403(b)(9)
Self-Audit Manual

For Employers

GuideStone®
Financial Resources
Do well. Do right.®

Table of contents

INTRODUCTION **2**
How to use this manual 2
FREQUENTLY ASKED QUESTIONS ABOUT RETIREMENT PLAN AUDITS **4**
FREQUENTLY ASKED QUESTIONS ABOUT CORRECTING ERRORS UNCOVERED DURING A SELF-AUDIT **6**
SELF-AUDIT CHECKLIST **8**
Do we understand that our plan is a church plan and that special rules apply to church plans? 9
Is our organization's ability to offer a church plan changing? 12
Is our organization's status as a church, qualified church-controlled organization (QCCO) or a non-qualified church-controlled organization (NQCCO) changing? 13
Are we familiar with and do we follow the terms of our plan? 14
Are we sending contributions on a timely basis? 15
Are we keeping the correct records regarding our plan? 15
Are the employees participating in our plan eligible to participate? 17
Are we handling Salary Reduction Agreements properly? 18
Are contributions to employee retirement accounts within legal limits? 19
Are distributions from employee retirement accounts being made properly? 21
Do our rollovers and exchanges/transfers comply with rollover and exchange/transfer rules? 23
Do our loans comply with plan loan rules? 24
Do our required minimum distributions comply with required minimum distribution rules? 25
Are required notices being distributed on time and do the notices include all required information? 26
If we find a problem with our plan, should we seek legal advice about how to correct it and what kind of documentation to keep? 29
NQCCOS **29**
Do our plans comply with the age 50 catch-up availability requirement? 29
Do we understand how to determine if we have any highly compensated employees? 30
Do we comply with nondiscrimination rules? 32
Do we understand that contributions can be limited by employee compensation? 35
APPENDIX **36**
Appendix A – Self-Correction Program form for operational failures 36
Appendix B - Status Certification Form 38
Appendix C – Annual notice of right to participate .... **Error! Bookmark not defined.**
Appendix D – IRS resources 38

Introduction

Are you ready for the IRS to audit your 403(b)(9) plan? Audit activity by the IRS has increased as a result of the 403(b) regulations, and new auditors are being brought into the IRS to focus on 403(b) plan audits.

There's good news and bad news. The good news is that you may be able to find and fix problems before an IRS audit. The bad news is that once an IRS audit begins, it may be difficult or impossible to avoid penalties if the IRS discovers specific problems with your plan.

We want to help the employers we serve. That's why we've produced this free manual.

Throughout the manual, we use "plan" to describe all the employer 403(b)(9) plans this manual was designed to help.

If you have any questions about whether your plan could be affected by the material in this manual, please call GuideStone at **1-888-98-GUIDE** (1-888-984-8433) or e-mail your questions to *gscompliance@GuideStone.org*.

This manual was designed as an interactive web tool for employers. A printed copy will tell readers about the content, but using the web version will allow employers to link to related material quickly and easily. Use the web version to take full advantage of this manual.

This manual was developed using the Internal Revenue Service's Employee Plans Technical Guidance, 403(b) Plans ("Exam Guidelines"), available on the IRS website, and other related material. Laws, regulations and IRS interpretations could change at any time.

The information provided in this resource is intended as a general discussion of the requirements and reflects our understanding of the rules as they affect most church-related organizations and their employees at the time of the latest revision. This manual is not a substitute for legal or tax advice.

How to use this manual

1. Read *Frequently asked questions about retirement plan audits* and *Frequently asked questions about correcting errors uncovered during a self-audit*.

2. Answer the questions on the **Self-Audit Checklist**. Start with this plan year. Be sure to read the related information before you answer a question on the checklist. Go to the appropriate section for additional information.

3. Contact GuideStone for help if you have any questions about the manual. GuideStone cannot give legal or tax advice so you may need to consult your own legal counsel about some issues.

4. During the course of your self-audit you may determine areas of non-compliance related to your 403(b)(9) plan. Do not be discouraged if that is the case, since finding those areas which may need improvement is the very purpose of a self-audit.

   GuideStone can serve as a resource of general information regarding possible correction alternatives. Your organization, as an employer, would make the final decision on what, if any, correction approach should be applied. Your organization may find it prudent to consult your legal counsel before making a final decision as to the nature and scope of any corrective action.

5. Some non-compliance concerns may raise issues of potential liability or adversely affect employer/employee relations. In these situations, your organization may wish to consult your legal counsel first to obtain legal advice and preserve the attorney-client privilege. Contact GuideStone, along with your legal counsel, if you prefer to discuss any final correction that impacts our records.

6. If you find any problems that are eligible for self-correction (as explained in the *Frequently asked questions about correcting errors uncovered during a self-audit* section of the manual), you may want to document how you corrected them after discussion with your legal counsel. You may want to use the optional form in Appendix A as a rough draft for designing your own documentation. If you uncover errors that cannot be self-corrected, see *Revenue Procedure 2016-51* for information about the documentation that must be submitted to the IRS for correction with IRS approval.

7. If this is your first self-audit, repeat steps 2 through 6 for the previous two years. Remember to contact GuideStone to let us know about any corrections that would affect our records.

Frequently asked questions about retirement plan audits

How do we know the IRS is auditing 403(b) plans?

The IRS has stated on several occasions and in several venues that it is auditing 403(b) plans. It has also issued technical guidance to its agents who are auditing 403(b) plans.

The IRS Tax Exempt & Government Entities Office issued its priorities for fiscal year 2016. Listed among those priorities is a program to focus resources on audits of 403(b) plans. With the finalization of the 403(b) preapproved plan program and the new Employee Plans Compliance Resolution Program released in 2013 that included more "fixes" to 403(b) plans, the IRS now has all the tools in place to begin auditing 403(b) plans.

What are the penalties if the IRS finds problems during an audit?

Substantial penalties, fees and account adjustments could be required if the IRS discovers problems during a plan audit. Employers could be required to make up contributions and lost earnings they failed to make, and employees could be taxed on contributions they thought were tax-sheltered. Sometimes penalties can be negotiated with the IRS before a closing agreement ending the audit is finalized.

What triggers an audit?

Audits are triggered for many reasons, including:

- Random selection is the primary means by which employers are selected for audit;
- Nationwide examination initiatives (for example, the national office decides to audit 403(b) plans);
- Regional examination initiatives (for example, the regional office decides to audit hospitals);
- Referrals (for example, a disgruntled employee calls the IRS);
- Local issues (for example, a newspaper article arouses IRS interest);
- Improper W-2 reporting; and
- Training of IRS agents (for example, the local office may have a new auditor to train and assigns that person to a small plan).

What is the IRS looking for when it audits 403(b) plans?

The "Exam Guidelines" tell agents what to look for when auditing a 403(b) plan. A variety of areas related to the operation of 403(b) plans are examined. This manual addresses some of the key areas addressed in the "Exam Guidelines" as they apply to your plan. An additional source of information is the checklist the IRS created for 403(b) plans (See Appendix D).

What kinds of problems is the IRS finding when it audits 403(b) plans?

The IRS has identified common problems found during audits of retirement plans. Some of the most common 403(b) related problems include:

- Contributions to the plan not being based on the plan's definition of compensation (e.g. plan compensation excludes bonuses but contributions were made to the plan using bonuses)
- Excess salary reduction contributions (violation of the Code section 402(g) limit), including violating the special 15-year limitation
- Excluding eligible employees from making salary reduction contributions, usually part-time employees who would qualify to participate. This is a violation of the "universal availability" requirement to which certain nonqualified church controlled organizations (e.g., hospitals and universities) are subject

- Failure to provide an annual "effective opportunity notice" (again, only applicable to employers such as hospitals, universities and colleges)
- Failure to keep employees out until the plan's stated entry date, e.g. including employees immediately when the plan's entry date is the first quarter following satisfaction of eligibility
- Excess annual additions (violation of the Code section 415 limit)
- Contributions made in excess of Maximum Compensation Limit under Code section 401(a)(17)
- Plan loans that violate the requirements of Code section 72(p) and a lack of documentation related to loans to purchase principal residences
- Hardship distributions failures and a lack of documentation supporting the need for and amount of the hardship distribution
- Plan sponsors who are not eligible to offer a 403(b) plan

What years does the IRS audit?

Generally, audits run about three years behind. For instance, if you receive an audit notice in 2016, the auditor will likely be examining 2014. We recommend that you begin auditing your plan for 2016, then, if this is your first self-audit, work back each year through 2014. If you have recurring errors for those years, you may want to work backward an additional three years.

What is the general audit process?

Although each IRS audit can be unique, the IRS has provided an online guide that provides an overview of the general audit process.

How long does a typical audit take?

This depends on the type of audit. The stated goal of the IRS is to complete audits within 210 days.

How can we be prepared if our plan is audited?

This manual is designed to help employers take preventive action. We want you to find problems and fix them before an audit.

Are there any special rules that apply to our plan?

Most plans offered by GuideStone are "church plans" as defined by the Code and special rules apply to church plans. Many rules that apply to retirement plans of for-profit organizations do not apply to church plans. This manual includes some of the unique information about church plans.

Where are IRS audits generally conducted?

IRS audits are generally conducted at the employer's place of business. The employer can request that the audit be conducted off-site or after hours if the employer outlines the reasons an on-site audit would be considered too disruptive.

In the past, IRS representatives have stated that having quick access to documentation is what makes it necessary to conduct the audit at the employer's place of business. As an example, the IRS representatives stated that auditors will want to review payroll records, personnel files, and W-2 forms which should be available in the employer's offices. In addition, auditors have been told to familiarize themselves with the taxpayer's business operations and to deal with people who are closest to the business operations. One of the goals of auditors is to evaluate internal controls which can best be conducted by observing the personnel handling the employer's benefits.

Frequently asked questions about correcting errors uncovered during a self-audit

How can we correct a problem if we find it?

Retirement plan problems can be corrected, but it's easier to correct problems before an audit. If plans are not corrected, participants could lose the tax benefits of participation. The earlier that problems are found and fixed, the better. The IRS offers some different options for correcting retirement plan problems through its Employee Plans Compliance Resolution System (EPCRS). In addition, the IRS has created a "checklist" of common problems along with ways to fix these problems. With Revenue Procedure 2016-51, the IRS has included corrections for 403(b) plans in EPCRS.

Where can we find more information about the IRS Employee Plans Compliance Resolution System (EPCRS)?

EPCRS is described in detail in Revenue Procedure 2016-51, available on the IRS website. In fact, the IRS has done an excellent job of providing the public with tools to assist in using EPCRS. There is a whole web page on the IRS website devoted to EPCRS that contains information about using EPCRS including a brochure.

If you have any specific questions about Revenue Procedure 2016-51, please consult your legal counsel. More information about EPCRS can be found in the training material the IRS publishes for its audit specialists.

What is the best option for correcting retirement plan problems under EPCRS?

EPCRS offers three options for correcting retirement plan problems. The first and best option is the Self-Correction Program (SCP). The IRS is not involved if SCP is used, but not all errors can be corrected using SCP. The second best option is the Voluntary Correction Program (VCP) with IRS approval. With VCP, you submit your proposed correction to the IRS along with a fee. The last option is correction under the Audit Closing Agreement Program (Audit CAP). When a plan is under audit, correction options are limited and sanctions are involved. That's why we hope you will use this manual to find any problems before an audit.

How does an employer qualify to use SCP to correct plan problems?

