

November 2001*

IRS Extends GUST Amendment Deadline

The IRS has again extended the deadline for updating plans to include provisions required by “GUST.” “GUST” refers to the Uruguay Round Agreements Act (GATT); Uniformed Services Employment and Reemployment Rights Act (USERRA); Small Business Job Protection Act (SBJPA); Taxpayer Relief Act of 1997; IRS Restructuring and Reform Act of 1998; and Community Renewal Tax Relief Act of 2000.

The IRS is also providing additional GUST extensions for plans impacted by the September 11, 2001 terrorist attack.

General Amendment Deadline

The general [GUST amendment deadline is extended](#) to February 28, 2002, *if the amendment deadline would have otherwise ended before this date*. Since amendment deadlines differ by document type, the extension may or may not apply to your plan.

Individually Designed Plans

Before the announcement of this additional extension, the GUST amendment deadline for individually designed plans was the last day of the 2001 plan year. Thus, if the 2001 plan year of an individually designed plan will end before February 28, 2002, the GUST amendment deadline is automatically extended to February 28, 2002. For individually designed plans where the 2001 plan year ends after February 28, 2002, there is no change to the GUST amendment deadline unless the plan was directly affected by the September 11, 2001, terrorist attack ([see below](#)).

Prototype or Volume Submitter Plans

Prior adopters of prototype or volume submitter documents and employers that have certified their intent to adopt a prototype or volume submitter document have a different GUST amendment deadline. These employers must adopt the GUST restated document by the later of December 31, 2002, or the end of the 12th month following the date the IRS issues the Opinion or Advisory Letter for the underlying base plan document.

Prior to the new GUST extension, employers qualified for this deadline if they either adopted a prototype or volume submitter plan or certified their intent to adopt this type of plan by the end of the 2001 plan year. The new extension allows an employer to either adopt or certify their intent to adopt a prototype or volume submitter plan by the *later of* the end of the 2001 plan year, or February 28, 2002, and still qualify for the prototype/volume submitter GUST amendment

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deadline.

Although employers may have an extended period to adopt or certify their intent to adopt a prototype or volume submitter document, the GUST amendment deadline for employers that fall into this category is not extended. The earliest date by which prior adopters of prototype or volume submitter plans and employers that certify their intent to adopt a prototype or volume submitter plan are required to adopt a GUST updated document is December 31, 2002. Since this date is later than February 28, 2002, the GUST amendment deadline for these plans is unchanged.

Church Plans

Church plans that do not elect to be covered by ERISA have one deadline for making amendments reflecting changes made by the Tax Reform Act of 1986 (TRA'86), the Unemployment Compensation Act of 1992 (UCA), the Omnibus Budget Reconciliation Act of 1993 (OBRA'93) and GUST. Considering the new extension, these amendments are all due by the later of February 28, 2002, or the end of the 2001 plan year.

Governmental Plans

The TRA '86, UCA, OBRA '93 and GUST amendment deadline for governmental plans was generally the later of:

- The last day of the 2001 plan year, or
- The last day of the first plan year beginning on or after the "2000 legislative date."

The "2000 legislative date" is the 90th day after the opening of the first legislative session beginning after December 31, 1999, of the governing body with authority to amend the plan, if that body does not meet continuously.

If this deadline would have occurred prior to February 28, 2002, the amendment deadline is now extended until February 28, 2002, for that plan.

Special Extension for Plans "Directly Affected" by the Terrorist Attack

The GUST amendment deadline is extended to June 30, 2002 for plans "directly affected" by the September 11, 2001, terrorist attack if the general GUST amendment deadline would otherwise end before June 30, 2002.

A plan is "directly affected" by the terrorist attack if any of the following were located in the area of the New York City borough of Manhattan bounded on the north by 14th street at the time of the attack:

- The principal place of business of any employer maintaining the plan,
- The office of the plan or the plan administrator,
- The office of the primary recordkeeper for the plan,
- The office of an attorney, enrolled actuary, certified public accountant or other advisor retained by the plan, or by the employer with respect to plan issues.

The plan is also “directly affected” by the terrorist attack if any of the following were injured, killed or are missing as a result of the attack:

- The individual(s) required under the terms of the plan or corporate rules to approve plan amendments,
- The plan administrator,
- An attorney, enrolled actuary, certified public accountant or other advisor retained by the plan, or by the employer with respect to plan issues.

If the plan does not meet this definition, the employer can ask the IRS to designate the plan as directly impacted by the attack, extending its GUST amendment deadline to June 30, 2002. The request must explain how the terrorist attack directly and severely impaired the employer’s ability to amend the plan and must be made by the later of December 31, 2001, or the 60th day before the end of the plan’s general GUST amendment deadline.

Requests to designate the plan as “directly impacted” should be sent to:

Manager, EP Determinations
Attention: RAP Extension Coordinator
550 Main Street
Room 5106
Cincinnati, Ohio 45202

The IRS will not consider delays in transportation or mail delivery and delays caused by the diversion of resources to other areas as reasons to grant the additional extension. If the request is denied, the GUST amendment deadline will end on the date that would have otherwise applied or, if later, one month after the date of the letter denying the request.

The TRA’86, UCA and OBRA’93 amendment deadlines for governmental plans and non-electing church plans are also extended to June 30, 2002 for those plans directly affected by the terrorist attacks, if this date is later than the deadline that would otherwise apply.

When a plan sponsor files for a determination letter using the additional GUST extension, the application must include either an attachment labeled “September 11, 2001 Terrorist Attack” describing how the plan meets the “directly affected” definition, or the letter from the IRS designating the plan as “directly affected”.

Requests for Extensions beyond June 30, 2002

If an employer sponsoring a plan directly affected by the terrorist attack (as defined above) can clearly show that it will not be able to amend the plan for GUST or file for a determination letter by either its general amendment deadline or June 30, 2002, that employer can submit a special request to the IRS to extend the deadline further. However, no extensions will be granted beyond December 31, 2002.

These special requests must be sent to Manager, EP Determinations at the address above by the later of April 30, 2002, or the 60th day before the end of the plan’s GUST amendment deadline. If the employer combines this request with a request to designate the plan as “directly affected,” the

request deadline is the later of December 31, 2001, or the 60th day before the end of the plan's general GUST amendment deadline. If the IRS denies the request, the GUST amendment deadline will end on the date that would have otherwise applied or, if later, one month after the date of the letter denying the request.

Next Steps

If you have questions about how the general amendment deadline extension or the extension due to the September 11, 2001 terrorist attacks affects your plan, please contact your Prudential Retirement representative.

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