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John: Hello, everyone. I'm John Schmidt. I'm the acting director of IRS Employee Plans Customer Education and Outreach. Thank you for joining us today and welcome to our phone forum entitled, "The Employee Plans Team Audit Program." Today we'll be hearing from Monika Templeman, Director of Employee Plans Examinations, Tom Pettit Employee Plans Area Manager, and two of our employee plans team audit group manager, Jeff Anderson and Fred Sanchez.

Before we start, I'd like to point out a couple of things. As always, we will email a certification of completion to everyone registered for today's forum if you attend the entire presentation. Enroll agents, retirement plan agents, and actuaries can receive continuing education credit for this session. Other tax professionals should consult their licensing organization to see if today's session qualifies for continuing education credit. As always, with any of our presentations, the comments expressed by our speakers should not be construed as IRS formal guidance.

We have many retirement plan resources for you. To that end, please take a look at slide 2 of your handout where we've highlighted information on employee plan audits under examination and enforcement on our website, www.irs.gov/retirement.

Another way to get to our page from irs.gov is the click on the "Information for," dropdown box in the upper right corner of the screen where you would then select, "Retirement plans."

If you take a look at slide 3, you'll notice a picture of how you can subscribe to our two free electronic newsletters. To subscribe select, "Newsletters," in the left navigation bar, choose, "Subscribe," and then select, "Retirement news for employers," our newsletter for employers sponsoring retirement plans, and the "Employee Plans News," our newsletter for retirement plan professionals.

With that on, thank you for your patience in listening to me. Now let's get into our discussion today and welcome Monika Templeman to the microphone. Monika.

Monika: Thank you very much, John, and it's a pleasure to be with all of you. During the phone forum today, Tom, Fred, Jeff and I will share with you important information about the Employees Plans Team Audit program, better known at the EPTA program. However, first I'd like stress that a primary objective of the IRS employee plans examination function is to

maintain compliance and enforcement programs that truly have a positive impact on the retirement system and protect plan participants.

EPTA is a special type of audit that a team of experienced employee plan experts conduct of larger employers. As you can see on slide 4, a large employer is defined as an employer that maintains a qualified pension plan or pension plans that, in total, have 2500 or more participations, in many cases, many, many more than that.

The EP large-case EPTA program is a key market segment because it does have a huge impact on the private retirement system in America. The EPTA team audit approach can involve several specialists, and the examination can take considerable time due to the complexity of the issue.

To preserve the integrity and viability of the private retirement system, it's very important to ensure that eligible employees are actually covered by the plan and that plan assets are managed with the best interests of plan participants in mind. Accordingly, examining the largest plans that impact the largest percent of plan participants continues to be a very high priority for us.

Currently there are about 1 million retirement plans that cover over 90 million participants. While only about 1% of the plans have more than the 2500 plan participant threshold that are really considered to be part of the EPTA cases, large plans cover about 60% of all the plan participant universe and 70% of total plan assets. This includes large 403(d) plans; those are the ones utilized by public and private schools and other charitable organization, 457 plans, and large Multiemployer Plans known as MAP; they're also included in our EPTA program.

The EPTA program does have a significant impact in protecting retirement security, so accordingly, we, continue to increase the examination of these large plans and have expanded to a multi-national focus, working closely with large business and international, better known as LB&I, on international issues that impact retirement plans, and we're working on audits both with LB&I and also on independent EPTA audits involving international and US territory issues.

I'll discuss all this in greater detail when we get to slide 34, which is on our international priority issue. Auditing the plans of large employers can consume, as I mentioned a little while ago, considerable time and resources. To optimize our EPTA program, we're using a more systemic approach to determine whether an audit of all the large employer plans under a particular employer of open years is actually necessary.

By looking at the control system that the employer has in place to avoid errors and to quickly discover them, and to correct the plan document and operational problems, the EPTA process allows us to focus our resources on areas that have weak or no internal controls in place, and efficiently identify focused issues based on a comprehensive pre-audit analysis.

This process includes a detailed study and evaluation of the internal controls I just mentioned related to the various payroll and personnel systems, specific business environments that affect

the administration of all qualified plans until a taxpayer, and therefore, determining which ones have the greatest risk. It's through the method and inquiry and analysis that the audit risk analysis can be performed and related focus issues can be determined.

Employee plans piloted this approach and subsequently revised the EPTA IRM, Internal Revenue Manual. That'll be discussed in more detail, and I'm going to cover that when I talk about slide 30.

Using a more focused approach increases coverage and efficiency by minimizing our time on the audit, giving us opportunities to perform more audits and focus on noncompliance. Likewise, a focused audit approach minimizes practitioner time and cost while reducing taxpayer burden, so it's a win-win for everyone. Of course, if major issues are found during a focused examination, we can expand it to a full audit, if we have to, using a team approach.

The IRS performs EPTA audits that actually result in millions of dollars in sanctions due to compliance failures which, in reality, could have been avoided with good internal controls, so do keep that in mind. If an IRS employee plan audit uncovers compliance problems, the Audit Closing Agreement Program, under the Employee Plans Compliance Resolution System, which is EPCRS, revenue procedure 2013-13, is an excellent alternative to a plan disqualification, although it's more expensive than the very reasonable fees associated with the voluntary compliance program.

Usually common mistakes found in our EPTA plans are the same types of problems that we find in smaller plans. However, the impact of noncompliance left unchecked is much more costly to a plan sponsor if it has a greater impact on a larger number of participants. To resolve unagreed compliance issues that do not fit within the EPCRS, Employee Plans Compliance Resolution System, the service offers an expedited appeal process called Fast Track that, in essence, equates to a nonbinding appeals arbitration process to try to come to accord. Fast Track can be a viable solution in complex large-case spectrum due to the types of issues and the large dollars that could be involved.

