

# QUALIFIED RETIREMENT PLAN

ADMINISTRATION MANUAL



GuideStone®

# Qualified Retirement Plan Administration Manual

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## Overview

The purpose of this manual is to provide plan sponsors with basic information needed to coordinate administration and benefits for your retirement plans, including how to use the Employer Access Program<sup>®</sup> (EAP) to accomplish administrative tasks, forms needed to request services and appendices addressing unique features of the various types of qualified plans GuideStone<sup>®</sup> recordkeepers, such as 401(k), 403(b)(7) and Money Purchase Pension Plans.

In addition, this manual will help plan sponsors develop and maintain internal policies necessary to document administrative practices. Both the Internal Revenue Service (IRS) and Department of Labor (DOL) will review a plan sponsor's policies, procedures and internal controls during an audit. It is essential that every plan sponsor maintains procedures and controls (and follow those procedures and controls). This manual will assist you in documenting your internal procedures specific to GuideStone's services.

Not all qualified plans are Employee Retirement Income Security Act of 1974 (ERISA) covered plans, which are subject to both ERISA rules and *Internal Revenue Code* (Code) rules. Some qualified plans are church plans that must comply with the applicable Code rules but not the ERISA rules. [Appendix A](#) addresses ERISA-specific issues that do not apply to church plans, and [Appendix E](#) addresses administration issues unique to qualified church plans.

**Important note:** Nothing in this manual should be construed as overriding plan provisions. Any conflict between this manual and your plan (including any rules or procedures established by GuideStone to administer the plan) shall be resolved in favor of the plan document, not this manual. Call your relationship manager at GuideStone if you have any questions about the information in this manual.

### How to Use This Manual

The manual provides guidelines that you should follow to help you fulfill your administrative duties under the plan. The manual can be an effective training tool for persons who become responsible for the administration of the plan as well as a reference guide for those who are already familiar with its operation.

Because the purpose of the manual is to describe the procedures for all employers, it does not contain any procedures that are specific to an individual employer (e.g., internal procedures for reconciling contributions to payroll records). You should develop and maintain written desk procedures that describe other step-by-step procedures you follow in addition to the procedures contained in this manual.

## Maintaining Your Plan's Qualified Status

The IRS and DOL require that a plan must be in writing. It is important that your practices and procedures conform to your plan documents, so you should understand the provisions of the plan thoroughly. Your plan may consist of a single document, or it may consist of a *Basic Plan Document* plus an *Adoption Agreement*. In addition, you will have either a *Trust* or *Custodial Agreement*. Please log into EAP for the latest copy of plan-related documents.

Always make sure your plan documentation is accurate and complete and reflects the operation of the plan. Keep original documents in a master file, but maintain copies of all plan documentation in a working file for day-to-day administration of the plan. Among any other plan-related items, your master file should include **all current and prior versions** of the following documents:

- *Basic Plan Document*
- *Adoption Agreement* (if applicable)
- *Recordkeeping Services Agreement*
- *Trust Agreement* or *Custodial Agreement*
- *Summary Plan Description (SPD)* or *Summary of Plan Provisions*
- *Information Sharing Agreement* (if a 403(b) plan with more than one investment provider)
- Loan program documents
- Resolutions of all actions taken regarding the plan
- Amendments to the plan, if any
- Determination, advisory or opinion letters from the IRS
- *Investment Policy Statement*
- Minutes and other documents related to fiduciary actions taken by the plan administrator or other plan fiduciaries
- Any other important plan information:
  - Letters to or from GuideStone regarding the plan, if any
  - IRS letters including *Audit Closing Agreements*, if any
  - Written confirmations of interpretations of provisions, if any

## Mandatory Plan Provisions

The IRS website provides information on the types of provisions that must be in a qualified plan. Most information on the IRS website relates to ERISA plans but can be helpful for all qualified plan administrators. Use the following links to access the appropriate IRS web page:

- 401(k) – [irs.gov/Retirement-Plans/Operating-a-401k-Plan](https://www.irs.gov/Retirement-Plans/Operating-a-401k-Plan)
- 403(b)(7) –
  - Mandatory plan provisions – [irs.gov/Retirement-Plans/IRC-403\(b\)-Tax-Sheltered-Annuity-Plans-Written-Program-Mandatory-Provisions](https://www.irs.gov/Retirement-Plans/IRC-403(b)-Tax-Sheltered-Annuity-Plans-Written-Program-Mandatory-Provisions)
  - Optional provisions – [irs.gov/retirement-plans/irc-403b-tax-sheltered-annuity-plans-establish-a-403b-plan](https://www.irs.gov/retirement-plans/irc-403b-tax-sheltered-annuity-plans-establish-a-403b-plan)
- Money Purchase Pension Plan – [irs.gov/Retirement-Plans/Choosing-a-Retirement-Plan-Money-Purchase-Plan](https://www.irs.gov/Retirement-Plans/Choosing-a-Retirement-Plan-Money-Purchase-Plan)

Church plans are not subject to **some** of the IRS requirements. See [Appendix E](#) for a discussion of church 401(k) and 403(b) plans.

## Determination Letters

A determination letter is an official statement from the IRS indicating the 401(k) or Money Purchase Pension Plan meets the requirements to be a qualified plan and therefore qualifies for favorable tax treatment. While the IRS does not require plan sponsors to obtain a determination letter, most plan sponsors prefer having this assurance of qualification. One of the primary advantages to having a determination letter from the IRS is that the IRS generally will not disqualify a plan retroactively for faulty plan language if that plan has received a determination letter. Moreover, having a determination letter provides a remedial amendment period in which a disqualifying provision in the plan (or omissions from the plan) can be corrected without disqualifying the plan. In addition, having a determination letter allows the plan to self-correct using the Employee Plans Compliance Resolution System (EPCRS). Visit the [IRS website](#) for more information from the IRS regarding determination letters.

GuideStone recommends that all qualified plans have a favorable determination letter. However, if a plan sponsor adopts a preapproved plan, such as a volume submitter plan (VSP), using only provisions in the VSP (sometimes referred to as a word-for-word adopter), the plan can rely on the advisory letter of the VSP. Generally, there are cost-saving advantages to adopting a preapproved plan.

A plan sponsor **cannot** rely on the VSP advisory letter if the VSP is not adopted word-for-word or if the plan is a 401(a) church plan. If any modifications are made to a 401(a) VSP document, you should obtain a favorable determination letter from the IRS. The IRS has a streamlined procedure for 401(a) VSPs to obtain a determination letter.

The IRS no longer accepts determination letter applications from word-for-word adopters of VSP plans or off-cycle filings for any plan. Effective January 1, 2017, the IRS will no longer accept determination letter applications from individually designed plans except in limited circumstances. Determination letters for individually designed plans will only be issued with respect to initial plan qualification (new plans) and qualification upon plan termination.

Previously, 403(b) plans were not included in the IRS preapproved plan program. In March 2017, the IRS issued a list of preapproved plans for 403(b) plan sponsors. GuideStone has received a favorable determination letter for 403(b) plans. If you have a 403(b) plan, you will be contacted in 2020 about moving your plan document into the new preapproved 403(b) plan document. This new program will allow 403(b) plan sponsors to have the same assurance regarding the qualification of the plan document as 401(a)/401(k) plans.

## Amending the Plan

Change is a constant in today's legal environment, and this is especially true for retirement plans. This means that plan sponsors must frequently amend their plans to keep up with legislative and regulatory changes. GuideStone stays abreast of regulatory and legislative changes that affect your plan and will assist you with meeting this requirement by notifying you of these changes. However, it is your responsibility to ensure the plan document remains compliant.

If you need to change any of the provisions of your plan to better achieve your overall benefits objectives, contact your GuideStone relationship manager at least 60 days prior to the date the amendment will be considered for approval by the plan's governing body. This will allow time for you and your legal counsel to



review the documents for accuracy and request any changes to the documents. We will send you the documents necessary to amend your plan along with either an SPD or *Summary of Material Modification* (SMM), as necessary.

Except for amendments due to legislative and regulatory changes, best practice is to amend your plan on a prospective basis.

Please note that discretionary amendments are subject to a fee as described in your fee schedule and is payable whether or not you adopt the amendment.

### **Retirement Plan Nondiscrimination Testing (NDT)**

All qualified plans, including 403(b)(7) plans, must comply with the NDT rules applicable to that plan. If the plan has no highly compensated employees benefitting under the plan, the plan will pass automatically. If highly compensated employees benefit under the plan, the plan must satisfy NDT each year either by plan design (i.e., a safe harbor plan) or by numerical testing.

All 401(k) plans that include matching and/or after-tax contributions, including church plans, must satisfy both the Actual Contribution Percentage (ACP) test and the Actual Deferral Percentage (ADP) test. A 401(k) plan is also subject to the top-heavy testing requirements. If a 403(b) plan is subject to testing, it must satisfy the ACP test since it must comply with the universal availability rules. Other tests, including the coverage test and rate group test, may also apply.

GuideStone can help you design a plan that satisfies NDT. GuideStone is available to provide testing services for a fee for plans that must test, or you can enlist the services of another provider to perform the testing for you. You should keep all of your testing results on file in case of audit by the IRS or DOL.

## Fiduciary Responsibilities

ERISA imposes strict requirements for those who are fiduciaries of the plan. The DOL is responsible for issuing and monitoring ERISA fiduciary standards. There is a lot of reference material available to ERISA plan sponsors regarding fiduciary responsibility, and it is essential for plan administrators to understand the requirements and comply. A more extensive treatment of ERISA fiduciary responsibilities is in [Appendix A](#), or you can read the DOL's *Meeting Your Fiduciary Responsibilities* booklet. Additional materials are available through your EAP's "Fiduciary Corner" link found under the "Resources" tab.

Non-ERISA plans are not required to meet ERISA fiduciary standards, but plans are subject to state fiduciary laws. It is essential for non-ERISA plan sponsors to understand and comply with state fiduciary law. Some practitioners consider ERISA fiduciary practices to be a model for non-ERISA plans.

### Investment Committee and Investment Policy – ERISA Plans

ERISA plan fiduciaries are responsible for selecting and monitoring the investment alternatives available under the plan. At the core of this responsibility is the *Investment Policy Statement*. The *Investment Policy Statement* details the investment structure available to participants, including the types of asset classes and styles included in the lineup. The policy should also outline the criteria used by the committee to select and procedures to monitor each fund. Once the criteria are established, the committee should follow the established investment procedures and document processes regarding investment decisions. More information regarding investments and ERISA can be found in [Appendix A](#).

### Know What Your Plan Says and What It Means

As a plan fiduciary, you cannot follow the plan provisions if you do not understand what each provision means and how those provisions are put into effect through your operational processes. Both the IRS and the DOL hold the plan sponsor responsible for the proper operation of the plan. The first step to proper operation is to read and understand all of the documents related to your plan. If you have any questions about how to interpret your plan, please contact your benefits legal counsel or GuideStone relationship manager for assistance.

### Operational Procedures and Internal Controls

Once you understand the plan provisions, you should create operational procedures for your staff to follow in implementing the plan. The procedures should emphasize compliance with both the plan provisions and the IRS/DOL regulations. If the IRS or DOL audits your plan, the auditors will review these procedures prior to the audit. If you have multiple investment providers, your procedures should address how to perform each function with each provider, such as remitting contributions, requesting distributions, etc.

At a minimum, you should have procedures for:

- Determining eligibility
- Plan entry dates
- New participant education/processing (e.g., when a newly eligible employee should be notified, what should be in the retirement packet provided, due date for material, etc.)
- Determining compensation used for calculation of contributions, including compensation limits
- How to remit contributions to each provider
- How to request loans and distributions from each provider

- How and when to notify each provider when an employee terminates service

You should review each procedure whenever you amend the plan and on a recurring scheduled basis to ensure the procedures reflect actual operations and comply with plan provisions. Be sure you document the results of your review (date conducted, scope, findings and any corrections) in case of audit. Documentation proves that you are fulfilling your fiduciary duties to administer the plan correctly and will help you in the event of a DOL audit.

In addition to developing operational procedures, you should develop internal control procedures to ensure your operational procedures are followed and that amounts remitted to or distributed from the plan comply with plan provisions and regulations. Internal controls could include running periodic reports to reconcile payroll with contributions remitted to the plan and confirm that employees were enrolled in the plan at the proper time.