To qualify for SCP, you must decide that:

1. You had a written 403(b)(9) plan in place by 12-31-2009;
2. The error is not egregious and is not related to the diversion or misuse of plan assets;
3. You have established practices and procedures (formal or informal) reasonably designed to promote compliance and the operational failure occurred from an oversight or mistake in applying them;
4. The operational failure is not directly or indirectly related to an abusive tax avoidance transaction as identified by the IRS; and

5. The error qualifies as either an insignificant or significant “operational failure” as identified by the IRS.

   Here are some factors to consider in determining whether an operational failure under a plan is insignificant:

   a) Whether other failures occurred during the period being examined (for this purpose, a failure is not considered to have occurred more than once merely because more than one participant is affected by the failure);

   b) The percentage of plan assets and contributions involved in the failure;

   c) The number of years the failure occurred;

   d) The number of participants affected relative to the total number of participants in the plan;

   e) The number of participants affected as a result of the failure relative to the number of participants who could have been affected by the failure;

   f) Whether correction was made within a reasonable time after discovery of the failure; and

   g) The reason for the failure (for example, data entry error, transposing numbers or minor arithmetic errors).

In limited cases, plan problems can be corrected under SCP even if they are not insignificant. However, correction of significant operational failures must be completed or substantially completed by the last day of the second plan year following the year the failure occurred. In the case of an operational failure of the Actual Contribution Percentage Test (explained later), the employer has until the last day of the third plan year following the year of the failure.

Can plans be corrected if they are under audit?

Retirement plans may be corrected if they are under audit. SCP is available to plans under audit, but only for insignificant operational failures or for significant operational failures if corrections have been substantially completed before the audit begins. If the employer is under audit, VCP is not available. Audit CAP is available for correction of all failures found on examination that have not been corrected in accordance with SCP or VCP. The Audit CAP option means sanctions. You want to avoid it if you can.

What role will GuideStone play if our plan is audited?

If your plan is audited, we will work with you and give you records to help respond to IRS requests for information. (There may be charges for providing this information.) We cannot give you legal or tax advice. If you are audited, we strongly urge you to seek your own legal counsel, CPA or other advisor who has experience with church plans.

If your plan is being audited, contact GuideStone immediately. It is crucial that GuideStone be provided with copies of the IRS Information Document Request (IDR) and that we work together to provide the IRS with information.

Self-audit checklist

- ☐ Have we read “Frequently asked questions about retirement plan audits”?
- ☐ Have we read “Frequently asked questions about correcting errors uncovered during a self-audit”?
- ☐ Do we understand that our plan is a church plan and that special rules apply to church plans?
- ☐ Is our organization’s ability to offer a church plan changing?
- ☐ Is our organization’s status as a church, qualified church-controlled organization (QCCO) or non-qualified church-controlled organization (NQCCO) changing?
- ☐ Are we familiar with and do we follow the terms of our plan?
- ☐ Are we sending contributions on a timely basis?
- ☐ Are we keeping the correct records regarding our plan?
- ☐ Are the employees participating in our plan eligible to participate?
- ☐ Are we handling Salary Reduction Agreements properly?
- ☐ Are contributions to employee retirement accounts within legal limits?
- ☐ Are distributions from employee retirement accounts being made properly, (employer must retain or have access to proper documentation)?
- ☐ Do we have information agreements with all vendors?
- ☐ Do our rollovers and exchanges/transfers comply with rollover and exchange/transfer rules?
- ☐ Do our loans comply with plan loan rules (employer must retain or have access to proper documentation)?
- ☐ Do we have procedures in place to ensure we comply with IRS hardship restrictions and loan limits across all vendors?
- ☐ Do our required minimum distributions comply with required minimum distribution rules?
- ☐ Are required notices being distributed on time and do the notices include all required information?
- ☐ If we find a problem with our plan, should we seek legal advice about how to correct it and what kind of documentation to keep?

For NQCCOs only

Skip these questions unless your organization is a NQCCO.

These questions do not apply to churches or QCCOs.

- ☐ Do our plans comply with the “age 50 catch-up” availability requirement?
- ☐ Do we understand how to determine if we have any highly compensated employees?
- ☐ Do we comply with nondiscrimination rules?
- ☐ Do we understand that contributions can be limited by employee compensation?

Do we understand that our plan is a church plan and that special rules apply to church plans?

Why does it matter?

Special rules apply to retirement plans that are “church plans” as defined by the Code and the Employee Retirement Income Security Act (ERISA). Many people who work with retirement plans, including accountants and attorneys, do not know much about church plans. They’re often more familiar with “qualified plans” subject to ERISA. Those are the retirement plans you would typically find at a for-profit employer. IRS agents who examine retirement plans may not be familiar with church plan rules either.

What will the IRS ask if we are audited?

The IRS may not realize that your plan is a church plan and may ask for documents about rules that aren’t applicable to church plans. If you’re audited, GuideStone can send you some information about church plans to give to the IRS agent, but you should know some basics about the rules that apply to church plans.

What are the general rules?

This section contains a lot of technical information, but this information may be helpful if you seek legal or tax advice about your plan. It may also help you understand some of the terminology used in other questions. You don’t need to read all of this section in order to answer the questions on the checklist, but you should know that your plan is a church plan and that special rules apply to church plans. You should also know that the Department of Labor does not have jurisdiction over church plan retirement income accounts under Code section 403(b)(9). The information that follows provides some technical details about church plans.

Church plan definition

For plans established and maintained by churches or conventions or associations of churches, a plan will qualify as a church plan under Code section 414(e)(3) if it establishes that:

1. Substantially all of its covered employees are employees or “deemed” employees of a church or convention or association of churches;
2. The plan is not established and maintained primarily for the benefit of employees (or their beneficiaries) who are employed in connection with one or more unrelated trades or businesses (within the meaning of Code section 513); and
3. The plan is established and maintained for employees:
   - By a church or a convention or association of churches that is exempt from tax under Code section 501; or
   - By an organization such as GuideStone , acting as an agent of the church, which has as its primary purpose the provision of retirement or welfare benefits to employees of a church or convention or association of churches [Code section 414(e)(3)(A)]. This is the basis upon which GuideStone can establish and maintain a church plan.

Church plans may, but are not required to, request a ruling from the IRS about their church plan status.

Plans of “church-related” organizations

Special rules apply to plans of certain “church-related” organizations. Code section 414(e)(3)(C) provides that a church or convention or association of churches shall be “deemed” the employer of any individual included as an employee of an employer that is exempt from tax under Code section 501 and that is “controlled by” or “associated with” a church or a convention or association of churches. This provision permits employees of church-related entities, such as retirement homes, children’s homes, hospitals, universities, and colleges, to participate in church plans.

What does it mean for an organization to be controlled by a church or a convention or association of churches? Regulations under Code section 414(e) state that "an organization, a majority of whose officers or directors are appointed by a church's governing board or by officials of a church, is controlled by a church…" Treasury Regulation 1.414(e)-1(d)(2).

The determination of "controlled by" is often based upon how the organization's officers, trustees, or board of directors are elected. For example, if the organization's charter or bylaws require a majority of its officers, directors or trustees to be appointed or elected by the governing body of a group of churches, that generally indicates the organization is controlled by that governing body.

What does it mean for an organization to be associated with a church or a convention or association of churches? An organization may be associated with a church within the meaning of Code section 414(e)(3)(D) because it shares common religious bonds and convictions with that church. For example, this may be shown by:

- An organization operated under church principles;
- The articles of incorporation and bylaws which require it to incorporate in its policies and practices the moral teachings of the church;
- A chapel where services are conducted;
- Employment of chaplains; and
- Performance of sacerdotal functions.

The IRS has recognized some organizations listed in a particular church directory as associated with the church. See, e.g., Ltr. Rul. 8824049; GCM 39832 (Oct 12, 1990); GCM 39007 (July 1, 1983).

In addition to sharing common religious bonds and convictions, here are some factors for indicating "associated with":

- The organization's charter or bylaws require a majority of its board of directors or trustees, or officers to be members of a certain church;
- The organization receives a majority of its funding from certain churches or organizations related to those churches;
- The organization reports to a governing body of a group of churches or to an organization related to the governing body of a group of churches; and
- The organization's assets, upon legal dissolution, are required to be distributed to the governing body of a group of churches or to a church or an organization affiliated with that governing body.

ERISA exemption for church plans

The cornerstone of federal retirement plan law is ERISA, the Employee Retirement Income Security Act of 1974. ERISA defines church plans in Code section 3(33). Unlike other retirement plans, church plans are exempt from Title I of ERISA, unless an affirmative election to be subject to ERISA has been made as described in Code section 410(d). Church plans therefore do not have to comply with Title I reporting and disclosure, minimum participation, minimum vesting, benefit accrual, funding and fiduciary responsibility and prohibited transaction provisions.

The Code requires most retirement plans to file a Form 5500 annually. Church plans do not have to file Form 5500. The IRS confirmed this in IRS Announcement 82-146, 1982-47 I.R.B. 55. The Department of Labor (DOL) does not have jurisdiction over church plans as it does other retirement plans.

Church plans are still subject to fiduciary and trust law requirements outside of ERISA. For example, certain prohibited transactions under ERISA might also be prohibited under fiduciary and trust law.

Church plan rules and your plan

Your plan is structured as a church plan as defined by Code section 414(e) and ERISA section 3(33) and is exempt from Title I of ERISA pursuant to section 4(b)(2) of ERISA. In other words, it does not have to comply with the reporting, disclosure, participation and vesting requirements of ERISA and the Code. An affirmative election under Code section 410(d) to be subject to these rules may be made, but your plan is not designed for that election. Therefore, your plan does not have to comply with the following requirements that apply to qualified plans:

1. The qualified joint and survivor annuity requirements;
2. The preservation of accrued benefit requirements in the case of a plan merger or a consolidation or transfer of plan assets;
3. The anti-alienation rules (however, 403(b) plans are subject to a non-transferable rule that is similar to the anti-alienation rule, and the plan associated trust places restrictions on alienation, i.e., transfer of plan assets);
4. The benefit commencement requirements (60 days after occurrence of normal retirement, 10th anniversary of plan participation or termination);
5. The requirement that retiree vested benefits may not be decreased due to Social Security increases after retirement;
6. The rule that accrued benefits from employer contributions cannot be forfeited due to withdrawal of employee contributions, if the employee is 50% vested;
7. The minimum participation rules;
8. The minimum vesting rules; and
9. The benefit accrual and anti-cutback rules. (Although the plan is not subject to anti-cutback provisions in the Code, there may be contract or other state law issues that should be considered before taking action that would "cut back" accrued benefits or rights under the plan.)

Retirement income accounts

Retirement income accounts are described in Code section 403(b)(9). You may hear 403(b) plans called Tax Sheltered Annuities or TSA. Code section 403(b)(9)(B) defines a "retirement income account" as a "defined contribution program established or maintained by a church, a convention or association of churches, including an organization described in Code section 414(e)(3)(A)," for employees of tax-exempt Code section 501(c)(3) employers.

Your plan is designed as a 403(b) plan. It is structured as a church retirement income account under section 403(b)(9) of the Code.