For example, Fast Track might be applicable to excise tax cases, let's say in situations where we have an unagreed case involving prohibited transactions, let's say a dispute as to the type of prohibited transaction, whether it's discrete or continuing; valuations, like the value of stock in an ESOP case, or expired statutes, where the taxpayer argues the statute is expired and the service disagrees. It could be applicable to excise tax under 4971, valuation of trust assets, so what we call level 3 assets over-valued.

Appeals uses the criteria set forth in the Fast Track announcement to determine if they're going to accept a case in the Fast Track, and again, I want to clarify that Fast Track would not be available for issues that can be settled or resolved under our established settlement procedures such as EPCRS revenue procedure 2013-12.

I'd also like to mention that we realize the importance of maintaining an ongoing dialog with stakeholders to promote voluntary compliance, and we're very pleased that our large-case practitioners proactively dialog with a service and provide valuable feedback, resulting in product-driven solutions to enhance compliance, to reduce taxpayer burden, and to improve communication; and that's all very, very good.

For example, large-case practitioners provided our Customer Education and Outreach function with ideas on how to best promote EPTA issues on the web and in newsletters, and remember those newsletters that John spoke about because the tools we have are excellent. In addition, Large case practitioners have helped us to make a large-case website a much more useful tool for large-case stakeholders and taxpayers.

To learn more about the EPTA program, visit the Employee Plan home page. The lower portion of that page has a new feature, "Visit plans and programs," which contains a link to large-case employee plans team audit. Once there, you'll find the top issues that we're looking at in large-case examinations, frequently asked questions on the EPTA program, and a taxpayer documentation guide which is not all-inclusive but very helpful.

We continue to add more web-based tools to help with compliance. Please stayed tuned for that and check out our website. Later in the presentation, we'll give you more information on our excellent and very useful free web-based resources, including our IRS Fix-It Guides, and the website, just have that address handy, it's www.irs.gov/retirement-plans. It really a great source to help you find mistakes and prevent errors.

Now let's take a quick look at slide 5; you should have that. On that slide, we're going to talk about the geographic locations of our EPTA groups and the names of the EPTA group managers. The IRS employee plans function is divided, as you may know, into five geographic regions that we refer to, at least the field areas, as areas. Each EP exam field area has its own EPTA group of 6-8 experienced employee benefit specialists who participate in the region's EPTA team. In conjunction with that, there are other specialists that can join the group.

The five areas and their respective managers we provided for you, and just to let you know very quickly, we have the Pacific Coast area, Craig Moore is EPTA manager there; Great Lakes area we have Jeff Anderson who's a presenter on this phone forum, and he is the Great Lakes EPTA manager; Gulf Coast, Fred Sanchez, and Fred is the EPTA manager for the Gulf Coast, the Gulf States region; Northeast we have Vinnie Rotolo as the EPTA manager; and in mid-Atlantic George Brim is the EPTA manager. He is also currently serving on a detail as the area manager for the mid-Atlantic.

Now let's take a quick look at slide 6. Slide 6 provides a brief historical overview. The key point is that, while auditing large plans is not new to the IRS ... employee plans function, we've been doing it for a while. The employee plans team audit program was formalized whether TE/GE stood up as an independent operating division in April 2000, and that was part of the IRS Modernization effort.

Now I'm going to turn it over to Tom Petit who will elaborate on the growth of EPTA. Tom.

Tom: Thank you, Monika. We're going to slide 7 now, and I'll give a little more background and history of EPTA. If any of you recall, the reorganization of the IRS back in the 1999-2000 timeframe, one of the efforts was to address the needs of our customers by designing our business units here in the IRS around our customers, our customer segments.

In employee plans, one such customer segment was and is the large qualified plan. We in EP saw the need to develop an audit program directed at our largest plans, which are ones maintained by the largest companies and other organizations, and to audit these plans we realized it would require specialized skills, so we developed some specialized training for the senior agents who would be involved in those types of audits. We wanted to make it a uniform approach so that these large plans would experience the same type of audit and the same audit processes no matter where they were in the country, so EPTA became a uniform national program.

In slide 8, as I mentioned, the large plans are typically the ones maintained by large corporation, which are the Fortune 500 type companies, but EPTA customers also encompass government entities, nonprofit organization, the large multi-employers plans that Monika mentioned, the collectively-bargained plans of large unions. Those are all encompassed under the EPTA program.

Slide 9, let me talk about the EPTA training. As I said, we developed specialized training for our EPTA agents. Since these audits involve handling and reviewing large amounts of electronic records, we provide training for our agents in using software programs such as Microsoft Excel and Access as audit tools and how to use those as audit tools. These programs are commonly used by our customers, and our examiners use them in order to manage the volume of records reviewed during such an audit.

In addition, we have training in data sampling techniques in order to aid the team in conducting statistical sampling, and finally, we have recently begun providing technical training in international issues. The IRS as a whole has been looking closer at international aspects of tax compliance, and EP is not different. A lot of those international issues are involved with our large EPTA audits.

Monika, I'll turn it back to you.

Monika: Thanks, Tom.

On slide 10 I'd like to briefly explain about the configuration of an EPTA team. An EPTA team is led by a case manager and will also consist of a team coordinator and other experienced employee plan agents. Frequently the EPTA team also includes specialized expertise such as a computer information specialist or specialists, actuaries, engineers, chief counsel attorneys when they're needed.

