

# Church Plan Eligibility

The following discussion is designed to **provide general information** on church plan requirements and **highlight certain areas of consideration** for your organization regarding its eligibility to offer a church plan.

**This document has three main purposes:**

1. To allow the employer to certify its decision regarding its ability to offer a church plan.
2. To help provide an employer with an accumulation of evidence, if ever needed, to justify why they offer a church plan.
3. To assist an employer in determining whether it qualifies to offer a church plan.

## What is a church plan?

A church plan is a type of employee benefit plan offered by a church or a convention or association of churches for employees working for or deemed to work for the church. While these plans are similar to employee benefit plans offered by for-profit corporations, church plans are treated differently under federal law, principally the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (Code).

### ? **How are church plans different from other plans?**

Church plans are exempt from the requirements imposed by Title I of ERISA on most employers, which results in significantly lower administrative costs. For example, church plans do not have to comply with the reporting and disclosure requirements required in Title I of ERISA, including an annual Form 5500 filing requirement, and are not subject to an annual audit requirement. Organizations offering church plans are provided other areas of flexibility, including offering retirement plans under Code section 403(b) and offering self-funded health care plans.

### ? What type of organization can use a church plan to provide benefits to its employees?

An actual church can certainly sponsor a church plan for its employees. Whether another organization that is not a church may offer a church plan depends upon the unique facts and circumstances relating to the organization. GuideStone Financial Resources of the Southern Baptist Convention® (GuideStone) provides the following discussion to assist you, in consultation with your legal and tax advisors, in determining whether your organization is eligible to use a church plan to provide benefits to your employees. Since this is a legal determination based on your facts and circumstances, GuideStone cannot make this decision for your organization. GuideStone cannot provide legal or tax advice, so the information in this discussion is informational only and intended as a brief overview of certain key considerations. GuideStone desires to provide you and your legal counsel with helpful resources and information so that your organization can make an informed decision and serve your employees effectively.

### ? What is the technical definition of a “church plan?”

The definition of the term “church plan” is found in section 414(e)(1) of the Code. A church plan is “a plan established and maintained . . . for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under Code section 501.” Since most ministry organizations are tax-exempt under Code section 501(c)(3), the “exempt from tax” aspect of this requirement is ordinarily satisfied.

### ? Can organizations other than a church, convention or association of churches use a church plan?

Yes. While the Code may create a strict limit on the kinds of organizations that may offer church plans, Code section 414(e)(3) contains two special provisions that significantly expand the scope of organizations eligible to offer employee benefits under a church plan.

First, under Code section 414(e)(3)(A), a plan may be “deemed” to satisfy the “established and maintained by a church” requirement if it is maintained by an organization “the principal purpose or function of which” is to administer the plan on behalf of employees “of a church or a convention or association of churches.” On June 5, 2017, the United States Supreme Court affirmed that organizations other than “churches,” like hospitals, universities, etc., may offer employer benefits under church plans, bringing clarity to the litigated issue (*Advocate Health Care Network v. Stapleton*, 137 S.Ct 1652 (2017)). This “principal purpose or function” organization must also be controlled by or associated with a church or a convention or association of churches. While GuideStone meets this requirement, as discussed below, a plan committee established for this purpose may also fulfill this role.

Second, an employee may be “deemed” to be an employee of a church or a convention or association of churches if the individual meets a three-part test. The first two parts of this test are virtually never an issue: the individual is 1) an employee of 2) a tax-exempt organization. The third prong of the test asks whether the organization itself is “controlled by or associated with a church or a convention or association of churches. . . .”



## What do “controlled by” and “associated with” mean?

If your organization is tax-exempt under Code section 501(c)(3) and also controlled by or associated with a church or a convention or association of churches, it is eligible to offer employee benefits under a church plan. The Code recognizes that while ecclesiastical bodies actually control many ministry organizations, these ministries are also established as independent organizations. Code section 414(e) provides that if an organization is controlled by or associated with a church, convention or association of churches, the organization’s employees are eligible to be deemed church employees.

### **Controlled By**

The IRS uses a practical approach to defining the phrase “controlled by” in this context. The regulations under Code section 414(e) reflect that “. . . an organization, a majority of whose officers or directors are appointed by a church’s governing board or by officials of a church . . .” satisfies this aspect of the test. However, the regulations also recognize this is not the only type of control that may satisfy this particular aspect of the test. As noted at the outset, the facts and circumstances of your organization’s specific structure must be examined and help determine who controls the organization.

### **Associated With**

An organization is associated with a church if it “shares common religious bonds and convictions with that church.” Similarly, an organization is associated with a convention or association of churches if it shares common bonds and convictions with the convention or association of churches. The IRS’s private letter rulings provide some guidance on what it means to share common religious bonds and convictions. Since private letter rulings only address the situation at hand, it is important to understand that the determination of whether any other organization meets the “associated with” test depends upon the particular facts and circumstances involved, with no particular fact or circumstance viewed as controlling.