Qualified church-controlled organizations and non-qualified church-controlled organizations

Under Code section 403(b)(12), 403(b) plans of certain employers are subject to nondiscrimination rules similar to those applicable to non-governmental and non-church Code section 401(a) qualified plans. However, Code section 403(b)(1)(D) says these rules do not apply to plans maintained by churches and "qualified church-controlled organizations," sometimes called "QCCOs." A QCCO is described in Code section 3121(w)(3)(B). To be a QCCO, an organization must receive significant, direct support from the church, or from donations. Organizations that receive a significant part of their income from the sale of goods or services to the general public, such as church-related hospitals or universities, are not QCCOs. Therefore, they are often called "non-qualified church-controlled organizations" (NQCCOs).

When an employer adopts the plan, it has to determine if it is a church or QCCO, or whether it is a NQCCO and therefore subject to the nondiscrimination rules. We have a Status Certification Form that you can complete to help you make this determination (See Appendix B).

What can we do now?

If you are audited, you should be prepared to tell the IRS that your organization's plan is a church plan and that you can provide more information about church plan rules.

How can GuideStone help?

Contact us as soon as you learn your plan is being audited so we can send you some information about church plans to give to the IRS.

Is our organization's ability to offer a church plan changing?

Why does it matter?

It is extremely important for you to know whether your organization continues to be eligible to sponsor a church plan. Although you may have been eligible to sponsor a church plan at one time, the organizational structure or ties with a particular church or denomination may change over time. If your organization is no longer eligible to sponsor a church plan, it is extremely likely that your plan will now be subject to the requirements of ERISA including certain reporting and noticing requirements. For example, ERISA requires annual 5500 filings to the DOL and annual fee disclosure requirements to participants. If these requirements are not satisfied, steep fines and sanctions may be imposed.

Records for church plans and for plans subject to ERISA are kept differently at GuideStone. For instance, participants in plans subject to ERISA are not eligible to establish annuities through GuideStone and are not eligible for non-registered mutual funds. If the correct record keeping is not in place and annuities are established or participants invest in non-registered mutual funds, this could cause issues for your plan and complicate required filings.

Moreover, your deferred compensation plan (such as your 457(b) or 409A plan) will be impacted. Participating in a nonqualified plan with records kept as a church plan when the plan should have been subject to ERISA could have adverse tax consequences for participants.

What are the general rules?

The previous Q&A section entitled "Do we understand that our plan is a church plan and that special rules apply to church plans?" provides an outline of the rules for offering a church plan.

Making the determination is very fact intensive and it is critical to the operation of your retirement plan that you get it right. You should always consult with your benefit advisor about the general rules and how they apply to your particular circumstances.

What will the IRS ask if we are audited?

The 403(b)(9) retirement plan clearly identifies itself as a church plan. It is likely the IRS will collect information so it can decide if your organization has properly classified itself for purposes of being able to offer a church plan. The IRS also may audit any deferred compensation plans you offer in addition to your 403(b) plan to determine if you are using the right kind of deferred compensation plan. Deferred compensation plans subject to ERISA must be limited to a select group of management or highly compensated employees and must make a one-time filing with the DOL.

What can we do now?

You may want to periodically review your ability to offer a church plan with your benefit advisor. If your status has changed, notify GuideStone immediately.

How can GuideStone help?

GuideStone makes publications available to you and your benefit adviser which may help with the determination of whether you can offer a church plan. GuideStone is also experienced with serving plans subject to ERISA. If you notify us in advance of any definitive determination that your organization can no longer offer a church plan, GuideStone can help you with steps to facilitate your transition. If you have any questions, contact your relationship manager or call GuideStone at **1-888-98-GUIDE** (1-888-984-8433) or email us at *gscompliance@GuideStone.org*.

Is our organization's status as a church, qualified church-controlled organization (QCCO) or a non-qualified church-controlled organization (NQCCO) changing?

Why does it matter?

It is extremely important for you to know if your organization's current status as a QCCO or NQCCO is correct. Although your organization told GuideStone whether it was a QCCO or NQCCO when your plan was established, your status can change over time, especially if your source of funding or services provided has changed. If the status is NQCCO, you'll need to follow special nondiscrimination rules that don't apply to churches or QCCOs. If a NQCCO does not comply with the rules applicable to it, the IRS could take action with adverse tax consequences to all participants in the plan. Your organization's status also affects:

- Whether your plan document must cover 403(b)(1) and 403(b)(7) contracts;
- The type of deferred compensation plans (such as Code section 457 plans) that may be offered to your employees.

If you do not determine your status correctly, your employees in any deferred compensation plans could suffer adverse tax consequences if you don't understand the rules that apply to them.

What are the general rules?

There are notable differences between QCCO and NQCCO organizations. Some of the main differences are:

	QCCO	NQCCO
Retirement plan nondiscrimination testing	Not Required	Required
Annual effective opportunity notice	Not Required	Required
Written plan document for 403(b)(9)	Required	Required
Written plan document for 403(b)(1) & 403(b)(7)	Not Required	Required
457 plans	Not Applicable	Permitted

What will the IRS ask if we are audited?

The IRS will collect information so it can decide if your organization has properly classified itself as a church, a QCCO, or a NQCCO. If the IRS decides that your organization is a NQCCO, it will see if you are following the nondiscrimination rules applicable to NQCCOs. The IRS also may audit any deferred compensation plans you offer in addition to your 403(b) plan to determine if you are using the right kind of deferred compensation plan. A NQCCO may offer a Code section 457 plan, and a church or QCCO may offer an unfunded deferred compensation plan that is not subject to Code section 457.

What can we do now?

You can review your organization's status by completing GuideStone's Status Certification Form. If your status is changing, notify GuideStone immediately.

How can GuideStone help?

GuideStone's Status Certification Form (Appendix B) can help you determine if your organization is a QCCO or a NQCCO. It is an employer's responsibility to comply with rules for NQCCOs, but we can help you with nondiscrimination testing. See GuideStone's website for more information.

Are we familiar with and do we follow the terms of our plan?

Why does it matter?

Your retirement plan has been drafted by GuideStone to comply with the rules applicable to 403(b)(9) church plans. These are legal documents that, along with any other documents incorporated by reference, tell you and your employees how the plan should operate. The 403(b) regulations require that plans be operated in accordance with the terms of the plan. If you are not following the terms of the plan, there could not only be problems with the IRS, but an employee could sue your organization for failing to make contributions required by the plan.

What are the general rules?

All 403(b)(9) plans are required to be in writing. Plans are permitted to incorporate by reference other documents, including insurance or annuity contracts, which as a result of such reference become part of the plan. As a result, a plan may include a wide variety of documents and it is important for the employer that adopts the plan to ensure that there are no conflicts with other documents that are incorporated by reference. This is particularly important for NQCCO employers who have other Code section 403(b)(1) and 403(b)(7) contracts that are incorporated under their 403(b)(9) plan. They will need to make sure the terms of any such contract do not conflict with the terms of the plan as a whole.

Your plan documents include a basic plan document, a separate adoption agreement and other written documents referenced by the basic plan document and/or adoption agreement such as policies, procedures and forms. GuideStone has also given you a plan summary for you to give your employees. If a plan does incorporate other documents by reference and there is a conflict, the basic plan document and adoption agreement will govern the rules.

What will the IRS ask if we are audited?

If your plan is audited, the IRS will check to see if the plan is being administered the way it is written. For example, the IRS may check to make sure that you are making contributions for all of the employees the plan says are eligible for contributions or that you are making contributions to the plan according to the compensation defined in your plan documents.

What can we do now?

Review your plan documents and make sure you understand them and follow them. Make sure that employees who operate the plan on a daily basis are familiar with the terms of the plan and put policies and procedures in place to ensure those employees are kept informed of any plan changes. Review all vendor contracts under the plan to make sure there are no conflicts with the terms of the plan. You can view your plan document on-line through the Employer Access portal. If you find any discrepancies between what the plan says and how you have been operating the plan, contact GuideStone to discuss general information about possible corrections. A failure to follow the terms of the plan is considered an "operational failure" as defined by EPCRS.

How can GuideStone help?

GuideStone can prepare plan documents and assist you in designing a plan that will comply with applicable law. GuideStone can help you understand your obligations as an employer under the plan. We can also assist you with any amendments to your plan. Some of your questions may be answered by going to GuideStone's website or contacting GuideStone for help.

Are we sending contributions on a timely basis?

Why does it matter?

By sponsoring the plan, your organization has agreed to follow the terms of the plan. One of your most important responsibilities as a plan sponsor is remitting contributions. If your plan says you will contribute a certain percentage of an employee's compensation, you have a legal obligation to do that. You also have a legal obligation to remit contributions made by employees who have reduced their salaries in order to make contributions. When you don't remit contributions on time, your employees could lose money they otherwise may have gained had the contributions been invested. Employees have sued employers for failing to make timely contributions.

What are the general rules?

The general rule under the 403(b) regulations is that all contributions must be made to the investment provider within "a period that is not longer than is reasonable for the proper administration of the plan." The regulations indicate that salary reduction contributions should be deposited in an administratively feasible period, typically within 15 business days following the month in which these amounts would have been paid to the employee, if not deferred. The IRS is seeking to ensure that contributions are properly and efficiently handled by the plan sponsor from the point of withholding to the point of deposit.

Under the 403(b) regulations, salary reduction contributions (including Roth contributions) may not be contributed to a retirement plan before the compensation from which the salary is reduced is earned. Salary reduction contributions remitted before the salary to which they relate is earned are considered employer contributions. There are very limited exceptions to this rule under the 403(b) regulations.

What will the IRS ask if we are audited?

If your plan is audited, the IRS may investigate whether you have made contributions required by the plan on a timely basis. The IRS may ask for records you can provide or for records GuideStone maintains, and it may want to see when you made contributions.

What can we do now?

You should review your records to determine if you are remitting contributions consistent with these rules. If you find problems with the timeliness of contributions, you may want to contact your legal counsel first to determine what action needs to be taken. You are responsible for notifying us of anything that could impact our records about contributions. For example, you need to notify us when employees terminate employment or increase their contributions by signing a new salary reduction agreement. The best way to do this is by updating the information in Employer Access portal. Making these contributions is a legal obligation. If you are audited or sued, it could be helpful if you could show that you followed these guidelines.

How can GuideStone help?

GuideStone maintains contribution records based on information you have given us. It is the employer's responsibility to remit contributions on a timely basis.

More information on timing of contribution remittance can be found on GuideStone's website.

Are we keeping the correct records regarding our plan?

Why does it matter?

If your plan is audited, the IRS will want to look at records documenting that you are following the terms of the plan. They may ask for extensive information regarding how a participant's benefit under the plan is calculated which could include information starting from the date the participant was eligible to make contributions. If an employee sued you, for example, for failing to make contributions required by the plan, you would want documents showing that you had complied with the terms of the plan, such as payroll records of deductions and contributions made to the plan.

What are the general rules?

Generally, you should keep most records for at least seven years; however, you may want to keep records related to participants' accounts, such as enrollment forms, salary reduction agreements and payroll records even longer. Here are some of the documents you should keep:

- Copies of plan documents, including the basic plan document, adoption agreements executed by your organization and all other corresponding documents referenced under the plan (You should keep these records permanently);
- Payroll master file or employee census records about all employees who performed any hours of service at any time during the plan year (The IRS will want these records to verify eligibility, participation, and coverage.);
- Copies of cancelled checks and other records about contributions made to your plan;
- Copies of salary reduction agreements (unless made via on-line website); and
- Information about maximum contribution limit calculations for your employees.
- Documents related to any past EPCRS corrections, including any favorable statements received from the IRS.
- Documentation for hardship distributions and loans or ensure that your vendor is requesting and keeping such information, and can produce them in the event of an audit.

