

457(b)

**Deferred Compensation Plan
Administration Manual**



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457(b) DEFERRED COMPENSATION PLANS

This manual will address 457(b) deferred compensation plans offered by non-qualified church-controlled organizations (NQCCOs), such as hospitals, universities, etc., that are exempt from the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), and top-hat plans of tax- exempt employers subject to ERISA.*

PURPOSE OF MANUAL

GuideStone® has prepared this manual to provide plan administrators an overview of 457(b) deferred compensation plans and information about your responsibilities as the plan administrator. While we attempted to cover important points, there are many nuances in the regulations, and it is impossible to cover every scenario. We recommend you routinely check your plan to see if you are administering it accordingly and consult your legal counsel.

All employees of the employer involved in administering the 457(b) plan should read through the *Basic Plan Document* and the employer's *Adoption Agreement* as well as any other documents related to plan provisions (such as policies or procedures). These documents are the key to proper administration of the employer's 457(b) plan with GuideStone.



*Note: For employers subject to ERISA, this manual will address only the top-hat exception to ERISA for non-qualified plans.

OVERVIEW OF 457(b) PLANS

Section 457 applies to non-qualified deferred compensation (NQDC) plans established by state and local government and tax-exempt employers. Two types of NQDC plans are subject to 457: (1) an eligible 457(b) plan established by any tax-exempt entity other than a church or qualified church-controlled organization (QCCO) and (2) any other deferred compensation plan established by a tax-exempt employer other than a church or QCCO (an ineligible NQDC plan).

457(b) plans operate similarly to 403(b) plans. Both employees and employers can make contributions to the plan. Upon severance from service, the participant can take a distribution of the funds or can elect to defer receipt of funds. Some key differences are:

- All contributions (both employee and employer contributions) are combined for contribution limit purposes and cannot exceed the lesser of the dollar amount of: (1) the general limit on elective deferrals 402(g) limit (i.e., \$19,500 for 2021) or (2) 100 percent of taxable compensation.
- All contributions made to the 457(b) plan are subject to FICA taxation at the time of contribution to the plan. (Self-employment (SECA) taxation is more complicated and should be discussed with the employer's Payroll department or benefit counsel.)
- All contributions to the plan are pretax; the plan does not allow for after-tax or Roth contributions.
- Some employees may be eligible to make catch-up contributions in the three years prior to the year they reach their normal retirement age (typically age 65 unless the participant completes an appropriate form designating a different normal retirement age between 65 and 70) to make up for periods where contributions were less than the limit. Contact GuideStone for calculation if participant is interested.
- The 10 percent penalty for early withdrawal does not apply.
- The plan can limit who can participate in the plan and is not subject to nondiscrimination rules.*
- 457(b) assets are held in a rabbi trust and are considered employer assets; therefore, any funds invested in the plan (employee or employer) could potentially be subject to the employer's creditors in the event the employer becomes insolvent.
- Distributions from the plan are not eligible rollover distributions.
- The age-50 catch-up contributions are NOT allowed (only permitted in governmental 457(b) plans).
- Upon a distribution event, the participant must make an election within 60 days of the event to take the income as a systematic withdrawal and/or defer payment. Otherwise, the plan's default of a single-sum payment (or other default as specified in the Adoption Agreement) will occur at the end of the 60 days.
- The unforeseeable emergency distribution provisions in a 457(b) plan are very different from the hardship distribution provisions in a retirement plan. In order to receive an unforeseeable emergency distribution, the reason for the emergency must be completely outside of the participant's control.



*Note: For employers subject to ERISA, top-hat plans must limit participation to a "select group of management or highly compensated employees." The Department of Labor (DOL) has not provided significant guidance on what constitutes a "select group of management or highly compensated employees."