These audits tend to be large and complex, as I mentioned before, so issues can include such things as cross-testing, subsidized early retirement windows, cash balance conversions with related whipsaw issues, required minimum distributions, legacy benefits, private equity investments, and the like. It's not uncommon to bring in specialists to assist on these complex issues.

As a matter of course, an EPTA team will bring in an actuary if they are examining defined benefit plans, or an IRS field counsel attorney because there may be a difficult issue with plan language, or when they encounter something unique that requires legal expertise.

When needed, they'll also bring in LB&I, Large Business and International specialists, including the engineers and the financial product specialists, the economists and the international examiners, to assist the team with issues such as, let's say, real estate holding or private equity and foreign pension expenses. That's all part of the EPTA team approach.

On slide 11, now let's take a look at that for a better understanding of the EPTA case selection process and criteria. That's a question we frequently get is, "How are these cases chosen?"

An EPTA case selection committee conducts a first screening of the EPTA cases, and the EPTA case selection committee includes the EPTA national coordination analyst, three EPTA area manager, three EPTA case managers who meet annually to select these cases for the EPTA audit plan. We have a large universe of plans that we're looking at, and we're selecting those that we're going to be potentially looking at for the work plan.

As previously stated, a large employer is defined as an employer that maintains a qualified pension plan that, in total ... and this is the important part, in total ... have 2500 or more participants. EPTA determines the 2500 participant threshold by looking at the information reported on the form 5500. In the case of a controlled group, whether the IRS aggregates plans to determine the 2500 participants in general depends on the entity that the IRS is examining. If the IRS is examining the parent company, then the IRS aggregates all the plans in the controlled group. However, if the IRS is examining a subsidiary with its own plan, then we may not aggregate other plans in the controlled group for purposes of determining whether there are at least 2500 participants. A multi-employer plan can be included in EPTA if the plan has 2500 participants or more, or course.

The criteria for an EPTA case are set forth in our Internal Revenue Manual, or IRM 4.71.16.3. The threshold, again, is a plan with the minimum in the aggregate of the 2500 participants.

On a regular basis, the EPTA team case selection committee, and as I mentioned that includes the area managers, the EPTA managers, and the EPTA national analysts, convene and select cases that are potentially for the EPTA examination plan, and they use the established criteria that we talked about.

Also they look at the 5500, including the actuarial schedules. We look in addition at such things as newspaper articles, Department of Labor referrals, and complaints, anything that indicates that the service should conduct further investigations.

Some factors that go into determining whether a case is selected for inclusion in the work plan ... but it's not limited to those things ... would be those referrals, both internal and external; media reports; merger and acquisition issues; significant decrease in trust assets; significant investment in level 3 or tier 3 assets, in which we talked about the hard-to-value assets, or private equity assets, and if they withdraw from voluntary compliance requests. This list is not all-inclusive, and not every case selected to be a part of that potential work plan is examined; but this is the pool from which the EPTA groups then draw, and then the EPTA cases are open for audit in their respective EP areas based on issues identified and the availability of staff to effectively conduct a given examination.

Now Tom will elaborate on this topic on slide 12. Tom, back to you.

Tom: Thank you, Monika. Slide 12 we're looking a little bit deeper into the case selection criteria. And Monika mentioned the EPTA Case Selection Committee. We'll select 5500 returns based on several criteria as listed here on the next slide, and we'll go over some of those criteria.

The ones you see, issues that are termed "emerging issues," those are new approaches in plan operations that may be problematic or require a closer inspection on our part. The selection committee will consider a particular market segment that we might be looking at because historical audit data suggests there could be compliance issues that exist in those types of markets.

The selection committee will look at information gleaned from SEC reports or other government filings, and as Monika mentioned, we'll also look at where our resources are located.

Go to the next slide, the other criteria. We review referrals that we receive, and that's both from internal and external sources. The selection committee also considers tax shelter information that may impact qualified plan operations. We also would consider things that are in the public media, perhaps something like a plant shutdown, a company experiencing financial problems or the like, so any type of media attention that we're aware of may bring that plan to our attention, and we might want to take a look deeper at it.

We may decide to conduct an audit where there has been a withdrawal of a VCP submission. If there is a voluntary compliance request in-house but, for whatever reason, it's withdrawn, we may decide to take a look at the 5500 return.

Go to slide 14. There are three basic types of corporate EPTA audits. The first is an EPTA ... I'm sorry, I've already mentioned some of this. Our EPTA customers are large plan sponsors in these categories: corporate both private and public, 403(b) plans, and Monika mentioned these 457 plans, and we audit large multi-employer plans, collectively-bargained plans. All those types of plans could be part of our EPTA mix.

Fred, I think you're going to take Slide 15.

Fred: Thank you, Tom. There are three basic types of corporate EPTA audits. The first is an EPTA-focused examination. EPTA is also under a focused audit initiative. These plans are typically selected for examination by the EPTA case selection committee. As part of the examination, the auditor will research our information document retrieval system, also known as IDRS, to see if there is any examination activity occurring on any of the plan sponsors' tax return. If there is, it usually involves large business and international, LB&I. When this happens, our auditors will typically coordinate their examinations with the LB&I team.

The second type of corporate EPTA audit is based on a referral from LB&I to EP to assist in a pension expense analysis. When this happens, we, go in and examine the pension expenses for the years in the LB&I cycle. We will typically limit our involvement to this, but on some occasions we will go ahead and pick up the 5500s for examination. This is, however, the exception and not the rule.

The third type of corporate EPTA audit can be based on a referral. This can come from a number of different sources including LB&I, exempt organizations, employee plans termination. As Tom mention, it can also result from a withdrawn VC request and from EPCU, Employee Plans Compliance Unit, in the case of a failure to respond to an inquiry, or even from an individual. These are typically issue-specific referrals.