If your organization is a NQCCO, you should also keep the following records:

- Copies of records showing who is a highly compensated employee (HCE);
- Copies of nondiscrimination test results and the data used for testing at the end of the plan year;
- Copies of other "contracts" held under the plan, such as 403(b)(1) or 403(b)(7) contracts; and
- Records showing you provided an annual notice of the right to make or change salary reduction contributions.

You should seek the assistance of experienced benefits counsel in developing a prudent record retention policy.

What will the IRS ask if we are audited?

The IRS may ask for the records listed above and other data to see if your organization is complying with the terms of the plan and applicable law. GuideStone may have some of the records the IRS will request.

What can we do now?

Be sure you can locate all of these records. If you haven't been keeping some of these records, start keeping them. Many employers keep notebooks with various categories of information behind tabs, such as employee census information, lists of HCEs by plan year and plan documents. Other information such as *Salary Reduction Agreements* and information about maximum contribution limit calculations for individual employees may be kept in the employee's files. Notify GuideStone as soon as employees change their *Salary Reduction Agreement* or a change in wages results in a change to their contribution amount. The best way to do this is by updating the information in Employer Access portal. If you are audited, you may be able to get some of the documents you need from GuideStone. It's likely the IRS will ask for some information only GuideStone can provide.

How can GuideStone help?

If you are audited, please contact GuideStone immediately. We may be able to provide you with additional information. The IRS created a Taxpayer Documentation Guide (Defined Contribution Guide) that provides guidance on retaining records for retirement plans, to assist plan sponsors and administrators.

Are the employees participating in our plan eligible to participate?

Why does it matter?

You must follow the terms of your plan with respect to eligibility and entry dates. If your plan is audited, the IRS will want to make sure that participants in your plan are eligible to participate and entered the plan timely according to the terms of your plan document. The IRS will also want to make sure that employees who are not eligible for the plan are not participating, and that participants are not included in the plan before their plan entry date.

What are the general rules?

Your plan documents tell you who is eligible to participate. Generally, only employees can participate in a 403(b) plan. In other words, if your organization issues a W-2 form to a worker, that person is probably an employee. If someone is treated as an independent contractor instead of an employee for other tax purposes, that person probably is not eligible to participate in your plan. Although ministers are always considered self-employed for Social Security purposes, they are eligible to participate as employees in 403(b) plans such as your plan. The question of whether a person is an employee for purposes of participating in a 403(b) plan is more likely to come up in connection with professionals such as physicians working for hospitals. If the IRS discovers your organization has incorrectly classified employees as independent contractors, your organization may have payroll reporting and withholding problems in addition to plan eligibility problems. If the IRS classifies someone as an employee whom you treated as an independent contractor, you could owe payroll taxes and penalties in addition to owing the employee contributions plus earnings.

What will the IRS ask if we are audited?

The IRS may ask for your payroll records to determine if you have properly classified your employees. The IRS may ask for any other records that would show that eligible employees are participating in the plan and ineligible employees are not participating in the plan. Document your internal processes and the schedule for reviewing eligibility and plan entry.

What can we do now?

Be sure your organization properly classifies its workers as employees or independent contractors. Know who is eligible and who is not eligible to participate in your plan. Make contributions for eligible employees and don’t permit ineligible workers to participate. Know when the plan’s entry date allows newly eligible employees to enter the plan. Make sure those operating the plan understand the eligibility and entry date rules as well as any amendments to those provisions.

How can GuideStone help?

Your organization must decide if each worker is an employee or independent contractor. NQCCOs may find helpful information in GuideStone’s publication, Guide to Nondiscrimination Testing for Section 403(b) plans.

For additional help, look for information concerning whether a person is an employee or independent contractor in IRS Publication 15-A which can be found on the IRS website.

Are we handling *Salary Reduction Agreements* properly?

Why does it matter?

The IRS Exam Guidelines tell agents to review a sample of salary reduction forms. The IRS wants to verify the agreements have been signed before the amounts were paid or made available to the employee and contributed to the plan. If the IRS audits your plan, it will want documentation about employees who elected to make deferrals to the plan. The IRS may want to see if the salary reduction agreement conforms to various rules about 403(b) plans. GuideStone provides a *Retirement Contribution Agreement* for use by your employees as a salary reduction agreement for the plan. In the absence of a completed salary reduction agreement, the IRS could take the position that contributions to the retirement plan may not receive favorable tax status.

What are the general rules?

Employers should not make employee deferrals to the plan without a salary reduction agreement (written or electronic). Employees should complete salary reduction agreements, and you should keep copies of those agreements. Salary reduction agreements must be completed prospectively. In other words, they must be completed before compensation is paid or made available. An employee can increase or decrease the amount they want to contribute by signing a new salary reduction agreement at any time during the year, but they must do so before they are entitled to receive compensation.

In addition, contributions made by salary reduction, including Roth contributions, may not be contributed to the 403(b) plan before the compensation is earned. In other words, these contributions cannot be made to the plan unless they have actually been reduced from the compensation made available to the employee. There are very limited exceptions to this rule, such as a payroll clerk going on vacation.

What will the IRS ask if we are audited?

The IRS may ask for a sample copy of the salary reduction agreement used by your employees and for copies of agreements for different employees. It may use other records to verify that the agreement was signed before the employee was entitled to receive the compensation and that the contributions were made properly under the terms of the agreement. The IRS may also check to be sure contributions were not contributed routinely in advance of the employee's service.

What can we do now?

Be sure your employees complete a salary reduction agreement before you reduce their salaries and send contributions and be sure salary reduction contributions (including Roth contributions) are not sent prior to compensation being earned. Also, be sure you are sending the amount shown on the salary reduction agreement. Notify your payroll department and GuideStone as soon as employees change their contribution amounts. If you do not have copies of salary reduction agreements and you are audited, you may be able to negotiate another form of "proof" with the IRS, but you should avoid that by keeping copies of salary reduction agreements, whether paper or electronic. For employers who utilize payroll feed functionality, additional salary reduction agreement options may be available.

How can GuideStone help?

GuideStone provides a *Retirement Contribution Agreement* for use by your employees as a salary reduction agreement for the plan. It is available on our website (See Appendix B) or by calling GuideStone. However, GuideStone does not keep signed salary reduction agreements in our records. It is the employer's responsibility to retain copies of signed salary reduction agreements, whether paper or electronic. .

Are contributions to employee retirement accounts within legal limits?

Why does it matter?

There are legal limits on the amount that can be contributed to 403(b) plans. If the IRS audits your plan, it will want to know if contributions have exceeded these limits. Excess contributions must be corrected, and if excesses are distributed, employees must pay taxes on those distributions.

What are the general rules?

The following factors can affect maximum contribution limit calculations:

- Multiple employers;
- Years of service;
- Compensation;
- Participation in more than one retirement plan (or in more than one contract);
- The minister's housing allowance;
- Other plans maintained by the employee, such as Keoghs; and
- Part-time or full-time status.

There are generally two limits affecting contributions to 403(b) plans. They go by different names, but GuideStone calls them the Basic Limit and the General Limit on salary reduction contributions.

The Basic Limit determines how much the participant and employer both contribute to a 403(b) plan. Employees and employers together may contribute the lesser of:

- 100% of includible compensation; or
- A set dollar amount.

The dollar amount is indexed by the IRS. Here are the amounts your organization needs to know for various years:

2002 - 2003	$40,000
2004	$41,000
2005	$42,000
2006	$44,000
2007	$45,000
2008	$46,000

2009-2011	$49,000
2012	$50,000
2013	$51,000
2014	$52,000
2015 - 2016	$53,000
2017	$54,000

Includible compensation is based on an employee's most recent one-year period of service. This period is an equivalent of one year of paid full-time service with all employers in the same church-related group. Compensation earned within this period is called "includible compensation." "Compensation" does not include the minister's housing allowance for this purpose. The sum of annual employer contributions, salary reduction contributions (including Roth contributions) and tax-paid contributions must be within the Basic Limit.

Alternatively, participants in church 403(b) plans may elect to have their employers contribute up to $10,000 per year, even if that's more than 100% of their includible compensation, subject to a $40,000 lifetime cap.

In addition to the Basic Limit, there is the limit GuideStone calls the General Limit on salary reduction contributions. The General Limit on salary reduction contribution amounts (including Roth contributions) are as follows:

1987-1997	$9,500	2004	$13,000	2012	$17,000
1998-1999	$10,000	2005	$14,000	2013	$17,500
2000-2001	$10,500	2006	$15,000	2014	$17,500
2002	$11,000	2007-2008	$15,500	2015 - 2016	$18,000
2003	$12,000	2009-2011	$16,500	2017	$18,000

A participant may exceed the General Limit on salary reduction contributions in some cases provided the participant has completed 15 or more full-time years of paid service (or its equivalent) with employers in the same church-related group. Under this special rule, the General Limit on salary reduction contributions may be increased by the lesser of:

- $3,000; or
- $15,000 minus amounts contributed above the General Limit on salary reduction contributions; or
- $5,000 multiplied by the participant's total years of paid service with employer in the same church-related group, minus all prior salary reduction contributions (including Roth contributions) made to plans of these employers.

The aggregate amounts contributed above the General Limit on salary reduction contributions may not exceed the lifetime cap of $15,000. The participant must maintain his or her own records for amounts applied to the $15,000 cap. Once the $15,000 lifetime cap is reached, salary reduction contributions (including Roth contributions) for future years cannot exceed the General Limit on salary reduction contributions unless the participant is age 50 or over.

Participants who will be age 50 or over during the tax year may be eligible to salary reduce more to their retirement accounts. They can contribute an additional amount which is the lesser of:

- Includible compensation minus salary reduction contributions (including Roth contributions) to a 401(k), Simplified Employee Pension plan, 403(b), SIMPLE plan or eligible 457 plan; or
- A set dollar amount.

The dollar amount is indexed by the IRS. Here are the amounts your organization needs to know for various years:

2002	$1,000	2009 - 2014	$5,500
2003	$2,000	2015 - 2106	$6,000
2004	$3,000	2017	$6,000
2005	$4,000		
2006 - 2008	$5,000		

This catch-up amount does not count toward any of the lifetime caps or other contribution limits.

IRS rules require coordination of the special rule for exceeding the General Limit on salary reduction contributions for participants with 15 or more full-time years of paid service (or its equivalent) with church-related employers (the special catch-up) and the special rule for participants who will be age 50 or over during the tax year (age 50 catch-up). Contributions must be applied as special catch-up contributions <u>before</u> being considered Age 50 catch-up contributions.

What will the IRS ask if we are audited?

The IRS may ask to see records and data showing that employees did not exceed contribution limits. They will ask for payroll records to determine compensation and contributions. They will ask for all the supporting documentation and figures used in calculating the special 15-years of service catch-up contributions.

What can we do now?

Consider asking GuideStone to calculate maximum contribution limits for all your employees each year. If GuideStone has performed a maximum contribution limit calculation, we will let you know if and when our records show that a participant may exceed the legal limits and we will suggest corrective action. You should respond to those letters immediately. If you find a problem during your self-audit, contact GuideStone to discuss possible corrections.

How can GuideStone help?