OVERVIEW OF 457(b) PLANS

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Upon establishing a 457(b) plan with GuideStone, we will provide you with a *Basic Plan Document*, *Trust Agreement* (rabbi trust), *Adoption Agreement* and *Eligible Employee Deferral /Contribution Agreement* that you will need in order to put the arrangements in writing. The *Basic Plan Document* encompasses the foundational provisions. The *Adoption Agreement* reflects the specific provisions elected by the employer for the arrangement. The *Basic Plan Document* and *Adoption Agreement* together with any policies and procedures governing eligibility or other provisions related to the 457(b) plan constitute the basic provisions of the employer's 457(b) deferred compensation arrangement. The Deferral/Contribution Agreement will indicate the employee elective deferrals and/or employer contributions that will be remitted to the plan. Contact your GuideStone relationship manager if you have any questions about how to complete the forms.

As a plan sponsor, it is your responsibility to keep all documents related to the plan since its inception, including any resolutions, exhibits and forms. You should verify that your files contain all current and historical plan documents. GuideStone reserves the right to retain only an electronic copy of the plan documents for a reasonable period of time as determined by GuideStone in its policies and procedures and to destroy or otherwise dispose of any original documents or other materials related to the plan.

Note that a rabbi trust is an optional document, which may offer some level of security to the employee with respect to their non-qualified income. This is especially true for an NQDC plan, in which the employee defers compensation with only a promise of the employer to pay the income. Under the rabbi trust, the funds are reachable by the employer's creditors in the event of the employer's bankruptcy or insolvency. Thus, the rabbi trust will protect an employee's investments from the employer's reach in most cases. However, if insolvency or bankruptcy occurs, the plan participants stand in line with other employer creditors. The IRS has ruled that the establishment of a rabbi trust would not in itself cause an NQDC plan to be considered funded for tax purposes since NQDC plan assets are subject to the claims of creditors and are not set aside solely for the benefit of participants.

ADMINISTRATION OF PLAN

1| Prior to enrolling participants in the plan

A. Determine who is eligible to participate in the plan.*

- Your *Adoption Agreement* states who is not allowed in the plan and details any eligibility requirements that need to be met before an employee can be enrolled in the plan.
- If your *Adoption Agreement* references a separate policy for excluded categories of employees and eligibility requirements, please ensure that the policy is in writing and kept with your *Adoption Agreement*.



*Note: For employers subject to ERISA, top-hat plans must limit participation to a “select group of management or highly compensated employees.” The DOL has not provided significant guidance on what constitutes a “select group of management or highly compensated employees.” Employers with a top-hat plan should consult with legal counsel regarding what constitutes a “select group of management or highly compensated employees.”

B. Complete an *Eligible Employee Deferral/Contribution Agreement (deferral agreement)* form. The purpose of this form is to:

- Communicate enrollment information and contribution expectations between the employer and GuideStone and
- Allow the participant to make an investment election

Timing

- **New participants in the plan:** New participants in the plan must enter into a deferral agreement as of their hire date in order to defer compensation that has not been paid or made available (i.e., received payment for the pay period) for the current month. If the new participant fails to submit a deferral agreement on or before the first day of eligibility, the deferral agreement will take effect the first day of the following month.
- **New participants previously eligible but not participating:** Current employees previously eligible to participate but who elected not to enroll when first eligible must complete the deferral agreement; however, salary reduction contributions will take effect in the month following the month in which the deferral agreement is completed for compensation that has not been paid or made available (i.e., received payment for the pay period).

C. After completing the deferral agreement, give a copy to the participant for their files and send a copy to GuideStone. You should maintain the original in your files. If at any time you have questions about completing the forms, please call your GuideStone relationship manager.

ADMINISTRATION OF PLAN

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2| Remitting employee and employer contributions

When remitting contributions to GuideStone:

- Remit contributions correctly in reference to the amount and pay period.
- 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.

3| Ceasing/changing employee or employer contributions

If employee contributions are changing or ceasing, complete an *Eligible Employee Deferral/Contribution Agreement Change Form* prior to the change taking place. The change in amounts will take effect the first paycheck after the beginning of the month following receipt of the *Change Form*.

If employer contributions are changing or ceasing, there is no need to complete an *Eligible Employee Deferral/Contribution Agreement Change Form*.

4| Employer changes*

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

- 501(c)(3) status
- Ability to offer a church plan (i.e., level of control or association with a church or a convention or association of churches)
- Organizational or corporate structure
- Employer name

Changes in any of the above can impact your plan or 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. You may need to submit a new *Status Certification Form* and *Church Plan Eligibility Form*. Newly related organizations that wish to participate in your plan may need to submit other information so GuideStone can determine their eligibility to participate.

