

IRS Issues Guidance on GUST, EGTRRA And MRD Amendments

WHO'S AFFECTED This guidance affects plan sponsors of qualified defined contribution and defined benefit plans, including governmental plans and church plans that do not elect to be covered by ERISA.

BACKGROUND AND SUMMARY The IRS has recently issued guidance regarding GUST (an acronym for the Uruguay Round Agreements Act (GATT), the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), the Small Job Business Protection Act of 1996 (SBJPA), the Taxpayer Relief Act of 1997 (TRA '97), and the IRS Restructuring and Reform Act of 1998 (IRRA)) and Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) plan amendments. The IRS has also published simplified determination letter application procedures, as well as an alternative model amendment for adopting the 2001 proposed rules for minimum required distributions (MRDs).

Notice 2001-42 provides guidance regarding GUST and EGTRRA plan amendments. The basic GUST amendment deadline for prior adopters of prototype plans and employers that certify their intent to adopt a prototype plan has been extended by one year to December 31, 2002. However, the GUST amendment deadline for individually designed plans remains the last day of the 2001 plan year.

Also, qualified plans must have a "good faith" EGTRRA plan amendment in effect in order to comply with either the required or optional changes of EGTRRA. This is a departure from the IRS's traditional "operational compliance" requirements.

Announcement 2001-77 provides simplified procedures for the determination letter process. This includes:

- Making the filing of Schedule Q optional;
- Allowing adopting employers of nonstandardized prototype plans or certain volume submitter plans to rely on the plan's favorable opinion or advisory letter; and
- Allowing multiple employer plans to request a determination only for the entire plan.

In addition, plan sponsors will soon be able to request determination letters that take into account the final cross-testing regulations.

Finally, Announcement 2001-82 provides an alternative model amendment for adopting the 2001 proposed MRD regulations in 2001.

*Republished December 2004 to reflect Prudential Financial's acquisition of CIGNA's retirement business.

ACTION AND NEXT STEPS Plan sponsors should review the changes described in this publication and identify those that affect their plans. If you have questions regarding the effect of these changes to your plan document or its operation, please contact your Prudential Retirement representative.

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GUST Amendment Deadline

[IRS Notice 2001-42](#) extends the GUST amendment deadline for prior adopters of prototype plans and employers that certify their intent to adopt a prototype plan to no earlier than December 31, 2002.

However, the special 12-month extension to this deadline following the issuance of the opinion or advisory letter still applies. *For example, if the prototype sponsor receives an opinion letter dated April 1, 2002, the adopting employer has until March 31, 2003, to adopt its GUST restatement and request a determination.* The IRS is planning to publish a list of all the prototype and volume submitter plans that were submitted for GUST opinion or advisory letters by December 31, 2000. This list, which will be updated to show approval dates, will be helpful in determining when the 12-month period expires for prototype and volume submitter adopters (i.e., adopting employers).

The GUST amendment deadline for individually designed plans remains the last day of the 2001 plan year. No extension has been provided.

Special Exemption for Adopting Employers Of Nonstandardized Prototype and Volume Submitter Plans

In addition to the general filing extension for the prototype and volume submitter plans, some adopting employers of these types of plans may not have to request determination letters at all. [IRS Announcement 2001-77](#) allows adopting employers of nonstandardized prototype and volume submitter plans to rely on the plan's favorable opinion or advisory letter, if certain requirements are met. This reliance is only available if the employer adopts a plan that is identical to the

approved prototype or specimen plan and chooses only options available under the terms of the approved plan.

To obtain automatic reliance regarding the minimum coverage and nondiscrimination requirements:

1. The base/specimen plan must be updated for GUST and have received a favorable opinion or advisory letter *before* it is adopted by the employer.
2. The plan must benefit 100% of the nonexcludable employees.
3. The adopting employer must elect a safe harbor allocation formula and a safe harbor definition of compensation.
4. The plan must have repealed the use of the family aggregation rules after 1996.
5. If the employer maintained both a defined contribution and a defined benefit plan, the plan must have repealed the use of the combined annual additions limit after December 31, 1999.
6. The adopting employer must not have modified or deleted any items in the approved prototype or specimen plan other than choosing options permitted under the approved base document and adoption agreement or specimen document.