Upon request, GuideStone will calculate contribution limits for free. We'll give you the worksheets and instructions you need to supply us the information we need. If your plan permits participants to make contributions to more than one investment provider, you will need to coordinate information among all providers. GuideStone provides a Multiple Investment Providers: Things to Consider document to assist with the various pieces of information that must be coordinated across providers. Through GuideStone's Employer Access portal, GuideStone makes contribution information available to employers for contributions made to investments offered by GuideStone. Additional information is available in GuideStone's *FAQ for 403(b) Contribution Limits* brochure. For copies or additional information, contact GuideStone at **1-888-98-GUIDE** (1-888-984-8433).

More information on 403(b) plan contribution limits can be found on the IRS website in IRS Publication 571.

Additional information on maximum contribution limits and a link to GuideStone's *Maximum Contribution Limits Worksheet* can be found on GuideStone's website.

Are distributions from employee retirement accounts being made according to the plan document (employer must retain or have access to proper documentation)?

Why does it matter?

There are legal restrictions on when employees can take distributions. Your plan documents describe when distributions can be made, including distributions of employer contributions. If the IRS audits your plan, it will want to make sure that employees are not taking distributions too early and that distributions are being made in accordance with plan provisions. Employees must pay taxes and penalties on premature distributions.

What are the general rules for salary reduced contributions (including Roth contributions) and tax-paid contributions?

Generally, Code section 403(b)(11) permits distributions of salary reduced contributions, including Roth contributions, only when the employee attains age 59 ½, separates from service, dies, becomes disabled, qualifies for a hardship distribution, or in the case of a distribution for certain employees in active military service. If your plan allows employees to receive other distributions while they are still in service, they can usually take only:

- Tax-paid contributions and earnings on those contributions;
- Salary reduction contributions and earnings as of January 1, 1989; and
- Salary reduction contributions made after December 31, 1988, if the employee demonstrates an immediate and heavy financial need within the meaning of applicable regulations (hardship distributions) or if the distribution is for certain employees in active military service.

Distributions in violation of these rules could cause a participant's 403(b) account balance in all 403(b) contracts to fail to satisfy the requirements of Code section 403(b), and consequently, all contributions beginning in the taxable year of the improper distribution will be includible in the participant's gross income. The participant's entire account may become taxable.

Following a hardship distribution, an employee may not make salary reduction or tax-paid contributions to an employer's 403(b) plan or any other retirement plan (both qualified and nonqualified plans) maintained by the employer for six months. For plans using multiple vendors, it is important to remember that deferrals and tax-paid contributions to all vendors under the plan must be stopped for six months following the hardship distribution. (***TIP: It is also important to determine whether the participant must complete a new salary reduction agreement in order to begin making contributions after the six-month suspension or whether the salary reduction agreement is "evergreen," i.e., contributions must begin immediately after the suspension. The IRS frequently finds problems in this area. Your salary reduction agreement or plan documents should address this provision.***)

What are the general rules for distribution of employer contributions?

For accounts established after January 1, 2009, distributions from employer contributions may be made upon the occurrence of an event. Generally, most 403(b) plans place distribution restrictions on employer contributions until the participant has obtained age 59 ½ or has a severance of employment. However, 403(b) plans that did not have distribution restrictions on employer contributions should have updated the plan's provisions to restrict distributions on employer contributions for all accounts established on or after January 1, 2009 (i.e. new participant accounts).

What will the IRS ask to see if we are audited?

If the IRS audits your plan, it will want to see your plan documents to make sure they include applicable restrictions on distributions. The IRS will investigate whether any distributions were made contrary to plan provisions. It will review hardship distributions to determine if applicable rules were followed and will look closely if one employee has taken multiple hardship distributions. The IRS will also request copies of documentation supporting the amount and the reason for the hardship distribution. Other distribution forms may be examined as well to determine whether the rules applicable to the distribution of salary reduction contributions were followed.

What can we do now?

Make sure you understand how your plan limits distributions. When your employees have questions about whether they are eligible for distributions, tell them to contact GuideStone for more information. Because employees have to complete appropriate forms before taking a distribution, it is unlikely that this will be a problem for your plan. However, you should be prepared to work with GuideStone if the IRS wants information about distributions.

How can GuideStone help?

GuideStone's recordkeeping system takes these restrictions into account for all investments maintained with GuideStone. If your plan has participants who have funds with multiple investment providers, you will need to coordinate information among all providers. GuideStone provides a *Multiple Investment Providers: Things to Consider* document to assist with the various pieces of information that must be coordinated across providers. Through GuideStone's Employer Access portal, GuideStone makes distribution information available to employers for distributions issued by GuideStone. In addition, GuideStone has forms and procedures designed to comply with distribution restrictions. We also report distributions to the IRS on the appropriate Form 1099. If your plan is audited, GuideStone can provide records about distributions.

Do our rollovers and exchanges/transfers comply with rollover and exchange/transfer rules?

Why does it matter?

Participants may be able to roll over or transfer amounts from another retirement plan to their retirement account at GuideStone. In addition, a plan may provide for contract exchanges with vendors under the plan that are not approved for on-going contributions (non-payroll slot vendors). If applicable legal rules are followed, participants are not taxed on those rollovers, exchanges or transfers. But if the rules are not followed, the amounts are treated as taxable distributions and participants will owe taxes and maybe penalties.

What are the general rules?

There are two types of rollovers, direct and indirect. A direct rollover is sent directly from a 403(b) plan to another 403(b) plan, 401(k) plan, 401(a) plan, governmental 457(b) plan, IRA, Roth IRA or SIMPLE IRA. Amounts distributed from any of these kinds of plans (other than a Roth IRA) may also be rolled over into a 403(b) plan. Direct rollovers are not subject to income tax withholding, unless the distribution includes funds that are not from a Roth 403(b) account that are rolled over to a Roth IRA. In the case of an indirect rollover, the participant first takes a distribution and then rolls it over to another plan or IRA within 60 days. For indirect rollovers, 20% must be withheld for income taxes. A participant may also roll over an amount equal to the 20% withheld, but that amount has to come from a participant's other resources.

Transfers of funds between 403(b) plans and 403(b) exchanges between vendors are not considered distributions. When plans follow the applicable rules, the amounts exchanged or transferred are not considered taxable distributions to participants. There is no tax reporting. Under the final Code section 403(b) regulations, there are two methods of exchange: (a) an investment exchange to an investment provider that has a payroll slot; and (b) a contract exchange to a vendor that is not authorized to receive contributions. The 403(b) regulations also permit plan-to-plan transfers, where money is typically transferred from one employer's 403(b) plan to another employer's 403(b) plan, or between 403(b) plans of the same employer.

Same plan "investment exchange"

An investment exchange is a movement of retirement assets under a plan between the plan's investments options. This movement could be movement within one investment provider's funds or between different 403(b) investment providers under the same plan. However, the movement must remain within the same plan, and both investment providers must occupy a "payroll slot" with the employer where contributions are made.

Same plan "contract exchange"

Under the final regulations, a contract exchange can only take place among providers within the same plan if:

- The plan permits contract exchanges;
- The account balance is not reduced as a result of the contract exchange;
- The funds moved are subject to the same statutory distribution restrictions with the receiving provider as with the sending provider; and,
- The employer and the provider receiving the account have an agreement to share information about the participant's account in order to ensure compliance with such issues as loan rules, hardship distributions, and other requirements of the 403(b) regulations.

Different plan "plan-to-plan transfer"

For a plan-to-plan transfer, each plan, again, would have to permit the transfer in and/or out. The participant would have to be an employee or former employee of the employer for the receiving plan, and, as with contract exchanges, the statutory distribution restrictions must be retained and the account balance cannot be reduced as a result of the transfer.

What does the IRS look for?

The IRS may want to examine documents and data about rollovers, exchanges or transfers. It will look to see if any rollovers, exchanges or transfers complied with applicable rules. For example, the IRS will want to make sure that withholding was handled properly. Also, the IRS will want to be sure that the participant was issued any notices required by law. In addition, the IRS will want to ensure that information is being shared so that the employer is monitoring and complying with participant limits under the regulations.

What can we do now?

Review your plan document to become familiar with the distributions options under your plan. When your employees have questions about rollovers, exchanges or transfers, refer them to GuideStone.

How can GuideStone help?

If your plan is audited, GuideStone can provide information to the IRS about rollovers and exchanges/transfers. GuideStone has designed forms, procedures and notices to comply with applicable laws about rollovers and exchanges/transfers. More information on rollovers and exchanges/transfers can be found by reviewing the *Special Tax Notice Regarding Plan Payments* and GuideStone's webpage.

Do our loans comply with plan loan rules (employer must retain or have access to proper documentation)?

Why does it matter?

There are legal restrictions on plan loans from 403(b) plans. If the IRS audits your plan, it will want to determine if loans were made properly, if proper documentation has been retained and if the loan documents reflect the way the loan was administered. In addition, if the loan is for purchase of a principal residence, the IRS will want to see proper documentation confirming the loan was for the purpose of purchasing the employee's principal residence. When participants default on loans, GuideStone reports that as income to the IRS in the year of default. Special rules may apply to employees with loans who are taking leave under the Family and Medical Leave Act, who are on active military duty, or who are affected by certain disasters declared by the President of the United States of America.

What are the general rules?

In determining the maximum amount available for loans, all retirement plans of the employer (and all retirement plans of certain employers related to the employer), as well as all investment providers under the plan, must be considered.

The maximum amount available for loans is the lesser of:

- 50% of the account balance in the plan and all other plans of the employer on the date of the loan request; or
- $50,000 minus the highest outstanding loan balance for a loan made from the plan and all other plans of the employer during the previous 12-month period.

The terms of the loan must provide for a level amortization schedule and for the participant to make regular payments.

There are two types of loans, regular loans and principal residence loans. The term of a regular loan may be anywhere from one to five years, including partial years. A principal residence loan may be made for a longer period. Principal residential loans serviced by GuideStone can be for up to 10 years.

GuideStone will consider the loan in default if the participant misses payments for an entire quarter and all the missed payments are not made up by the end of the next quarter. A loan default is a taxable event. Once a loan is in default the entire outstanding balance of the loan, including principal and interest, is reportable as a taxable distribution in the year of default.

What will the IRS ask if we are audited?

The IRS will ask for data and records showing that loans have been administered according to applicable law. In multiple vendor situations, in situations where the employer sponsors more than one plan and in situations where several employers are closely related, the IRS will ask for information to ensure that the limitations on loans have been coordinated among vendors and plans. In addition, the IRS make as for additional documentation supporting a principal residence loan.

What can we do now?

If you or your employees have questions about plan loans or how they are administered, contact GuideStone. Be prepared to produce records about leave under the Family and Medical Leave Act or military leave for your employees with loans.

How can GuideStone help?

GuideStone processes loan requests and payments in compliance with all applicable loan rules. For loans from funds maintained by GuideStone, all monitoring of loan payments and all defaults are handled by GuideStone. If your plan is audited, GuideStone can help provide plan loan information and documentation of principal residence loans to the IRS. If your plan has participants who have funds with multiple providers, you will need to coordinate compliance of loan regulations among all providers. GuideStone provides a *Multiple Investment Providers: Things to Consider* document to assist with the various pieces of information that must be coordinated across providers. Through GuideStone's Employer Access portal, GuideStone makes loan information available to employers for loans issued by GuideStone.

Do our required minimum distributions comply with required minimum distribution rules?

Why does it matter?

Federal law requires plan participants to start receiving minimum amounts from their retirement accounts by the later of retirement or the April 1st following attainment of age 70 1/2. If your plan is audited, the IRS will want to make sure that your participants are taking these "required minimum distributions" (RMDs). Participants who don't comply with these rules face an excise tax of 50% of the amount that should have been distributed but was not. That is in addition to applicable income tax. Failing to distribute an RMD can be considered a failure to follow the terms of your plan, an "operational failure" under EPCRS.