If you undergo reorganization and/or restructuring, you should contact your relationship manager at GuideStone for more information.



*Note: If your organization is no longer able to offer a church plan and therefore becomes subject to ERISA, you must redesign the non-qualified plan in order to be exempt from ERISA. Contact your relationship manager to discuss your NQDC plan options. If your organization's funding sources change to include a significantly lower ratio of funding from government sources or goods and services offered to the general public (i.e., you are no longer a NQCCO), you may have other deferred compensation options available. Contact your relationship manager to discuss your situation.

5| General administrative responsibilities

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

A. Employer responsibilities

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

- Explaining the plan to eligible participants and answering their questions about the plan
- Having participants complete enrollment forms and sending copies of the completed forms to GuideStone
- Maintaining participants' deferral agreements
- Withholding contributions from participants' compensation as requested
- Withholding employment taxes at the appropriate time (generally when contributions are made to the plan)
- Verifying and adjusting contribution amounts
- Notifying GuideStone promptly in the event of a participant's severance from employment or death
- Responding to requests for information from GuideStone about the plan or participants
- Keeping plan practices consistent with plan provisions and making timely amendments
- Top-hat plans only: Filing a one-time notice with the DOL that the plan is exempt from ERISA reporting within 120 days of plan establishment

B. GuideStone responsibilities

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

- Establishing participant accounts
- Placing employee and employer contributions in plan funds, as directed
- Preparing and distributing quarterly accounting statements to participants and employers
- Preparing and distributing written information for participants, participants' spouses, beneficiaries and their attorneys in the event of death, divorce or bankruptcy
- Making administrative rules in accordance with the plan

6| Distributions

GuideStone relies on the employer to notify us when the participant has incurred a distribution event (severance from employment or death). If timely payments are not made, the participant may face penalties (for instance, for underpayment of taxes).

The default form of distribution under the plan is a single-sum payment 60 days following the distribution event unless the employer elects in the *Adoption Agreement* for default payments to be made as a systematic withdrawal. If the participant/beneficiary does not make an election to defer distributions and/or designate payment in the form of a systematic withdrawal within 60 days of the distribution event, the funds will be paid out in a single sum or according to the default specified in the *Adoption Agreement* 60 days after the distribution event.

GuideStone refers to this deadline as the 60-Day Rule:

If an initial election to defer distribution has not been made as described above, then the distribution will be made 60 days after the participant's severance. If the participant (or beneficiary in the case of death) elects a distribution method (but not an election to delay the distribution) within 60 days of the severance, distribution will be made 60 days after severance in the method elected by the participant. Regardless of election, no payments will be made until 60 days after the distribution event.

The participant should be provided with the *457(b) Payment Application* and *Form W-4* immediately upon severance. On the *457(b) Payment Application* form, the participant can elect to defer distribution to a date in the future, but if distribution is deferred past age 72, the participant will begin to receive their annual required minimum distributions once they reach their required beginning date. On the *Form W-4*, the participant can designate federal withholding, if applicable.

7 | Withholding and reporting

The following is some general information regarding the taxation of NQDC arrangements. More information can be found on the IRS website at [irs.gov/businesses/corporations/nonqualified-deferred-compensation-audit-techniques-guide](https://www.irs.gov/businesses/corporations/nonqualified-deferred-compensation-audit-techniques-guide). While GuideStone cannot provide tax or legal advice, GuideStone is pleased to provide this information as a resource for your organization's 457(b) plan. You should consult with your Payroll department or benefit counsel for more information and for the specific taxation rules applicable to your plans and organization. In addition, participants are urged to seek counsel from their own tax advisors regarding these complicated issues.

A. FICA

- Since the plan document offered by GuideStone does not have a vesting schedule, deferred compensation amounts (both employee and employer) are taken into account for FICA tax purposes when the services are performed (i.e., as contributions are made to the plan).
- FICA taxes apply up to the annual wage base (\$137,700 for 2020 and \$142,800 for 2021, amount may adjust annually) for Social Security taxes **and without limitations for Medicare taxes**.

