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Changes in IRS Nonbank Trustee Program

Recently, the Treasury Inspector General for Tax Administration released an [audit report](#) on the Internal Revenue Service (IRS) Employee Plans oversight program for nonbank trustees and custodians (NBTs). NBTs are entities other than banks and insurance companies that are authorized by the IRS to act as trustees or custodians for certain retirement, health and education savings arrangements. As described in the audit report:

- In the aftermath of the Madoff scandal, the IRS ascertained that a Madoff entity had been approved as an NBT.
- As a result, the IRS undertook to:
 - Strengthen its processes for evaluating new applications to serve as an NBT. The processes include at least an updated and standardized form of internal IRS documentation, referred to as the Nonbank Trustee Approval Checklist/Workpaper Exam Investigation; and
 - Expand its audit program for NBTs. Prior IRS policy had been to audit one NBT per quarter, generally reviewing the entity's ability to administer individual accounts, confirming the existence of the entity's audited financial statements and required bond, and otherwise examining compliance with the requirements of Treas. Reg. § 1.408-2(e). [Internal Revenue Manual 4.72.18 \(Feb. 1, 2006\)](#). As the Madoff scandal surfaced, the IRS resolved to audit, making use of its updated form of checklist/workpaper, (i) at least 20 NBTs annually and (ii) each NBT at least once every five years. [Internal Revenue Manual 4.72.18 \(April 22, 2011\)](#). The IRS closed 31, 21 and 27 such audits in fiscal 2009, 2010 and 2011 respectively.
- Because the audits revealed a high level of compliance with applicable tax requirements, the Inspector General recommended, and the IRS agreed to consider, reducing the audit resources dedicated to NBTs and shifting them to the regular IRS retirement plans audit program.
- Also, the IRS agreed to clean up occasional, small inaccuracies in its [published list of approved nonbank trustees](#) (91 entities as of February 1, 2012).

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If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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