Your EAP has a reporting functionality that allows you to schedule automatic reports on a recurring basis and email you when the report is ready for review. If you are unsure how to use EAP reporting, contact your retirement operations administrator or your relationship manager. In addition to the reporting functionality, GuideStone publishes an annual checklist for 401(k) and 403(b)(7) plans to help you review key points of plan administration on a recurring basis. These checklists can be found under “Forms and manuals” at [GuideStone.org/LearningCenter/EmployerResources/AdministratorSupport](http://GuideStone.org/LearningCenter/EmployerResources/AdministratorSupport).

The IRS has additional material that can assist you in developing both procedures and internal controls: [irs.gov/Retirement-Plans/Policies,-Procedures-and-Internal-Controls-Self-Audit](http://irs.gov/Retirement-Plans/Policies,-Procedures-and-Internal-Controls-Self-Audit).

### **Training for Staff**

Once you have your operational procedures in place, you should conduct periodic training for all personnel who perform administrative functions for the plan. Document the training (who attended as well as topics covered) so you can show the DOL and the IRS that you are doing your due diligence as a plan fiduciary. The training should include a review of the plan provisions as well as the operational procedures to implement the provisions you are training. This activity gives opportunities for cross-training, asking questions and identifying procedural gaps to increase both accuracy and efficiency.

### **Multiple Investment Providers or Multiple Plans of a Single Employer**

It is common for plans to have multiple providers for their retirement program. It is also typical for a provider to require or prefer that the plan sponsor use the provider’s retirement plan documents. As a result, plan sponsors may have multiple plan documents and/or multiple providers. Plan sponsors should be aware of the implications of operating a retirement program that includes assets with more than one provider even if a provider no longer receives contributions from the plan sponsor.

If any of the following apply to your retirement plan program, go to the “Multi-provider Plans” section of [Appendix C](#) for specific information about managing your multi-provider situation:

- You have multiple providers under a single plan.
- You have multiple plans for your employees.
- You had prior plans or former providers where there are still plan assets even though you no longer allow contributions to go to those providers.

## Notification of Audit

It is always best to prepare for an audit well in advance of receiving a notice. While the IRS and DOL are responsible for different things, there are many overlaps in the audit topics. Both the IRS and DOL will look at the plan's documents and operations. The DOL will also look at ERISA-required disclosures and the plan sponsor's documentation of fiduciary oversight. GuideStone is prepared to assist the plan sponsor as needed in collecting the information requested by the appropriate agency. There may be a fee for data collection and audit assistance.

Upon notification of an audit, you should:

- Notify each service provider and send a copy of the entire IRS or DOL audit notice to the provider(s) (e.g., your GuideStone relationship manager).
- Review audit information published by the appropriate agency:
  - IRS – [irs.gov/Retirement-Plans/EP-Examination-Process-Guide](https://irs.gov/Retirement-Plans/EP-Examination-Process-Guide)
  - DOL – <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/publications/assessment-of-the-quality-of-employee-benefit-plan-audits>
- Consider hiring a consultant and/or attorney to represent you during the audit.
- Gather information requested by the agency and submit that information by the deadline. Request an extension of the deadline, if necessary.
- Submit only what is requested, as any unrequested information may reveal errors that could result in a more extensive audit.

## General Responsibilities

Both the employer and recordkeeper/trustee of a plan have administrative responsibilities. The *Recordkeeping Services Agreement* addresses administrative responsibilities of the employer and GuideStone that involve plan administration.

### GuideStone's Services and Responsibilities

GuideStone's services and responsibilities are outlined in your service agreement. As a fiduciary, you should review the service agreement and, if the plan is subject to ERISA, the *Plan Sponsor Disclosure* as well. Both documents are available through EAP under "Document Center", "Retirement Plan Documentation" and by selecting "Service Agreements" in the drop-down box. GuideStone does not provide a *Plan Sponsor Disclosure* to non-ERISA plans since all services and fees are in the service agreement and related *Fee Schedule for Church Plans*. ERISA plan sponsors have a fiduciary responsibility to review the services provided and determine whether the fees paid for those services are reasonable and whether the services provided are necessary and meet expectations.

### Employer Responsibilities

The employer is responsible for monitoring the plan administration for compliance purposes regarding contribution limits, plan loans, hardship withdrawals, and transfers or exchanges. The employer is further responsible for remitting contributions in compliance with the IRS and DOL requirements. These duties may NOT be delegated to the participant.

The duties of the employer are further outlined in your *Recordkeeping Services Agreement*. Be sure to read your *Recordkeeping Services Agreement* to be aware of your responsibilities.

Some examples of plan administration activities associated with these duties include, but are not limited to, the following:

- Notifying participants of any eligibility requirements for participating in the plan
- Providing notices as required by the IRS or ERISA
- Explaining the plan to all employees and answering their questions about the plan
- Enrolling participants in the plan
- Maintaining participants' *Retirement Contribution Agreement* forms, *Enrollment Applications* and other important papers relating to participation in the plan
- Withholding contributions from participants' compensation as requested and remitting them to GuideStone in a timely manner
- Verifying and adjusting retirement remittance statements and submitting contributions to GuideStone
- Notifying GuideStone promptly in the event of a participant's death, disability, termination or retirement
- Responding to requests for information from GuideStone about the plan or participants
- Keeping plan administration consistent with plan provisions and making timely amendments

## Eligibility

When you adopt your plan, you must determine who will be allowed (or eligible) to participate in the plan. These requirements are described in detail in the plan. For the qualified plans, these provisions are in various sections of the *Basic Plan Document*. For 403(b) plans, eligibility is defined in the *Basic Plan Document* and your elections are found in the *Adoption Agreement*. Plan sponsors should read all documents completely and carefully to understand fully the plan provisions.

Your plan will identify which employees are eligible employees for the purpose of receiving employer contributions. Typical eligibility requirements to receive employer contributions (or make after-tax contributions if the plan allows) include age and service minimums, such as age 21 and one year of service (with 1,000 hours of service during a consecutive 12-month period equaling one year of service). **Plan sponsors who impose an hours of service requirement must be able to provide documentation verifying actual hours worked by the employee, or the plan must include a DOL-approved equivalency.**

**Note:** The IRS and ERISA have strict rules on hidden service requirements for participation. A 403(b) plan can exclude employees who normally work fewer than 20 hours per week (equivalent to 1,000 hours per year) but cannot exclude anyone who works 1,000 hours or more unless they are in an excluded category of employee. If the plan excludes a category of employees that is based on a service requirement such as part-time, seasonal, temporary, etc., the plan must provide fail-safe language allowing the employee to enter the plan if they actually work 1,000 hours. In addition, even if a category is not explicitly based on a service requirement, the IRS and DOL will look at the demographics of an excluded category to determine if the plan sponsor is attempting to exclude employees based on hours of service. For example, if a category of excluded employees has only part-time employees working 20 hours or more per week, those employees will work 1,000+ hours per year, so it will be harder to convince the auditor that the exclusion is not a hidden service requirement. A common example of this concept is the exclusion of adjuncts at a college or university where many adjuncts work more than 1,000 hours per year, but the plan sponsor does not want to include them in the plan.

It is more difficult for a 403(b) plan sponsor to exclude employees from making pretax contributions because the plan can use only statutory exclusions (those contained in the Code or regulations). Plan sponsors must be careful in implementing exclusions since correction can be very expensive or the IRS can disqualify the plan entirely. A 401(k) plan (but not a 403(b) plan) may require an employee to serve one year and/or be age 21 before making elective deferrals to the plan. Qualified 401(k) plans must satisfy the ADP test each year, so the plan sponsor bears the burden on ensuring sufficient participation by the non-highly compensated employees. A 403(b) plan is not required to satisfy the ADP test but must comply with the universal availability regulations by allowing all employees (except for limited statutory exclusions as stated in the plan) to make elective deferrals as of their date of hire. See [Appendix C](#) for detailed information on universal availability requirements for 403(b) plans.

## Rehired Employees and Eligibility

Many operational violations occur because of the incorrect treatment of former employees who are rehired. Generally, ERISA requires a plan sponsor to credit past service with an employer except in very limited circumstances. The plan document will state how to apply the break-in-service rules for the plan, and the plan administrator must ensure she or he has a complete understanding of the rules. It would be wise to

document your evaluation of each rehire situation in case of audit so you and the auditor will understand why you reached a specific conclusion.

### **Enrolling Participants in the Plan**

Most plan sponsors will enroll new participants through EAP. Upon logging into the account, use the “Enroll New Employee” link above the “Quick Links” section of the homepage to start the enrollment.

### **Plan Entry Dates**

The plan entry date, or effective date of participation, is the date when an employee is eligible for enrollment in the plan. The plan must allow a minimum of two entry dates each plan year but may allow more than two. As plan sponsor, you must develop a system to track plan entry dates and ensure employees are enrolled in the plan at the appropriate time.

For elective deferrals (including Roth elective deferrals), 403(b) plans eligibility generally is upon hire because of universal availability requirements, but the plan entry date may be the first pay period or first month following the hire date. Other qualified plans may contain age and/or service requirements before allowing an employee to make deferrals into the plan. The actual entry date, however, may be the earlier of June 1 or the first day of the plan year following satisfaction of the eligibility requirement. Other entry dates, such as the first day of the month following the month of satisfaction of the eligibility requirements, are common. You should read your plan document carefully to understand what rules apply regarding elective deferral participation and ensure your operational procedures are in line with the plan’s provisions.

Generally, your plan’s eligibility criteria for employer contributions and after-tax contributions (if allowed) are identical. If your plan imposes a service requirement based on completion of hours of service in a computation period, the employee may not enter the plan until the computation period is over, even though the employee has enough hours of service to enter earlier. For example, if the plan requires 1,000 hours of service and the computation period is the plan year, the employee may not enter the plan until the first entry date after December 31 even though he or she worked 1,000 hours in the first six months. As discussed above, the entry date may be as restrictive as two per year (usually January 1 and July 1 for a calendar plan year) or more frequent, such as quarterly or monthly, upon satisfying the eligibility requirement.

Once an employee is enrolled in the plan, GuideStone will mail the participant a confirmation letter that summarizes the participant’s indicative data and initial investment election.

You should conduct a periodic audit of your plan to verify that everyone participating in the plan entered at the correct entry date and that all eligible employees are participating according to plan provisions.

### **Required Forms at Enrollment**

- Enrollment forms and *Retirement Contribution Agreements*

Each employee should complete and sign an enrollment form and *Retirement Contribution Agreement*. GuideStone provides a generic enrollment form and *Retirement Contribution Agreement* for your use. Generally, the enrollment form will capture indicative data (full name, Social Security number, date of birth, date of hire, spouse information, etc.) as well as initial investment elections. There may be a section for the employer to authorize the enrollment and record initial contribution amounts.

Enrollment forms and/or *Retirement Contribution Agreements* should not be sent to GuideStone for retention. It is critical that these documents are retained in the employee's personnel file or a plan participant file.

Most plans provide that the participant's spouse is the sole primary beneficiary under the plan unless the spouse provides notarized consent to designate a primary beneficiary other than or in addition to the spouse. Any change in marital status could automatically invalidate a prior beneficiary designation.

Participants can make or change most beneficiary designations through their *MyGuideStone*<sup>®</sup> account. If the change requires spousal consent, the participant can download the form by visiting [My.GuideStone.org/Beneficiary](http://My.GuideStone.org/Beneficiary) or requesting a form through GuideStone's Customer Solutions at **1-888-98-GUIDE** (1-888-984-8433).

- Investment information

The participant must also be provided information regarding investments. For non-ERISA plans, investment information can be provided by referencing a website or by providing brochures or other educational material. In addition to providing information referencing a website or by providing brochures or other educational material, ERISA plans must provide investment information through the *Participant Fee Disclosure* (see below).

- IRS-required notices

If the plan includes automatic enrollment and/or safe harbor provisions, the employee must be provided with those notices in a timely manner (generally on the date of hire). There are also annual noticing requirements that are discussed under "[IRS Notice Requirements](#)" below.

- ERISA disclosures

In addition to providing each eligible employee with basic enrollment material, ERISA plans must provide additional disclosures. For a more extensive treatment of the rules regarding ERISA disclosures, see [Appendix A](#).

- The SPD explains in easily understood language the basic plan provisions, such as eligibility, compensation, distribution timing, forms of distribution and general claims procedures.
- The SMM updates any changes to the SPD since the plan was last restated. The SMM must be provided to newly eligible employees in conjunction with the SPD.
- The *Participant Fee Disclosure* provides the participant with basic information regarding any fees that could be paid by the participant and must include investment performance information as well as investment expense ratios. For 403(b) plans that use multiple providers, the participant must be provided information from all investment providers as a single package.
- *Participant Fee Disclosure Addendum* updates any changes to the *Participant Fee Disclosure* since the last annual *Participant Fee Disclosure*. Addendums should be included with the latest annual *Participant Fee Disclosure* to newly eligible employees.



