



## IRS provides guidance for plans requesting church plan status rulings

In [Revenue Procedure 2011-44](#), the IRS has provided important guidance for plan sponsors requesting rulings that their 401(a) or 403(b) plans are “church plans.” This guidance requires an applicant to notify “interested persons” of the ruling request before the request is submitted to the IRS. This notice must advise the interested persons that they may submit comments to the IRS about the request. The requirement applies to new ruling requests received by the IRS after September 26, 2011, and to requests pending with the IRS as of September 26, 2011. An Appendix to the Revenue Procedure provides a Model Notice.

While this notification rule is similar to the requirement that the sponsor of a 401(a) qualified plan notify “interested parties” when making an application for a favorable determination letter for the plan, it is a separate requirement entirely.

### Church plan status and the need to notify interested persons

Internal Revenue Code section 414(e) defines a church plan as a plan that covers the employees of a church or a tax-exempt convention or association of churches, and the beneficiaries of those employees. Classification as a church plan exempts the plan from ERISA reporting, disclosure and fiduciary rules, as well as minimum vesting, coverage and other requirements, including the Pension Benefit Guaranty Corporation plan termination insurance program for defined benefit plans.

While a church plan is not required to get IRS confirmation of its status, many plan sponsors choose to do so for tax purposes. The rules for submitting Letter Ruling requests to the IRS, currently set forth in [Revenue Procedure 2011-4](#) contain a checklist for Church Plan ruling requests. Neither that Revenue Procedure nor the Church Plan Checklist requires plan sponsors to provide advance notification to potentially-affected individuals when making these requests. Since classification as a church plan exempts the plan from many rules designed to protect participants and beneficiaries, the IRS now feels that such notification is needed.

### Basic notification rules

“Interested persons” are all plan participants, beneficiaries, alternate payees under Qualified Domestic Relations Orders (QDROs), and employee organizations representing employees who are plan participants (e.g., unions). If the plan is a multiple employer plan, each contributing employer other than the applicant for the ruling request is also an “interested person.”

Plan sponsors must provide the Notice to Interested Persons no more than 30 days before the Letter Ruling request is submitted to the IRS. A copy of the Notice and a statement specifying the date or dates the Notice was provided must be included with the request for a Letter Ruling.

For Letter Ruling requests that are pending with the IRS as of September 26, 2011, plan sponsors must distribute the Notice no later than November 25, 2011. By this same deadline, plan sponsors must submit to the IRS a copy of the Notice and a statement referencing the pending request and specifying the date the Notice was distributed.

If a plan sponsor with a pending ruling request chooses not to provide the Notice, it must notify the IRS of this decision in writing, by November 25, 2011. The IRS will then decline to rule on the request and refund the User Fee. If a sponsor distributes the Notice but does not notify the IRS by November 25, 2011, that it has done so, the IRS may consider the request withdrawn and may not refund the User Fee.

#### Compliance Advisory

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