

TOP 5 403(b) PLAN MISTAKES *AND HOW TO FIX (OR AVOID) THEM*

Lutheran Financial Managers Association
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TERMINOLOGY

- ERISA
- Qualified church controlled organization (QCCO)
- Nonqualified church controlled organization (non-QCCO)
- 401(k), 403(b), 403(b)(9)

CHURCH PLAN VS. ERISA PLAN

Church plans are statutorily exempted from ERISA, and therefore are exempt from:

- annual audit, Form 5500 filing, summary plan description, summary of material modification, fee disclosures
- certain nondiscrimination testing, vesting, eligibility, funding, disclosure, reporting and fiduciary rules

CHURCH 403(b) VS CHURCH 401(k) PLANS

- Universal availability vs. average deferral percentage (ADP) test (for non-QCCOs)
- No 5 year post-employment contributions in 401(k) plan
- No \$10,000/\$40,000; 15 years of service catch up; \$3,000 foreign missionary contributions in 401(k) plan
- Wider variety of funding vehicles for 403(b)(9) church retirement income account plan

MISTAKE #1

Not following the terms of the
written plan document

CORRECT USING EPCRS

IRS Revenue Procedure 2016-51, Employee Plans Compliance Resolution System (“EPCRS”)

- Self-correction program (SCP) can be used to correct “insignificant” operational failures, and can be used to correct some “significant” operational failures if corrected within 2 years after the failure occurred.
- Voluntary correction program (VCP) can be used to correct most errors, but requires IRS approval and payment of a fee.

EXAMPLES

- Plan document says participant is eligible for employer matching contributions after completing 1 year of service. During a routine audit 6 months after year-end, your accounting department identifies 2 participants whose matching contributions never began
- Same as above, but an audit hadn't been done for 5 years. The audit identifies 50 participants who should have been getting an employer matching contribution over the past 4 years
- Plan's definition of compensation does not exclude bonuses. However, bonuses have NEVER been taken into account when determining elective deferral or matching contributions since the plan's inception in 2008

MISTAKE #2

Exceeding statutory contribution
limits

CONTRIBUTION LIMIT QUESTION

Which one of the following is not a statutory contribution limit?

- a) \$ 3,000
- b) \$ 6,000
- c) \$10,000
- d) \$18,000
- e) \$54,000

CONTRIBUTION LIMIT ANSWER

Answer – ALL are correct!

- a) \$3,000/\$15,000 15 years of service catch up *Code §402(g)(7)*
\$3,000 foreign missionary contribution *Code §415(c)(7)(C)*
- b) \$6,000 age 50 catch up *Code §414(v)*
- c) \$10,000/\$40,000 no taxable compensation *Code §415(c)(7)(A)*
- d) \$18,000 elective deferral contributions (includes Roth)
Code §402(g)(1)
- e) \$54,000/100% of taxable compensation *Code §415(c)(1)*
 - Excludes age 50 catch up
 - Includes 15 YOS catchup

MISTAKE #3

Improper administration of
hardship distributions

HARDSHIP QUESTION

Which one of the following statements is false?

- a) Hardship distributions can only be made on account of immediate and heavy financial need
- b) Employees must first exhaust all other options before taking a hardship distribution
- c) Elective deferral contributions must be suspended for 6 months following a hardship distribution
- d) Distributions are limited to \$10,000
- e) Substantiation is required

HARDSHIP ANSWER

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MISTAKE #4

Improper administration of
plan loans

LOAN QUESTION

Which one of the following statements is false?

- a) Loans are limited to \$50,000 or ½ of the vested account balance
- b) Repayments must be made in accordance with the amortization schedule
- c) The loan length cannot exceed 5 years (except for a home loan)
- d) Elective deferral contributions must be suspended for 6 months following a loan

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MISTAKE #5

Other common mistakes

MISTAKES WE COMMONLY SEE...

- Post-employment contributions – only employer contributions, cannot be pre-paid
- Post severance contributions – only from amounts earned/accrued before separation from service
- Timely deposit of elective deferrals – within a period that is not longer than is reasonable for the proper administration of the plan
- Not periodically benchmarking investment fees, conducting RFP for record keeping services – reasonable fees
- Filing Form 5500 if a church plan – can be fixed

Thank you...
QUESTIONS?