Qualified Non-Electing Church Plans

The purpose of this paper is to identify the reasons an eligible organization might sponsor a qualified non-electing church plan. The law was changed by the Multiemployer Pension Plan Amendments Act of 1980 (MPPA), clarifying the definition of church plans which have the option of not electing to be covered by the Employee Retirement Income Security Act of 1974 (ERISA), i.e. qualified non-electing church plans. MPPA added Code section 414(e)(3)(B), which defines an employee of a church to include:

- a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of his source of compensation, or
- an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under Code section 501 and which is controlled by or associated with a church.

The benefits resulting from the status of a qualified non-electing church plan can be significant. Therefore, it is important that the plan qualifies. For example, Code section 414(e) still excludes a plan maintained by a church primarily for the benefit of employees of an unrelated trade or business. Under Regulation Sec. 1.414(e)-1(b)(2), a plan is deemed to satisfy the "primarily" test if in the year the plan is established, less than 50% of the eligible participants are employed in connection with an unrelated trade or business. Thereafter, the plan is considered to satisfy the "primarily" test if in four (4) of the last five (5) years less than 50% of the participants and in the same year less than 50% of the compensation paid to participants by the employer are employees of an unrelated trade or business. Otherwise, the plan must demonstrate using a facts and circumstances test as to the "primarily" test. Further, if the plan is sponsored by two or more employers, each employer must qualify i.e. employers are not aggregated for the "primarily" test.

ERISA Act Sec 4(b)(2) excludes church plans from coverage under Title I, Protection of Employee Benefit Rights, and ERISA Act Sec 4021(b)(3) excludes church plans from coverage under Title IV, Plan Termination Insurance which established the Pension Benefit Guaranty Corporation (PBGC). The qualified non-electing church plan is still treated as a qualified plan under IRC section 401(a) even though it fails to satisfy these requirements, provided it meets the other requirements of IRC section 401(a). Thus, distributions from a qualified non-electing church plan can still be eligible for rollover to another qualified plan, assuming the distribution is in the form of an eligible rollover distribution under IRC section 402(c), even if the recipient qualified plan is not another church plan. A church plan may irrevocably elect to be covered by IRC Part I, subpart B dealing with participation, vesting, funding, etc. (IRC Sec 410 (d)).

Beneficial Attributes of a Qualified Non-Electing Church Plan

Qualified non-electing church plans are relieved from certain qualification requirements, as follows:

1. The minimum age and service rules IRC section 410(a) and the minimum coverage requirements IRC section 410(b) of ERISA. The pre-ERISA coverage rules apply. Pre-ERISA, a plan had to satisfy one of the three coverage tests.
    a) The plan had to benefit at least 70% of all employees (the "70% test").

b) If at least 70% of employees were eligible for the plan, the plan had to benefit at least 80% of the eligible employees (the "70%/80% test").

c) If neither the 70% test nor the 70%/80% was satisfied, the plan had to cover a classification of employees which was determined to be nondiscriminatory ("classification test").

When applying the 70% and 70%/80% tests, the employer may exclude employees whose customary employment is for not more than twenty (20) hours in any week, and employees whose customary employment is for not more than five (5) months in any calendar year. The classification test is satisfied if the classification of employees covered by the plan does not discriminate in favor of highly compensated employees (HCEs) as defined in IRC section 414(q), even though that definition was not in effect pre-ERISA. See IRC section 414(q)(9). Pre-ERISA the statute actually referred to discrimination in favor of officers, shareholders, supervisors, and other undefined HCEs. The IRS has not issued regulations on the pre-ERISA coverage rules. A qualified non-electing church plan may be able to rely on other guidance that was published on these rules until more formal regulations are issued.

2. The pre-ERISA vesting rules apply. These vesting rules require that the plan's vesting schedule not discriminate in favor of officers, shareholders, or HCEs. 100% vesting occurs upon plan termination or complete discontinuance of contributions by the employer. In general, a level ten (10) year vesting schedule was acceptable.

3. The complexity of the requirement of a Joint and Survivor Annuity and Pre-Retirement Annuity is avoided.

4. The requirements protecting benefits pursuant to plan mergers or transfer of plan assets and liabilities does not apply.

