

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters
(Also, Part I, §§ 401; 1.401(b)-1.)

Rev. Proc. 2002-73

SECTION 1. PURPOSE

This revenue procedure extends the time for making various amendments to qualified retirement plans. First, the revenue procedure extends the time for amending pre-approved plans to comply with GUST¹ to September 30, 2003. Second, the revenue procedure extends the time for amending plans to comply with Rev. Rul. 2001-62, 2001-2 C.B. 632, regarding changes to the mortality tables under § 417(e) of the Internal Revenue Code, and Rev. Rul. 2002-27, 2002-20 I.R.B. 925, regarding the incorporation of deemed § 125 compensation in a plan's § 415(c)(3) definition of compensation. The time by which a plan must be amended to comply with these revenue rulings is extended to the end of the plan's GUST remedial amendment period. Finally, the revenue procedure extends the time for amending plans to comply with § 314(e) of the Community Renewal Tax Relief Act of 2000 ("CRA") to the latest of the end of the first plan year beginning on or after January 1, 2002, the end of the plan's GUST remedial amendment period, or June 30, 2003.

SECTION 2. BACKGROUND

.01 Under § 401(b), plan sponsors have a remedial amendment period in which to adopt plan amendments for GUST. The end of the GUST remedial amendment period is the deadline for making all GUST plan amendments and other plan amendments specifically enumerated in Rev. Proc. 99-23, 1999-1 C.B. 920. The GUST remedial amendment period also applies with respect to all disqualifying provisions of new plans adopted or effective after December 7, 1994, and with respect to all plan amendments adopted after December 7, 1994, that would cause an existing plan to fail to be qualified.

.02 Rev. Proc. 2001-55, 2001-2 C.B. 552, provides that the GUST remedial amendment period for nongovernmental plans ends on the later of

¹ "GUST" refers to the following:

- the Uruguay Round Agreements Act, Pub. L. 103-465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353;
- the Small Business Job Protection Act of 1996, Pub. L. 104-188;
- the Taxpayer Relief Act of 1997, Pub. L. 105-34;
- the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206; and
- the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554.

February 28, 2002, or the last day of the first plan year beginning on or after January 1, 2001. This is also the end of the remedial amendment period for the Tax Reform Act of 1986 (TRA '86) for nonelecting church plans. The GUST remedial amendment period for governmental plans, as defined in § 414(d), ends on the latest of (i) February 28, 2002, (ii) the last day of the first plan year beginning on or after January 1, 2001, or (iii) the last day of the first plan year beginning on or after the "2000 legislative date" (that 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). This is also the end of the TRA '86 remedial amendment period for governmental plans.

.03 Rev. Proc. 2000-20, 2000-1 C.B. 553, as modified by Rev. Proc. 2000-27, Rev. Proc. 2001-55, Rev. Proc. 2002-6, 2002-1 I.R.B. 203, Rev. Proc. 2002-29, 2002-24 I.R.B. 1176, and Notice 2001-42, 2001-2 C.B. 70, provides an extension of the GUST remedial amendment period for employers who, by the end of the GUST remedial amendment period (determined without regard to the extension), have adopted a pre-approved plan (that is, a master or prototype or volume submitter plan) or certified their intent to adopt such a plan. If the requirements for the extension are satisfied, the GUST remedial amendment period for the employer's plan will not end before the later of December 31, 2002, or the end of the 12th month beginning after the date on which the Service issues a GUST opinion or advisory letter for the pre-approved plan.

.04 Rev. Proc. 2002-6 contains the Service's procedures for issuing determination letters on the qualified status of plans under §§ 401(a), 403(a), 409 and 4975.

.05 Rev. Rul. 2001-62 describes changes to the mortality tables under § 417(e). The latest date by which a plan must be amended to comply with Rev. Rul. 2001-62 is the last day of the plan year that includes the plan's 94 GAR effective date (i.e., the effective date of the 1994 GAR mortality table for the plan). A plan's 94 GAR effective date may be no later than December 31, 2002. Thus, for example, a calendar year plan must be amended by December 31, 2002, to comply with Rev. Rul. 2001-62.

.06 Rev. Rul. 2002-27 provides that a definition of compensation that otherwise satisfies § 415(c)(3) will not fail to satisfy § 415(c)(3) merely because it is amended to incorporate deemed § 125 compensation, as provided in the revenue ruling. The amendment must be adopted by the later of the end of the 2002 plan year and the end of the plan year in which the changed definition is first effective. Thus, if a plan has, in operation, included deemed § 125 compensation in § 415(c)(3) compensation for a year prior to 2003, the plan must be amended by the end of the 2002 plan year as provided in Rev. Rul. 2002-27.