- Educational material
- Retirement plan education should be a high priority for plan sponsors. There are resources in EAP using the “Educational Content” tab that can be used for enrollment and education. Your GuideStone relationship manager can work with you to develop a plan to educate your employees so they can plan for their retirement.

It is important for ERISA plan administrators to document all educational efforts, including enrollment education for new employees and ongoing education for existing participants. Keep samples of all materials or communications and provide dates, methods of distribution (e.g., educational meeting, email, flyers, etc.) and who received the education. Both the IRS and DOL will ask to review this material if you are audited.

## Compensation Issues

### Plan's Definition(s) of Compensation

The IRS has a web page that discusses compensation for retirement plans (see [irs.gov/retirement-plans/401k-plan-fix-it-guide-you-did-not-use-the-plans-definition-of-compensation-correctly-for-all-deferrals-and-allocations](https://www.irs.gov/retirement-plans/401k-plan-fix-it-guide-you-did-not-use-the-plans-definition-of-compensation-correctly-for-all-deferrals-and-allocations)). The plan can have different definitions of compensation for different purposes. Compensation generally includes the pay a participant received from the employer for personnel services for a year, including:

- Wages and salaries
- Fees for professional services
- Other amounts received (cash or non-cash) for personnel services actually rendered by an employee, including, but not limited to:
  - Commissions and tips
  - Fringe benefits
  - Bonuses

To avoid errors in applying the definition of compensation:

- Review the plan document's definition of compensation used for determining:
  - Elective deferrals
  - Employer non-elective and matching contributions
  - Maximum annual additions (the 401(a)(17) limit)
  - Top-heavy minimum contributions (for 401(a) plans)
  - NDT
- Review the plan election forms, such as the *Retirement Contribution Agreement* or enrollment form, to determine if they are consistent with plan terms.
- If the payroll system or provider cannot track different elements of compensation, such as bonuses, commissions, fringe benefits, etc., you should consider including these in your definition of compensation to avoid errors.
- If you have different definitions of compensation for different purposes or have a complicated definition of compensation, you may want to develop a calculation worksheet to help your staff in applying the plan's definition of compensation.

Discrepancies in the calculations must be [corrected](#) using the EPCRS methodology.

### Cautions in Defining Compensation in the Plan

Because the definitions of compensation are critical to the successful administration of the plan, here are some cautions to consider:

- If possible, use the same definition for all plan purposes.
- Use a statutory definition for contributions to simplify NDT. NDT compensation must be statutory, so using a non-statutory definition in the plan for contributions opens the possibility for testing failure.
- Make sure that your payroll system or provider can easily identify and track elements of compensation that should be excluded from or included in calculations to ensure contributions are calculated correctly.

- If the plan excludes elements of compensation that lower a participant's compensation below the elective deferral limit (the 402(g) Limit), the IRS may view that exclusion as a violation of the opportunity to defer up to the maximum deferral permitted by law. For a 403(b) plan, that would be a qualification error.

## **Types of Contributions**

The plan document will specify what types of contributions are allowed for the plan. It is important that benefits staff understands the types of contributions (sources) and how to identify them correctly in EAP.

EAP will allow the employer to remit only contributions allowed by the plan document. Matching contributions must have both an employee match and employer match component or the contributions will create an error in EAP. If your EAP administrator has questions about which source code to use for contributions, contact your retirement operations administrator or Customer Solutions for help.

Use the EAP "Contributions History by Payroll End Date" report to assist you in reconciling plan contributions with payroll records, thereby ensuring accuracy in both source and amounts. Documenting the reconciliation will also prove to the IRS and DOL that you are diligent in administering the plan.

## **Remitting Contributions**

Review your plan provisions regarding employer and participant contributions.

Here are several things you need to know regarding remitting contributions to GuideStone:

- Remit contributions correctly in reference to the contribution amount, type (i.e., employee non-match or employer match) and pay date.
- Remit contributions as soon as possible following the payroll(s) for which the contributions are applicable and in accordance with the remittance method you use. (GuideStone currently offers several options for remitting contributions. See "[Methods of Sending Contribution Data](#)" and "[Methods of Remitting Payment](#)" for a description of these methods.)
- Do not remit contributions based on compensation not yet earned.

## **Timing of Contributions**

You should remit your plan's elective deferrals and after-tax contributions as soon as possible after the payroll from which contributions were withheld. The DOL requires that participant contributions be made as soon as they can be reasonably segregated from the employer's general assets, but in no event may the contributions be made later than the 15th business day of the following month in which contributions were withheld from the participants' paychecks. The DOL has indicated that the 15th business day rule is **not** a safe harbor. If the employer generally can segregate these contributions from its general assets sooner than 15 business days, that earlier day becomes the standard for remitting elective deferrals and/or after-tax contributions. GuideStone has different payment methods from which to choose so you can comply with this requirement.

Small plans subject to ERISA, generally those with fewer than 100 participants at the beginning of the plan year, have a safe harbor to determine whether participant contributions (elective deferrals and after-tax contributions) have been deposited to the retirement plan in accordance with the DOL rules regarding plan assets.

Under the safe harbor rule, contributions for small plans will be deemed to be made to the plan timely if they are **deposited to the plan** no later than the seventh business day following the date on which the contribution is withheld from the participant's paycheck. Thus, even if contributions could have been "reasonably segregated from the employer's general assets" at an earlier time, as long as they are **deposited to participant accounts** by the seven-day safe harbor deadline, they will be considered to be made in accordance with the DOL guidelines.

Most employers remit employer contributions according to their payroll frequency. In such case, in order for contributions to appear on the participant's benefit statement and to help GuideStone calculate excess contributions, GuideStone suggests that the contribution for December be made no later than January 31. For employers that submit discretionary contributions, contributions may be submitted later than January 31 as long as contributions for a plan year are made by no later than the date the organization's tax return is due for the plan year (including extensions).

The DOL has a [Frequently Asked Questions](#) website with additional information on when contributions must be transmitted to the plan and the procedures for reporting delinquent contributions.

### **Consequences for Failure to Remit Contributions Timely**

Failure to transmit deferrals to the trust within a certain period will result in the deposit of deferrals being considered late. If deposits of deferrals are not made within the time frame required by the DOL, it will result in a violation of ERISA and constitute a breach of fiduciary duty. For 401(a) plans subject to ERISA, this also constitutes a prohibited transaction under the Code for which an excise tax is generally due. The initial tax on a prohibited transaction is 15 percent of the amount involved for each year (or part of a year) in the taxable period. The excise tax for 401(a) plans is paid on IRS *Form 5330*. If the affected participant's account is not corrected within the taxable period the failure occurred, the law imposes an additional tax of 100 percent of the amount involved. For 403(b)(7) plans (subject to ERISA), while they are not subject to the 15 percent excise tax, they are subject to a 5 percent tax under ERISA. It is GuideStone's understanding that this 5 percent tax is paid using the DOL's correction program, the [Voluntary Fiduciary Correction Program](#) (VFCP), only if the DOL indicates they are electing to impose the penalty tax.

You will be required to disclose the late deposit of participant deferrals on your *Form 5500* and confirm that you have properly corrected the plan's operational error. The Employee Benefits Security Administration (EBSA), which is part of the DOL, has an easy way to correct this error through their VFCP. We advise taking advantage of the program right away rather than waiting to be contacted by the DOL. Once the error has been properly corrected, the DOL issues a "no action" letter, and you can provide this letter if ever audited as proof of proper correction.

Anytime contributions are determined not to be remitted timely, you should consult with your benefits counsel or advisors to facilitate plan compliance.

## Methods of Sending Contribution Data

The following remittance methods are available for employers to utilize when sending payments to GuideStone:

### Employer Access Program® (EAP)

GuideStone offers a free online service that employers can use for remitting contributions. This same service can also be used for processing enrollments, maintaining participant accounts and updating employment status. A GuideStone administrator will issue the employer an employer number and security code to register online. By registering, you are authorizing GuideStone to allow your authorized employees (security administrators) to use the EAP. A security administrator can then grant viewing and/or updating authority to other users at the administrator's discretion.

Administrators may access this service from the website [EAP.GuideStone.org](http://EAP.GuideStone.org). The following features are available to help with daily administration:

- Employee maintenance (address, phone, email, etc.)
- Employee enrollments and terminations
- Contribution processing through Automated Clearing House (ACH)
- Contribution history
- Participant activity history and account summary
- Downloadable forms
- Employer statements
- Employer reports
- Plan administration manuals
- All plan-related documents, including ERISA disclosures

For more information about EAP, please contact Customer Solutions at **1-888-98-GUIDE** (1-888-984-8433).

### Electronic Data Transfer (EDT)

EDT enables you to extract contribution, enrollment and termination data from your payroll system and send the data electronically to GuideStone. We recommend this method for employers who have more than 100 participants and make frequent changes to their statement.

If you select this method, GuideStone will send you an instruction manual on how to use EDT for remitting contributions. Contact GuideStone if you need a manual.

### Payroll Feeds

GuideStone can receive the following data from an employer's payroll system:

- Contributions
- Employment information
- Salary and compensation information
- Participant indicative information

In addition, participants of employers using a payroll feed may call our Customer Solutions Center so GuideStone can collect salary reduction percentages/amounts. This data will be sent by GuideStone to the employer so that they may update their payroll system and ensure they have documentation of changes in case of audit.

### **Methods of Remitting Payment**

- ACH

ACH is an Electronic Funds Transfer (EFT) GuideStone initiates at a time designated by the employer for payment of contributions. You can set up ACH through EAP at any time or contact GuideStone if you need assistance.

- Wire transfer

A wire transfer is a payment from the employer's bank to GuideStone's bank.

## Maximum Contribution Limits

### Maximum Contribution Limits

There are legal limits on the amount of contributions that may be made to the plan. There are two contribution limits that participants may not exceed:

- Code section 415(c) (referred to as the 415 Limit) – the **lesser** of:
  - 100 percent of includable compensation as defined in Code section 403(b)(3) or
  - \$58,000 (indexed amount for 2021)
- Code section 402(g) (referred to as the 402(g) Limit) – \$19,500 (indexed amount for 2021)

The 402(g) Limit is the limit on salary reduction contributions (including Roth elective deferrals). There is only one 402(g) Limit per participant, regardless of the number of employer plans in which a participant makes salary reduction contributions (including Roth elective deferrals).

There is a third contribution limit that NQCCO plan sponsors must follow too:

- Code section 401(a)(17) – \$290,000 (indexed amount for 2021). 401(a)(17) limits the annual compensation which an employer can use to make employer contributions to the plan.

### Code Section 414(v) Catch-up Contributions for Ages 50 and Over

Individuals who will attain age 50 or older by the end of the taxable year who want to maximize salary reduction contributions may make an additional salary reduction contribution up to \$6,500 (indexed amount for 2021).

### Determining if a Participant Is Within the Limits

Both the employee and the employer are ultimately responsible for determining if a participant is within the limits. If there are questions, contact GuideStone's Retirement Compliance department for assistance.

Participants may lose certain tax advantages related to their retirement accounts, and the employer may encounter payroll tax problems if participants exceed limits for contributions to the plan.

The employer must withhold proper amounts from participants' salaries for federal income tax. If a participant exceeds contribution limits, then the excess becomes taxable income to the participant. When this occurs, the employer can inadvertently become subject to penalties for failure to withhold amounts for federal income tax and FICA on the excess contributions.

More information on contribution limits can be found here:

[GuideStoneRetirement.org/Individual/ContributionLimits](https://www.guidestoneretirement.org/Individual/ContributionLimits).

## Maintenance of Participant and/or Employer Information

### Participant Indicative Data

The participant should notify GuideStone promptly of any change to the following participant records:

- Address/email address/phone number
- Marital status\*/name change\*

\*A participant's marital status affects plan administration with respect to various records, such as beneficiary designations. Please advise participants that the plan records must reflect their marital status since it directly affects their beneficiary information and requests for withdrawals from the plan. Plans must be careful to apply the qualified domestic relations order (QDRO) plan provisions accurately. GuideStone's Legal department requires complete copies of a divorce decree, marital property settlement, marital dissolution settlement and/or death certificate before a marital status is changed from married to single.

### Participant Employment Status

You should promptly notify GuideStone, through EAP or other means such as by phone, of changes in the employment status of participants. Changes in employment status may include the following:

- Change from part-time to full-time status (or vice versa) if the status affects the participant's eligibility for continued contributions to the plan
- Change in status due to the employee meeting eligibility requirements
- Active, but not contributing to the plan
- Rehired employees
- Termination of employment
- Transfer within the employer (i.e., when an employee switches from one employer to another for contribution purposes — This is especially important if the employer has employees in both a not-for-profit entity and a for-profit entity and/or has multiple plans or multiple related employers.)

