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IRS sets fiscal 2021 compliance priorities for tax-exempt entities

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The IRS Tax Exempt & Government Entities division (TE/GE) has published a pared-down 2021 program letter describing TE/GE's priorities for the October 2020–September 2021 fiscal year (FY 2021). TE/GE has also launched a new Compliance Programs and Priorities webpage to provide details on the division's goals. The new webpage will feature quarterly updates on TE/GE's plans and compliance initiatives.

2021 priorities

The 2021 program letter provides few specifics on TE/GE's priorities but explains the division's goals in broad terms. With respect to employee benefit plans, the letter suggests that TE/GE will pay close attention to retirement plans of closely held businesses, such as employee stock ownership plans (ESOPs), and will develop a tool to help individuals avoid making excess 401(k) plan contributions.

The webpage provides more details on the benefit and compensation issues receiving TE/GE focus in FY 2021:

- **Participant loans.** TE/GE will examine whether participant loans from employer retirement plans comply with rules on maximum loan balances and repayment of early distributions before age 59-1/2. Audits will focus on retirement plans holding a high percentage of loans relative to total trust assets.

- **Section 4960 excise tax on excess compensation.** Internal Revenue Code (IRC) Section 4960 imposes a 21% excise tax if an applicable tax-exempt organization pays compensation exceeding $1 million to certain of its highest-paid employees. TE/GE will focus on organizations that appear to owe the tax but fail to report and pay it.

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- **Wage misclassification.** TE/GE will examine employers that have issued a Form W-2 and a Form 1099-MISC to the same payee in the same calendar year. This review aims to determine whether any wages have been misclassified.

TE/GE will also continue to pursue its FY 2020 compliance programs, including the focus on 403(b) and 457 plans, which prompted several IRS issue snapshots this year. The FY 2020 program letter also indicated that TE/GE would examine whether terminated cash balance plans violated IRC Section 415 limits or generated asset reversions subject to a reversion tax.

Related resources

Non-Mercer resources

- Tax Exempt & Government Entities — compliance programs and priorities (IRS, Nov. 13, 2020)
- Tax Exempt & Government Entities Division's FY 2021 program letter (IRS, Nov. 5, 2020)

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- Compliance issues for 457(b) plans remain a focus for IRS (Oct. 13, 2020)
- IRS focuses on 457(b), 403(b) plan catch-up contributions (June 16, 2020)