



Important Information

Plan Administration and Operation

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## Terrorist Attacks Affect Retirement Plans: Federal Agencies Extend Deadlines and Employers Review USERRA Responsibilities

**WHO'S AFFECTED** This information applies to sponsors of qualified pension, profit sharing and stock bonus plans, including 401(k) plans, governmental plans and church plans. It also applies to sponsors of tax-sheltered annuity plans. The Uniformed Services Employment and Reemployment Act (USERRA) information also applies to sponsors of nonqualified plans.

**BACKGROUND AND SUMMARY** The terrorist attacks on September 11 significantly affected businesses across the country. Recognizing this, the IRS, the Department of Labor (DOL), and the Pension Benefit Guaranty Corporation (PBGC) recently granted extensions of certain deadlines for both plan sponsors and participants affected by these tragedies. In addition, many employers are trying to determine their responsibilities to employees who are military reservists that may be called to duty soon.

The IRS issued [Notice 2001-61](#), providing tax relief for taxpayers affected by the terrorist attack. This Notice extends the deadline for making tax-deductible contributions to certain retirement plans and individual retirement accounts. The 60-day timeframe for rolling over distributions was also extended for affected individuals.

Additionally, the [DOL announced an extension](#) for filing Forms 5500 and 5500-EZ for entities affected by the disaster. The [PBGC has also provided relief](#) for defined benefit plans impacted by the terrorist attacks.

Finally, USERRA gives employment and benefit rights to individuals who are absent from work due to duty in military service. Since all employers are required to comply with USERRA, a review of the provisions affecting retirement plans is included in this publication.

**ACTION AND NEXT STEPS** Plan sponsors should review the information in this publication to determine potential impacts to their plans. If you need more information regarding the IRS, DOL, and PBGC extensions or USERRA provisions as they relate to your plan, please contact your Prudential Retirement representative.

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## **IN THIS ISSUE**

- [Federal Agencies Extend Deadlines](#)
- [Deadline for Making Tax-Deductible Contributions to Retirement Plans](#)
- [Extension of 60-Day Rollover Timing](#)
- [Taxpayers Affected by IRS Relief](#)
- [Extension for Filing Form 5500 Series](#)
- [PBGC Disaster Relief](#)
- [Additional Form 5500 and PBGC Relief](#)
- [Employers Review USERRA Responsibilities](#)
- [Eligibility for USERRA Rights](#)
- [Employee Notice](#)
- [Before the Employee Leaves for Military Duty](#)
- [After the Employee Returns from Military Duty](#)
- [Plan Sponsor Next Steps](#)

## **Federal Agencies Extend Deadlines**

The IRS, the Department of Labor (DOL), and the Pension Benefit Guaranty Corporation (PBGC) recently granted extensions as a result of the terrorist attacks on September 11, 2001.

### **Deadline for Making Tax-Deductible Contributions to Retirement Plans**

Generally, tax-deductible contributions to retirement plans must be made by the due date (including extensions) for filing the employer's federal income tax return for that taxable year. However, employers that are "affected taxpayers," as described below, have been granted a 120-day extension to make deductible contributions, if their original contribution deadline fell between September 11, 2001, and November 30, 2001.

*For example, Company A is located in one of the federally-declared disaster areas (noted below). Company A maintains a profit sharing plan. The plan year and the taxable year for Company A are on a calendar year. Company A obtained an extension on its tax return for the year 2000 to September 15, 2001. Typically, contributions to the profit sharing plan should have been made by September 15, 2001, to be tax-deductible. However, the extension provided by the IRS, now allows Company A an additional 120 days in which to make the tax-deductible contribution. Company A has until January 13, 2002, to make this contribution.*

At this time, these extensions *do not* apply to minimum funding deadlines. Additional guidance regarding this subject is expected in the next few weeks.