**Note:** If the plan has a vesting schedule that requires the participant to work a certain number of hours in the plan year to earn credit for vesting service, you must communicate all terminations of employment using the *Notice of Severance from Employment* form instead of using EAP. Also, if the plan has a vesting schedule, it is especially important for the employer to notify GuideStone promptly when participants terminate so GuideStone may remove non-vested amounts from participants' accounts. Not doing so can mislead participants regarding the value of their account.

### Employer Changes

Notify GuideStone immediately of changes or potential changes in the following:

- Employer's legal name
- Address and phone number changes
- 501(c)(3) status
- Organization or corporate structure
- Systematic reduction in personnel or layoffs

Changes in any of the above can impact your plan or the plans of related employers or other entities.



Organizational or structural changes can include mergers, acquisitions, spin-offs, etc. Such changes frequently require plan amendments and can affect the administration of the plan. New related organizations that wish to participate in your plan may need to submit additional information so that GuideStone can determine their eligibility to participate.

A reduction in your workforce could trigger a partial plan termination, which could, in turn, require automatic vesting of those terminated under the program. If your organization is contemplating a reorganization or restructuring, consult with your benefits counsel and contact your relationship manager at GuideStone to assist you in determining the impact on your plan.

## Vesting

Vesting is the process by which a participant gains ownership, or rights, to the employer contributions made to the participant's account. All participant contributions (pretax, after-tax, Roth or rollover/transfer contributions) as well as earnings on those contributions are always 100 percent vested. One of the most important duties of the plan administrator is described in the *Recordkeeping Services Agreement* under "Sponsoring Employer Required Actions":

In addition to notification of severance from employment, the Sponsoring Employer shall promptly provide any related information necessary to enable GuideStone to (a) maintain accurate and up-to-date records of vested percentages and (b) process forfeitures of non-vested amounts on a timely basis, if vesting is applicable.

Failure to apply the vesting provisions as written in the plan document is an operational failure that must be corrected using EPCRS.

## Vesting Service in the Plan Document

The plan document will define the criteria for a participant to receive credit for purposes of vesting. Note that the definition of service for vesting purposes may be different than the definition of service for eligibility or employer contributions. Therefore, it is important that the plan administrator understand the definition of vesting service and ensure proper procedures are in place to credit vesting service. **In particular, if the plan defines vesting service based upon actual hours of service (e.g., requires 1,000 hours of service in a plan year or anniversary of employment commencement to accrue a year of vesting service), the plan administrator must ensure that records are kept in order to confirm a participant's vesting percentage at termination.**

## Timing of Forfeitures

The *Recordkeeping Services Agreement* requires a plan administrator to contact GuideStone upon termination of a participant to ensure the vesting percentage is applied correctly and at the proper time. Forfeitures in all ERISA plans and church 401(k) plans generally occur after the participant has incurred a five-year break in service or if the participant requests a lump-sum distribution prior to the five-year break in service. If the participant is rehired before the five-year break in service has occurred, the participant will receive vesting service credit for service prior to their initial termination.

## Investments and Funds

See the plan document(s) for the plan's investment election provisions.

### Initial Investment Elections

Participants make all plan investment choices when they first enroll in the plan. They have the option to invest in any one or a combination of funds offered under the plan. If a participant fails to make an investment election, all contributions made on their behalf will be placed in the default fund.

### Changes to Investment Elections

A participant may make changes in the investment of accumulated funds at any time by requesting a fund exchange or a reallocation of funds. You should inform participants that **changing the allocation of accumulated funds does not automatically change allocations of future contributions.**

- Fund exchange

A fund exchange is an exchange a participant makes from one investment to one or more investments. **Example:** Participant A wants to exchange 10 percent of the accumulations in the Growth Equity Fund to be placed in the International Equity Fund.

- Reallocation of funds

This term is used to describe the action a participant makes to completely change the fund or funds in which his plan accumulations are placed. It involves an exchange of 100 percent of the participant's accumulations to one or more investments. **Example:** Participant A's accumulations can be described as follows: 52 percent in the Growth Equity Fund, 28 percent in the Value Equity Fund, 16 percent in the Money Market Fund and 4 percent in the International Equity Fund.

The participant decides to reallocate his accumulations so that 50 percent is in the Growth Equity Fund, 25 percent is in the Value Equity Fund, 15 percent is in the Money Market Fund and 10 percent is in the International Equity Fund.

Generally, an employer may not make changes in the investment of accumulated funds for a participant. Participants must take the steps necessary to change investments.

GuideStone accepts exchange and reallocation requests on a whole percentage basis only.

A participant may also establish an automatic reallocation of funds so that the portfolio will reset to the original allocation percentages on a set schedule. The automatic reallocation assists the participant in managing results of market performance.

## **Allocation Change, Fund Exchange or Reallocation**

Participants may request allocation changes to future contributions, fund exchanges or reallocations. GuideStone does not charge fees for fund exchanges. There are various methods participants may use to make such changes. These include:

- MyGuideStone through [My.GuideStone.org](http://My.GuideStone.org)
- **1-888-98-GUIDE** (1-888-984-8433); speak with a customer solutions specialist
- Mail written request to GuideStone, Attn: Customer Solutions, 5005 LBJ Freeway, Suite 2200, Dallas, Texas 75244

**Note:** GuideStone cannot guarantee trade dates for written requests sent by mail or fax; however, such requests will be processed when received on a timely basis and in good order. GuideStone will not be responsible for undelivered mail or faxes.

## **Requirements to Process Exchanges and Allocations**

Make sure your employees are aware of the following requirements for processing exchanges and allocation changes. GuideStone has adopted industry standards in imposing these requirements:

- No future or backdated requests will be accepted.
- Request must be received by the designated cutoff time established by GuideStone to receive same-day Net Asset Value (NAV).

**Note:** Requests received after the cutoff will be processed with the next business day's NAV.

## Rollovers into the Plan

Generally, a rollover is the only method by which a participant can move retirement savings from one type of retirement plan to a different type of plan (within limits imposed by the IRS) without incurring a taxable event. A qualified plan must allow a participant who is eligible for a distribution to request a direct rollover to another plan as allowed under the Code.

The Code allows plan sponsors to choose whether to accept rollovers into the plan. The plan document will specify whether rollovers into the plan are allowed. If the plan allows rollovers into the plan, the amount rolled over (plus earnings accrued) will be held in a rollover contribution account.

**Note:** The rules regarding rollovers are complex, and not all types of plans can be rolled to other plans (e.g., Roth IRA cannot be rolled into a qualified plan or 403(b) plan). Contact GuideStone's Customer Solutions before beginning the rollover process to ensure the participant understands the IRS rules, plan provisions and any tax consequences that may be involved.

## Distributions

### In-service Withdrawals

An in-service withdrawal is a distribution of amounts to a participant while the participant is still working. The amount that a participant may withdraw is limited both by law and plan provisions.

Participants interested in withdrawing funds while still in service can go through their *MyGuideStone* account or contact GuideStone to create the *Withdrawal Application* on their behalf.

Contributions to the plan are intended to stay in the plan until a qualifying age or event. The IRS places restrictions and penalties on early distributions. The IRS requires a mandatory 20 percent federal tax withholding on any pretax accumulations withdrawn that are not directly rolled over to another retirement plan or IRA. However, participants may owe more or less than amounts withheld depending on their personal tax liability. A participant may also be subject to a 10 percent penalty for amounts withdrawn prior to attaining age 59 1/2. Participants may indicate on the application the amount of taxes they want withheld. Refer to the section in this manual entitled “[Penalty Tax on Early Withdrawals](#)” for specific information, including a list of exceptions to the penalty tax.

Pretax amounts may be rolled directly to another employer-sponsored retirement plan, such as a 401(k) or another 403(b) plan if the receiving plan permits, or to an IRA. In addition, amounts from a 403(b) plan may be transferred to another 403(b) plan. See “[403\(b\) Exchanges and Transfers](#)” for more specific information.

**Check your Plan Documentation** to see which amounts, if any, your Plan permits or restricts participants to withdraw while they are in service. Some plans do not permit in-service withdrawals. In addition, some plans limit the number of in-service withdrawals a participant can take in a Plan year. Check your *Adoption Agreement* to see if your Plan has any specific restrictions.

- Generally, the following amounts are available for an in-service withdrawal:
  - Participant rollover contributions, transfer contributions and earnings
  - Participant tax-paid contributions and earnings
    - If such contributions were made prior to January 1, 1987, the participant may choose to withdraw the tax-paid contributions without earnings (tax-free distribution).
    - If such contributions were made on or after January 1, 1987, the participant must also withdraw earnings on a pro-rata basis.
  - Participant tax-sheltered contributions and earnings
    - If contributions were made prior to January 1, 1989, the balance in the account, both contributions and earnings, may be withdrawn.
    - If contributions were made on or after January 1, 1989, tax-sheltered contributions, along with Roth elective deferrals and earnings may not be withdrawn, unless the participant has reached age 59 1/2, has severance from employment, is eligible to receive a qualified reservist distribution, dies, become disabled or can meet the requirements for a financial hardship.
- Some plans do not permit in-service withdrawals.

## How to Request an In-service Withdrawal

If your plan allows in-service withdrawals and a participant requests a withdrawal, the plan administrator should:

- Instruct the participant to go to their *My*GuideStone account to process their withdrawal online or call GuideStone at **1-888-98-GUIDE** (1-888-984-8433) to verify the amounts available for withdrawal.
- Ensure that married participants have received notarized spousal consent, if applicable.
- Complete the “Employer Verification” section of the application.
- Send the completed form to GuideStone.

## Hardship Withdrawals

A hardship withdrawal is an in-service withdrawal for participants who have not attained age 59 ½ and have a situation that meets the hardship criteria as defined in the Code. Your plan documents will determine if the plan allows hardship withdrawals under certain circumstances. Amounts available for a hardship withdrawal are limited by law and plan provisions.

**Note:** A participant must have obtained all other distributions available, other than a hardship withdrawal, prior to taking a hardship withdrawal.

### **Amounts available for a hardship withdrawal are limited by law and Plan provisions.**

Only elective deferrals (excluding earnings) are available for a hardship withdrawal. See your *Adoption Agreement* for any additional Plan restrictions.

The amount requested from the Plan must not exceed the amount necessary to meet the financial need indicated on the application, taking into account the amounts necessary to pay any taxes or penalties which may result from the withdrawal.

If the plan allows hardship distributions, participants must provide evidence of one or more of the following situations:

- **Medical expenses:** Medical expenses include expenses incurred by the participant, the participant's spouse, dependent(s) or primary beneficiary for medical care.
- **Purchase of principal residence:** Expenses related to the purchase of the participant's principal residence (excluding mortgage payments).
- **Prevention of eviction or foreclosure:** Expenses related to preventing eviction from the participant's principal residence or foreclosure of the mortgage on the participant's principal residence.
- **Educational expenses:** Limited to expenses related to the payment of the current semester or incurred in the next 12 months for tuition and fees, related educational fees, and/or room and board expenses for post-secondary education for the participant, participant's spouse, children, dependent(s) or primary beneficiary.
- **Burial or funeral expenses:** Expenses related to burial or funeral for the participant's deceased spouse, parents, children, dependents or primary beneficiary.
- **Casualty and disasters:** Expenses related to repairs resulting from damage to the participant's principal residence that would qualify for the casualty deduction.

The *Hardship Withdrawal Application* will provide more information to participants regarding required documentation. The required documentation should substantiate the hardship distribution event and must be made available at any time, upon request, to the employer or GuideStone.

Participants may indicate on the application the amount of taxes they want withheld. GuideStone will withhold 10 percent unless the participant elects to have zero withheld, or participants may elect that additional amounts be withheld. Be advised there is a 10 percent penalty for amounts withdrawn prior to age 59 ½. Refer to the section in this manual entitled "[Penalty Tax on Early Withdrawals](#)" for more information, including exceptions to the penalty tax. GuideStone does not withhold the 10 percent penalty. Participants are responsible for paying this amount when they report their taxes. These amounts are not eligible to be rolled over to another retirement plan.