5. The anti-assignment rule (IRC section 401(a)(13)) does not apply. However, IRC section 414(p)(11) expressly makes the QDRO provisions applicable to qualified non-electing church plans. By doing so, the tax code provisions relating to the taxability of benefits distributed pursuant to a QDRO are applicable to benefits in church plans that are payable to an alternate payee under a QDRO.

6. The requirement that a plan must commence benefits not later than the sixtieth day after the latest of the close of the plan year in which the participant attains age 65 or the normal retirement age specified in the plan if younger, the tenth anniversary year of plan participation, or termination of service, does not apply to a qualified non-electing church plan. However, a qualified non-electing church plan is subject to the minimum distribution requirements of IRC section 401(a)(9) with minor differences.

7. Qualified non-electing church plans are not prohibited from decreasing plan benefits by reason of an increase in benefits payable under the Social Security Act.

8. A qualified non-electing church plan is permitted to cause a participant to forfeit his accrued benefit derived from employer contributions if such participant withdraws his benefit attributable to his contributions.

9. A qualified non-electing church defined benefit plan is exempt from the minimum funding standard of IRC section 430.

10. Qualified non-electing church plans are exempt from the prohibited transaction rules of IRC 4975(g)(3).

11. Since qualified non-electing church plans are exempt from ERISA Title I, such plans are not required to file Form 5500 with the DOL and are not required to provide participants with a Summary Plan Description (SPD), Summary of Material Modifications (SMM), or the Summary Annual Reports (SAR).

Requirements of a Qualified Non-Electing Church Plan

The following requirements apply to qualified non-electing church plans:

1. The plan must be for the employees of the church or associated organizations (IRC section 401(a)(1)). Therefore, independent contractors cannot be covered by the plan.

2. The plan must be maintained for the exclusive benefit of the participants and their beneficiaries. IRC section 401(a)(2)/ERISA section 404(a)(1). This rule is known as the exclusive benefit rule. It prohibits the employer from diverting the assets for its own benefit. Other than the prohibited transaction exemption, there are no exceptions under this rule for qualified non-electing church plans.
3. Qualified non-electing church plans must satisfy pre-ERISA coverage rules, as discussed in paragraph 1 under **Beneficial Attributes.**

4. Qualified non-electing church plan must not discriminate in favor of HCEs (IRC section 401(a)(4)). If the nonelecting church plan contains a 401(k) salary reduction feature, the plan is subject to the non-discrimination testing (IRC section 401(m)), referred to as the Average Deferral Percentage (ADP) test, and the Average Contribution Percentage (ACP) test.

5. Qualified non-electing church plans are subject to the minimum distribution requirements of IRC section 401(a)(9) with minor differences, as mentioned in paragraph 6 under **Beneficial Attributes.**

6. The Top Heavy rules, IRC section 401(a)(10)(B), apply to qualified non-electing church plans. A plan is Top Heavy as of any plan year if at the beginning of such plan year more than 60% of the plan benefits have accrued to Key employees. Key employees are owners and officers. Since churches do not have owners, only officers can be Key employees. An officer is a Key employee for a plan year if his compensation for such year exceeds $130,000 in 2002 increased annual for cost-of-living-adjustments (COLA) in increments of $5,000, currently $160,000. Only 10% of the employees but not less than three (3) can be classified as Key employees. A Top Heavy plan must provide the non-Key employees with a Top Heavy minimum benefit. Such a result could be very detrimental to certain plan objectives. Therefore, generally the plan design should avoid creating a Top Heavy plan.

7. Annual compensation for plan purposes must be limited to the amount prescribed by IRC section 401(a)(17) adjusted for COLA, currently $245,000.

8. A defined benefit plan must stipulate its actuarial assumptions in order to satisfy the definitely determinable benefit rule.

9. Pursuant to IRC section 401(a)(27)(B), a defined contribution qualified non-electing church plan must declare whether it is a money purchase pension plan or a profit sharing plan.

10. A 401(k) qualified non-electing church plan must comply with the 401(a)(30) limit on elective deferrals. As prescribed in 402(g)(1)(A), the dollar limit for elective deferrals in a calendar year, adjusted for COLA, is currently $16,500 plus $5,500 catch-up or 100% of compensation if less.