If an employer can rely on the plan's favorable opinion or advisory letter, the opinion or advisory letter is the equivalent to a favorable determination letter (e.g., for purposes of the Employee Plans Compliance Resolution System).

New Determination Letter Procedures

Under the old procedures, when an employer files for determination, the plan is generally reviewed for compliance with form and operational coverage and nondiscrimination requirements. Form requirements are the required plan document provisions. Coverage and nondiscrimination requirements include minimum coverage, general nondiscrimination and minimum participation (for defined benefit plans only).

Under the new procedures, employers can elect to have a plan reviewed for compliance with the form requirements only or with both the form and coverage and nondiscrimination requirements. The filing of the Schedule Q (Form 5300), providing demographic data for the specific coverage and nondiscrimination requirements is now optional.

Revised Plan Determination Forms

Since the Schedule Q is now optional, the IRS is revising all of the determination application forms (Form 5300, 5307, etc.).

Form 5303, Application for Determination for Collectively Bargained Plan, is being eliminated entirely. Applications previously submitted using Form 5303 should now be submitted using Form 5300.

The IRS expects to have the forms finalized and available in August.

Effective Dates and Transition Rules

Until December 31, 2001, employers requesting determination letters on Form 5300 or 5307 may choose to:

- Submit the revised Form 5300 or 5307, either including or omitting the revised Schedule Q once the forms are finalized;
- Submit the old Form 5300 or 5307 with the old Schedule Q following the old procedures;
- Submit the old Form 5300 or 5307, omitting the Schedule Q; or
- Submit the old Form 5300 or 5307 with the old Schedule Q, completing only Part I of the Schedule Q and those line items relating to the specific coverage and nondiscrimination requirements for which the employer requests a determination.

Determination letters requested on Form 5310 (for plan terminations) before January 1, 2002, must use the old forms and comply with the old procedures.

Any determination letters requested after December 31, 2001, must use the revised forms and comply with the new procedures.

The user fees associated with each of the forms remain unchanged.

Changes to Determination Procedures for Multiple Employer Plans

Two determination options are now available for multiple employer plans. The plan as a whole may request a determination letter, or each employer sponsoring the plan may request its own determination letter, along with a letter for the plan as a whole. If determinations are requested for each employer, each employer must elect whether to request a determination that includes coverage and nondiscrimination requirements. If only a plan-level determination is requested, the sponsoring employers may not rely on that letter with respect to minimum coverage and nondiscrimination requirements.

Cross-Tested Plans May Request Determinations under Final Regulations

The IRS published final cross-testing regulations on June 29, 2001. These regulations, which are effective for plan years beginning on or after January 1, 2002, describe the conditions under which stand-alone defined contribution plans and defined contribution and defined benefit plans that are tested together may demonstrate compliance with nondiscrimination rules on a benefits basis.

The IRS is allowing practitioners that sponsor volume submitter plans to submit final regulation amendments to the specimen defined contribution plans to be reviewed for GUST, provided the amendments are submitted by October 22, 2001.

After August 21, 2001, employers may request determination letters that take into account the final cross-testing regulations.

EGTRRA Amendments

In the past, the IRS allowed plan sponsors to operationally comply with changes made to legal requirements before those provisions were adopted via plan amendments. However, the IRS is not permitting plans to operationally comply with EGTRRA provisions pending later adoption of formal plan amendments. A plan must have a “good faith” EGTRRA plan amendment in effect for any year that existing plan document provisions are not consistent with either:

- A required EGTRRA provision; or
- An optional EGTRRA provision that the plan sponsor wishes to use.

The EGTRRA provisions are described in our June 2001 publication titled [“The Economic Growth and Tax Relief Reconciliation Act of 2001 Makes Significant Changes to Retirement Plans and IRAs.”](#)

By September 1, 2001, the IRS is expected to publish sample EGTRRA plan amendments. A sample EGTRRA amendment or an amendment that is materially similar to a sample EGTRRA amendment will be considered a “good faith” EGTRRA plan amendment.

Plan sponsors must adopt “good faith” EGTRRA plan amendments by the later of:

- The last day of the plan year in which the amendment is required to be effective or is optionally put into effect; or
- The plan’s GUST amendment deadline.

If a timely adopted “good faith” EGTRRA plan amendment is later determined to be deficient, the plan sponsor will have until the last day of the 2005 plan year to make necessary corrections retroactive to the original amendment effective date.

