
Deadline for Filing Retirement Plan GUST Restatement with IRS Extended Until January 31, 2004

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The IRS has just extended, until January 31, 2004, the deadline for master and prototype (M&P) or volume submitter plans to be filed with the IRS in order to obtain an IRS determination letter that the plan complies with GUST. However, the IRS has provided only limited relief from the requirement that M&P or volume submitter plan sponsors adopt their GUST amendments by September 30.

The September 30 amendment deadline is extended only if (i) the plan is submitted for a determination letter with the IRS by January 31, 2004 and (ii) an additional \$250 fee is paid to the IRS. Employers relying solely on the prototype sponsor's opinion letter, and not intending to file individually with the IRS, must therefore still adopt their GUST amendments by September 30. Other employers should also consider satisfying the original September 30 date in order to avoid the additional \$250 charge.

Previously, qualified retirement plans had to be amended to comply with the various statutes referred to as GUST by the later of (i) the last day of the first plan year beginning on or after January 1, 2001 or (ii) February 28, 2002.

Plans that were filed with the IRS for its determination that such plans complied with GUST (and other applicable law) were required to make their filings by that date, and were permitted to file the plan in proposed form (the plan or amendments did not have to be adopted and signed before

filing). However, as the deadline approached, the IRS announced that if, as of that deadline, a company had adopted a pre-approved qualified retirement plan (namely, an M&P plan or a volume submitter plan), or certified its intent to adopt such a pre-approved plan in the manner prescribed by the IRS, then the deadline would be extended if certain conditions were met. The original extension for such plans to be brought into compliance with the law, and to be filed with the IRS for its recognition of such compliance, was until the later of September 30, 2003 or the end of the twelfth month beginning after the IRS issued to the provider a GUST opinion or advisory letter for the M&P or volume submitter plan. If a company had adopted a standardized prototype plan, it had only to adopt such plan—with all GUST provisions—by the end of the original extension. However, if a company adopted a non-standardized retirement plan or volume submitter plan, such plan would have to be filed with the IRS by that date to obtain a determination that the plan terms—as adopted by the company—complied with all IRS requirements, including the GUST provisions. Pre-approved plans that had been adopted by companies in the last several years and never previously filed with the IRS could also be filed, with all GUST provisions, by this extended date.

Now the IRS has announced that the deadline for filing an M&P or volume submitter plan with the IRS in order to obtain either initial approval of the plan or confirmation that the plan complies with GUST, will be extended to January 31, 2004. The plan documents, including any amendments, should be adopted before the end of the original extension period. If this is not done but the plan is filed with the IRS for a determination letter before January 31, 2004 an additional fee of \$250 must be paid to the IRS at that time in order for the amendment to be treated as timely filed. Even standardized plans that miss the original extension may be able to take advantage of the January 31, 2004 deadline.

Companies should also consider these new deadlines when reviewing

EGTRRA provisions to be added to the plan and additional changes either required by law or desired by the company.

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