.07 Notice 2001-37, 2001-1 C.B. 1340, provides guidance relating to the amendments made by § 314(e) of CRA to §§ 403(b)(3), 414(s)(2), and 415(c)(3), regarding definitions of compensation in qualified plans and § 403(b) plans. The CRA amendments change the compensation definitions in these sections to reflect the amount of the compensation reduction elected for qualified transportation fringes that is not includible in the employee's gross income by reason of § 132(f)(4). Notice 2001-37 provides that a qualified plan must be amended to comply with CRA by the end of the plan's GUST remedial amendment period. Notice 2001-37 provides model amendments that may be adopted to satisfy this requirement.

.08 Rev. Proc. 2002-35, 2002-24 I.R.B. 1187, contains streamlined procedures that allow a plan that was not timely amended for GUST, including CRA, to avoid loss of qualification, provided a complete GUST determination letter application for the plan is filed with the Service by September 3, 2002, and the fee required by the procedure is paid.

.09 Section 1.401(b)-1(f) of the Income Tax Regulations provides that, at his discretion, the Commissioner may extend the remedial amendment period or may allow a particular plan to be amended after the expiration of its remedial amendment period and any applicable extension of such period. In determining whether such an extension will be granted, the Commissioner shall consider, among other factors, whether substantial hardship to the employer would result if such an extension were not granted, whether such an extension is in the best interest of plan participants, and whether the granting of the extension is adverse to the interests of the government.

.10 A number of sponsors of pre-approved plans have informed the Service that, due to unforeseeable business circumstances, their clients will not be able to adopt their GUST-approved plans within the deadline under Rev. Proc. 2000-20, as modified, and have requested a further extension. The Service has also been asked to extend the time for adopting plan amendments to comply with Rev. Rul. 2001-62 and Rev. Rul. 2002-27 so that in no case will these amendments be required to be adopted before the time a plan is required to be amended for GUST. Finally, the Service has been asked to extend the deadline for adopting plan amendments for CRA in order to provide relief in situations where a plan has otherwise been timely amended for GUST. In response to these requests, this revenue procedure provides these extensions.

SECTION 3. EXTENSION OF GUST REMEDIAL AMENDMENT PERIOD UNDER REV. PROC. 2000-20

If the requirements for the extension of the GUST remedial amendment period under section 19 of Rev. Proc. 2000-20, as modified, are satisfied, the GUST remedial amendment period for the employer's plan will not end before the later of September 30, 2003, or the end of the 12th month beginning after the

date on which the Service issues a GUST opinion or advisory letter for the pre-approved plan. This extension also applies to the TRA '86 remedial amendment period in the case of a governmental or nonelecting church plan that qualifies for extension of the GUST remedial amendment period under Rev. Proc. 2000-20.

SECTION 4. EXTENSION OF TIME FOR AMENDING PLANS TO COMPLY WITH REV. RUL. 2001-62 AND REV. RUL. 2002-27

.01 The time for amending a plan to comply with Rev. Rul. 2001-62 is extended to the later of the time determined under the revenue ruling or the end of the plan's GUST remedial amendment period.

.02 The time for amending a plan to comply with Rev. Rul. 2002-27 is extended to the later of the time determined under the revenue ruling or the end of the plan's GUST remedial amendment period.

SECTION 5. EXTENSION OF TIME FOR AMENDING PLANS TO COMPLY WITH CRA

.01 The time for amending a plan to comply with CRA is extended to the latest of the end of the first plan year beginning on or after January 1, 2002, the end of the plan's GUST remedial amendment period, or June 30, 2003.

.02 Upon resolution of a determination letter application filed under the procedures in Rev. Proc. 2002-35, the Service will refund without interest the fee paid under section 3.04 of that procedure if it determines that, except for CRA, the plan was otherwise amended for GUST within the plan's GUST remedial amendment period.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective December 9, 2002.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Procs. 2000-20, 2002-6 and 2002-35; Rev. Ruls. 2001-62 and 2002-27; and Notice 2001-37 are modified.

DRAFTING INFORMATION

The principal author of this revenue procedure is James Flannery of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday

through Friday. Mr. Flannery may be reached at 1-202-283-9888 (not a toll-free number).