### **Extension of 60-Day Rollover Timing**

Generally, a participant who is eligible to roll over a distribution must make the rollover within 60 days of receiving the distribution. However, a participant who is an "affected taxpayer" has an additional 120 days to make this rollover if the rollover deadline occurred during the period from September 11, 2001, to November 30, 2001.

## **Taxpayers Affected by IRS Relief**

For purposes of the IRS relief described above, "affected taxpayers" include:

- Any individual whose principal residence is located in a federal disaster area,
- Any business entity whose principal place of business is located in a federal disaster area,
- All workers assisting in the relief activities in the federal disaster areas and in Pennsylvania,
- Any individual whose principal residence is not located in a federal disaster area, but whose records necessary to meet a filing or paying deadline are maintained in a federal disaster area,
- Any business entity whose principal place of business is not located in a federal disaster area, but whose records necessary to meet a filing or paying deadline are maintained in a federal disaster area,
- Any estate or trust that has tax records necessary to meet a filing or paying deadline in a federal disaster area,
- Any spouse of an affected taxpayer, solely with regard to a joint return of the husband and wife,
- Victims of the crash (those on the plane and those on the ground) of the four hijacked commercial jet airplanes, and
- Taxpayers whose place of employment is located in a federal disaster area.

The "federal disaster areas" include Arlington County, Virginia (where the Pentagon is located), and the five boroughs of New York City.

## **Extension for Filing Form 5500 Series**

The normal deadline for filing Form 5500 is the last day of the seventh month following the close of the plan year. If the employer's tax year matches the plan year and the tax return is on an extension, that extension automatically applies to the Form 5500 filing for the year.

The special DOL extension granted as a result of the terrorist attacks applies to plan administrators, employers and other entities that are located in the areas designated as federal disaster areas. The extension also applies to filers located outside the disaster areas who are unable to obtain the information necessary for filing from service providers, banks or insurance companies whose operations are directly affected by the disaster.

This "Form 5500 Disaster Extension Date" is determined as follows:

- Plans with filings originally due between September 11, 2001, and November 20, 2001, will be allowed an additional six months plus 120 days to file.
- Filers currently on an extension that expires between September 11, 2001, and November 30, 2001, will be allowed an additional 120 days to file.
- Filers who do not otherwise qualify for these extensions but aren't able to meet filing deadlines due to disruption in transportation and delivery of documents by mail or private delivery service resulting from the attacks will have until November 15, 2001, to make their Form 5500 and 5500-EZ filings.

These extensions cannot be further delayed by filing Form 5558.

Filers that are entitled to the relief described above should check Part 1, Box D on the Form 5500, or Part 1, Box B on the Form 5500-EZ, and attach a statement labeled "SEPTEMBER 11, 2001 TERRORIST ATTACK" explaining the reasons for the extension.

### **PBGC Disaster Relief**

The PBGC announced additional relief for defined benefit plans affected by the terrorist attacks. Plan sponsors can claim PBGC disaster relief by noting "September 11, 2001, terrorist attack relief until \_\_\_\_\_" prominently at the top of the affected filing. The last date for which relief is provided, as determined below, should be inserted in the blank.

The PBGC relief relates to PBGC premium payment and filing due dates, plan termination deadlines, and deadlines for providing certain notices.

**Premiums.** For "designated persons," late payment and late filing penalties are waived for the period from the premium filing deadline through February 12, 2002, if the original deadline falls on or after September 11, 2001, and before February 12, 2002.

Also, if the plan has a Form 5500 Disaster Extension Date for the 2000 plan year that is later than February 12, 2002, the PBGC will waive any late payment and late filing penalties from February 12, 2002, through the Form 5500 Disaster Extension Date for following premium filings:

- The plan's 2001 Form 1 (or Form 1-EZ) premium filing that is due late in the 2001 plan year (e.g. October 15, 2001, for calendar year plans), and
- The plan's 2002 flat-rate premium filing (the "Form 1-ES filing") that is due early in the 2002 plan year (e.g., February 28, 2002, for calendar year plans) if the plan is a large plan. For Form 1-ES filing purposes, a large plan is defined as a plan with 500 or more participants in a prior filing year.