B. SECA

Income tax and SECA taxes generally apply at the time of distribution. A special rule allows retirement benefits received by a minister from a church plan after the minister retires not to be subject to SECA taxes. Ministers should consult a tax advisor regarding reporting distributions.

C. Non-duplication rule

Once contributions are taken into account for FICA as described above (i.e., when the services are performed), the non-duplication rule in the regulations provides that the earnings on the contributions are not subject to FICA. However, if the earnings are not reasonable, the non-duplication rule does not apply. In general, if the earnings are based on actual earnings on an investment, such as a mutual fund, the earnings will not be considered unreasonable.

D. Income tax withholding

Federal taxes are due at the time the amounts are actually or constructively received by the employee. GuideStone will withhold income taxes from deferred compensation amounts at the time the amounts are actually paid; however, employers must report distribution events to GuideStone promptly to avoid incorrect reporting and associated penalties.

When amounts become payable, GuideStone will report the income on the IRS *Form W-2*.

E. Reporting requirements

1. *Form W-2* (contributions to the 457(b) plan)

Amounts subject to Social Security (generally the amount of contributions for the year to the 457(b) plan) should be reported in Boxes 3 and 5 on the participant's *Form W-2*. Elective deferrals and employer contributions to a section 457(b) deferred compensation plan should be reported in Box 12 with a code G (based on the *Form W-2* instructions).

2. *Forms 990* and *990T*

Employers should consult with their benefit or tax counsel regarding whether any reporting on *Form 990* is required.

3. Special reporting for ERISA employers

Employers who are subject to ERISA but who file a notice with the DOL within 120 days of the plan's inception are exempt from ERISA's annual *5500* reporting requirements.

ANNUAL CHECKLIST FOR 457(b) PLAN SPONSORS

Sponsoring a 457(b) plan is a good way to supplement retirement savings for your employees. As a sponsor of a 457(b) plan through GuideStone, you should be aware of the following important operational aspects of this type of plan:

Plan administration

- The plan must be operated in accordance with the terms of the 457(b) plan document. It is the plan sponsor's responsibility to ensure the plan is operated under these terms until a prospective change is made to the terms of the plan and/or the internal policies and procedures (such as eligibility and contributions).
- Everyone involved in the day-to-day operation of the 457(b) plan should read the *Deferred Compensation Plan Administration Manual – 457(b)* and know how the plan should be operated.
- Failure to operate the plan in compliance with its terms may cause the plan to become an ineligible deferred compensation plan (and possibly subject participants to immediate taxation and penalties).

Elections to defer compensation

- Current participants making an election to defer compensation or make a change in the level of their deferral of compensation (including stopping contributions) must do so the month before the compensation is earned.
- Newly hired employees who are immediately eligible must make deferral elections on or prior to their date of hire; otherwise, the election will become effective for the month following the election.

Contribution limits

- Everyone involved in the plan is responsible for ensuring that the contribution limit that applies to the plan (\$19,500 for 2021) is followed. They are also responsible for knowing that this limit applies to the sum of employer and employee contributions to the plan.

Proper withholding

Ensure the following:

- For employees subject to FICA, all contributions to the plan (employee and employer) are subject to FICA when contributed and must be reported correctly on IRS *Form W-2*.
- For employees subject to SECA, please reference the *Non qualified Deferred Compensation Plan Special Tax Consequences* form.

Notification of severance from employment and payment election

- Notify GuideStone immediately when someone has incurred a payment event (severance from employment or death) and has accumulations in the 457(b) plan, because the plan's default payment method will apply 60 days after the payment event if the participant has not made a payment election. NOTE: Regardless of payment election, no payment will be made until 60 days after the payment event.

If you have any questions, please **contact your GuideStone relationship manager**.

This checklist is not intended to be an all-encompassing list of items you must monitor as part of your fiduciary responsibility. For more information, you may want to review information about 457(b) plans at [irs.gov/Retirement-Plans/IRC-457\(b\)-Deferred-Compensation-Plans](https://www.irs.gov/Retirement-Plans/IRC-457(b)-Deferred-Compensation-Plans).

This 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.



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