GENERAL TESTING INFORMATION

This section provides additional information not provided in the *Employer's Guide to Nondiscrimination Testing for Section 403(b) Plans* (the "Guide"). The Guide is available on GuideStone's website at www.GuideStone.org.

ATTENTION

2024 HCE DETERMINATION

To determine an HCE for 2024 under the Statutory HCE Definition calculate the employee's Standard Compensation for the previous 2023 Plan Year plus any amount which is not includible in the gross income of the employee under sections 125, 132(f)(4), 402(g)(3), or 457(b) of the Code. This amount excludes any minister's housing allowance. Any employee earning in excess of $150,000 during 2023 (the previous year) is an HCE for 2024. (Certain ownership rules apply.)

IF YOU HAVE MULTIPLE 403(b) PLAN DOCUMENTS, GUIDESTONE AGGREGATES THE PLANS FOR TESTING AND ASSUMES PROVISIONS ARE UNIFORM. DATA SHOULD REPRESENT ALL 403(b) PLANS.

In performing nondiscrimination testing of multiple 403(b) plans, GuideStone will perform testing without reviewing any other plan documents and will assume provisions in all of the employer's 403(b) plans are identical to the provisions in the 403(b) Retirement Plan with GuideStone You should be aware that if provisions exist that are not identical to the 403(b) Plan, nondiscrimination testing issues could arise in cases where any such provision is available to any HCE but may not be available to all NHCEs.

QUESTIONS AND ANSWERS

Q. Why has my HCE Form (2A non-Control Group employers) and Form (2B Control Group employers) already been completed for me?

A. Based on data you submitted to GuideStone for the 2023 Plan Year, GuideStone has preliminarily (subject to your review and approval) identified your organization's HCEs for the 2024 Plan Year to provide assistance to you as you prepare data and forms for the testing process.

Forms 2A (non-Control Group employers) and 2B (Control Group employers) are now pre-populated with those employees who you indicated earned compensation from the employer in excess of $150,000 during the 2023 plan year.

Employers must review these forms to ensure all pre-populated information match their records. Employees who did not receive W2 Compensation for 2024 should not be listed on the forms or included in the data.

HCEs listed on the form, after employer adjustments (if any), should match those flagged as HCEs in the data spreadsheet submitted for testing. The columns in the data spreadsheet used to identify HCE's are: 5 (E) for non-Control Group employers and 7(G) for Control Group employers.

If you did not test with GuideStone for the 2023 plan year, you MUST complete the Worksheet for Determining HCEs, Form 2A (non-Control Group employers) and Form 2B (Control Group employers).

Q. What rules are there concerning student employees?

A. For purposes of the Census Form (Form 8A or 8B), if students are excluded from participation in your 403(b) Retirement Plan, you are probably aware that the IRS issued final regulations related to this category in 2005. Final regulations for determining whether employees of educational institutions are "students" for purposes of the student FICA exemption became effective April 1, 2005.

Benefits eligibility is a relevant factor in determining an employee's student status under the new standards. Employees previously classified as students may not meet the new FICA standards, in which case such "students" may no longer be considered a statutory exclusion (see Questions & Answers 36 of the Guide) from 403(b) plans under the student exemption.

If your plan excludes students, you should review these final regulations to ensure that the individuals in this category still qualify as statutory exclusions. In addition, if your employer is a hospital or other medical facility, you and your benefits counsel may want to review the Mayo Foundation v. United States, 09-837 Supreme Court decision to determine whether medical residents may be eligible for the student FICA exception. If so, you may consider amending your plan's exclusions in future years.

Q. What rules are there concerning discretionary or special contributions?

A. If the employer made discretionary or "special" matching or non-matching contributions to the plan during the 2024 Plan Year, these should be reported in the data. These contributions could be subject to various tests if any HCE received such a contribution.

For non-Control Group employers include any special employer matching contributions in Column O (item 15) and non-matching contributions in Column P (item 16). Control Group employers should place special employer matching contributions in Column V (item 22) and non-matching contributions in Column W (item 23).

GuideStone will conduct nondiscrimination tests on the assumption that contributions were made for participants with a single uniform formula under which each participant received the same percentage of compensation or the same dollar amount. If allocations were not uniform, it will be your responsibility, when submitting testing data, to provide GuideStone with information about how the contributions were allocated. Failure to provide GuideStone with information regarding the allocation formula could invalidate the test results.

Q. What rules are there concerning employees who normally work less than 20 hours a week?

A. If your plan included this category of exclusion for the 2024 Plan Year, you must determine whether any employee in this category actually worked more than 1,000 hours during 2023, if 2023 was **not** the employee's initial year of employment. If an employee did work more than 1,000 hours during 2023 that employee cannot be excluded. Employees excluded under this category for 2024 are reported on Form 8A (non-Control Group employers) and Form 8B (Control Group employers).

Under the 403(b) regulations, an employee normally works less than 20 hours a week if, (1) for the 12-month period beginning on the date the employee's employment commenced, the employer reasonably expects the employee to work fewer than 1,000 hours of service and, (2) for each Plan Year ending after the close of that 12-month period, the employee has actually worked fewer than 1,000 hours of service (plans that do not switch to the plan year after the initial employment year will need to look back each anniversary to see if the employee worked 1,000 hours in the prior anniversary year). Once an individual in this category works 1,000 hours or more, they are no longer allowed to be excluded under this category.