If a plan administrator is not a "designated person," the PBGC will waive any late payment or late filing penalty through November 15, 2001, if:

- The plan has a Form 5500 Disaster Extension Date of November 15, 2001, for the 1999 or 2000 plan year because of the disruption of transportation and delivery of documents, and
- The premium filing deadline for the plan for the following plan year (2000 or 2001) falls on or after September 11, 2001, and before November 15, 2001.

The PBGC guidance does not provide relief from late premium payment interest charges.

**Plan Terminations.** For "designated persons," whose plan termination deadlines for the plan falls on or after September 11, 2001, and before February 12, 2002, certain deadlines have been extended to February 12, 2002.

**Notices.** Deadlines for providing Participant Notices and Reportable Event Notices falling on or after September 11, 2001, and before February 12, 2002, are extended to February 12, 2002.

**Multiemployer Plans.** The premium payment and filing deadline extensions discussed above also apply to multiemployer plans. Other PBGC deadlines for "designated persons" that fall on or after September 11, 2001, and before February 12, 2002, are extended until February 12, 2002.

**Designated Person.** A "designated person" is a person responsible for meeting a PBGC deadline (for example, a plan administrator or plan sponsor) who is located in one of the federal disaster areas described above. A "designated person" also includes a person that cannot reasonably obtain information or assistance necessary to meet a deadline from a service provider, bank, or other person whose operations are directly affected by the disaster.

### **Additional Form 5500 and PBGC Relief**

A [joint announcement from the IRS, DOL and PBGC](#) provided even more relief for defined benefit and money purchase pension plans with plan years ending on or after December 27, 2000, and on or before January 8, 2001. The joint announcement provides that a Schedule B of Form 5500 will not be treated as filed incorrectly if it shows the minimum contribution being made on or before September 24, 2001.

The PBGC provided similar relief for defined benefit plans that failed to pay premiums or failed to meet PBGC reporting or disclosure requirements. The relief provided in the announcement is not limited geographically.

### **Employers Review USERRA Responsibilities**

Many reservists may be called for duty because of the September 11, 2001, terrorist attacks. The Uniformed Services Employment and Reemployment Rights Act (USERRA) gives employment and benefit rights to individuals who are absent from work due to duty in uniformed military service. All employers must comply with USERRA (although some special rules apply to federal employees). There are still many unresolved issues with respect to the administration of USERRA provisions. Below is a review of the USERRA provisions that affect retirement plans.

#### **Eligibility for USERRA Rights**

USERRA rights must be granted to any member of the armed forces, which includes the Army, Navy, Air Force, Marines, Coast Guard, Reserves, Army and Air National Guards, the commissioned corps of the Public Health Service, and any other persons designated by the President. However, an individual loses USERRA rights if he does not receive an honorable discharge.

#### **Employee Notice**

USERRA requires the employee to give the employer notice that he will be serving in the uniformed services, but there are no specific guidelines about when or in what form this notice is to be given. For example, the notice can be given either in writing or verbally by the employee, it can be given by an officer in the uniformed services, or the notice requirement can be overlooked altogether if it is deemed that giving notice is impossible or unreasonable.

#### **Before the Employee Leaves For Military Duty**

In general, an employee who leaves for military service becomes an inactive participant in the employer sponsored retirement plan. However, the plan sponsor and employee should resolve

certain issues before the employee leaves for duty.

