agencies have their own self correction programs. The IRS’s program is called the Employee Plans Compliance Resolution System and the EBSA’s is the Voluntary Fiduciary Correction Program. From experience it is significantly cheaper for a plan sponsor to find and correct its own mistakes than to get caught in an investigation or an audit. It is also very dangerous to have the plan sponsor respond to these situations on their own.



The IRS and EBSA have fairly small investigative staffs. Each has around 500 employees. So they must pick and choose their battles carefully.

So here is my thought, most plan sponsors have virtually no plan committees, no processes and procedures and very often they cannot even find a copy of their signed adoption agreement. Furthermore, they have no ERISA attorney and if they have a bundled provider no one is challenging the plan sponsor to take their roles as fiduciaries of the plan seriously, so therefore they don't.

Consider challenging a prospect to partner with you and a compliance firm like ours in doing a cursory review of some of the documents and administration material to see if the operation of the plan seems to be in order. This is different than approaching them just on the investment options and client education and it may be more effective. Clients don't like the IRS or the DOL sniffing around their companies.

**Note: These issues equally apply to your existing clients as well.**

Please let us know if you need any more education on these programs or if we can help you answer any other questions you may have about your prospect(s).