What are the general rules?

Employees must begin taking minimum amounts from their retirement income accounts by April 1 of the calendar year following the calendar year in which they reach age 70 ½ or retire, whichever is later. The date minimum distributions must begin is called the "required beginning date" (RBD).

Although a minimum distribution must be calculated for each 403(b) plan, a participant's total minimum distribution amount from all 403(b) plans may be satisfied from distributions received from just one 403(b) plan.

What will the IRS ask if we are audited?

The IRS will ask for the age of employees and former employees. It may ask for other records or data maintained by GuideStone.

What can we do now?

If you're audited, be aware that the IRS will ask for the age of participants so it can determine compliance with these rules.

How can GuideStone help?

To the extent accurate information is in our files, participants in funds maintained by GuideStone are notified about RMDs as they approach the age when these rules may apply. We calculate and distribute RMDs to participants based on accumulations in funds maintained by GuideStone.

Are required notices being distributed on time and do the notices include all required information?

Why does it matter?

The IRS requires all employers, churches, QCCOs and NQCCOs, to provide notices to employees if they have special provisions in their plan. Two of the most popular provisions with notice requirements are the “automatic enrollment” and “safe harbor” provisions. The first provision allows employers to enroll employees by “automatically” withholding tax-sheltered contributions (including Roth contributions) from the employees’ compensation. The second provision allows NQCCO employers to satisfy the Actual Contribution Percentage (ACP) test without the need for numeric testing by satisfying specific plan design requirements.

In addition, an “effective opportunity” notice is required for all NQCCOs. The employer must provide a notice annually to all eligible employees of their right to make and change salary reduction contributions, including Roth contributions, if applicable, to the 403(b) plan.

What are the general rules?

While this manual is not intended to be an exhaustive discussion of the notice requirements, nor is it intended to take the place of competent legal counsel, the following information may help you determine whether you are complying with the notice requirements.

The notices must contain certain information specified by the IRS (see below). The content requirements vary depending on the provision. (GuideStone’s sample notices (see below) are designed to satisfy our understanding of the content requirements.) There are also timing requirements for the various notices, discussed below.

The employer can give employees most notices electronically as long as: (1) the electronic medium is reasonably accessible to the employee; (2) the electronic notice is no less understandable than the written notice; and (3) the electronic notice tells employees that they can obtain the notice on paper free of charge. The IRS has said that advising employees they can print the notice does not satisfy the requirement that employees can obtain a written copy.

Automatic enrollment notice requirements

Under an automatic enrollment feature, the plan generally provides that as of the first date an employee meets the eligibility requirements for salary reduction contributions (generally at the date of hire), the employee is automatically enrolled at a default salary deferral rate determined by the employer unless the employee completes a salary reduction agreement indicating a different rate of deferral (including 0%).

In approving the use of automatic enrollment provisions in plans such as 403(b) plans, the IRS imposed some notice requirements. Here are some highlights of the notice requirements that must be met in order for the employer to reduce an employee’s compensation:

- When employees are first eligible to participate in the plan, they must receive a notice that explains that salary reduction contributions (or Roth contributions) will automatically be reduced from their compensation. This notice must be given sufficiently in advance before salary reduction contributions (including Roth contributions) are deducted from their compensation. The notice must also inform employees that they have the right to opt out of automatic enrollment or elect to contribute a different amount to the plan prior to the first reduction in their compensation. Also, the notice must describe the process for exercising those rights, including any timing rules about those elections. The notice should also explain how contributions will be invested if the employee does not make an investment election.

- If an employer adopts an automatic enrollment feature in an existing plan and elects to include existing participants, employees who are already eligible to participate in the plan must receive the same type of notice described above prior to the effective date of the automatic enrollment feature.
- All employees eligible to make tax-sheltered contributions (including Roth contributions) should be notified annually about how much is being taken from their compensation and about their right to change that amount or stop making any contributions. Again, the notice should include the procedure for exercising that right, the deadline for requesting a change in the amount of the contribution and the investment in which contributions are placed if no investment election is made.

Safe harbor contribution notices for matching plans

For 403(b) plans of NQCCOs, the IRS has provided two "safe harbor" provisions to allow these plans to satisfy the ACP test. Under the two provisions, plans meeting certain contribution and notice requirements will automatically satisfy the ACP test without the need for numeric testing.

Most plans serviced by GuideStone are not safe harbor matching plans, even if they provide for matching contributions. Contact GuideStone if you do not know whether your plan is a safe harbor matching plan or if you are interested in learning more about designing one.

This discussion focuses on the basics of the safe harbor matching contributions notice requirements. (Remember, these notice requirements apply only to employers who are NQCCOs and who have elected to make these special safe harbor contributions.)

To satisfy the safe harbor contribution notice requirements, the employer must provide timely written notice to all eligible employees before the beginning of each plan year and to newly eligible employees on or before their eligibility. The notice must be written in a manner understandable by the average plan participant and specify these items:

- The safe harbor contribution formula used by the employer to satisfy the safe harbor contribution requirements;
- Any other contributions provided under the plan and any conditions for receiving those contributions;
- The plan receiving the safe harbor contributions if those contributions are not made to the same plan as other contributions;
- The definition of compensation used for deferrals;
- The conditions for making tax-sheltered contributions;
- The withdrawal and vesting provisions applicable to plan contributions; and
- Instructions concerning where the participant can receive additional information about the plan.

Effective opportunity to participate in a 403(b) plan

A NCQQO employer must demonstrate that employees are provided with "an effective opportunity" to make salary reduction contributions. The regulations state that the determination is based on all the relevant facts and circumstances such as:

- Notice of the availability of making salary reduction contributions;
- The period of time during which a salary reduction contribution elections may be made; and
- Whether any other rights or benefits are conditioned on the employee making salary reduction contributions.

IRS officials have repeatedly stated the one thing they do not want to hear when auditing an employer is that employees are only told about the ability to make salary reduction contributions if they happen to stop by the Human Resources department and ask. These officials indicated they will ask to see payroll stuffers, posters and emails in order to determine whether an employer has informed employees of the ability to make salary reduction contributions. GuideStone can help provide employers with communication pieces to help provide an effective opportunity notice to its employees about making salary reduction contributions.

Timing

The effective opportunity notice must be provided at an employee's initial eligibility and at least annually thereafter.

The automatic enrollment and safe harbor notices must be provided within a reasonable time before the beginning of each plan year during which automatic enrollment contributions or safe harbor contributions will be made to the plan and at an employee's initial eligibility to participate in the plan. Whether the notice has been provided within a reasonable time is determined based on all the facts and circumstances. In general, however, the timing requirements will be met if the notice is provided not less than 30 days and not more than 90 days prior to the beginning of each plan year.

Each newly eligible participant must be provided with the notice no later than the day he/she becomes eligible to participate in the plan and no earlier than 90 days prior to that time.

For new plans, the notice requirement is the same as for a newly eligible participant. In other words, the notice must be provided by the first day participants are eligible to participate.

A special notice requirement applies when an employer has not decided whether it will make safe harbor non-elective contributions in the following plan year. In that case, the employer must provide a notice within the time frames discussed indicating that the plan may be amended to provide for a non-match safe harbor contribution of at least 3%. This notice must also inform eligible employees that if the plan is so amended, the eligible employees will be notified of the amendment 30 days before the last day of the plan year. If the plan is amended to provide for a non-match safe harbor contribution, a final notice must be provided within 30 days of the end of the plan year informing eligible employees that the non-match safe harbor contribution has been made. There is a similar "maybe" notice that can apply to safe harbor matching contributions.

What does the IRS look for?

The IRS may want to examine notices you have distributed to determine if the content is correct and may ask for documentation of when the notices were mailed and to which employees the notices were mailed. They may also want to talk with certain employees to determine whether notices are being received.

What can we do now?

If your plan is subject to these notice requirements, you should ensure that the employees who are responsible for administering your retirement plan at your organization are aware of the notice requirements and that model notices are available for distribution. Also, it may be helpful to set up a reminder using a calendar or some other system to ensure that timely notices are sent. Additionally, you may want to work with your legal counsel to make sure you and the employees responsible for administering your retirement plan understand the requirements.

How can GuideStone help?

More information about safe harbor plans and sample safe harbor notices can be found on GuideStone's website. Contact your GuideStone relationship manager for sample automatic enrollment notices. In addition, GuideStone's website also has a sample "effective opportunity" notice.

More information about automatic enrollments and 403(b) plans can be found on the IRS website.

If we find a problem with our plan, should we seek legal advice about how to correct it and what kind of documentation to keep?

Why does it matter?

If you find a problem, you may want to seek legal advice before correcting it. Your legal counsel can advise you about the documentation you should keep. If you are audited and the IRS discovers a problem that you have already corrected, you should be prepared to show the IRS how you corrected the problem.

What are the general rules?

The IRS does not have a specific form for employers to use to document self-corrections to their retirement plans. There is some general guidance about the kinds of documentation employers should use to correct problems eligible for self-correction in Revenue Procedure 2016-51. There are specific documentation requirements contained in Revenue Procedure 2016-51 for submitting errors for correction with IRS approval.

What will the IRS ask if we are audited?

The IRS may ask you to show how you have corrected any problems you may have found with your plan.

What can we do now?

If you find any problems, you can seek legal counsel. Your legal counsel will guide you in making corrections and the documentation you should keep. You can use the optional form provided in Appendix A to document any corrections. GuideStone developed this form for your convenience based on information in Revenue Procedure 2016-51, but you should seek your own legal counsel about the best way to document any corrections. This form is merely a sample tool for you to consider and modify.

How can GuideStone help?

GuideStone has provided you with the optional form (Appendix A) that can act as a rough draft to help you develop your own form for documenting any corrections. You may have to seek your own legal counsel, but we will be happy to work with your legal counsel to provide any assistance or records you may need.

NQCCOs

Answer the following questions ONLY if your organization is a NQCCO.

These questions do not apply to churches or QCCOS.

Do our plans comply with the age 50 catch-up availability requirement?

Why does it matter?

If your organization (and any controlled group of which your organization is a part) sponsors only the 403(b)(9) Retirement Plan prepared by GuideStone, then your organization will meet the universal availability requirement for age 50 catch-up contributions as long as your organization's rules and procedures adhere to the plan provisions. However, you should be aware of this requirement in case you are audited. GuideStone recognizes that your organization may offer retirement plans from other vendors and that your arrangements with other vendors are outside the scope of our assistance. We want to call your attention to the universal availability requirement for age 50 catch-up contributions in case your plan or other 403(b) plans are audited.

What are the general rules?

Under section 414(v) of the Code, eligible participants who are age 50 or over in a tax year may make up to an additional $6,000 age 50 catch-up contributions for 2017 if catch-up contributions are allowed by their retirement plan. Here are the amounts your organization needs to know for various years:

2002	$1,000
2003	$2,000
2004	$3,000
2005	$4,000

2006 - 2008	$5,000
2009 - 2014	$5,500
2015- 2016	$6,000
2017	$6,000

The 403(b)(9) Retirement Plan prepared by GuideStone permits these age 50 catch-up contributions, but if you offer other retirement plans, you may have to address these universal availability requirements. Under the universal availability requirement for age 50 catch-up contributions, if an employer offers any retirement plan allowing age 50 catch-up contributions, then all of the employer's retirement plans must allow age 50 catch-up contributions. The term "all" employer plans apparently includes plans of other employers within a controlled group. With respect to separate contracts under a single plan, as long as all eligible participants can make salary reduction catch-up contributions to one contract, not all contracts must have the age 50 catch-up contributions available.