11. Pursuant to IRC section 401(a)(31), a qualified non-electing church plan must provide a direct rollover option for an eligible rollover distribution.
12. Pursuant to IRC section 401(a)(36), a qualified non-electing church plan may permit in-service distributions to any employee who has attained age 62.

Analysis

If the objective of a defined benefit plan is to provide a benefit only for pastors and other potential HCEs, the pre-ERISA coverage of a certain percentage of non-highly compensated employees (NHCEs) may present a cost issue. If so, the logical plan to provide a significant benefit only to certain HCEs would be a non-qualified deferred compensation plan. A discussion of non-qualified deferred compensation plans is beyond the scope of this paper. However, since IRC section 457(b) does not apply to non-electing churches, only an unfunded deferred compensation plan would be available. The only remaining qualified plans available to non-electing churches would then be 401(k) plans or 403(b) plans.

Plan Type Differences*

Plan Feature	401(k) Plans	403(b) Plans
Are there limits on elective deferrals?	Lesser of a dollar limit or 100% of pre-plan compensation. The dollar limit is $16,500 i 2011, and is adjusted for cost of living changes in future years. 401(k) plans need to be combined only with other 401(k) plans or 403(b) plans in applying limits.	Lesser of a dollar limit or 100% of pre-plan compensation. The dollar limit is $16,500 in 2011, and is indexed for cost-of-living changes in future years. 403(b) plans need only be combined with other 403(b) plans or 401(k) plans in applying limits.
Are catch-up provisions available to increase the maximum elective deferrals?	Catch-up available under 402(g) and 414(v) for participants age 50 or over.	Catch-up available under 402(g) and 414(v), for participants age 50 or over. Catch-up available under 402(g)(7) for employees who have at least 15 years of service with certain organizations. If both catch-ups apply, the individual can take the sum of the two.
Can the plan have a profit sharing contribution allocated in varying amounts by participant (i.e. new comparability)?	Yes.	No.
Are there limits on total contributions?	Lesser of $49,000 (for 2011; as indexed in later years) or 100% of pre-plan compensation. Other qualified plans are combined in determining the limit.	Lesser of $49,000 (for 2011; as indexed in later years) or 100% of pre-plan compensation. Qualified plans, other than a plan maintained by a business the employee controls, do not count in determining the limit for 403(b) plans.
Is there an excise tax on excess contributions?	No.	Only if the 403(b) contract is a custodial account described in Code Section 403(b)(7), as opposed to an annuity contract.
Can the plan provide for participant loans?	Yes, subject to maximum limits under 72(p) to avoid taxation of the	Yes, subject to maximum limits under 72(p) to avoid taxation of the participant.

	participant.	
What are other effects of violating limits on total contributions?	Disqualification of the plan.	Only amount in excess of the limits is taxable.
What is the effect of the vesting schedule on contributions limits?	No effect.	Contributions count for Section 415(c) purposes only when they vest.
Can money be rolled in from a 401(k) or other qualified plan?	Yes.	Yes.
Can money be rolled in from a 403(b) plan?	Yes.	Yes.
Can money be rolled in from a 457(b) plan?	Yes.	Yes.
Can tax on distributions be deferred by rolling them into another plan or an IRA?	Yes.	Yes.
Is there a trust requirement?	Yes, unless the plan is fully insured.	No, but must have annuity contracts or custodial accounts.
Are funds protected from creditors of employees?	Probably yes. See *Rousey v. Jacoway*, 544 U.S. 320 (2005), holding that an individual retirement account, although not subject to ERISA was nevertheless exempt from the claims of creditors under 11 U.S.C. section 522(d)(10)(E). Similar reasoning should apply to a 401(k) plan.	Probably yes. See *Rousey v. Jacoway*, 544 U.S. 320 (2005), holding that an individual retirement account, although not subject to ERISA was nevertheless exempt from the claims of creditors under 11 U.S.C. section 522(d)(10)(E). Similar reasoning should apply to a 403(b) plan.
Is there a prohibition on discrimination in favor of highly compensated employees?	Yes, they are subject to the ADP and ACP test.	In the case of salary reduction contributions, simplified rules measure only availability of the right to make contributions, not actual contribution levels. Non-electing church plans are not subject to nondiscrimination requirements. They are not subject to the ADP test but are to the ACP. For this purpose, a church-controlled organization is not a church
Are there salary reduction distribution restrictions?	Yes.	Yes.
Is there an exception to salary reduction distributions for hardships?	Yes.	Yes, but the exception applies only to the salary reduction contributions themselves, not to income on them.
Is there an exception to salary reduction distribution restrictions for plan terminations?	Yes.	Yes, at least under proposed regulations. Prop. Treas. Reg 1.403(b)-10 (November 14, 2004)
Do the minimum distribution requirements of section 401(a)(9) apply?	Yes.	Yes.
Do prohibited transaction rules apply?	No.	No, unless imposed by state or local law.
Are IRS determination letters available?	Yes. See attached Rev. Proc. 2011-44.	Only possible through National Office private letter ruling; no prototype submissions.
What practical considerations apply?	Overwhelming popularity makes 401(k) plans a recognizable commodity to most individuals.	403(b) plans are not really understood as a 401(k) equivalent.