**Plan Loans.** When a participant has an outstanding plan loan, repayments are frequently made by payroll deduction. If that participant leaves for military duty, he typically stops receiving a paycheck from the employer. Therefore, the employer and employee need to determine how the loan will be repaid. Options may include:

- Continued repayments according to the loan amortization schedule, but by personal check rather than payroll deduction. This is only an option if the plan and the loan note allow this form of payment. If the participant fails to make the scheduled repayments under this arrangement (i.e., the loan goes into default), the loan is not reported as taxable until after he completes his military service.
- Suspension of loan repayments until the employee completes his military service, even if the leave lasts more than one year.

Suspension of payments for more than one year is only an option if the plan allows for suspension of repayments while the participant is on military leave.

As soon as the individual completes his military service, repayments must resume at the same frequency and in at least the same amount as the original payments. The loan must be fully repaid by the end of the original term of the loan plus the period of military service. The total amount to be repaid must include the interest that accrued during the period of military service.

The Soldiers' and Sailors' Civil Relief Act of 1940 also provides that, if requested by the employee, the maximum interest rate charged on the plan loan while the employee is on active military duty is reduced to 6%. This provision only applies to loans taken before the employee goes on military leave.

**Practical Considerations: Beneficiary Designation and Power of Attorney.** When an employee gives notice that he will be serving in the military, the employer may want to confirm that a beneficiary form that accurately reflects the participant's wishes is on file, especially if the employee has had any life status changes (e.g., marriage, divorce, birth of children) since enrolling in the plan. The beneficiary designation will generally determine who is to receive plan death benefits, regardless of what the participant's will indicates.

It's possible for the participant to give someone power of attorney while he is away on leave. The power of attorney gives that person control over whatever is specified in the power of attorney, which may include the qualified plan. If given power of attorney, someone (e.g., the spouse) could initiate and receive a withdrawal or plan loan without the participant's signature. The employer may want to ask if anyone has been given power of attorney covering the qualified plan before the participant leaves.

### **After the Employee Returns From Military Duty**

An employee who is eligible for rights under USERRA and is rehired by the employer must be given the following rights with respect to the employer sponsored retirement plan.

**Service.** If the employee's period of military service was five years or less, the employee cannot be treated as having a break in service. If the employee had already met the service requirement for plan eligibility, he cannot be required to complete additional service to participate when rehired. If the employee had not met the plan's eligibility service requirement before his military leave, his period of military service counts toward this requirement.

The period of military service is also treated as service with the employer for purposes of vesting and accrual of benefits.

**Contributions.** An employer must fund any benefits an individual rehired under USERRA did not receive due to military service. This includes employer contributions that would have been made to a profit sharing plan or money purchase plan.

If the plan has a 401(k) feature or allows employees to make after-tax contributions, the employee must be given the right to make up missed contributions. If the plan provides for matching contributions, the employer must make any matching contributions relating to the make-up contributions submitted by the employee. A contributory defined benefit plan must permit a returning employee to make up his missed contributions and earn the related benefit accrual.

From the date of rehire, the missed contributions (either employer or employee contributions) must be made by the earlier of:

- Five years, or
- The period of military service multiplied by three.

The amount of make-up contributions cannot exceed the amount the individual would have been permitted or required to contribute had he worked for the employer throughout the period of military service. The employer does not have to adjust the make-up contributions for earnings, and does not have to reallocate forfeitures after the individual is rehired.

**Multiemployer Plans.** If an employer that contributes to a multiemployer plan rehires a union member covered by that plan under USERRA, that employer must give written notification to the administrator of the plan within 30 days after rehiring that member. The liability for funding contributions for the rehired individual is generally determined by the plan. If the plan does not contain a method for determining liability, then the individual's last employer before performing military service must make the contributions. If that employer is no longer in business, the plan is liable for these contributions.

**Reporting Contributions.** USERRA contributions made for a prior year can be reported through either:

- Form W-2, or
- A separate statement created by the employer.

If using Form W-2, employers report the amount of any make-up elective deferrals in Box 12, using code "D" and noting the applicable year. Employer contributions, employee after-tax contributions, or required contributions made under USERRA may be reported in Box 14.