Plan sponsors may include EGTRRA provisions in their GUST documents, but the resulting determination letters will not cover the EGTRRA provisions. Additional EGTRRA amendments and filings may be needed. If an adopting employer requests a determination for a prototype or volume submitter plan containing EGTRRA provisions that are not set out in a separate addendum, the IRS will treat the plan as an individually-designed plan.

EGTRRA Special Considerations

EGTRRA does not provide any exceptions to the standard anti-cutback rules. Therefore, careful attention should be given to certain provisions with respect to amendment deadlines:

- Certain changes to defined benefit plan section 415 limits are effective for limitation years ending after December 31, 2001. A plan that has a non-calendar limitation year and incorporates the affected provisions by reference would have to be amended *before the first day of the 2001 limitation year* to prevent these increases from taking effect in 2001.
- Effective for years beginning after December 31, 2001, matching contributions may be counted towards the required top-heavy minimum contribution. However, doing so will reduce the amount of additional contributions made to non-key employees. Therefore, an amendment to count these contributions should be made before the first day of the first plan

year that the plan sponsor intends to take them into account.

- Plan sponsors will have to look at the application of the revised key employee definition and determine whether it impacts their plans. It is possible that a plan that would have been top-heavy under the old rules will not be top-heavy under the new rules. Since the non-top-heavy status will result in a lower benefit for many non-key employees, an amendment to adopt the new key employee determination rules should be made before the first day of the first plan year they will be applied.

Alternative Model Amendment For Adoption of 2001 Proposed MRD Regulations

[IRS Announcement 2001-82](#) provides an additional model amendment for defined contribution plans adopting the proposed minimum required distribution (MRD) regulations in 2001, on a date other than January 1. If this alternative model amendment is used, MRDs made on or after the effective date of the amendment will be made under the 2001 proposed regulations. If, prior to the effective date, MRDs were distributed using the 1987 regulations and those amounts are equal to or greater than the amount required under the 2001 regulations, no additional amounts are required for the year. If, however, any MRDs were distributed that are less than the amount required under the 2001 regulations, the difference must be distributed by the end of the year.

This alternative model amendment may only be used for 2001. If a plan is using the 2001 regulations for the entire 2001 calendar year or any calendar year thereafter, the original model amendment should be used, with an effective date of January 1. The 2001 proposed MRD regulations, along with a copy of the original model amendment are described in our March 2001 publication titled [“IRS Issues New Minimum Required Distribution Regulations.”](#)

You may continue to use the old rules until the IRS publishes final regulations. If you would like to use the new rules during the 2001 calendar year, you must adopt the appropriate model amendment. To be effective, this amendment must be adopted by the plan’s GUST amendment deadline.

Next Steps

Plan sponsors should review the changes described in this publication and identify those that affect their plans. If you have questions regarding the effect these changes have on your plan document or its operation, please contact your Prudential Retirement representative.

As soon as the IRS publishes the EGTRRA model amendments and additional guidance regarding the revised determination letter process, we will publish another *Pension Analyst* to provide you with this information.

**ALTERNATIVE MODEL AMENDMENT
FOR PROPOSED MRD REGULATIONS
FOR DEFINED CONTRIBUTION PLANS**

Contract #/ Division _____ Plan ID# _____

Plan Name: _____

"With respect to distributions under the Plan made on or after _____ [enter the date on which the plan began operating in accordance with the 2001 proposed regulations] for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001 (the 2001 Proposed Regulations), notwithstanding any provision of the Plan to the contrary. If the total amount of required minimum distributions made to a participant for 2001 prior to _____ [specify date on which the plan began operating in accordance with the 2001 proposed regulations] are equal to or greater than the amount of required minimum distributions determined under the 2001 Proposed Regulations, then no additional distributions are required for such participant for 2001 on or after such date. If the total amount of required minimum distributions made to a participant for 2001 prior to _____ [specify date on which the plan began operating in accordance with the 2001 Proposed Regulations], are less than the amount determined under the 2001 Proposed Regulations, then the amount of required minimum distributions for 2001 on or after such date will be determined so that the total amount of required minimum distributions for 2001 is the amount determined under the 2001 Proposed Regulations. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under section 401(a)(9) or such other date as may be published by the Internal Revenue Service."

Plan Sponsor's Signature

Date Signed

Pension Analyst by Prudential Retirement

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