What will the IRS ask if we are audited?

The IRS will look at your plan documents and any underlying contracts to see if they comply with the universal availability requirement for age 50 catch-up contributions. Your rules and procedures may also be examined.

What can we do now?

If your organization offers retirement plans through other vendors, you may wish to consult your tax or legal counsel regarding the universal availability requirement for age 50 catch-up contributions and the retirement plans of your organization. Your adviser could help you in determining if or how this requirement might apply to your particular arrangements with other vendors.

Remember, if the 403(b)(9) Retirement Plan prepared by GuideStone is the only retirement plan offered by your organization (and any controlled group of which your organization is a part) then your organization will meet the universal availability requirement for age 50 catch-up contributions as long as your organization's rules and procedures adhere to the plan provisions.

How can GuideStone help?

GuideStone can help your organization by providing information related to the universal availability requirement for age 50 catch-up contributions. If you have questions, or if we may be of assistance to your adviser, please contact us at **1-888-98-GUIDE** (1-888-984-8433) or by email at *gscompliance@GuideStone.org*. In addition, 414(v) regulations can be found on the IRS website.

Do we understand how to determine if we have any highly compensated employees?

Why does it matter?

Nondiscrimination rules for NQCCOs are designed to prevent retirement plans from primarily benefiting highly compensated employees (HCEs). These rules are extremely complex and these questions merely highlight some of the issues for NQCCOs. As discussed in the next question, there are nondiscrimination rules for salary reduction and non-salary reduction contributions (employer matching and non-matching contributions and employee tax-paid contributions or irrevocably elected salary reduction contributions required at initial eligibility to participate in the plan or as a condition of employment). If a NQCCO does not have any HCEs, it automatically passes the nondiscrimination tests for non-salary reduction contributions. If your organization has HCEs, testing your plan is the only way to be sure you meet the nondiscrimination requirements unless the plan is designed to "automatically" satisfy the requirements. If a plan fails the nondiscrimination requirements, the IRS could take drastic action. The plan could be disqualified, causing adverse tax consequences to all employees, across all vendors and contracts of the employer.

What are the general rules?

The statutory definition, that is the definition under Code section 414(q), must be used to define HCEs.

Statutory HCE definition

The statutory definition for 2016 is any employee who:

- During the current plan year or prior plan year is a 5% owner (not applicable to tax-exempt employers), or
- During the 2014 plan year received compensation in excess of $120,000; and, if the employer elects, is in the top 20% paid group.

The $120,000 compensation figure for determining HCEs is indexed each year. Here are the amounts your organization needs to know for various years:

1999 - 2000	$80,000
2001 - 2002	$85,000
2003 - 2004	$90,000
2005	$95,000
2006 - 2007	$100,000

2008	$105,000
2009 - 2011	$110,000
2012 - 2014	$115,000
2015 – 2016	$120,000
2017	$120,000

In general, in deciding which employers to include when determining HCEs, all tax-exempt employers of which at least 80% of the directors or trustees are either representatives of or are directly or indirectly controlled by the employer contributing to the plan, along with any for-profit entities owned by the employer contributing to the plan, are considered one employer for purposes of determining HCEs.

What will the IRS ask if we are audited?

The IRS will look at records and data about employee compensation to determine if you have properly identified your employees as HCEs or non-highly compensated employees (NHCEs). They might also ask you for "controlled group" information.

What can we do now?

Make sure you understand how to determine if you have HCEs. Set up a reminder at the beginning of each year to review all of the previous year's compensation figures so you can identify all HCEs in a timely manner.

How can GuideStone help?

GuideStone can give you more information about identifying HCEs in our free publication, *Guide to Nondiscrimination Testing for Section 403(b) Plans*, which can be found on GuideStone's website at *www.GuideStone.org*. If you have any questions, call GuideStone at **1-888-98-GUIDE** (1-888-984-8433) or email us at *gscompliance@GuideStone.org*.

Do we comply with nondiscrimination rules?

Why does it matter?

Generally, the nondiscrimination rules are designed to ensure that retirement plans are not designed or do not operate primarily to benefit HCEs. If a plan fails the nondiscrimination rules, the IRS could take drastic action. The plan could be disqualified, causing adverse tax consequences to all employees.

What are the general rules?

NQCCOs are subject to complex nondiscrimination rules and the information provided here is only a general discussion of the requirements. The exact application of the rules to your plan may be different. A more detailed discussion of the nondiscrimination requirements applicable to 403(b) plans is found in the *Guide to Nondiscrimination Testing for Section 403(b) Plans*, a GuideStone publication available on GuideStone's website.

Statutory rules under 403(b)(12)

Under the statutory rules, separate nondiscrimination rules apply to salary reduction and non-salary reduction contributions (employer matching and non-matching contributions and employee tax-paid contributions or irrevocably elected salary reduction contributions required at initial eligibility to participate in the plan or as a condition of employment).

Statutory rules for salary reduction contributions

Generally, under the statutory rules of Code section 403(b)(12)(A)(ii) and the related regulations, the nondiscrimination requirements for salary reduction contributions require that if an employer's plan permits any employee to make salary reduction contributions (including Roth contributions), all employees must be allowed to make salary reduction contributions. These rules apply regardless of the employee's age or how long they have worked for the employer. This is called "universal availability."

The following employees may be excluded from the statutory nondiscrimination test for salary reduction contributions:

- Employees who are permitted to make salary reduction contributions under other retirement programs of the employer such as 401(k), 403(b) or governmental 457(b) plans; and
- Non-resident aliens with no U.S. source earned income.

If provided for in the employer's plan, in addition to the excluded employees above, the following employees may be excluded from the statutory nondiscrimination test for salary reduction contributions:

- Employees who normally work less than 20 hours a week[1];
- Employees who do not make salary reduction contributions of at least $200 annually; and
- Student employees who are enrolled and regularly attending classes at the employer (for educational institutions only).

---

[1]*After the employee's first year of employment, employers who wish to use this exclusion will be required to look back at the end of each plan year or each excluded employee's anniversary year (if stated in the plan) to determine if anyone excluded under this category worked more than 1,000 hours. Therefore, employers with this plan provision should have counted hours in the previous year to determine if anyone met the 1,000 hours during that year. If so, the employee should be allowed to make elective deferrals. The look-back period for a new hire is different and does not occur at the end of the employee's first anniversary date. The IRS conducted a helpful webcast on this topic which is worth reviewing, see Appendix C.*

As part of the universal availability requirement, the IRS wants to ensure that employers are taking steps to make all employees aware of their right to participate in the retirement plan. Under the new regulations, employers must be able to demonstrate that employees are provided with an “effective opportunity” to make salary reduction contributions, including Roth contributions, if available in the plan.

Another part of the universal availability requirement is called the “anti-conditioning” or “contingent benefit rule.” Under this rule, no other right or benefit (other than certain benefits such as employer matching contributions to the plan) can be conditioned (directly or indirectly) on making or not making salary reduction contributions to the plan. For example, an employer cannot say it will make contributions to a nonqualified deferred compensation plan if the employee does not make tax sheltered contributions to the 403(b) plan.

Statutory rules for non-salary reduction contributions

Other nondiscrimination rules apply to non-salary reduction contributions (employer matching and non-matching contributions and employee tax-paid contributions or irrevocably elected salary reduction contributions required at initial eligibility to participate in the plan or as a condition of employment).

Code section 403(b)(12)(A)(i) requires non-salary reduction contributions to pass a number of tests. However, if an employer has no HCEs, the plan automatically passes these tests:

- The General Nondiscrimination Test under Code section 401(a)(4) which requires a plan to provide that contributions or benefits do not unlawfully discriminate in favor of HCEs.
- The Permitted Disparity Test under Code section 401(a)(5) which applies to plans that provide different contribution rates for compensation above and below a certain salary level. This test does not apply to employer matching contributions.
- The Maximum Compensation Limit under Code section 401(a)(17) which requires the employer to limit the amount of compensation on which plan contributions are based. Here are the amounts your organization needs to know for various years:

1999	$160,000
2000 - 2001	$170,000
2002 - 2003	$220,000
2004	$205,000
2005	$210,000

2006	$220,000
2007	$225,000
2008	$230,000
2009 - 2011	$245,000
2012	$250,000

2013	$255,000
2014	$260,000
2015 - 2016	$265,000
2017	$270,000

  See, “If our organization is a NQCCO, do we understand that contributions can be limited by employee compensation?” for more information about this requirement.

- The Actual Contribution Percentage Test under Code section 401(m) which tests employer matching contributions and employee tax-paid contributions. The purpose of this test is to make sure that the average contribution percentage for eligible HCEs does not exceed the average contribution percentage for all other eligible employees by more than a certain percentage.
- The Coverage Test under Code section 410(b) which compares the percentage of NHCEs benefiting under a plan to the percentage of HCEs benefiting. The difference between the percentages benefiting in each group must meet a certain ratio.

Some employees are considered “excludable” from the nondiscrimination requirements for non-salary reduction contributions. In other words, if the employer’s plan contains the exclusion, they do not have to be considered when applying the rules. While the employees considered excludable vary slightly with each test, they include:

- Employees who have not satisfied permissible age and service requirements under the plan;
- Certain students (for educational institutions only); and
- Employees who normally work less than 20 hours a week.[2]

The following exclusions are always available, regardless of whether the employer’s plan contains the exclusion:

- Union employees who are the subject of good-faith bargaining; and
- Non-resident aliens with no U.S. source earned income.

Statutory rules for employer determination

The first step in nondiscrimination testing for a NQCCO is determining who the employer is for this purpose.

All tax-exempt employers of which at least 80% of the directors or trustees are either employees of or are directly or indirectly controlled by the employer contributing to the plan and any for-profit entities owned by the employer contributing to the plan are considered one employer.

In addition, under the statutory rules, it is possible that “the employer” for testing purposes could include the common law tax-exempt employer and another organization that is providing “management functions” for the common law tax-exempt employer as long as there is a degree of common ownership.

Obviously, the rules for determining who the employer is for testing purposes are too complex to be explained thoroughly here. This is why we recommend that you discuss this issue with your legal counsel.

What will the IRS ask if we are audited?

The IRS will want to make sure that you have properly identified your HCEs. (See, “If our organization is a NQCCO, do we understand how to determine if we have any highly compensated employees?”) It will also ask for data to determine if your plan complies with any applicable nondiscrimination rules. The IRS will want to make sure that your plan makes salary reduction contributions universally available to employees. It may ask to see posters or payroll stuffers notifying employees of their ability to make salary reduction contributions. The IRS has stated it will interview employees to determine whether they are aware of their ability to make salary reduction contributions to the plan. If the IRS audits a NQCCO, it will ask for documentation showing that your organization complies with all nondiscrimination and coverage rules and may want to examine the data used to perform the tests. A sample *IRS Information Document Request* form indicates the IRS will request copies of test reports.

What can we do now?

Your organization needs to be sure it knows if it is a NQCCO and that it can identify its HCEs and NHCEs. You need to make sure that you administer your plan the way it is written. If nondiscrimination testing is required, you should be sure testing is done on a timely basis by GuideStone, by a third party with experience in testing church plans, or by the employer if you are comfortable doing your own testing. You may want to review the ways in which you provide employees with notification of their ability to make salary reduction contributions. You may want to consider creating a form for employees to sign showing that they have been informed of their eligibility to make salary reduction contributions but have chosen not to make them.