Instead of using the Form W-2, the employer can provide a separate statement to the employee that shows:

- The type of plan;
- The years to which the contributions relate; and
- The contribution amounts.

**Compensation.** The compensation amount to be used by the plan for determining benefits for the period of military service is based on the rate of pay the individual would have received from the employer during the period of military service. If the rate of pay is not reasonably certain, the plan may use the employee's average compensation during the 12-month period immediately preceding military service. If the employee did not work 12 full months before military service, then the plan uses average compensation over the total length of employment before military service.

**Nondiscrimination Testing.** Make-up contributions (either employer or employee) are *not* taken into account in the year in which the contributions are made with respect to the following limitations:

- The elective deferral limit.
- The employer deduction limit.
- The defined contribution annual additions limit.
- The defined benefit annual benefit limit.
- The tax-sheltered annuity plan limits.

For purposes of these limits, make-up contributions are taken into account for the year to which the contributions relate. For example, if the employer makes a profit sharing contribution in 2002 for an employee who was out on military leave in 2001; this contribution will be counted as a 2001 annual addition for that employee.

USERRA make-up contributions are not counted in either the year made or the year to which they relate for the following purposes:

- Minimum participation requirements.
- Minimum coverage requirements.
- General nondiscrimination requirements.
- ADP and ACP testing.
- Top-Heavy determination.

**Plan Document Issues.** USERRA became law in 1994, and employers must currently administer retirement plans in accordance with the USERRA provisions discussed above. However, qualified plan documents do not have to include USERRA provisions until the plan's GUST (GATT, USERRA, SBJPA '96 and TRA '97) amendment deadline.

The GUST amendment deadline varies by document type. Individually designed plan documents must be updated by the end of the 2001 plan year. Adopters of prototype or volume submitter plan documents and employers that certify their intent to adopt a prototype or volume submitter plan have until at least December 31, 2002 to readopt a GUST updated plan.



## Plan Sponsor Next Steps

The IRS recognizes questions may arise that weren't addressed in recent notices. Therefore, they have announced the availability of an electronic mailbox to answer questions businesses may have regarding the IRS extensions and other tax relief available to those affected by the terrorist attacks. Businesses can e-mail their questions to [corp.disaster.relief@irs.gov](mailto:corp.disaster.relief@irs.gov). A special toll-free telephone number is also available for taxpayers whose ability to meet their federal tax obligations has been affected by the attacks. Taxpayers with questions related to the attacks can call 1-866-562-5227.

Additional questions about the special Form 5500 filing extension may be directed to the PWBA Help Desk at 1-866-463-3278.

Plan sponsors affected by the disaster that need relief from a PBGC deadline that has not been provided should request case-by-case relief from Diane Morstein at the PBGC. Ms. Morstein can be contacted by calling 1-800-736-2444, extension 4136 or by e-mail at [practitioner.pro@pbgc.gov](mailto:practitioner.pro@pbgc.gov). Case-by-case relief can also be requested by writing to Pension Benefit Guaranty Corporation, Diane Morstein, Suite 610, 1200 K Street, NW, Washington, DC 20005-4026, Re: Disaster Relief Notice.

Plan Sponsors should review the information in this publication to determine whether the IRS, DOL, and PBGC extensions apply to their plan. A list of frequently asked questions related to the events of September 11, 2001, is available for plan sponsors at <http://www.dol.gov/ebsa/faqs/main.html>. Additional questions regarding the impact of these extensions on retirement plans can be directed to your Prudential Retirement representative.

Employers with employees on military leave need to be aware that USERRA grants employment and benefits rights in addition to the retirement plan requirements listed in this publication. Information about all of the USERRA requirements is available from the DOL's Veterans' Employment and Training Services (VETS) web site at <http://www.dol.gov/elaws/USERRA.htm>. Retirement plan questions related to USERRA can be directed to your Prudential Retirement representative.

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