* This comparison was adapted from the Employee Benefits Legal Resources Site, available at: http://benefitsattorney.com/modules.php?name=Content&pa=showpage&pid=1

Conclusion
The 401(k) plan is the overwhelming plan of choice unless the sponsor can not or will not fund a Safe Harbor feature to eliminate an ADP problem. In such a case, a 403(b) plan is the plan of choice. If the objectives of the sponsor would be satisfied with an ERISA plan and the administrative costs would not be a barrier to such an election, the employee beneficiaries of a plan would be better protected by such an (irrevocable) election.

Rev. Proc. 2011-44

SECTION 1. PURPOSE

The purpose of this revenue procedure is to supplement the procedures for requesting a letter ruling under § 414(e) of the Internal Revenue Code (Code) relating to church plans. This revenue procedure modifies Rev. Proc. 2011-4, 2011-1 I.R.B. 123, to require that plan participants and other interested persons receive a notice in connection with a letter ruling request under § 414(e) for a qualified plan, to require that a copy of the notice be submitted to the Internal Revenue Service (IRS) as part of the ruling request, and to provide procedures for the IRS to receive and consider comments relating to the ruling request from interested persons.

SECTION 2. BACKGROUND

Section 414(e) generally defines a church plan as 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 § 501 (church plan). For purposes of § 414(e), an employee of a church or a convention or association of churches includes an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under § 501 and which is controlled by or associated with a church or a convention or association of churches.

Section 1.414(e)-1 of the Income Tax Regulations provides that a church plan is a plan established and at all times maintained for its employees by a church or by a convention or association of churches which is exempt from tax under § 501(a), provided that the plan otherwise meets the requirements of the regulations.

To qualify under § 401(a), a retirement plan must meet certain requirements, including the minimum participation requirements under § 410(a), the minimum coverage requirements under § 410(b), and the minimum vesting requirements under § 411. A church plan (for which no special election described below has been made (non-electing church plan)) is ordinarily not subject to various requirements that apply to tax-qualified plans under § 401(a) and is not covered by the Employee Retirement Income Security Act of 1974 (ERISA).

Thus, Code provisions that do not apply to a non-electing church plan include § 410 (relating to minimum participation standards), § 411 (relating to minimum vesting standards), § 412 (relating to minimum funding standards for pension plans), and § 4975 (relating to prohibited transactions). In addition, the flush language at the end of § 401(a) provides that paragraphs (11), (12), (13), (14), (15), (19), and (20) of § 401(a) do not apply to non-electing church plans. These paragraphs relate to joint and survivor annuities, mergers and consolidations, assignment or alienation of benefits, time of benefit commencement, certain social security increases, withdrawals of employee contributions, and distributions after plan termination, respectively.

Under section 4(b)(2) of ERISA, a non-electing church plan is excluded from coverage under Title I of ERISA. Thus, for example, it is not subject to ERISA's rules governing reporting, disclosure, and fiduciary conduct. In the case of a defined benefit pension plan, the plan is also not covered by the insurance provisions of Title IV of ERISA, which provides for certain benefit guarantees by the Pension Benefit Guaranty Corporation (PBGC) in the event of termination of an under funded pension plan. These results are not limited to a church plan whose only

participants are employees of a church, but may also in some cases include substantial numbers of employees of certain affiliated entities who are participants in a church plan as defined in § 414 (e).