## How to Request a Hardship Withdrawal

- Instruct the participant to call GuideStone at **1-888-98-GUIDE** (1-888-984-8433) to verify the amounts available for withdrawal and request appropriate hardship withdrawal forms.
- Assist the participant in completing a *Hardship Withdrawal Application*.
- In light of the recent [Department of the Treasury Memorandum](#) for the Employee Plans Examination, GuideStone will no longer need to receive substantiation documents with the application, unless the participant has received more than two hardship withdrawals in the current year. (If urgent, advise the participant to send this material via overnight or expedited mail.) As the employer, you may want to request and retain the substantiation documents for your records, if ever audited.
- Counsel the participant regarding the tax implications of the withdrawal. It is possible that the withdrawal may move the participant into a higher tax bracket or that insufficient withholding could incur a penalty for under withholding.
- Ensure that married participants have received notarized spousal consent, if applicable.
- Complete the “Employer Verification” section of the application.

For 403(b) plans with multiple investment providers, the IRS requires plan administrators to ensure that hardship distributions are coordinated. For more information, see “Multi-provider Plans” in [Appendix C](#).

## Termination Withdrawals

A termination withdrawal is a distribution of amounts to a participant who has terminated service with the employer and not reached the plan’s normal retirement age (generally age 65). Most qualified plans do not distinguish between a termination withdrawal and a retirement income withdrawal, but some plans, such as a Money Purchase Pension Plan or defined benefit plan, may limit distributions until attainment of the early or normal retirement age.

If the plan allows for termination withdrawals, the following accounts may be available for withdrawals:

- Participant’s after-tax contributions account
- Participant’s pretax deferrals account
- Participant’s Roth contributions account
- Vested portion of the participant’s employer contributions account

The IRS requires that all vendors, like GuideStone, withhold a mandatory 20 percent on any taxable accumulations withdrawn (unless the participant elects a direct rollover). A participant may also be subject to a 10 percent penalty for amounts withdrawn prior to age 59 ½, if the assets are not rolled over to another employer-sponsored retirement plan or an IRA. Please see “[Penalty Tax on Early Withdrawals](#)” for specific information, including exceptions.

Termination withdrawals, unless restricted by your *Adoption Agreement* provisions, if applicable, are eligible for any of the payment options described in the *Basic Plan Document* and your *Adoption Agreement*.



## How to Request a Termination Withdrawal

- Instruct the participant to go to their *MyGuideStone* account to process their withdrawal online or call GuideStone at **1-888-98-GUIDE** (1-888-984-8433) to create the withdrawal on their behalf.

**Important note for employers whose plans have vesting schedules:** According to the *Recordkeeping Services Agreement*, you are responsible for verifying vested percentages in the participant's employer contributions account, especially if the plan defines vesting service based on hours worked in a plan year or anniversary of employment commencement. It is extremely important that you promptly communicate to GuideStone each terminated participant's date of termination and vested percentage so that communication with the participant is accurate. If vesting service is based on hours worked in a plan year or anniversary of employment commencement, administrators must submit the *Notice of Severance from Employment* form indicating proper vesting percentage. Plans using elapsed time may update the participant's record in EAP.

- Ensure that married participants have received witnessed or notarized spousal consent, if applicable.
- Complete the "Employer Verification" section of the application.
- Instruct the participant to send the application to GuideStone.

## Penalty Tax on Early Withdrawals

If a participant receives a payment before reaching age 59 ½ and does not roll it over, then, in addition to the regular income tax, the participant may be required to pay an additional tax equal to 10 percent of the taxable portion of the payment. The 10 percent additional tax does not apply to the payment if it is:

- Paid to the participant because the participant separates from service with the employer during or after the year the participant reaches age 55.
- Paid because the participant retires due to disability.
- Paid to the participant from the plan as equal (or almost equal) payments over the participant's life or life expectancy (or the participant and participant's beneficiary's lives or life expectancies). The payments must begin after separation from service to avoid the 10 percent additional tax.
- Paid directly to the government to satisfy a federal tax levy.
- Used to pay for certain medical expenses.
- In certain cases, made to an alternate payee because of a QDRO.
- Paid to the beneficiary or estate on or after the participant's death.
- Made from elective deferral contributions as a result of a qualified reservist distribution.

The 10 percent additional tax applies only to taxable distributions. Distributions of Roth or after-tax contributions, as well as distributions taken as minister's housing allowance, will be excluded from the 10 percent additional tax.

See IRS *Form 5329* and instructions for more information on the 10 percent additional tax.

## Requesting a Rollover to Another Plan

A qualified plan is required to contain provisions allowing a participant to request a distribution in the form of a direct rollover to another plan as allowed by the IRS. The procedures to request a rollover are the same as to request an in-service withdrawal or termination withdrawal, except the participant will provide the rollover information requested on the application. If the rollover will go to another qualified plan or 403(b) plan, the participant should consult with the plan administrator of the receiving plan to ensure that the plan can accept the rollover. This especially is true if the rollover contains either after-tax or Roth contributions, since not all plans will accept after-tax or Roth assets.

Once the participant has completed the distribution application, the plan administrator must authorize the distribution and forward the application to GuideStone for processing.

## Requesting Disability Income

The plan may provide distributions to a participant who experiences a disability. Generally, the definition of disability for qualified plan purposes will coincide with the Social Security Administration's definition of disability. Plan administrators should be familiar with both the plan's definition of disability and the claims procedures that a participant must follow to qualify for disability income.

## How to Request Disability Retirement Income

Notify GuideStone as soon as possible when a participant meets the plan definition of disabled (see the *Basic Plan Document* for definition) and include their last day of work. Keep in mind that payments for a disability are not paid for the first five months of disability. This is sometimes called the waiting period.

**Note:** Payments may be paid for the current month (1) when employers notify GuideStone after the participant has already satisfied the waiting period and (2) if a physician approves the participant's disability claim.

- Request that GuideStone send a *Retirement Income Application* and *Attending Physician's Statement* to the participant.
- Inform participant if you will continue to make employer contributions to their retirement account while disability income is being paid.
- Encourage participants who have disability income under a separate long-term disability income program provided by you to defer disability retirement income from the plan until age 65 or until the income under the separate long-term disability income program stops.
- Instruct participants who elect to begin receiving disability retirement income from the plan to complete and return the *Retirement Income Application*. Participants must check the appropriate box in Section 1 of the application indicating they are applying for disability retirement income. The employer must complete the "Employer Verification" section of the application.
- Inform participants who elect to defer receiving a disability retirement income that accumulations will remain in the plan and participants will continue to receive quarterly account statements as long as GuideStone has a valid email address for the participant.
- Send the completed application and physician statement to GuideStone.
- Delete the participant's name from the retirement remittance statement if no further contributions will be made on the participant's behalf.

**Note:** GuideStone may require a checkup on the participant's disability status at 18 months and third year.

## Benefits Payable at Death

Please notify GuideStone when a death has occurred. GuideStone must receive a copy of the death certificate before a beneficiary estimate can be prepared and beneficiary income can be paid from the plan. All income is reported on a *Form 1099-R* for federal income tax purposes. The beneficiary receives a *Form 1099-R* for any payments they receive.

As a practical matter, in most cases, beneficiaries of participants contact GuideStone directly upon the death of the participant. However, you may want to notify GuideStone for processing status.

### How to Request Survivor Benefits

- Notify GuideStone of the participant's date of death.
- GuideStone will contact the beneficiary and answer any questions, or you may meet with the beneficiary to explain the options when a participant dies prior to receiving benefits and provide the beneficiary with the ERISA-required disclosures. Be sure to discuss:
  - Beneficiary income is payable as a single sum or systematic withdrawal as permitted by the plan and IRS guidelines.
  - There are certain legal restrictions on deferral of beneficiary benefits. Have the beneficiary contact GuideStone if the beneficiary wants to defer payment.
  - All income is reported on a *Form 1099-R* for federal income tax purposes. The beneficiary receives a *Form 1099-R* for any payments they receive. Inform the beneficiary that failure to report this income can result in adverse tax consequences. GuideStone sends beneficiaries a *Form 1099-R* at the beginning of the year following payment.
  - If deferring receipt of the retirement account, the beneficiary should name his/her own beneficiary(ies) by visiting [My.GuideStone.org/Beneficiary](http://My.GuideStone.org/Beneficiary).
  - GuideStone will send a *Beneficiary Income Estimate* and *Beneficiary Income Application* to the beneficiary.
  - Each beneficiary should be provided the SPD, SMM (if applicable) and the latest annual *Participant Fee Disclosure*.

If the beneficiary returns the *Beneficiary Income Application* to you, forward it to GuideStone for processing.

### Required Minimum Distributions (RMDs)

Federal law requires participants to begin receiving a minimum amount from their retirement plan by April 1 of the calendar year following the calendar year the participant reaches the required age or retires, whichever is later. GuideStone uses the acronym "RMD" to refer to this type of distribution. If born June 30, 1949 or earlier, the RMD age would have been age 70 ½. If born on July 1, 1949 or later, the RMD age is age 72.

### General Information

Participants who are currently employed may be able to delay required distributions. ("Employment" generally means that a participant is receiving compensation, reported on a *W-2*, from the employer maintaining the plan with GuideStone.) Participants who determine that they are eligible to delay required distributions may simply sign and return a delay form **each year** to GuideStone. GuideStone includes this form in a notification letter it sends each year to affected participants. Participants who fail to return the delay form by the date specified in the annual notification letter will receive a distribution of the required minimum amount less 10 percent for withholding. Participants may owe more or less taxes than the amount withheld depending on their personal tax liability. Depending on the participant's state of residence for tax purposes, the participant may owe state income taxes and some distributions from the Plan may be required to have state income tax withholding.

Corrections to a payment can only be made if the calendar year is current. If the payment was issued in a previous calendar year, corrections cannot be considered unless GuideStone has made an error. Participants may delay RMDs only for the plan maintained by their current employer. If a participant submits a delay form and subsequently terminates service prior to the end of the year, the participant should notify GuideStone that the delay form is no longer valid so the RMD will be distributed before the IRS deadline.

RMDs are complex, so GuideStone encourages employers and participants to check with our Benefits area for more detailed information and guidance. If a participant has more than one plan with GuideStone, the RMD rules apply to each plan separately.

### **How to Request an RMD**

- The participant may request an RMD by logging into [My.GuideStone.org](http://My.GuideStone.org) or by contacting GuideStone to create the distribution on their behalf, or you may assist participant in completing the *Required Minimum Distribution Systematic Withdrawal Application*. The participant can access this form by logging into [My.GuideStone.org](http://My.GuideStone.org). GuideStone will also mail this form to the participant along with the notification letter, if applicable.
- The participant or the employer can send the completed form(s) to GuideStone.
- If delaying, have the participant delay the RMD by logging into [My.GuideStone.org](http://My.GuideStone.org) or return the completed delay form to GuideStone each year until distributions begin.

**Note:** If a participant has a balance in more than one Plan with GuideStone, the RMD rules apply to each Plan separately.

## Loans

If the plan contains a loan provision, there will be loan program documentation provided with the plan documents. The loan program consists of two documents:

- *Loan Document*, which provides a description of the loan rules and guidelines for loans issued by GuideStone under the plan
- *Definitions and Terminology*, which defines the terms used in the *Loan Document*

Participant loans are available on a plan-by-plan basis. Participants may have only one outstanding loan per plan unless your plan allows more. Participants with vested balances in more than one plan may have more than one loan.

If the plan is a 403(b) plan, and GuideStone is not the sole investment provider under the plan, the employer is required to sign off on all plan loans. This requirement is to make sure a participant does not already have a loan exceeding the IRS limits with another vendor in the plan or from another plan of the employer. See “Multi-provider Plans” in [Appendix C](#).

Plan administrators may access loan information, including whether a loan is in default, by running the “Participant Loans” report in EAP.

### Minimum Amount

The minimum loan amount is \$1,000.

### Maximum Amount

The maximum loan amount is the lesser of:

- 50 percent of the participant’s vested account balance on the date of the request or
- \$50,000 minus the highest outstanding loan balance(s) for loan(s) made from all plans maintained by the employer during the previous 12-month period.

### Interest Rate

The interest rate for loans is the prime rate plus one percentage point. GuideStone uses the prime rate published in *The Wall Street Journal’s* “Money Rates” column. The interest rate remains fixed for the terms of the loan.

### Terms of the Loan

There are two types of loans: regular loans and principal residence loans.

- The terms of a regular loan may be for any time period from one to five years, including partial years.
- The terms of a principal residence loan may be for any time period up to 10 years.

## Loan Fees

A participant must pay two fees: a loan origination fee and an annual maintenance fee. GuideStone deducts the origination fee and first year's maintenance fee from the participant's retirement account at the time the loan is issued. GuideStone deducts the annual maintenance fee from the participant's retirement account on the anniversary date of the loan.