Now I'll turn is over to Jeff who will cover slide 16, "Tax Exempt Governmental Entities."

Jeff: Thank you, Fred. On slide 16 we see we also conduct audits on plans sponsored by tax-exempt and government entities. Each employee plans area, of which we have five areas, has a 403(b)/457 examination coordinator and agents specifically trained to audit these types of plans; 403B plans, which are also called "tax sheltered annuities or TSA plans, are retirement plans offered by public schools and certain 501c3 tax-except organizations. Here employees save for retirement by contributing to individual accounts, and employers can also contribute to these employee accounts.

Plans of deferred compensation described in Internal Revenue Code section 457 are available for certain state and local governments, and non-governmental entities who are tax exempt under Internal Revenue Code section 501. They can either be eligible plans under 457(b), or ineligible plans under Internal Revenue Code section 457(f).

Plans eligible under 457(b) allow employees of sponsoring organizations to defer income taxation on retirement savings into future years. Ineligible plans may trigger different tax treatment under section 457(f). In most instances, employee plans will conduct standalone audits on these entities but will also coordinate our audit efforts with exempt organization, typically called EO, on tax-exempt entities.

The same is true concerns audits of governmental entities where we may also coordinate our audit efforts fed, state, and local government, which we'll call FSLG. This is especially true when it comes to the 218 agreements that are in place, FICA replacement plans, and special pay plans with the possible assessment of employment taxes.

Slide 17 we're going to talk about multi-employer plans, and these are concentrated in industries with high worker mobility or seasonal employment such as the construction industry or where the company is maybe too small to justify single-employer plans. Some plans cover only a particular trade or craft such as electrical workers, while other plans are industry-wide.

Multi-employer plans have their own unique issues, and we have a cadre of agents in the EPTA program who examine the largest of these plans. Our agents receive specialized training to address these unique issues.

The scope of an examination of a multi-employer plan may be broader than that of an examination of a form 5500 return for a single-employer plan due to the nature of the collective bargaining process and the fact that more than one employer contributes to the plan.

Now I'll turn it over to Fred who will discuss the EPTA processes and procedures on slide 18.

Fred: Thank you, Jeff. This slide is an overview of the specific EPTA processes and procedures that our auditors go through from the beginning of an examination to its completion, from the preaudit analysis to the opening conference, through the internal control interviews, through working with electronic data, through the issuance of information document requests, IDRs, through issue development resolution, and finally to case closing. Each of the items will be covered in more detail in the succeeding slides.

Moving on to slide number 19. Before one of our agents even contacts you, he will do a significant amount of research through the internet and through our internal systems such as IDRS and TEDS, which is our Determination Letter System. The purpose of this research is to determine of any significant events occurred during the years under examination such as mergers, acquisitions, spin-offs, significant law suits, etc. Our internal research is geared to determine what, if any, other examination is ongoing and whether any determination letter applications are currently pending so throughout we can coordinate our efforts.

After contact, the agent will set up some interviews to assess the internal controls in place for the plan and, based on all of this, select the focused audit issues to examine. Again, we'll go into this in more detail in succeeding slides.

Moving on to slide number 20. An opening conference is held on all EPTA examinations. The purpose of this is to have a discussion on the specifics of the audit and set forth some protocol on how the examination will be conducted. Typical items addressed during this opening conference include points of contact, who speaks for the taxpayer, who will respond to IDRs, who will provide a formal response to a notice of proposed adjustment, a NOPA, and who can execute a statute extension.

To continue, on slide 21, we will also discuss the plan years and returns under examination, the statute dates on the returns examined, and the protocol that the team must follow in protecting these statutes. We will discuss the mandatory issues to be examined per our focused audit initiative. The mandatory issues are plan qualification in form and distribution. We must also conduct a package audit review to ensure that all required returns are filed per the retirement plans.

In the case of a referral on a specific issue, we will discuss the issues as well with the taxpayer.

We will discuss our process of reviewing internal controls and set up interviews with key personnel to assess them. We will discuss the process of issuing information document requests, IDRs, and noticed of proposed of adjustments, NOPAs. Things like how they will be issued, when and how they are to be responded to.

The last thing that we typically discuss during this opening are things like access badges, office space, copiers, and periodic meetings. We expect our agents to keep their taxpayers in the loop of what is going on and to do this on a regular and continuing basis.

I'll turn it over to Jeff who will talk a little bit about our internal control interviews.

Jeff: Thank you, Fred. Again, we're on slide 22. More detailed operational internal control interviews will be conducted at the beginning and throughout the audit. Later in this presentation, Fred will cover in more details the process and reasons for the internal control interviews, but just as a heads-up on the interviews, we will be requesting interviews with the personnel who are in the know, like the people who work directly with the retirement plans, and this may include the directors of human resources, the directors of payroll, the people all involved with the plan administration, and even service providers or others who have first-hand knowledge of the plans under examination.

The purpose of a more intense internal control interview is to see how the process and procedures work in operation and how they are being followed and updated as needed.

Depending on what is discovered during all this process. This will help the service in selecting focused audit issues and provide a platform in working in partnership with the taxpayer throughout the audit process.

