

SPECIAL EDITION
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employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service
Tax Exempt and Government
Entities Division

A Publication of Employee Plans

EP Questions Plans Using Short Service Employees in Nondiscrimination Tests

On October 22, Carol Gold, the Director of Employee Plans, issued a [directive to EP staff](#) regarding certain schemes which use employees with short periods of service to insure that most, or all, of the benefits paid under a retirement plan go to the employer's highly compensated employees (HCEs). The directive states that these schemes may violate the nondiscrimination rules of Code section 401(a)(4) even though they ostensibly satisfy certain provisions of the nondiscrimination regulations.

The directive applies to schemes which allow only HCEs and the lowest paid employees to participate in the plan, and which may use cross-testing under 1.401(a)(4)-8 of the regulations in an effort to satisfy the nondiscrimination rules. Under these schemes, the lowest paid employees are limited primarily to employees with short periods of service and, consequently, small amounts of compensation. So, even though these employees receive substantial allocations relative to their compensation, the allocations are actually small in amount. Thus, these plans provide little or no benefits to these employees.

The directive states that even though these schemes may ostensibly satisfy the nondiscrimination rules of the regulations, they do so by distorting the results of the test. The directive concludes that this interpretation of the regulations is not reasonable and that these schemes may nevertheless violate the nondiscrimination rules. •

ACT Now

On November 1, the IRS announced that it is seeking applications for vacancies on the Advisory Committee on Tax Exempt and Government Entities (ACT). The committee provides a venue for public input into critical tax administration areas. The ACT is an organized public forum for the IRS and representatives who deal with Tax Exempt and Government Entities Division (TE/GE) issues.

There are two ACT vacancies for the EP portion of TE/GE.

ACT members are appointed by the secretary of the Treasury and serve two-year terms, beginning in May 2005. Applications can be made by letter or by completing an [application form](#). Applications should reflect the proposed member's qualifications. A [notice](#) published in the Federal Register, Nov. 1, 2004, contains more details about the ACT and the application process.

Applications should be sent to Steven Pyrek; TE/GE Communications and Liaison Director; Internal Revenue Service; 1111 Constitution Ave. NW — SE:T:CL Penn Bldg; Washington, D.C. 20224, or by fax 202-283-9956 (not a toll-free number). •

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