## Method of Request

A participant may submit loan requests in two ways:

- Via GuideStone's participant website at [My.GuideStone.org](http://My.GuideStone.org) — Participant models the loan, and the loan documentation will be sent to the "My Messages" section of their MyGuideStone account.
- By calling GuideStone at **1-888-98-GUIDE** (1-888-984-8433) — A customer solutions specialist will model a loan for a participant and then send the appropriate paperwork based on the modeled loan.

Loan models and paperwork are based on current plan account balances on the date of the request. Any transaction resulting in a change to these balances may affect the amount available for loan and invalidate outstanding paperwork. It is recommended that a participant refrain from initiating further account activity until the loan is completed. Once received, the participant cannot change or alter loan documents. Loan paperwork must always have original signatures.

GuideStone cannot process a loan until it receives completed paperwork. Any changes or modifications in the terms of the loan will require the issuance of new paperwork at the current interest rate and based on the account balance on the new request date. The participant should confirm that GuideStone's records regarding their marital status are correct before requesting a loan model. Loan paperwork is accepted for processing at GuideStone via email or mail.

Terminating employment does not release the participant from the terms of the loan agreement. The participant's obligation to repay the loan remains the same. Account balances of participants who terminate and request a partial or complete withdrawal will not include the amount of the outstanding loan balance. Further, in the case of a complete withdrawal, the loan balance will remain due and payable according to the terms of the loan and repayment schedule. A loan default may become a taxable deemed distribution if the participant fails to repay the loan in accordance with its terms and after the cure period has passed. The loan may also become a taxable deemed distribution if the loan exceeds the maximum term imposed by law and your Plan.

## General Information Regarding Issuing a Loan

GuideStone distributes the loan amount from the participant's account in proportion to the most recent investment allocation on file with GuideStone at the time of the loan and not from any specific fund choice.

GuideStone will distribute the loan as soon as administratively feasible after verifying the application. The standard processing time is three to five business days.

GuideStone transmits the loan amount by EFT to the participant's bank or financial institution.

## Loan Repayments

GuideStone's rules and procedures require the participant to repay loans only via ACH payments deducted from a participant's checking or savings account. (GuideStone cannot debit a participant's business account.) Loan repayments are allocated to a participant's account according to their current plan

investment allocation election. A participant should call GuideStone to obtain prepayment instructions. Prepayments can only be submitted online through the borrower's MyGuideStone account. Prepayments can be made to pay off the loan in full or for a partial payment. Partial payments are applied toward the principal only. Monthly payments will continue to be drafted for the original payment amount until the loan is paid off. The final payment will be adjusted for the balance due. Participants may prepay loans in full at any time without penalty or fee.

Upon the death of a participant, the loan is immediately due and payable. Beneficiaries may pay off the loan balance or discontinue payments, initiating a loan default. A defaulted loan is treated as a deemed distribution and reportable as taxable income in the year of the default.

### **Missed Loan Payments**

GuideStone allows a cure period as permitted under IRS Reg. 1.72(p)-1 Q&A 10(a). This cure period, essentially a repayment grace period, ends on the last day of the calendar quarter following the quarter in which the full amount due for the quarter was not paid. When a participant fails to make a scheduled payment, GuideStone sends a notice to the participant. The notice indicates the first missed payment, the amount due and information about the cure period. GuideStone applies any payments received after the notice to the first missed payment. Once the cure period has been entered, GuideStone sends a *Warning Notice of Default*, notifying the participant they have entered the cure period and when this repayment grace period will end. At the end of the cure period, if the loan has not been brought to a current status, a *Notice of Default* letter is sent notifying the participant the cure period has ended and the loan is now deemed a taxable distribution.

### **Loans in Default**

When the cure period has passed, the remaining outstanding loan balance is in default. The balance is reported to the IRS as taxable income in the year of the default. GuideStone will issue a *Form 1099-R* showing the remaining unpaid balance as includable in gross income. If the participant is younger than 59 ½, they may also be subject to the 10 percent early withdrawal penalty on the includable amount.

**Note:** Participants who have defaulted on a plan loan are not eligible for future loans from the plan, with exceptions for events leading to foreclosure or paying off the previous deemed distribution.

## Account Statements

GuideStone's *My.GuideStone.org* website provides participants daily access to all activity concerning their accounts. Encourage participants to use this service.

### Participant Quarterly Account Statements

Quarterly account statements show all activity concerning a participant's retirement account during the preceding quarter. Activities that appear on a participant's quarterly account statement include:

- Money In/credits
- Money Out/debits
- Exchanges
- Investment gains/losses

**Note:** Money In and Money Out may consist of contributions, loans, adjustments, distributions and forfeitures.

Quarterly account statements are available to participants online. They may access the statements by logging into their account via *My.GuideStone.org* and selecting the "Statements" Quick Link. Statements are mailed to participants unless they opt into electronic delivery by contacting a GuideStone customer solutions specialist at **1-888-98-GUIDE** (1-888-984-8433) Monday through Friday, 7 a.m. to 6 p.m. CT.

Instruct participants who believe their quarterly account statement contains errors to promptly call GuideStone's toll-free number, **1-888-98-GUIDE** (1-888-984-8433). GuideStone will assume that account statements are correct unless notified by the employer or participant within 120 days following the close of the calendar year. If notified within 120 days, GuideStone will research any request or proposed discrepancy and make any correction it determines necessary or appropriate. Research and correction after that time may incur a service fee in accordance with the applicable fee schedule. In addition, participants can view their account activity daily by accessing their account online at *My.GuideStone.org*.

**Note:** Quarterly account statements do not show defined benefit plans. Participants in a deferred compensation plan will receive a separate statement showing the activity on those accounts. The fourth quarter accounting statement will be an annual statement.

### Employer Account Statements

Employers who have a forfeiture account receive a quarterly account statement from GuideStone. As part of your fiduciary duty, plan administrators should develop procedures and policies to review statements for accuracy and document the results of the review. Report any discrepancies to GuideStone as soon as possible so research and corrections can be completed at minimal cost to the plan sponsor.



## Tax Information

### Pretax Deferrals (i.e., Tax-sheltered Contributions)

Participants must sign written *Retirement Contribution Agreements* with you in order to make pretax deferrals to the plan. Participants pay no federal income tax on the pretax contribution at the time it is put into the plan. Any federal income tax due is payable when amounts are distributed from the plan. You do not report participants' contributions made by salary reduction as taxable income in Box 1 of *Form W-2*. You must report participants' pretax contributions in Box 12 of *Form W-2*. You should review the IRS [General Instructions for Forms W-2 and W-3](#) for complete information about reporting.

### Roth Elective Deferrals

Participants must sign written *Retirement Contribution Agreements* with you in order to make Roth elective deferrals to the plan. Participants pay applicable taxes on the money at the time it is put into the plan. If the employee takes a qualified distribution, the contributions and earnings are withdrawn tax-free. A qualified distribution means the funds must be held for a five-year period dating from the earlier of the first year the participant contributes to any Roth 403(b) or Roth 401(k) option in the plan or, if a Roth rollover contribution is made, the first year the participant makes a designated Roth contribution to the other applicable retirement plan, whichever is earlier. In addition, a distribution is not qualified unless the participant has reached age 59 ½ or is disabled or it is made to a beneficiary(ies) after the participant's death.

### Withholding

Participants may roll over eligible distributions to an IRA or to another employer-sponsored retirement plan that accepts rollovers. GuideStone is required by law to withhold, for federal income tax, 20 percent of the taxable distribution for any portion of the distribution paid directly to the participant that can be classified as an eligible rollover distribution.

GuideStone may distribute all or any portion of a participant's eligible income as either a:

- Direct rollover (check made payable to appropriate plan)
- Roth IRA conversion (check made payable to IRA provider)
- Distribution (check made payable to the participant)

Below is helpful information for those participants who are considering the differences between these options.

#### **Direct Rollover (check made payable to appropriate plan)**

- Subject to taxes later when the participant withdraws the money from the receiving institution.
- Participants receive a *Form 1099-R* from GuideStone and report the rollover when filing their taxes for the previous year (reportable on IRS *Form 1040*, but not taxable).
- Roth accounts may only be rolled over to a Roth IRA or another employer-sponsored plan with a Roth feature.

#### **Roth IRA Conversion (check made payable to IRA provider)**

- Reportable as taxable income at the time of the conversion.
- Qualified distributions are tax-free at retirement.

## Distribution (check made payable to the participant)

- The IRS requires 20 percent withholding for federal income tax for amounts that could have otherwise been distributed in an eligible rollover distribution.
- Participants must pay taxes in the current year unless they roll the distribution over to another financial institution and report the distribution as a rollover on *Form 1040*.
- Participants who receive checks made payable to them who roll the money over to another financial institution must complete the rollover within 60 days of receipt of the check.
- GuideStone reports the gross amount of the participant's distribution on a *Form 1099-R*.

**Note:** Distributions to participants who are not yet age 59 ½ may be subject to an additional 10 percent excise tax (note exceptions below). Participants pay this when they file their federal income tax.

## Exceptions to the 20 Percent Mandatory Income Tax Withholding

Participants may **not** roll over the following distributions, and they are **not** subject to the mandatory 20 percent withholding:

- Payments that will last for a period of 10 years or more
- RMDs
- Hardship withdrawals
- The portion of a distribution claimed as minister's housing allowance
- Distributions to correct excess deferrals, excess contributions or excess aggregate contributions
- Coronavirus-related distributions taken in the year 2020

Participants need to keep in mind that distributions are generally taxable income and thus affect the amount of federal income tax the participant must ultimately pay.

## Exceptions to the 10 Percent Excise Tax

See the section "[Penalty Tax on Early Withdrawals](#)" of this manual.

## Housing Allowance

Eligible ministers may have the church or other qualifying organization designate all or a portion of their income as housing allowance. It is the minister's and his employer's responsibility to determine eligibility for housing allowance and to adhere to all applicable laws and regulations regarding such designation. The amount a minister can claim as housing allowance must be the **lesser** of:

- The housing allowance designated by their church; or
- Actual housing expenses (including mortgage payments, utilities, property taxes, insurance, furnishings, repairs and improvements); or
- The fair rental value of the home (furnished, plus utilities).

At retirement, eligible, retired Ministers for Tax Purposes may ask GuideStone (if Southern Baptist) or the plan sponsor (if not Southern Baptist) to designate all or a portion of their retirement income as a housing allowance. A housing allowance can be designated for income only when that payment relates to contributions made as a result of the participant's own earnings from service as a minister. Each minister must decide if he is a Minister for Tax Purposes and how much he can exclude from income as a housing allowance.

GuideStone reports the total distribution on the minister's *Form 1099-R*, but the portion of the retirement income claimed as a housing allowance is not reported as taxable income on the *Form 1099-R*.

This creates a difference between the gross amount, taxable amount and after-tax amounts of which ministers need to be aware and resolve on their tax returns. If a minister asks GuideStone or the plan sponsor to designate more than he can exclude from income as a housing allowance, he must report the excess to the IRS.

Ministers who receive retirement income but continue their service in the ministry may have to pay SECA taxes on the part of their retirement income designated as housing allowance. Ministers must comply with other IRS rules about the housing allowance. We encourage ministers to consult with an accountant or attorney who is familiar with the unique issues surrounding ministers' taxes.

Ministers receiving retirement income can request to make or change a housing allowance designation at any time by completing a form. All requests for changes will apply to future payments only and cannot be retroactive. If participants have additional questions on minister's housing allowance, they may access (and print) the annual *Ministers' Tax Guide* from GuideStone's website, [GuideStone.org](http://GuideStone.org), or call GuideStone at **1-888-98-GUIDE** (1-888-984-8433) to request a copy.

### **State Income Tax Withholding**

Depending on the participant's state of residence for tax purposes, some distributions from the plan may be required to have state income tax withholding. GuideStone will accommodate state income tax withholding on distributions where such withholding is required. The amount will be credited against the participant's state income tax.

### **Form 1099-R**

GuideStone reports all of the retirement distributions from the plan to participants on IRS *Form 1099-R*, mailed no later than the last day of January of the year following the year of distribution. GuideStone also reports defaulted loans as "deemed a distributable event".

## IRS Notice Requirements

Plan sponsors may be required to provide certain notices to employees if the plan contains certain provisions, such as an automatic contribution arrangement or safe harbor contributions. These notices are in addition to disclosures required by the DOL. See [Appendix A](#) for notices required by the DOL under ERISA.