Slide number 23, "Work with Electronic Data." The administration of retirement plans really has become increasingly automated over the years, especially with large plans. Internal Revenue Code section 6001 and the applicable regulations provide the authority for maintaining records. Data such as payroll files, W2s, asset statements, bank and fund statements, census reports, distribution reports, plan testing, and so forth are predominantly maintained electronically. Since we do work with a large amount of electronic data and data in all sorts of different formats, we typically have a computer audit specialist assigned to the case. The computer audit specialist will work with the taxpayer and the EPTA agents to capture the electronic data requested and, if needed, convert the data into a format our auditors can use. This will include sampling data, stratifying the data, and doing the analysis of it.

Now slide 24. The most common formats we convert the data to or formats we request the data to come to us from the taxpayer in is either in Excel and/or Access. If needed, the computer audit specialist will internally design applications to use and work with the data more efficiently. In other words, if the data comes in forms that are hard for use to use in the systems that we do use, then they'll help us convert the data to something that we can use it.

Slide number 25. Information document requests, or IDRs, are important to the EPTA examination because they are the documentation of the interaction between the agent and the taxpayer. The examining agent issues IDRs to the taxpayer to secure all data necessary to conduct a quality examination. This process is the backbone of the EPTA examination. All IDRs issued by the revenue agents should be clear and concise, in sufficient detail to leave no doubt in the reader's mind what information is being requested. They are usually generally limited to one issue at a time. They should be properly completed including specific response dates. They should always be discussed with the taxpayer at the time of issue, and they should be understood by both the taxpayer and the agent on the information being requested.

An understanding and agreement for issuing and responding to IDRs will be addressed and agreed to at the latest during the opening conference. IDRs will be issued by the EPTA team in the logical and sequential stated order so that they will not overwhelm the taxpayer, and they will be issued by plan number and by issue. IDRs should reflect a courteous and professional tone and appearance.

Now on to slide 26. When an EPTA team of agent discovers and identifies and issue or issues, the agent will discuss the issues with the taxpayer. It is best to discuss issues with the taxpayer as soon as they are discovered. This helps both the agent and taxpayer in understanding the issues on both sides and to come to an agreement on how to solve or correct the issues, or we may come to no agreement after discussing the issues.

After discussing the issues with the taxpayer, the issue will be written and presented to the taxpayer on a form 5701 which we call Notice of Proposed Adjustment, or NOPA. After receiving the NOPA, the taxpayer will be given the opportunity to present their formal position and to discuss whether they agree or disagree to the issue.

Now Fred will discuss issue resolutions in slide 27.

Fred: Thank you, Jeff. To talk a little bit more about what Monika mentioned early on in this home forum, for form and operational issues discovered during an EPTA examination, we generally use the EPCRS revenue procedure 2013-12 to resolve them. One of initial IDRs, we will request that the taxpayer disclose any operational pro forma issues that they have corrected or are in the process of correcting. We try to do this up front so that we do not waste any time working on something that has already been corrected or in the process of being corrected. We typically do not audit these self-disclosures, but we do request enough information to make sure that the correction is being done properly or was done properly.

We will ask for the nature of the form/operational defect, the number of years affected, the number of affected participants, the dollar amount of correction, and the status of correction at the time that the taxpayer was notified that the plan was under examination.

Form issues are typically not eligible for SEP, if a taxpayer finds it before the beginning of an examination, a VCP submission is required and a closing agreement with a set sanction per a schedule, and this Rev. Proc. will be applicable. If the form defect has not been submitted for a VCP application and it is discovered or disclosed during the audit, it will be addressed through an audit tap, and a sanction will be negotiated which is somewhat higher than the walk-in fee. Our agents work with the area cap coordinators to determine a range for the sanction for the form element.

If it's an operational error/issue and it involves some type of self-correction, the agent will verify that the operational error is or was eligible for SEP. Things that the auditor will ask himself, "Was it identified prior to the initiation of the audit? If so, is correction substantially complete?" which is greater than 65%. If so, we will allow you to continue to self-correct, and it will not be considered for an audit tap. If it is less than 65% and the error is disclosed, we will consider it an equity in favor of the taxpayer in determining whether to apply SEP or audit tap at the conclusion of the examination.

One thing to keep in mind is that the plan sponsor has to request relief under revenue procedure 2013-12, and it is almost always granted; but there are exceptions. The relief has to involve a legitimate retirement plan, and the error cannot be egregious. If it involves a tax shelter or some type of listed transaction issue, relief will generally not be given under this revenue procedure. The agent will propose plan disqualification, and any relief will have to come via the appeals process.

Moving on to slide number 28. At time in examining a pension expense, we determine that an adjustment should be made to the corporate tax return. We will, of course, discuss the issue with the taxpayer as it develops. We will consider what they have to say. If we feel an adjustment is still in order, we will prepare a formal NOPA and provide a copy of it to the LB&I team prior to issuance to the taxpayer. The LB&I team will review it, and if they concur with it will issue the NOPA. We will review the taxpayer's response to it in conjunction with LB&I. If he taxpayer does not agree to the adjustments, the will follow the LB&I team's protocol on unagreed issues.

The LB&I team is required to consider LB&I/appeals Fast Track settlement, but that is something that both sides have to agree to.

We sometimes make discrepancy adjustments on affected 1040s. A good example of this is when we look at a distribution and we determine that it was not a qualified rollover and it was not taken into income. We will either made the adjustments ourselves or farm them out to some of our general program agents to make.

Finally, from time to time, we pick up 5330 excise tax and 990T UBIT tax returns. UBIT stands for unrelated business income tax. Our procedures require that we make the adjustment, solicit these returns with a tax and interest due. We are also supposed to make a recommendation on penalties, as to whether or not they should b assessed, or waived for reasonable cost.

Now I'll turn it over to Tom to cover slide 29.

