

Procedure for Late GUST Amenders to Avoid Disqualification

Plan sponsors that missed the deadline to amend their plan for GUST can now avoid plan disqualification using a special procedure announced by the IRS.

General GUST Amendment Deadlines

“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 (TRA’97); IRS Restructuring and Reform Act of 1998 (IRRA’98); and Community Renewal Tax Relief Act of 2000 (CRA).

The deadline for amending a plan for GUST provisions varies by document type. For individually designed plans, the GUST amendment deadline is the later of February 28, 2002, or the end of the 2001 plan year. The GUST amendment deadline has already passed for many of these 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 later deadline. These plan sponsors must adopt a restated GUST document by the later of December 31, 2002, or the end of the 12th month following the date the IRS issues the last Opinion or Advisory Letter for the Sponsor of the underlying base plan document.

Governmental plans or plans directly affected by the September 11, 2001 terrorist attack may have other amendment deadlines. More information about the GUST amendment deadlines for these plans can be found in the Compliance Bulletin titled ["IRS Extends 'GUST' Amendment Deadline."](#)

Procedure for Late GUST Amenders

Failure to update a plan for required GUST provisions by the amendment deadline can result in plan disqualification. A special IRS procedure now allows employers whose plans are not amended by their GUST amendment deadline to update their plans and avoid plan disqualification without using a formal Employee Plans Compliance Resolution System (EPCRS) correction program. However, this procedure is only available until September 3, 2002.

To use the procedure, the plan sponsor must update the plan for GUST and file a complete GUST determination letter application by September 3, 2002. The plan sponsor must pay the normal User Fee for a determination letter request, and must submit an additional fee. The additional fee is based on the number of participants reported on the Form 5300 or Form 5307 as follows:

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Number of Participants	Fee
1 – 100	\$1,000
101 – 1000	\$3,000
1001 or more	\$10,000

Plan sponsors that want to use this procedure must submit the following with the determination letter request:

- The Form 5300 or Form 5307 with "Rev. Proc. 2002-35" written in bold at the top.
- A check or money order made payable to the U.S. Treasury for the standard determination letter fee, annotated as such.
- A separate check or money order made payable to the U.S. Treasury for the application fee noted above, annotated as such.

The IRS will contact plan sponsors that amended their plans for GUST provisions after the GUST amendment deadline but requested a GUST determination letter before July 17, 2002, to give them the opportunity to use the procedure described above.

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