In addition, 403(b)(7) plans must provide notices to comply with the universal availability rules. The universal availability notice must be provided to any employee who is eligible to participate in the plan, and the plan administrator should keep records of (1) the content of each notice and (2) who received the notice.

### Sample Notices

GuideStone has templates available for administrators to use in drafting automatic enrollment or effective opportunity notices for their participants.

- [Automatic enrollment notices](#)
- [Effective opportunity notices](#)

The IRS has provided a list of required information for a safe harbor contribution plan at [irs.gov/Retirement-Plans/Retirement-Plan-Participant-Notices-When-the-Plan-is-Intended-to-be-an-IRC-401k-or-m-Safe-Harbor-Plan](https://www.irs.gov/Retirement-Plans/Retirement-Plan-Participant-Notices-When-the-Plan-is-Intended-to-be-an-IRC-401k-or-m-Safe-Harbor-Plan).

### Delivery Deadlines

Both automatic enrollment and safe harbor notices have the same regulatory deadlines. The plan sponsor must provide these notices as follows:

- Annually, no earlier than 90 days or later than 30 days prior to the beginning of the plan year
- For new hires, as soon as possible upon eligibility to make deferrals (generally, the date of hire)

To satisfy universal availability (403(b) plans only), the effective opportunity notice must be provided at least once annually to every employee eligible to make deferrals to the plan. New employees must receive a notice within 30 days of their employment date so that the employee can make deferrals as of the first pay period.

There is no regulatory reason why the notices cannot be combined, but the plan administrator should be careful to ensure that all required content for each type of notice is included in the disclosure.

### Delivery Methods

While all of these notices can be delivered via U.S. Postal Service (generally via First-Class Mail® delivery), the IRS recognizes that most business can be conducted electronically. The IRS has issued rules providing that notice and disclosure requirements can be satisfied electronically. The rules are detailed and complex, and, while GuideStone is happy to provide general information, before undertaking electronic delivery, an employer should check with its own benefits counsel regarding how to satisfy these requirements.

Under the IRS rules for electronic notices\*, notices required by the IRS (for instance, the *Special Tax Notice* required under Code section 402(f), safe harbor notices, automatic enrollment notices, etc.) may be provided electronically without participant consent provided that:

- The timing and content rules that otherwise apply to the notice are met.
- The electronic information is provided in a manner that is no less understandable than if provided on a written paper document.
- The electronic system is designed to alert the participant, at the time the notice is provided, to the significance of the information (including identification of the subject matter of the notice) and to provide any instructions needed to access the notice.
- The electronic record of an applicable notice is maintained in a form that is capable of being retained and accurately reproduced for later reference.
- The participant is effectively able to access the electronic medium used to provide the notice (i.e., the participant has a worksite email address or has demonstrated they can access the electronic medium used to provide the notice).
- The participant is advised that the applicable notice is also available in writing on paper at no charge, upon request.

As an alternative, notices can be provided electronically as long as the participant consents to such delivery. In order to properly consent:

- The participant must affirmatively consent to receive the notice electronically in a manner that demonstrates the participant can actually access the notice through the electronic medium.
- The participant must be provided with a detailed disclosure regarding, among other things, the right to withdraw consent and the right to receive a paper copy.
- The participant must be provided with updated information if the system used to access the notice is changed.

\*See Treasury Regulation 1.401(a)-21 for information on the use of electronic media to deliver notices.

If your plan is subject to ERISA, DOL notice requirements apply. See [Appendix A](#) for information regarding DOL notices.

## Correcting Mistakes

Despite a plan administrator's best attempts to administer the plan correctly, there will be mistakes. Once identified, mistakes in a retirement plan must be corrected as soon as possible and the corrections documented. If audited, the chances are very good that the auditor will find the mistake and ask for documentation showing it was corrected.

The first step is to contact your benefits legal counsel for instructions on the proper steps to take for correction. If the correction involves recordkeeping, such as missed contributions or excess contributions, you should contact the recordkeeper as soon as possible. Most IRS correction methods generally involve earnings on contributions, so a quick correction generally will be less costly than one that must go back several years.

### EPCRS (IRS) and VFCP (DOL)

The correction method depends on a number of factors, such as whether the error was a plan documentation failure or an operational failure and whether the error was considered insignificant or egregious. Using an improper correction method only compounds the error, so consultation with your benefits counsel is strongly recommended.

Both the IRS and DOL have correction programs with different procedures, rules and fees. The IRS provides correction through the EPCRS: [irs.gov/Retirement-Plans/EPCRS-Overview](https://irs.gov/Retirement-Plans/EPCRS-Overview). The DOL provides correction through the VFCP: <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/vfcp.pdf>.

If you and your benefits counsel determine that the correction involves recordkeeping, contact your GuideStone relationship manager and/or retirement operations administrator and provide as much detail as possible:

- Participant's name
- Social Security number (last 4 digits)
- Contribution type to be changed
- Amount to be refunded
- Payroll date(s) of amount to be corrected

GuideStone will provide you with the appropriate form to authorize the correction and work with you to determine the amount of earnings involved, if any.

**Note:** If the correction requires substantial research or multiple transactions, GuideStone may charge a fee for the correction. GuideStone will invoice you for the correction before work begins on the correction.

As indicated above, any corrections made should be documented in accordance with guidance received from your benefits counsel and kept in your historical records for the plan.

## Appendix A – Special ERISA Issues

This appendix applies only to retirement plans that must comply with ERISA. Church plans are not required to comply with ERISA rules such as disclosure or reporting.

The following information should not be considered tax or legal advice. GuideStone stands ready to assist your organization as you work with your legal and tax advisors by providing resource information that you and your advisor may find beneficial.

### DOL Investigations

This section will provide information regarding inquiries, investigations and audits by the DOL to enforce the provisions under ERISA. Information regarding ERISA enforcement efforts can be found on the DOL website at <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/enforcement/erisa>.

Understanding the scope of a DOL inquiry will help you be prepared in advance. Remember that the DOL is very concerned with the process, not just the results, and their focus is on fulfilling fiduciary responsibilities.

If you are notified of a DOL inquiry or investigation, contact your GuideStone relationship manager immediately and provide a copy of the notice. You should also contact your benefits legal counsel and other service providers who may be impacted by the inquiry. The deadline for response usually is short, so all parties will need as much time as possible to respond.

Generally, the notification letter will request specific documentation regarding plan administration. Documents may include:

- Records of contributions to the plan
- Payroll audits
- Fidelity Bond documentation
- *Investment Policy Statement*
- Benefit payments
- Administrative expenses
- Written plan documents
- Required disclosures or reports, such as SPD, SMM, *Summary Annual Reports (SARs)*, *Forms 5500*, *Annual Participant Disclosure*, etc.

### Fiduciary Responsibilities

GuideStone has created a Fiduciary Corner in EAP where you may access articles to assist you in fulfilling your fiduciary duties as the plan administrator. To access the Fiduciary Corner, click on the “Resources” tab in EAP.

Since the DOL is concerned with satisfying fiduciary responsibilities under ERISA, you also should be familiar with the resources provided by the DOL. These resources can be found at <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/publications>. In addition, see the list of publications below.

- *Protect Your Employee Benefit Plan With An ERISA Fidelity Bond*
- *Meeting Your Fiduciary Responsibilities*
- *Selecting an Auditor for Your Employee Benefit Plan*
- *Selecting and Monitoring Pension Consultants – Tips for Plan Fiduciaries*
- *Tips for Selecting and Monitoring Service Providers for Your Employee Benefit Plan*
- *Target Date Retirement Funds – Tips for ERISA Plan Fiduciaries*

## Reporting and Disclosures

A key component of ERISA is to provide plan participants with information regarding the retirement plan. It is important that the plan administrator monitor and comply with all DOL-required disclosures. Generally, most disclosures must be provided to anyone who has benefits due from the plan (including beneficiaries or terminated employees) and everyone eligible to participate in the plan, whether they have a balance or not. The following chart summarizes the disclosure and reporting requirements for ERISA plans:

Disclosure	When Due	Recipient	Provided By
<i>Form 5500</i> Annual Report with Schedules*	7 months after end of plan year	DOL	Service provider
<i>Form 8955-SSA</i> is Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits	7 months after end of plan year	IRS	Service provider
Independent Accountant's Statement (if applicable)	With <i>Form 5500</i>	DOL	Auditor
<i>Summary Annual Report (SAR)</i>	9 months after end of plan year	Participants and beneficiaries	<i>Form 5500</i> service provider
<i>Summary Plan Description (SPD)</i>	Newly eligible participants: within 90 days of eligibility Current participants: Every 5 or 10 years, depending on whether there have been plan amendments	Participants and beneficiaries	Plan documentation provider
<i>Summary of Material Modification (SMM)</i>	Not later than 210 days after the end of the plan year in which the change is adopted	Participants and beneficiaries	Plan documentation provider
Participant Plan and Investment Fee Disclosures	Annually	Participants and beneficiaries	Service provider
<i>Form 8955-SSA</i>	With <i>Form 5500</i>	IRS	<i>Form 5500</i> service provider
404(c) Disclosure	Upon eligibility to invest	Participants and beneficiaries, as applicable	Plan administrator

\*A plan with fewer than 121 participants at the beginning of the plan year and that filed as a small plan the previous year may continue to file as a small plan for the current year if eligible for the waiver from the independent accountant's statement. A plan with fewer than 100 participants that filed as a large plan the previous year may continue to file as a large plan for the current year.



The following link to DOL resources provides additional information important for compliance with the disclosure and reporting rules: [Reporting and Disclosure Guide for Employee Benefit Plans](#).

### **Electronic Delivery of Notices – DOL**

The DOL [proposed regulations](#) for electronic delivery could make disclosures available on a website, after providing the initial notice to participants and beneficiaries about how to access the documents. Participants could request for paper copies of specific documents or opt out of electronic delivery. Currently, the DOL regulations regarding electronic delivery of required disclosures and notices are not the same as the IRS regulations. It is important for plan administrators to understand the differences and comply with the DOL regulations if the plan is subject to ERISA. [Technical Release 2011-03R](#) issued on December 8, 2011, provides the rules regarding use of electronic media for delivery. Before implementing electronic delivery using the non-safe harbor procedures, the plan administrator should read the “Conclusions” section completely to comply with the technical release.

### **Fees and Plan Expenses**

A primary responsibility under ERISA is for the plan administrator to monitor fees and expenses associated with the plan. While the DOL does not require a plan fiduciary to make choices based solely on fees, the fiduciary must consider whether the fees are reasonable based on the services or products received for the fees. As always, a fiduciary must keep records of the decision-making process when evaluating plan expenses or fees.

### **Understanding Retirement Plan Fees and Expenses**

The DOL has published a booklet, [Understanding Retirement Plan Fees and Expenses](#), to assist plan administrators and fiduciaries in evaluating fees and expenses.

### **Timely Remittance of Contributions**

As discussed previously in “[Timing of Contributions](#)”, ERISA plans must comply with the DOL standards for remitting contributions to the plan. Failure to comply with DOL standards constitutes a prohibited transaction that can incur both IRS and DOL financial penalties. You should have processes in place to ensure that contributions are remitted timely when the person normally responsible for remitting contributions is unable to perform his or her duties. Late contributions are reportable on the *Form 5500*.

## **404(c) Protection**

### **What is 404(c)?**

Section 404(c) of ERISA defines the responsibilities of plan fiduciaries and offers statutory liability protection to employers who sponsor participant-directed defined contribution plans.

If a plan meets section 404(c) requirements and related regulations, the plan sponsor and other fiduciaries are not liable for any retirement account losses that are a result of the investment decisions of participants or their beneficiaries.

### **404(c) Benefits for Plan Sponsors**

Complying with ERISA 404(c) helps shift the responsibility for losses resulting from a participant's direction of investments from the plan sponsor to the participant. In a nutshell, 404(c) offers a shield against imprudent participant investment decisions.

As an example, consider a 25-year-old who decides to put his account in the Money Market Fund and keeps it there for 40 years. Or a 65-year-old who invests his entire account in an aggressive growth fund and loses significant amounts in a bear market. In a 404(c) plan, the fiduciaries will not be legally responsible for the imprudence of those decisions.

### **Why think about taking advantage of 404(c) protection now?**

The DOL issued participant fee disclosure regulations effective August 30, 2012, that require plan sponsors to disclose fee and investment information to participants. By complying with the participant fee disclosure regulations, employers also comply with most of the requirements of 404(c) listed below.

Although compliance with section 404(c) is optional, the protections afforded under 404(c) help shift the responsibility for the participant's investment selection to the participant and away from the plan sponsor.