Nevertheless, various private letter rulings offer insight into the kinds of facts and circumstances relevant to determining whether an organization is associated with a church, convention or association of churches. Points previously examined by the IRS include:

- Sharing in commonly held religious tenets and doctrine.
- An organization’s being operated under church or denominational principles.
- An ongoing active relationship with a church or denomination.
- Articles of incorporation and bylaws that require the organization to incorporate in its policies and practices the moral teachings of the church or denomination.
- An organization’s listing in a particular denominational directory.
- The presence of a chapel where services are conducted in an educational setting.





### Where does this leave your organization concerning whether it can use a church plan to provide benefits to its employees?

If your ministry organization is controlled by or associated with the Southern Baptist Convention (SBC), GuideStone can establish a church plan for your employees. GuideStone is an integrated auxiliary of the SBC and has an SBC ministry assignment from the convention to provide benefits for persons serving churches and other ministry organizations associated with the SBC.

GuideStone is also a “principal purpose or function” organization described in Code section 414(e)(3)(A) eligible to establish and maintain a church plan.

If your organization is not controlled by or associated with the SBC but is controlled by or associated with another church or denomination, GuideStone can still help your organization establish a church plan for your employees.



### Can an organization seek a ruling from the IRS that it is able to sponsor a church plan?

An organization may seek a private letter ruling from the IRS determining that it is able to sponsor a church plan. However, an organization is not required to obtain a private letter ruling to sponsor a church plan. In 2011, the IRS issued Revenue Procedure 2011-44, which changed the procedure for requesting a letter ruling from the IRS on church plan status. In addition to the general requirements for filing for a letter ruling on church plan status that have been in place for years, Revenue Procedure 2011-44 requires the employer to give notice to “interested persons” (generally anyone with an account balance in the plan) that such a letter ruling is being requested and describing the requirements from which church plans are exempt.

An organization that decides to request a letter ruling on church plan status should work with its legal counsel to prepare the request. In addition to other related costs, the IRS charges a fee for processing a letter ruling request.

## Summary

GuideStone is an organization that is eligible to maintain a church plan for organizations controlled by or associated with the SBC. Even if your organization is not controlled by or associated with the SBC, but is otherwise controlled by or associated with another church or denomination, your organization should be eligible to offer employee benefits under a church plan.

Certainly, we defer to your organization and its advisors concerning the determination of church plan status. As you engage in due diligence related to church plan considerations, please know that **GuideStone welcomes the opportunity to provide information and resources to your organization** and its advisors with respect to this matter. At your convenience, please share with us how GuideStone may be of further assistance.



## What are the factors used to determine church plan eligibility?

The following is not an exhaustive list of factors; rather, it is a starting point for discussion with the employer of the facts and circumstances that may influence the employer's determination to offer a church plan to its employees.



### History

This category is used to determine the organization's origins and to what degree the organization has stayed true to its genesis.

- How did it form?
- What was the original purpose, historically, of the organization?
- What/who has it been connected to in its history?



### Board Make-up Requirements

This category is used to determine if the board members' requirements would influence the organization.

- Describe any board members' requirements (e.g., church membership, church or denominational affiliation, etc.).
- If there is no such requirement, what percentage of board members is affiliated with one or more church(es) or denomination(s)?
- Describe any faith-based requirement for board members (e.g., statement of faith).
- Is there a statement of faith the board members are required to sign?



### Funding

This category is used to determine to what degree the organization's financial position is tied to a church or other faith-based organization, including the origin of the initial funding.

- Describe how your initial funding was made and by whom.  
Did your organization break off from another faith-based organization?  
Who purchased/owns the land/building used by the organization?
- Describe your primary source of funding.  
Who are the top 10 funders/donors to the organization?  
Who are your regular donors/funders, no matter how small?
- Describe your primary targets for fundraising.
- Describe any organizations that assist with fundraising.
- Describe the rules for how the assets are distributed upon dissolution.
- Describe any organizations you support or to whom you contribute financially.





### Listed in the directory of the church or other faith-based organizations

Some churches or faith-based organizations have directories that list entities they support or with whom they directly relate. This category is used to determine if an employer is listed in one of these directories or if it is linked to faith-based organizations in other publications.

- To what faith-based organizations does the organization belong?
- With what religious-based entities is the organization involved?
- With what churches is the organization involved?
- Name any faith-based organization directory that lists your organization.
- Name any websites to which your website is linked or on which your organization is listed.
- Name any publications of other faith-based organizations in which your organization is referenced.



### Nature of Operations/Ministry

This category is used to determine the primary operations/activities/ministries of the organization.

Describe the operations/activities of your organization and who controls them.

- Provide your mission statement.
- Describe with whom you do business.
- Describe whom you serve.
- Describe your ministry activities.
- Describe what endorsements the organization receives from faith-based organizations.
- Does the organization report to any other church, association or convention or other faith-based organization by mandate or voluntarily?

If **yes**, please describe this reporting requirement.

- Does the organization co-sponsor activities or events with a church, association or convention or other faith-based organization?

If **yes**, please describe the nature of such activities or events.

- Describe your primary sources of advertising.
- Describe your primary target audience for your ministry and/or services.
- Describe your primary source to reach your target audience.



### Preferential Hiring/Admissions/Clients

This category is used to determine if the organization prioritizes any specific church membership or affiliation criteria when deciding whom to hire/admit/serve.