Tom: Thank you, Fred, and I'll go quickly through this to make sure we end up on time. The EPTA program is always under modification and enhancement and some of the recent changes we've made we've already really discussed. We did include an approach which focuses up front on the internal controls, as Jeff and Fred mentioned.

We spend time at the beginning of the audit learning about the internal controls that the sponsor has in place for operating the plan, and we analyze that system to discover weaknesses or flaws where problems could occur, so we use that analysis to help drive the focus of our examination. We've actually formalized that approach into our IRM; we updated the IRM to include that.

I mentioned, as Monika mentioned, too, we have recently included an emphasis on international issues. As corporations have become much more international in so many aspects of their operations, we in EP have begun to look deeper into the international area for issues that impact qualified plans; and there are some. We've developed training in these issues, and now our EPTA agents have begun to work closely with LB&I on these international examinations.

Monika, I think you have slide 30.

Monika: Yes, thank you, Tom. As I promised earlier, I'm going to tell you a little bit about how EP successfully piloted that systemic approach I mentioned to more effectively identify compliance risks and determine those focus issues we talked about.

In FY 2012 ... remember our years begin in October and end in September for fiscal years ... EPTA conducted a successful national pilot of that systemic approach to more effectively identify compliance risks and determine focus issues that ... and this was highly endorsed by our TE/GE advisory committee for tax exempt and governmental entities, better known as the ACT.

The EPTA pilot methodology includes a comprehensive pre-audit analysis and a detailed evaluation of the internal controls related to, as I mentioned earlier, the various payroll systems and personnel systems, and business environments that affect the administration of all the qualified plans sponsored by a taxpayer. That's to determine the areas of greatest risk in terms of compliance.

As Tom just mentioned, as a result of this systemic approach, we incorporated the EPTA process into the way we're doing business, and in FY 2013 we updated and revised the EPTA IRM to include internal controls and systems analysis as part of that audit approach to determine risk.

Now Fred's going to be covering slides 31 and 32. Back to you, Fred.

Fred: Thank you, Monika. To briefly touch on what Monika just discussed, there is an increased emphasis on assessment of internal controls. This is not just applicable to employee plans but throughout the IRS's forms and functions. To this end we will set up interviews with key taxpayer and service provider personnel to assess how processes, procedures, and communications work with respect to plan operation.

An example which touches on the first would be to assess how payroll is captured for qualified plan purposes, from the time it is first input, to the time it makes it to HR, and to the service provider for generation of an accrual or a deferral/matching contribution to participants' accounts. We want to make sure there are processes in place to capture the right data and to correct for any errors as they come up. We also want to determine that any manual touches to payroll are done in accordance with established procedures.

An example of a procedure that we might want to look at might be something like making sure there are written, established procedures with regards to proper withholding on form 1099-R or 1042-S distributions.

With regards to good internal communications, we want to make sure that all different processes and procedures communicate well with each other. For example, if a plan amendment is adopted which affects an operational aspect of the plan, were the internal communications sufficient to communicate this change to the people who will enact this change, whether it be an employee of the employer, department, or a service provider?

To continue on side 32, the purpose of this drill-down on internal controls is to observe, assess, and then select potential soft spots to examine. For example, instead of doing a complete payroll validation, we may determine that we may only want to do some light testing and only validate a certain subpopulation, say a company that was recently purchased and has its own standalone payroll system. On the other side of the coin, if we determine that the taxpayer has poor internal controls and the light testing uncovers some problems, we may very well expand into a full payroll validation.

The benefit of this drill-down is that it helps the team conduct the audit in a more timely and efficient manner. With our limited resources, cutting down on our cycle time and months in process is critical to our mission. The benefit also extends to the taxpayer as it should significantly cut down on the time that the taxpayer personnel have to spend on the audit. It also helps the taxpayer identify weaknesses in their internal controls and take steps to address them.

Now I'm going to turn it over to Monika who's going to cover slide 33.

Monika: Hello. This is Monika, and I'm sorry. My line, for some reason, was disconnected, so I'm joining you again.

Tom: Okay, we just started slide 33, Monika. Fred got started, but go ahead.

Monika: I really appreciate that, Fred. Sometimes technology does play tricks on us.

As Fred was probably letting you know, we have some key priority focus areas, and he started on international. I'm going to discuss that in more depth on 34 and 35. The second priority is 401(k) plans, and you may be aware but section 401(k) plans are the most popular plans in the United States. There are over 500,000 401(k) plans covering approximately 60 million participants, and since these K plans are the most prevalent, K plan audits are also prevalent, and we need to ensure that the plans in form and operation are in compliance. That's continuing on.

Also you may be aware that we had a questionnaire, compliance check, a follow on report that was published in 2013, and then we've developed follow on projects and tools; so please stay tuned in the K arena.

403(b) plans are also a priority focus area. EP Examinations partnered with EP Ruling and Agreements and EP Customer Education and Outreach to assist the 403(b) community, to

acclimate to recent 403(b) written document requirements. That said, I also want to clarify that the EP examination compliance and enforcement activities include ensuring qualification of the pension plans, the plans, for example, annuity, profit-sharing, stock bonus, individual retirement arrangements, the simplified employee plan steps, saving incentive plans for employees, as well as the 403(b) tax-sheltered annuities that we recently discussed in 457 plans and related trusts.

We're responsible for all of that, and the tax treatment of participants and beneficiaries, and the accuracy of deductions for employee contributions, procedural and administrative provisions.

It's a very complex area, but the focus areas we wanted to share with you.

Now on slide 34, I wanted to cover a little bit about how the international priority works and focus to give you a little deeper dive. Building on the successes in the past several years, employee plans can work corporately with tax-exempt governmental entities within all the function in TEG, and closely with large business and international LB&I to enhance our customer service to our international and US territory taxpayers.