If your plan includes this category of exclusion, in order to exclude these employees for the 2025 Plan Year, you will need to determine whether any employee in this category actually worked more than 1,000 hours during 2024 if 2024 was **not** the employee's initial year of employment. If they did, they can no longer be excluded under the "normally works less than 20 hours a week" exclusion and should be allowed to participate in the employer's plan.

Q. What special rules are there concerning Compensation?

A. 415 Compensation includes those amounts which are paid by the later of 2 ½ months after severance from employment or the end of the year in which the severance occurs if the amounts are either (1) a regular pay that would have been made while the employee continued in employment (overtime, bonuses, shift differential, etc.); or, (2) a payment for accrued bona fide sick, vacation, or other leave, but only if the employee would have been able to use the leave if employment had continued. These amounts should NOT include severance pay. You may have already been following these rules in your compensation practice.

As explained in more detail in Questions & Answers 12 of the Guide and related questions dealing with compensation, the definition of 415 Compensation is used not only for section 415 limits but also for determining HCEs and is the basis of nondiscriminatory compensation under Code section 414(s).

The Heroes Earnings Assistance and Relief Tax (HEART) Act, requires employers who provide differential pay to employees called up for active military service, to include that amount in 415 compensation used for nondiscrimination testing.

Q. What is the Universal Availability test under the final 403(b) regulations?

A. The 403(b) regulations require that if any employee is allowed to make elective deferrals, all employees of the employer must be allowed to make elective deferrals — with certain exceptions. This requirement is known as "universal availability."

Under the final regulations, an employer must demonstrate that employees are provided with an "effective opportunity" to make elective deferrals, as a part of satisfying the Universal Availability requirement. The regulations state that the determination of whether an employer provides employees with an effective opportunity to make elective deferrals is based on all the relevant facts and circumstances. Some of the facts and circumstances looked at in determining whether employees have an effective opportunity to make elective deferrals are:

- Notice of the availability of making elective deferrals,
- The period of time during which an elective deferral election may be made, and
- Whether any other rights or benefits are conditioned on the employee's making elective deferrals.

Prior to the issuance of the final regulations, IRS officials repeatedly stated that the one thing they do not want to hear when auditing an employer is that employees are only told about the ability to make elective deferrals if they happen to stop by the Human Resources department and ask. These officials indicated they will ask to see notices, payroll stuffers, posters and emails in order to determine whether an employer has let employees know they have the ability to make elective deferrals.

GuideStone has created a sample notice that employers can use to help satisfy the effective opportunity notice requirement on an annual basis. Employers should customize this notice to conform to the provisions of their 403(b) plan. The sample notice can be found on GuideStone's web site at www.GuideStone.org.

Q. **What is the statutory deadline for correcting a failure of the ACP Test?**

A. Plans failing to satisfy the ACP Test have until the end of the Plan Year following the Plan Year of the ACP Test failure to correct a failure of the ACP Test. For instance, if your plan failed the ACP Test for the 2024 Plan Year, you would have until December 31, 2025 to correct the failure. The correction method for an ACP Test failure is based on plan provisions but generally is made by reducing any excess and returning the excess plus applicable earnings to HCEs. Another correction method allows QNEC contributions (Qualified Non-elective contributions) to be made to some non-excludable employees.

Q. Are there specific dates for submitting data for nondiscrimination testing?

A. Yes. If your plan is subject to the ACP Test (Employer Matching Contributions and/or Employee Tax-Paid Contributions), you will need to submit cumulative data for the entire Plan Year by **February 1, 2025**. (NOTE: If your plan is subject to the ACP Test and testing is not completed by March 15, 2025, the employer will be subject to a 10% excise tax on any excess aggregate contributions.) Plans that have an eligible automatic contribution arrangement (EACA) have a deadline of **July 1, 2025** for distribution of excess contributions and earnings to HCEs resulting from the ACP Test to avoid the 10% penalty tax on the Employer.

For plans not subject to the ACP Test, submit cumulative data for the entire Plan Year by **March 15, 2025**.

Q. What happens if the appropriate NDT forms are not returned in a timely manner?

A. Data received after August 15th may not be provided in sufficient time for testing to be completed by IRS imposed deadlines (such as the October 15th deadline (calendar year plans) for Coverage and General Nondiscrimination Test corrections). For any data received after October 15th, GuideStone cannot ensure that ACP testing for matching plans will be completed in time for corrections to be made by the year-end IRS deadline. The IRS imposes potentially large monetary fees for corrections made after IRS deadlines and may even result in plan disqualification. Information on all tests and applicable IRS deadlines can be found in the *Employer's Guide to Nondiscrimination Testing for Section 403(b) Plans*.

If your organization fails to provide GuideStone with accurate and complete data in time for testing to be completed and any corrections made by required IRS deadlines, GuideStone will deem that you have self-tested or otherwise determined that your plan is in compliance with all applicable nondiscrimination tests. However, if the IRS requests documentation that nondiscrimination requirements have been met, it will be the employer's responsibility to provide that documentation. Under the 403(b) regulations, a failure to satisfy the NDT requirements is a failure of the plan in which the tax favored status of the entire plan could be lost. We encourage you to pay close attention to these testing requirements and let us know if we can help you in completing this responsibility. GuideStone welcomes the opportunity to talk with you about the requirements to perform retirement plan nondiscrimination testing and ways GuideStone can help make the process easier.