---

[2]*If, during the employee’s first year of employment, the employee is reasonable expected to work 20 hours per week then, for each plan year after the initial year of employment, employers who wish to use this exclusion will be required to look back at the end of each plan year (or each excluded employee’s anniversary year, if stated in the plan) to determine if anyone excluded under this category worked more than 1,000 hours. Therefore, employers with this plan provision should have counted hours in the previous year to determine if anyone met the 1,000 hours during that year. If so, the employee would NOT be excluded from employer contributions. The look-back period for a new hire is different and does not occur at the end of the first anniversary date.*

How can GuideStone help?

GuideStone helps employers design their plans to satisfy the universal availability requirement. We also provide information about nondiscrimination rules and offer testing services to NQCCOs. See GuideStone's *Guide to Nondiscrimination Testing for Section 403(b) Plans* for more information. GuideStone has a sample "effective opportunity" notice that your organization can modify and send to your eligible employees to satisfy this requirement. Upon request, GuideStone can provide you with materials such as memos, e-mail text, posters announcing meetings with GuideStone employees, payroll stuffers, and other items that you can use to notify your employees of their ability to make salary reduction contributions to the plan. Contact your GuideStone Relationship Manager for information about what is available from GuideStone to help you provide meaningful notice. If you have any questions, call GuideStone at **1-888-98-GUIDE** (1-888-984-8433) or email us at *gscompliance@GuideStone.org*.

Do we understand that contributions can be limited by employee compensation?

Why does it matter?

Nondiscrimination rules limit the amount of compensation NQCCO employers can consider when making contributions to an employee's retirement account. These rules are designed to prevent retirement plans from primarily benefiting HCEs. If a plan fails the nondiscrimination requirements, the IRS could take drastic action. The plan could be disqualified, causing adverse tax consequences to all employees.

What are the general rules?

Code section 401(a)(17) limits the amount of compensation an employer can consider when making contributions to a retirement account. Here are the amounts your organization needs to know for various years:

1999	$160,000
2000 - 2001	$170,000
2002 - 2003	$220,000
2004	$205,000
2005	$210,000

2006	$220,000
2007	$225,000
2008	$230,000
2009 - 2011	$245,000
2012	$250,000

2013	$255,000
2014	$260,000
2015 - 2016	$265,000
2017	$270,000

Compensation, for this purpose, is defined by the plan and may include the minister's housing allowance.

What will the IRS ask if we are audited?

The IRS may look at any records or data about employee compensation and all retirement plan contributions to determine if you have properly limited contributions based on the compensation limit of Code section 401(a)(17).

What can we do now?

Make sure you understand how compensation is defined by the plan and that you are not contributing more than you should on behalf of employees. If you need help or find a problem, contact GuideStone. You may be able to correct it.

How can GuideStone help?

GuideStone provides information and testing services to NQCCOs. Refer to GuideStone's *Guide to Nondiscrimination Testing for Section 403(b) Plans* for more information. If you have any questions, call GuideStone at **1-888-98-GUIDE** (1-888-984-8433) or email us at *gscompliance@GuideStone.org*.

Appendix

Appendix A – Self-Correction Program form for operational failures

Employers may use this optional form as a rough draft to help develop their own form for documenting corrective action taken under the Self-Correction Program (SCP) of Revenue Procedure 2016-51. This optional form is provided for convenience only and has not been approved by the IRS. Employers should consult their legal counsel before documenting plan failures.

SCP is not available for all plan failures, only "operational failures" as defined in Revenue Procedure 2016-51. In addition, it is not available to correct operational failures that are egregious or that relate to a diversion or misuse of plan assets or that are related to an abusive tax avoidance transaction. Finally, SCP is only available to employers who have "established compliance practices and procedures"; however, the IRS has informally indicated that practices and procedures of a vendor or record keeper (such as GuideStone) may be substituted for practices and procedures of the employer. Revenue Procedure 2016-51 is available on the IRS website.

Section one: Audit status

Was the plan under audit when the failure was discovered?

Retirement plans may be corrected if they are under audit. SCP is available to plans under audit, but only for insignificant operational failures or for correction of significant operational failures that have been substantially completed before the audit begins. If the plan is under audit, please consult your legal counsel before answering additional questions.

Section two: Type of failure

Only "operational failures" may be corrected using SCP. Under Revenue Procedure 2016-51, an "operational failure" means a failure to follow the terms of the plan. Below is a partial list of what might qualify as an operational failure. Please consult your legal counsel for additional information. Check the box beside the kind of failure on the list below and see the question in the manual for more information.

For all employers:

- ☐ Failure to base contributions on the correct definition of compensation (e.g. the plan *excludes* bonuses from compensation but employer contributions are based on compensation including bonuses).
- ☐ Failure to provide contributions for eligible participants (e.g. the plan calls for a 3% employer non-elective contribution for all employees who are 21 and have one year of service, but an eligible employee failed to receive the non-elective contribution).
- ☐ Failure to implement a participant's salary reduction (including Roth contributions) election.[3]
- ☐ Failure to limit the amount distributed to a participant who is still in-service to only elective deferrals (employer contributions were distributed to a participant while the participant was in-service when the plan does not allow in-service distributions of employer contributions).[4]
- ☐ Failure to satisfy the distribution restrictions on salary reduction contributions under Code section 403(b)(11). See the question, "Are distributions from employee retirement accounts being made properly?"
- ☐ Failure to pay required minimum distributions under Code section 403(b)(10). See the question, "Do our required minimum distributions comply with required minimum distribution rules?"

[3] Also see Revenue Procedure 2015-28.
[4] Also see Revenue Procedure 2015-27.

- ☐ Failure to give employees the right to elect a direct rollover or give a meaningful notice of that right under Code section 403(b)(8). See the question, “Do our rollovers and exchanges/transfers comply with rollover and exchange/transfer rules?”
- ☐ Failure to satisfy the 402(g) limit on salary reduction contributions. See the question, “Are contributions to employee retirement accounts within legal limits?”
- ☐ Failure to limit contributions under Code section 415. See the question, “Are contributions to employee retirement accounts within legal limits?”
- ☐ Any other failure to satisfy the 403(b) plan rules when the failure results in the plan’s loss of 403(b) status.

For NQCCOs only:

- ☐ Failure to satisfy the requirement for universal availability of salary reduction contributions under Code section 403(b)(12)(A)(ii). See the question, “Do we comply with nondiscrimination rules?”
- ☐ Failure to satisfy the ACP test under Code section 401(m). See the question, “Do we comply with non-discrimination rules?”
- ☐ Failure to satisfy the limit on compensation under Code section 401(a)(17). See the question, “Do we understand that contributions can be limited by employee compensation?”

If you have not checked one of these boxes, self-correction may not be available. Please consult your legal counsel before completing the rest of the form.

Section three: Abusive tax avoidance transactions

If the operational failure is directly or indirectly related to an abusive tax avoidance transaction, SCP is not available.

Section four: Significant and insignificant operational failures

Here are some factors to consider in determining whether an operational failure under a plan is insignificant:

1. Whether other failures occurred during the period being examined (for this purpose, a failure is not considered to have occurred more than once merely because more than one participant is affected by the failure);
2. The percentage of plan assets and contributions involved in the failure;
3. The number of years the failure occurred;
4. The number of participants affected relative to the total number of participants in the plan;
5. The number of participants affected as a result of the failure relative to the number of participants who could have been affected by the failure;
6. Whether correction was made within a reasonable time after discovery of the failure; and
7. The reason for the failure (for example, data entry error, transposing numbers or minor arithmetic errors).

In limited cases, plan problems can be corrected under SCP even if they are not insignificant. However, correction of significant operational failures must be completed or substantially completed by the last day of the second plan year for which the failure occurred. In the case of an operational failure of the ACP Test (explained earlier), the employer has until the last day of the third plan year following the year of the failure.

Section five: Failure and self-correction information

Describe the failure and any relevant background information. Include details such as when the failure occurred, when it was discovered, when it was corrected, how many participants were affected relative to the total number of participants, the dollar amount of the failure relative to the total plan assets, number of years the failure occurred, reason for the failure, etc. Describe the correction method used, the amount of the correction, earnings calculation method used, attempts to find participants, etc. Use this space or attach additional documents. Also, attach documentation of how your organization's practices or procedures are designed to address and prevent the failure from re-occurring. The IRS has informally indicated that practices and procedures of a vendor or record keeper (such as GuideStone) may be substituted for practices and procedures of the employer.

Employer plan name: ____

Correction and documents approved by: ____

Print name: ____

Signature: ____

Title: ____

Date: ______/______/______

Appendix B – GuideStone Resources

GuideStone provides a *Status Certification Form* that can be used to help an employer determine its status as a NQCCO.

GuideStone provides a sample notice that employers may modify and use to send to all eligible employees informing them of their opportunity to make deferrals into the 403(b) plan.

GuideStone provides a Retirement Contribution Agreement that employers may use as a Salary Reduction Agreement.

GuideStone provides a *Guide to Nondiscrimination Testing for Section 403(b) plans* that you may find helpful.

GuideStone provides a brochure titled *Multiple Investment Providers: Things to Consider* that you may find helpful.

GuideStone provides a webpage that lists resources for 403(b) regulations.

GuideStone provide an Employer Access Portal.

GuideStone provides information on the annual effective opportunity notice.

Appendix C – IRS Resources

Correcting Plan errors
www.irs.gov/Retirement-Plans/Correcting-Plan-Errors

Compliance Check-Up
www.irs.gov/Retirement-Plans/Have-You-Had-Your-Retirement-Plan-Check-Up-This-Year%3F

403(b) Plans
www.irs.gov/Retirement-Plans/Retirement-Plans-FAQs-regarding-403(b)-Tax-Sheltered-Annuity-Plans

403(b) Checklist
http://www.irs.gov/pub/irs-pdf/p4546.pdf

Audit Guide
https://www.irs.gov/retirement-plans/ep-examination-guidelines

Charity and Nonprofit Audits: In Person (Field) Examination Audit
https://www.irs.gov/charities-non-profits/in-person-field-examination-audit-exempt-organizations-audits

EPCRS
https://www.irs.gov/retirement-plans/correcting-plan-errors

EPCRS Brochure
http://www.irs.gov/pub/irs-pdf/p4224.pdf

Taxpayer Documentation Guide
https://www.irs.gov/retirement-plans/ep-team-audit-epta-program-taxpayer-documentation-guide

IRS Publication 571
http://www.irs.gov/pub/irs-pdf/p571.pdf

Information on Automatic Enrollments and 403(b) Plans
www.irs.gov/pub/irs-tege/sample_notice.pdf.

414(v) regulations
www.irs.gov/irb/2003-37_IRB/ar11.html.

Revenue Procedure 2016-51
https://www.irs.gov/pub/irs-drop/rp-16-51.pdf

IRS Webcast on 1,000 hour requirements
http://www.irsvideos.gov/UnderstandingTheUniversalAvailabilityRulesInA403bRetirementPlan-WebinarMay192016/

GuideStone®
FINANCIAL RESOURCES
of the Southern Baptist Convention

2401 Cedar Springs Road, Dallas, TX 75201-1498
1.888.98.GUIDE • www.GuideStone.org