The goal is to encourage voluntary compliance with respect to the rules and regulations involving retirement plans, and TEG and LB&I entered into a memorandum of understanding in August of 2011 to augment the channels of communication, leverage our resources, enhance coordination and the management of international-related matters, a lexicon, if you will, so that we would handle it in a more uniform way service-wide. We're looking at those issues involving our tax-exempt taxpayers, entities and issues.

The memorandum covered all of these things, and EP continues to expand the scope of our international outreach, education and guidance and develop international compliance projects as well. EP is also partnering with tax professionals and other internal and external stakeholders, and including other government agencies such as working with the Hacienda in Puerto Rico and the IR in the Virgin Islands, and we're proactively contributing to the service-wide international strategic plan to ensure effective global tax administration.

For example, I previously mentioned in my opening remarks that we significantly expanded the international focus in our large-case program, or EPTA program.

In slide 35, I'd like to highlight our EPTA international activity, and then we'll get into more depth later on. Throughout FY 13, our last fiscal year, EP made significant progress on international issues including referrals from LB&I, and over the past two years we examined approximately 200 employee plan team audit cases with international issues, and additional EPTA cases with international issues have recently been started.

Considering the growing number of huge multinational corporations, including US companies with increasing numbers of employees overseas and in the territories, it really isn't surprising as

globalization continues to grow that the service is challenged by international and US territory noncompliance, and constantly evolving issues.

Since employers are globally focused and there's an unprecedented cross-border movement of employees, the global economy has a huge impact on the retirement plans area on terms of noncompliance, and information reporting on cross-border transactions, and assets increasingly being sheltered overseas.

Offshore assets is a concern. Michigan US Senator, Carl Levin's, website had stated that the experts estimate that Americans now have \$1 trillion ... trillion with a T ... in assets offshore and illegally evade between \$40 and \$70 billion in US taxes each year through offshore tax dodges.

Even tax dodges and offshore aside, the fast-paced change in the global economy really requires us to have an equally fast-paced change within IRS. Accordingly, to ensure retirement plans' compliance, we really have to have a multinational focus in our EPTA large-case examinations.

Now I'm going to turn it over to Fred ...

Female: I do want you to let you know that it is 5 minutes 'til 3:00, since you requested to know the 5 minutes ahead.

Monika: Thank you so much. So Fred, why don't you, on slide 36, tell us a little bit about international issues.

Fred: Thank you. Some of the issues we have come across include eligibility, participation, and coverage. We are finding that not all entities required to be aggregated for IRC 410(b) purposes are being aggregated, are not being done so. We are seeing this in joint ventures, limited partnerships set up for specific business purposes. We have also come across situations where employees of these entities are being incorrectly excluded from plan participation.

With regards to distributions from qualified plans, we are seeing situations where the presumptive rules under Income Tax Regulation 1.1441-1(b)(3) **are** not obtaining the required withholding certificates on individuals, both US and foreign. What's happening is that the required federal income tax withholding is not being done and reported on the relevant 1099-R or the 1042-S. Keep in mind that both the plan sponsor and the service provider can be considered withholding agents liable for this withholding, so you want to make sure this is being done correctly either in-house or by your service provider.

We are also seeing some significant compliance issues with respect to the treatment of foreign pension expenses under IRC 404(a)(5) and 404A. What we have come across include bad accounting, little or no oversight from the US parent, missing elections to come in under IRC 404A. On some of our international audits, we have worked with the LB&I team and proposed some significant disallowances of some foreign pension expenses.

Finally, with regards to foreign trust assets, we have seen some hard value level 3 assets involving some offshore investments. Some of these have been eye-opening to say the least. We have seen some assets which have not been valued in several years, some in which the value of these investments was brought down significantly, and some where the value was written off altogether because there was not a market to sell it in. We are mostly seeing this in defined benefit plans with huge master trusts. Where appropriate, we are making referrals to the Department of Labor.

I'm going to turn it over slide 37 to Jeff. He will cover EPTA 401(k) plans' recurring errors.

Jeff: Over the last few years, we're seeing several trends in reoccurring errors in our 401(k) plans when we take a look at them. A few of them are non-amending and failure to follow the plan term, for example, with respect to definition of compensation, matching contributions, hardship, distributions, and loans. The other is eligibility provisions that we're looking at are the three most common errors in regular examinations, VC programs and EPTA examinations. Also, with the changing economic times the past few years, we have seen an up trend in participant loans and hardship distributions, and along with this we have seen where the administration of loans and hardships are not being following per the plan document and procedures.

With 401(k) plans a common error is matching contributions not being made properly due to failing to properly count hours of service, incorrect plan entry dates, or a deferral of compensation. Failure to perform coverage testing and problems with ADP/ACP testing issues are common in 401(k) plans.

Some of the reasons, again, is not running the tests, misclassification of employees, highly- and not-highly-compensated employees, and the definition of compensation issues. Failure to include eligible employees in the plan or the failure to exclude ineligible employees from the plan, usually with controlled group situations; usually this happens with controlled group situations after a merger acquisition, with increase of loans because of the economy, the failure to satisfy loan provisions is working its way up the charts also, mainly the plan sponsors' failure to withhold loan payments in this area. Internal Revenue Code section 402G limits on elected deferrals that a plan participant may exclude from taxable income each calendar year is a problem, unless a participant is eligible for catch-up contributions. The excess plus earnings over the 402(g) limit must be withdrawn by April 15th of the year following the year the year the excess occurred. If not a timely return, the excess is actually taxed twice both in the year contributed to the plan and in the year of distribution. Timely deposits of employee-elected deferrals, Form 5330, the Prohibited Transaction and Excise Tax, is under IRS jurisdiction.