### **404(c) General Requirements**

To comply with 404(c), the plan must:

- Allow participant direction of investments
- Provide a "broad range of investment alternatives" (at least three)
- Let the participants transfer assets among the options as often as appropriate, given the market volatility of the options
- Satisfy the disclosure requirements under the participant fee regulations

The following information must be provided to the participants:

- \*A statement that the plan is a 404(c) plan and that fiduciary relief is provided
- Explanation of how to direct investments and any limitations
- Description of fees (required disclosures satisfied by participant fee disclosure)
- Name, address and phone number of plan fiduciary responsible for providing this information

Other information must be provided upon request.

**\*With the exception of this requirement, the DOL transferred the long list of disclosure**

**requirements under the 404(c) regulations to the new participant fee disclosure regulations under 404(a)(5). This requirement is met by distributing the SMMs.**

### **Plan Sponsor and Other Fiduciary Responsibilities**

Although 404(c) relieves the liability for a participant's investment decisions, the plan sponsor retains responsibility for:

- Prudently selecting and monitoring the plan's investment options to ensure they remain competitive and meet the diverse needs of the plan's participants on an ongoing basis
- Reviewing the plan's operations to ensure that the frequency with which participants can change their investments continues to be appropriate, given the volatility of the investment options
- Ensuring that participants have been given sufficient disclosure about the plan's investment options on an ongoing basis so the participants can make educated decisions
- Following the terms of the plan document
- Enlisting the skill and care of a prudent expert in choosing investments for the plan

## Appendix B – 401(k) Plans

A 401(k) plan is a 401(a) plan that allows participants to make pretax contributions to the plan (see [irs.gov/Retirement-Plans/401k-Plans](https://www.irs.gov/Retirement-Plans/401k-Plans) and [irs.gov/Retirement-Plans/Plan-Sponsor/401k-Plan-Overview](https://www.irs.gov/Retirement-Plans/Plan-Sponsor/401k-Plan-Overview)). These plans can also allow an employer matching contribution (also called a 401(m) contribution) and an employer profit-sharing or non-elective contribution. A 401(k) plan does **not** include a Money Purchase Pension Plan or a defined benefit plan, even though all of these fall under the 401(a) trust provision.

### Plan Documents

The IRS (and DOL, if the plan is subject to ERISA) require that all 401(a) plans, including 401(k), have a written plan document. Plan sponsors that use documents produced by GuideStone will satisfy this requirement with a single document containing all plan provisions. In addition to the plan document, there will also be a *Trust Agreement*, service agreement and fee schedule.

See “[Maintaining Your Plan’s Qualified Status](#)” for more information on plan document retention.

### Testing

All 401(k) plans, including church plans, are subject to NDT requirements, including top-heavy provisions. A plan must pass testing either by plan design, by numerical testing or by having no highly compensated employees. Plan sponsors must ensure that documentation is maintained, proving that the plan satisfies the testing requirements. More information on testing can be found at [irs.gov/Retirement-Plans/401k-Plan-Fix-It-Guide-The-Plan-Failed-The-401k-ADP-and-ACP-Nondiscrimination-Tests](https://www.irs.gov/Retirement-Plans/401k-Plan-Fix-It-Guide-The-Plan-Failed-The-401k-ADP-and-ACP-Nondiscrimination-Tests).

## Appendix C – 403(b)(7) Plans

Mandatory Provisions — [irs.gov/Retirement-Plans/IRC-403\(b\)-Tax-Sheltered-Annuity-Plans—Written-Program:-Mandatory-Provisions](https://www.irs.gov/Retirement-Plans/IRC-403(b)-Tax-Sheltered-Annuity-Plans—Written-Program:-Mandatory-Provisions)

Optional Provisions — [irs.gov/retirement-plans/irc-403b-tax-sheltered-annuity-plans-establish-a-403b-plan](https://www.irs.gov/retirement-plans/irc-403b-tax-sheltered-annuity-plans-establish-a-403b-plan)

### Universal Availability and the Annual Effective Opportunity Notice

Employers who sponsor an ERISA 403(b) plan are subject to NDT and, therefore, must satisfy the universal availability requirement. Universal availability provides that if any employee is eligible to make elective deferrals under your plan, all employees must be eligible to defer into the plan unless they can be excluded from the plan based on a statutory exclusion. As a part of the universal availability requirement, you must demonstrate that all employees have been informed, at least annually, of their ability to make or change their deferral elections.

If your retirement plan is audited, the IRS will determine whether the employer meets the universal availability requirement for salary reduction contributions (including Roth contributions). To make this determination, the IRS will want to know whether “meaningful notice” has been given to employees to tell them they are eligible to make salary reduction contributions. The IRS has not elaborated on what “meaningful notice” means, but has indicated that simply informing an employee of their right to make salary reduction contributions if they come by the Human Resources office does not constitute “meaningful notice”. The IRS will want to make sure that your plan makes salary reduction contributions universally available to employees. They may ask to see posters or payroll stuffers notifying employees of their ability to make salary reduction contributions. The IRS has stated they will interview employees to determine whether they are aware of their ability to make salary reduction contributions to the plan.

You should establish practices that ensure that all employees are informed of this right upon being hired. It is best to ask employees to provide their signature, perhaps on a form you create, indicating they have been informed of and understand their right to make such contributions. You should maintain this written documentation in the employees’ files. Failure to meet the retirement plan nondiscrimination requirements can result in significant consequences to you. GuideStone offers a [sample effective opportunity notice](#) template for plan sponsors to edit as needed.

### 403(b) Exchanges and Transfers

In addition to rollovers, 403(b) plans have other options to move money from one 403(b) plan to another using an exchange or a transfer. While the plan must provide for investment exchanges, the plan is not required to provide for contract exchanges or plan-to-plan transfers.

**Exchanges** can be broken down into two categories according to the IRS 403(b) regulations.

**Investment exchanges** involve a participant moving money from one approved vendor with a payroll slot (they are actively receiving contributions from the employer's payroll) to another approved vendor with a payroll slot under the same plan. With these exchanges, employer approval and information sharing is required, but a separate written *Information Sharing Agreement* is not required. The IRS feels that payroll slot vendors will have an agreement to share information in their service agreement or other documents.

**Example:** Your plan allows employees to have their contributions sent to GuideStone or Vendor X. A participant who is currently using Vendor X would like to move a portion or all of his money to GuideStone, which is actively receiving contributions. This is an **investment exchange**. You would be required to share information in the event the participant has money with both vendors. No *Information Sharing Agreement* would be required.

**Contract exchanges** involve a participant moving money from one vendor (contract) to another vendor (contract) under the same plan where the receiving vendor involved in the exchange does not have a payroll slot (e.g., a discontinued vendor). With these exchanges, employer approval and a written *Information Sharing Agreement* is required.

**Example:** Your plan allows employees to have their contributions sent to GuideStone or Vendor X. A participant who is currently using Vendor X would like to move a portion or all of his money to Vendor Y. Vendor Y is not an option for employees to have their contributions sent to on a monthly basis. This is a **contract exchange**. You would be required to approve this exchange and share information. A written *Information Sharing Agreement* would be required.

If your plan allows multiple vendors or has a prior vendor with some remaining assets, you should review the [Multiple Provider Booklet](#) found in EAP under the "Compliance" section of the "Resources" tab.

**Transfers** involve (1) an employee moving money from your plan to a completely unrelated employer's 403(b) plan at which the employee is or was an employee or (2) an employee moving money from one 403(b) plan to another 403(b) plan of the same employer. In this instance, the money is moving out of the plan, and, if moved to another employer's plan, no information sharing or oversight is required. If allowed in your *Adoption Agreement*, plan-to-plan transfers can be made while the employee is still in service without regard to any distribution restrictions.

## Multi-provider Plans

The IRS asserted in their 403(b) regulations that retirement plan oversight is the responsibility of the employer. This means that in situations where multiple vendors are a part of the plan, the employer will be responsible for sharing information with each vendor to ensure compliance. For example, an employer has multiple vendors and only allows one plan loan per employer plan. The employer is responsible for making sure that an employee seeking to take out a plan loan with one vendor does not already have a loan with another vendor within the same plan. In some situations, this information sharing requires a signed *Information Sharing Agreement*. Below is a chart of the process involved with information sharing.

Participants, employers and plan providers have more steps to complete if your organization makes contributions to more than one investment provider or allows plan participants to move money from one 403(b) investment provider to another while in service. (These new rules do not apply to rollovers between retirement plans.)

Money can still be moved, but the employer and the provider receiving the 403(b) money must enter into an agreement to exchange required information related to compliance with the 403(b) requirements. An

exchange will no longer be allowed between providers with which an employer has no formal relationship.

A plan-to-plan transfer occurs between two unrelated employers' 403(b) plans or between 403(b) plans of the same employer. For example, a participant may elect to transfer money from a former employer's 403(b) plan into his/her new employer's 403(b) plan.

Activity	Information Sharing Requirement
Contributions to more than one vendor	Employer must ensure coordination of information between vendors
Investment exchange	Employer must ensure coordination of information between vendors
Contract exchange	Written <i>Information Sharing Agreement</i> required
Plan-to-plan transfer	Information sharing not required
Rollover	Not affected by 403(b) regulations

Your decisions may present some new accountabilities and challenges. You may need to:

- Establish an *Information Sharing Agreement* documenting responsibility for sharing information if you allow plan participants to move money within your single 403(b) plan from one investment provider with a payroll slot to a vendor who does not occupy a payroll slot.
- Provide written consent when participants request certain types of plan distributions, such as a hardship withdrawal or plan loan.

If your plan allows multiple vendors or has a prior vendor with some remaining assets, you should review the [Multiple Provider Booklet](#) found in EAP under the “Compliance” section of the “Resources” tab.

Again, plans that use GuideStone as their sole provider will see minimal impact from this information sharing requirement.

## Appendix D – Money Purchase Pension Plans

See [irs.gov/Retirement-Plans/Choosing-a-Retirement-Plan-Money-Purchase-Plan](https://www.irs.gov/Retirement-Plans/Choosing-a-Retirement-Plan-Money-Purchase-Plan).

Generally, plan sponsors who maintain a Money Purchase Pension Plan with GuideStone maintain a frozen plan (i.e., contributions are no longer made to the plan). Frozen plans are not required to perform testing since no participants receive additional benefits under the plan provisions. In addition, frozen plans must provide 100 percent vesting to all participants.

### Updating Participant Status

Most plan sponsors at GuideStone with a Money Purchase Pension Plan will have a 403(b) plan as well. As a result, it is possible for plan sponsors to overlook the status of participants in the Money Purchase Pension Plan. Money Purchase Pension Plans are not allowed to distribute benefits to participants prior to termination of service, so it is very important for plan administrators to keep the status of Money Purchase Pension Plan participants current.

To update a participant's status, log into the Money Purchase Pension Plan EAP site and access the participant's account on the "Employee" tab. Click on the "Terminate Employee" link, complete the dates and save. **Note:** Entering termination information for one plan does not transfer the information to all plans. If there is more than one retirement plan for the employer, the administrator must enter the termination information for the participant for each plan.

### Disclosures

Money Purchase Pension Plans that are church plans are not subject to the disclosure requirements of ERISA. Participants should be provided with the most current SPD (available through EAP) to ensure they understand their benefits.



## Appendix E – Church Plans

A retirement plan that is established as a church plan is not subject to ERISA, and special rules apply to church plans. The DOL does not have jurisdiction over church plans unless the plan sponsor has made an affirmative election under Code section 410(d) to become voluntarily subject to ERISA. Employers who make an affirmative 410(d) election cannot later opt out of ERISA. The information that follows provides some technical details about church plans.

### ERISA Exemption for Church Plans

The cornerstone of federal retirement plan law is ERISA. 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, prohibited transaction provisions and funding, and fiduciary responsibility.

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 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

If your plan is structured as a church plan as defined by Code section 414(e) and ERISA section 3(33), it 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
4. The benefit commencement date 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 percent vested
7. The minimum participation rules
8. The minimum vesting rules
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.)

## **Merging Your Qualified Plan into Your 403(b) Plan**

In December 2015, the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) was signed into law. Section 336 now allows a church 401(a) plan of a church-related employer to be transferred directly to a church 403(b) plan maintained by the same church-related employer without making the accounts distributable to participants and thus preserving their retirement benefits. A transfer would require that participants be 100 percent vested in the amounts transferred.

Since this is a new provision that is unique to church plans, the process to accomplish the merger is not clear. The IRS has been tasked with creating regulations to provide guidance. In the meantime, church plan sponsors with a qualified plan can contact your relationship manager to discuss the advantages and disadvantages of consolidating your retirement plans.