A non-electing church plan is instead primarily subject to certain qualification requirements that pre-date the enactment of ERISA. The plan is treated as a tax-qualified plan only if the plan satisfies the participation, vesting, and funding requirements of the Code as in effect prior to ERISA.
Section 514(a) of ERISA generally provides that ERISA supersedes state laws that relate to an employee benefit plan described in section 4(a) of ERISA and not exempt under section 4(b) of ERISA. A non-electing church plan is exempt under section 4(b) of ERISA. Thus, state laws that relate to an employee benefit plan generally would apply to the non-electing church plan.

Section 410(d) permits an election to be made under which a church plan would be subject to the same requirements as apply to other qualified plans (electing church plan). Section 1.410(d)-1 of the Income Tax Regulations provides that the election is irrevocable and may be made only by the plan administrator and only in the manner provided in the regulations. If the election is made, the plan must comply with the applicable provisions of the Code. In addition, an electing church plan would be covered by and subject to Title I and, if a defined benefit pension plan, Title IV of ERISA.

Rev. Proc. 2011-4 contains procedures for an applicant to submit a letter ruling request that a qualified plan is a church plan under § 414(e). Although a church plan is not required to have a favorable letter ruling from the IRS, a letter ruling would ordinarily confirm a plan's status for tax purposes, as noted in Rev. Proc. 2011-4, section 4. Additionally, other agencies may require the applicant to have an IRS letter ruling. Appendix B of Rev. Proc. 2011-4 contains a checklist to comply with the general procedures for all such ruling requests. Appendix E contains an additional checklist applicable to church plan ruling requests. Rev. Proc. 2011-4 does not require any notice to interested persons prior to issuing a letter ruling with respect to a church plan under § 414(e).

Because a non-electing church plan is exempt from certain requirements under the Code and is not subject to ERISA, the IRS has determined that advance notice should be given to interested persons, with an opportunity for interested persons to comment, before a letter ruling is issued on a church plan under § 414(e). Accordingly, in the case of a non-electing church plan, the IRS will not issue a letter ruling that a qualified plan (which, for this purpose, means a § 401(a) plan, a § 403 (a) insurance annuity plan, and a § 403(b) plan) is a church plan unless the notice requirements of section 3 of this revenue procedure have been met.

SECTION 3. NOTICE TO PARTICIPANTS, BENEFICIARIES, ALTERNATE PAYEES, AND EMPLOYEE ORGANIZATIONS

.01 General Requirements. The applicant must give notice to interested persons that a letter ruling under §414(e) on behalf of a church plan will be submitted to the IRS. A copy of such notice must be submitted to the IRS as part of the ruling request.

.02 Information in the Notice. The notice must include the information set forth in the Model Notice attached as an appendix to this revenue procedure. However, information that is not applicable should be deleted. For example, in the case of a plan that is not a defined benefit plan, the notice should omit any information relating to the insurance protection provided by the PBGC (see references to PBGC in the notice). Similarly, the notice should be modified appropriately in the case of a § 403(b) plan (by deleting the reference to "the Code relating to retirement plans and with" in the paragraph under the heading "What is the Effect of an Election to be Subject to ERISA?"). In addition, if the notice is posted under section 3.05 below, it must provide that the interested person may request and receive the applicable notice on paper from the applicant at no charge.

While the notice may include additional information if that information is necessary or helpful to interested persons to understanding the information in the Model Notice, the notice should not have the effect of misleading or misinforming recipients or of distracting recipients from the information in the Model Notice.

.03 New Ruling Requests. Except as provided in section 3.04, the applicant must submit a copy of the notice to interested persons to the IRS containing the information under section 3.02 along with a statement that such notice was provided. The statement must specify the date or dates the notice was provided, and the date must be within 30 days before the letter ruling request is submitted to the IRS.

.04 Pending Ruling Requests. For a ruling request pending with the IRS on September 26, 2011, the applicant must submit a copy of the notice to interested persons to the IRS containing the information under section 3.02 along with a statement in a cover letter referencing the pending ruling request and stating the date or dates on which such notice was provided. This date must be within 60 days after September 26, 2011. The notice to interested persons must be in substantially the form set forth in the Model Notice attached as an appendix to this revenue procedure, but modified to specify that the letter ruling request has already been submitted to the IRS.

