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Tax Regs in Plain English

IRS Restructuring and Reform Act of 1998

1201 - Improvement in Personnel Flexibilities

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Section 1201

A. Provision covered: Section 1201 (Improvement In Personnel Flexibilities)

B. Background: This provision amends Title 5 by adding new Sections 9501 through 9510, which apply only to the Internal Revenue Service. These provisions are intended to allow managers more flexibility in rewarding good performers and in making employees more accountable for their performance. The provisions should enable the Service to attract and retain the employees needed to meet the challenge of modernizing its management practices and bringing its technology and administrative systems up to date while fulfilling its dual missions of tax collection and customer service. This subpart is significant in that it gives the Secretary of the Treasury flexibilities in hiring and managing personnel which are not otherwise available under Title 5. The new personnel flexibilities must be exercised consistent with existing statutory provisions relating to merit system principles and prohibited personnel practices, and to preference eligibles. Bargaining unit employees are not subject to any flexibility authorized by §§ 9507 through 9510 unless the Service and the Union have entered into a written agreement specifically providing for the exercise of that flexibility. The written agreement may be imposed by the Federal Services Impasses Panel under § 7119. This section is effective upon the date of enactment.

Sec. 9501, Internal Revenue Service personnel flexibilities. This section provides that the personnel flexibilities granted to the Secretary of the Treasury must be exercised

consistent with existing statutory provisions relating to merit system principles and prohibited personnel practices, and to preference eligibles. Bargaining unit members are not subject to any of the flexibilities described below unless the Union and the Service have entered into a written agreement which specifically provides for the exercise of that flexibility.

Sec. 9502, Pay authority for critical positions. This section authorizes the Secretary to set pay for one or more critical IRS positions not to exceed the rate of pay of the Vice President (currently \$175,400), subject to the approval of the Office of Management and Budget.

Sec. 9503, Streamlined critical pay authority. This section authorizes the Secretary, for a period of 10 years after the date of enactment, to designate positions, set pay, and appoint to these positions up to 40 individuals at any one time to designated critical administrative, technical, and professional positions in order to recruit or retain individuals exceptionally well qualified for a position. These positions are outside of the SES and competitive service systems. Total annual compensation may not exceed the current rate of pay of the Vice President (currently, \$175,400). Positions are excluded from the bargaining unit. Appointments can be for no more than four years. Appointees cannot have been IRS employees prior to June 1, 1998. Appointees under this section have no chapter 75 appeal rights.

Sec. 9504, Recruitment, retention, and relocation incentives. This section authorizes the Secretary, subject to approval by the Office of Personnel Management, and for a period of 10 years from the date of enactment, to pay recruitment, relocation and retention incentives to employees. The section also authorizes the payment of allowable relocation expenses for current employees, and allowable travel and transportation expenses for new appointees, for any new appointee to a section 9502 or 9503 position.

Sec. 9505, Performance awards for senior executives. IRS career senior executives who have program management responsibility over significant functions of the Service may be paid a performance bonus if the Secretary determines that such award is warranted by the executive's performance. An award cannot be paid to an executive in a calendar year if, and to the extent that, the executive's total annual compensation would exceed the annual compensation of the Vice President (currently \$175,400).

Sec. 9506, Limited appointments to career reserved SES positions. This provision authorizes the Secretary to make limited emergency or limited term appointments to career reserved SES positions for a term not to exceed three years of 1) a career appointee, or 2) a limited emergency or limited term appointee who, immediately prior to appointment was serving under a career or career conditional appointment outside the SES, or whose limited emergency or limited term appointment has been approved by OPM. An appointee may serve two such terms or two such terms in addition to any unexpired term applicable at the time of the appointment. The number of such appointments at any one time may not exceed 10% of the total number of IRS SES positions.

Sec. 9507, Streamlined demonstration project authority. This section authorizes the

Secretary to implement a demonstration project for the IRS. A demonstration project under this section would not be subject to the lengthy approval process ordinarily associated with such projects.

Sec. 9508, General workforce performance management system. Under this section, the Secretary of Treasury shall establish within one year a performance management system which

1. establishes one or more retention standards for each employee related to the work of the employee and expressed in terms of performance, and communicating the standards to employees,
2. makes periodic determinations of whether each employee meets the established retention standards, and
3. takes actions in accordance with applicable law and regulations with respect to employees whose performance does not meet the established retention standards, including denying increases in basic pay and promotions, reassignment, chapter 43 or chapter 75 actions, or any other appropriate action.

The performance management system may establish goals or objectives for individual, group or organizational performance and taxpayer service surveys, communicating such goals or objectives to employees, and using such goals or objectives to make performance distinctions among employees and groups of employees, and using such assessments as basis for granting awards, adjusting an employee's rate of basic pay, and other appropriate personnel actions.

The Secretary may establish an awards program to provide incentives for and recognition of individual, organizational, or group achievements by granting awards to employees who, individually or as group members, contribute to meeting the performance goals and objectives through superior accomplishment, a documented productivity gain, or sustained superior performance.

Section 9508(d)(1) provides that the statutory notice period for adverse and performance actions may be reduced from 30 days to 15 days. Section 9508(d)(2) provides that an IRS employee may not appeal the denial of a periodic step increase to the Merit Systems Protection Board.

Sec. 9509, General workforce classification and pay. This provision authorizes the Secretary to establish one or more broad band pay systems covering all or any portion of the IRS workforce. Prior to implementing a broad band system, OPM shall prescribe criteria which will assure that the system maintain the principle of equal pay for substantially equal work, establish the minimum and maximum number of grades to be combined into pay bands, establish requirements for setting rates of pay in a pay band.

Sec. 9510, General workforce staffing. This section provides that an IRS employee may compete for and be selected for a permanent appointment in the competitive service if the employee has completed two years of current continuous service under a term appointment or any combination of term appointments in the competitive service. The employee must meet all applicable retention standards and the minimum qualifications

for the vacant position.

The IRS may establish category rating systems for evaluating job applicants, under which qualified applicants are divided into categories on the basis of relative degrees of merit rather than assigned individual numerical ratings. Selections could be made of any candidate from the highest quality category and would not be limited to the three highest ranked candidates.

The Secretary may detail employees among the offices of the IRS without regard to the 120-day limitation.

The Secretary may establish a probationary period under § 3321 of up to three years for IRS position if the Secretary determines that the nature of the work is such that a shorter period is insufficient to demonstrate complete proficiency in the position.

C. Changes: The IRS is subject to the personnel rules and procedures set forth in Title 5 of the U.S.Code. This new section provides for variations from those rules and procedures for the Internal Revenue Service by amending Title 5.

D. Impact: This new section could significantly affect the performance management, staffing and pay of all IRS employees depending on the extent to which the Secretary decides to implement the new flexibilities.

E. Necessary Actions:

1. **Actions/Procedures:** Authority under the new section must be delegated from the Secretary of the Treasury to the Commissioner. The Commissioner must determine to what extent the flexibilities are to be exercised. Plans for implementation must be developed, training provided to affected managers and employees, and guidance written and distributed.
2. **Things we CAN do:** Develop training and written guidance. Draft IRM sections to reflect new procedures.
3. **Things we CAN'T do:** Exercise flexibilities with respect to bargaining unit employees until a written agreement has been reached between the Union and the Service.

F. Other Special Comments: None.

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