Per a MOU, DOL refers prohibited transactions to EP. This has also involved failure to follow terms of the plan if a specific time for deposits, such as on a weekly basis, is stated in the plan.

Fred will discuss, on slide 38, common issues with EPTA examinations.

Fred: Thank you, Jeff. This is a big list of some of the issues we are coming across in large defined benefits plans we are auditing under our EPTA program. We are finding required minimum distribution issues, or RMD issues, on plans which are frozen and ones that contain legacy benefits. This is both a qualification under IRC 401(1)(9) and an excise tax issue to affected participants under IRC 4974(a). The excise tax is 50% of the amount that should have been withdrawn and is reported on form 5329, which is attached to an individual's 1040 tax return.

The lost participant issue goes hand-in-hand with the RMD issue. We have come across situations where there's been no real effort to be defined or locate lost participants. There are different things that you can do to show that you have made a good-faith effort to locate a lost participant or his beneficiary; but the point of it is that you have to show that you have done something.

We also frequently come across compensation issues which result in under- or overpayments of benefits to participants. With respect to underpayments, the correction will require that these individuals be made whole. With respect to overpayments, the plan sponsors should attempt to recoup the excess amounts from affected participants. If this is not possible, the plan sponsor will be required to make these overpayments back to the trust and make it whole.

We also have some issues with cash balance plans, most notably the whipsaw issue under IRC 417. When we find this issue on examination, we always coordinate with our field actuaries with respect to any required correction. This is a complex and difficult issue to address on examination, and to be very honest with you, the guidance that the service has put out in the past has, at times, not been entirely clear. We take a facts-and-circumstances approach with these cases and try to help the plan sponsors get these plans back into compliance.

Finally, we're seeing a lot of non-amenders, late amenders, especially in the case of frozen BB plans. Sometimes I think some plan sponsors believe that, once a plan is frozen, they really don't have to do anything other than pay off the remaining assets over time. That is not correct. A plan sponsor of a frozen plan is required to amend the plan for all prescribed law changes applicable to them, and they are to do it in a timely manner. If we find this issue on audit, we will require a retroactive amendment, and it will be subject to an audit tap per the requirement of revenue procedure 2003-12.

I'll turn it over to Jeff who will cover the multi-employer issues found on EPTA audits.

Jeff: I think, because of time, I'm going to quickly go through this here on slide 39. On 403(b)/457, some of the most prominent errors in the 403(b) plan examinations are errors with respect to universal availability, and with universal availability there are exceptions that you have to take a look at and review to see what the exceptions are; but still, in this area, universal availability is considered still a big problem.

Also with this here, I'm going to add to this that, in a recent Supreme Court ruling considered with the clinic decision, medical residents and interns cannot fall under the student exemption anymore, so employee plans has received several referrals from fed, state, and local government on some of this, and we also received some referrals on independent contractors being reclassified as employees, causing a universal availability issue.

Errors with respect to the 15 years of service catch-up are still common, and applying the rules with the 15 years of service catch-up haven't been followed through and/or calculated properly.

Again, plan loans, as we discussed earlier, where failure to make the required payments are due, resulting in default of the entire loans, poor documentation, and loans from multiple vendors have been a problem.

Hardship distributions. Failures include the inadequate documentation of the distribution, what is the actual financial hardship, and also distributions from multiple vendors that, in aggregate, exceed the amount needed to relieve the hardship, unforeseeable emergency, distribution errors, also include inadequate documentation, and 457(f) plan failures in operation where plans do not have any real substantial risks of forfeiture for substantial services performed. Those are some of the reoccurring errors in the 403/457 area.

On slide 40, quick we'll go through multi-employer issues. Some of the more common issues here are failure to follow provisions contained in the plan and the collective bargaining agreement, and a deficient plan or amendment language. We are continually finding non-collectively-bargained employees who are participating in plans without specific plan sections. Errors in allocation of contributions and earnings are also happening. Other errors were accruals and service credits are dependent on employer contributions being made to the pension plan, which we should ensure that crediting of participant accruals and service is not dependent on the receipt of related employer contributions. Also with the changing environment, funding deficiencies per Internal Revenue Code section 412, minimum funding requirements. Plans are failing to receive the necessary contributions to satisfy the funding requirements. The majority of administrators typically rely on participants to apply for benefits before addressing such issues. Required minimum distributions requirements of 401A9 are not being met; specifically, many plans have failed to make required distributions to participants by the 1st of April following the year [the year she turned 70 1/2, in that 1:05:54] calendar year.

Now I'm going to turn it over Tom to go over slide 41.

Tom: Thank you, Jeff, and just real quickly because John already really pointed it out, but if you got to [irs.gov](https://www.irs.gov), there's a lot of information about EPTA that we talked about today and additional information on our retirement home page, and I'll show how to get to that in the next slide.

You go all the way down to the bottom of the page and you select the site map, and from there you'll find an alphabetical list of the site where you can locate the EPTA large-case examination program.

The slide 42 is what John showed you. The best way to find the retirement plan information is to use that box in the top right-hand corner, "Information for," if you click on that down arrow, one of the choices is, "Retirement plans," and it's in that retirement plan area that you'll find all the information we talked about today, including some additional information on EPTA.

Monika ...

Monika: Thank you very much. I'd like to thank all of you for joining us. We thank you for joining us today for a closer look at the Employee Plan Team Audit Program. Please do join us for future phone forums on relevant retirement plan topics.