If an applicant for a pending letter ruling request chooses not to provide the notice to interested persons in connection with the letter ruling request, the applicant should notify the Service in writing within 60 days after September 26, 2011. The Service will then decline to rule, and the applicant's user fee will be refunded. If an applicant does not timely respond by notifying the IRS in the manner set forth under this section 3.04, the Service may consider the ruling request withdrawn and the user fee might not be refunded.

.05 Reasonable Effort. If the applicant makes a reasonable effort to satisfy the notice rules of this section 3, failure of one or more interested persons to receive the required notice will not cause the applicant to fail the notice requirement. Mere posting of the notice on a bulletin board is not sufficient to constitute a reasonable effort to satisfy this notice requirement, unless (a) the notice is prominently displayed on a bulletin board at a principal place of employment, (b) the bulletin board is regularly and actively used for a wide variety of purposes by employees who are plan participants, and (c) notice is given to all other interested persons by other methods that constitute a reasonable effort to satisfy the notice requirement.

.06 Modification of Prior Revenue Procedures. This revenue procedure modifies Rev. Proc. 2011-4 (and any applicable predecessor revenue procedure) by adding a notice requirement for ruling requests under § 414(e) involving church plans, and requiring that an applicant represent whether the plan is a non-electing church plan.

.07 Interested Person. For purposes of this section 3, the term interested person means each plan participant, beneficiary, or alternate payee (within the meaning of § 414(p)(8)), and any employee organization representing employees who are plan participants. In the case of a plan covering more than one employer, the term interested person also includes each contributing employer other than the applicant.

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective for all ruling requests received after September 26, 2011, and ruling requests pending with the IRS as of September 26, 2011.

SECTION 5. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2011-4 (and any applicable predecessor revenue procedure) is modified.

SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. sec. 3507) under control number 1545-1520.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in section 3. This information is required to inform interested persons of the significance of being a non-electing church plan in order to evaluate and process a request for a letter ruling that a plan is a church plan under § 414(e). The likely respondents are participants, beneficiaries, alternate payees, and employee organizations.

The estimated total annual reporting burden is 60 hours.

The estimated annual burden per respondent/recordkeeper varies from 1 to 3 hours, depending on individual circumstances, with an estimated average burden of 2 hours. The estimated number of respondents and/or recordkeepers is 30.

The estimated annual frequency of responses is on occasion.
Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. sec. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Sherri M. Edelman of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, contact the Employee Plans taxpayer assistance answering service at 1-877-829-5500 or email Ms. Edelman at RetirementPlanQuestions@irs.gov.

APPENDIX

MODEL NOTICE TO INTERESTED PERSONS OF THE REQUEST FOR AN IRS RULING ON A RETIREMENT PLAN'S STATUS AS A CHURCH PLAN

WHY ARE YOU RECEIVING THIS NOTICE?

You are receiving this notice because a letter ruling request will be submitted by [INSERT PLAN SPONSOR'S NAME AND EIN] to the Internal Revenue Service (IRS) for the [INSERT PLAN NAME] [INSERT PLAN NUMBER, IF APPLICABLE] for the plan year beginning [INSERT DATE]. The applicant requests the IRS to determine that the plan is a church plan under § 414(e) of the Internal Revenue Code (Code).

The applicant has represented that a special election (described below, relating to § 410(d) of the Code) has not been made. Therefore, the IRS requires that this notice be provided to you.

This notice informs you that a church plan under § 414(e) of the Code is generally not required to comply with many rules that apply to other retirement plans. Thus, those protections and rights under federal law are not required to be provided to participants and other interested persons. This notice also informs you that you may give the IRS comments.

WHY DOES CHURCH PLAN STATUS MATTER?

In general, a church plan is a plan established and at all times maintained for its employees by a church or by a convention or association of churches which is exempt from tax under Code § 501(a). A church plan is generally not subject to various requirements that generally apply to retirement plans under federal law. Instead, the plan is primarily subject to certain qualification requirements that pre-date the enactment of the Employee Retirement Income Security Act of 1974 (ERISA).

The applicant is representing that this plan is a church plan that is exempt from ERISA. This means that the plan is not required to provide certain protections and rights to plan participants. The protections applicable to ERISA-covered retirement plans that a church plan is not required to provide include the following:

A participant's eligibility to join the plan cannot be delayed past a stated period of time A participant's entitlement to fully vested benefits must be set forth in schedules depending on years of service, and cannot be delayed past a stated period of time The plan may not generally be amended to reduce previously earned benefits Specific minimum funding requirements apply for pension plans A participant has the right to bring suit under federal law for payment of benefits, fiduciary violations (such as inappropriate management of plan assets or impermissible self-dealing), and failure to receive a statement of benefits and other plan information A participant has the right to be notified about certain changes in the plan, and to obtain a copy of plan documents and certain reports filed with the government The insurance protection provided by the Pension Benefit Guaranty Corporation (PBGC) that applies in the event of termination of an under funded defined benefit pension plan.

If a church plan is excluded from ERISA coverage, state laws could independently provide protections and rights to participants, beneficiaries, and alternate payees. However, this would depend on the applicable state law. Further, if a church plan is excluded from ERISA coverage, a sponsor of the plan may choose to provide similar protections to those provided under ERISA and the Code (though PBGC insurance protection would not be available). However, the plan might be able to cease providing those protections (for future benefits or previously earned benefits) at any time, to the extent applicable state law does not prohibit such action. Also, the plan administrator is not precluded from making an election under § 410(d) (as discussed below) at a later time, in which case the plan would then become subject to ERISA and to the provisions of the Code that generally apply to tax-qualified retirement plans (and any applicable state law protection would then cease to apply).

WHAT IS THE EFFECT OF AN ELECTION TO BE SUBJECT TO ERISA?

The plan administrator of a church plan is permitted to make an irrevocable election under § 410(d) of the Code under which the plan will be subject to all of the Code requirements that generally apply to tax-qualified retirement plans including the protections and rights listed in the preceding section. If the plan administrator of a church plan makes that election, the plan must comply with applicable provisions of the Code relating to retirement plans and with ERISA. The applicant has represented that no such election has been made with respect to this plan.

WHAT IS THE SCOPE OF A LETTER RULING?

Please be aware that, if the IRS issues a ruling stating that the [INSERT PLAN NAME] is a church plan under Code § 414(e), that ruling is based on the information provided and is limited to the plan's status as a church plan under § 414(e). The ruling will not make any determination regarding other events or actions, for example, regarding whether the plan administrator actually has or has not made an election under § 410(d) for this plan in the past. Also note that while a letter ruling from the IRS would confirm a plan's status as a church plan under § 414(e), a plan is not required to have a letter ruling from the IRS in order to be a church plan under § 414(e). However, other agencies may require the applicant to have an IRS letter ruling in order for the plan to be treated as a church plan.

YOU HAVE AN OPPORTUNITY TO COMMENT

The IRS will consider any written information submitted by plan participants or other interested persons that is relevant to the ruling request. Comments not relevant to this issue will be disregarded, but relevant information, such as whether the employer is or is not controlled by or associated with a church and whether an election has or has not been made under § 410(d), will be taken into account. The relevant information must be submitted within 60 calendar days from the date this notice is provided to interested persons and must include all identifying information relating to the plan and plan sponsor listed in the first paragraph of this notice (which includes the name and identifying number of the plan sponsor, the plan name, and the plan number, if applicable). Information may be sent to the following address:

Internal Revenue Service
Attention: EP Letter Rulings
P.O. Box 27063
McPherson Station
Washington, DC 20038

In addition to considering relevant written information from interested persons, the IRS may permit interested persons to participate in the decision-making procedure by making oral presentations at meetings to which interested persons are invited. However, it is solely within the discretion of the IRS as to whether or not there will be meetings to which interested persons are invited.
Due to the tax disclosure restrictions of § 6103 of the Code, the IRS is prohibited from providing any information with respect to the letter ruling request.

WHERE TO OBTAIN FURTHER INFORMATION
For further information on rules that apply to plans that are subject to ERISA (such as to a church plan that has made an election under § 410(d) of the Code), see the information on retirement plans provided by the Department of Labor at
www.dol.gov/ebsa and the Pension Benefit Guaranty Corporation at www.pbgc.gov.
[NAME OF PLAN SPONSOR]
[NAME AND TITLE OF APPROPRIATE OFFICER]