

Part IV

Items of General Interest

The GUST Remedial Amendment Period for Employers Who Use M&P or Volume Submitter Specimen Plans

Announcement 2001-6

This announcement –

- Provides a general summary of the rules for determining the GUST remedial amendment period for employers who use master and prototype (M&P) plans or volume submitter specimen plans. This summary is followed by answers to questions the Service has received regarding the application of these rules.
- Describes circumstances under which the Service will waive the requirement that employers certify their intent to adopt a sponsor or practitioner's M&P or volume submitter specimen plan. In some situations, such a certification is required as a condition for extending the GUST remedial amendment period.

In addition, this announcement describes the Service's policies regarding requests for additional information on opinion and advisory letter applications for M&P and volume submitter specimen plans, including applications that relate to previously approved plans.

Summary of Rules for Determining the GUST Remedial Amendment Period for Employers Who Use M&P or Volume Submitter Specimen Plans

Employers who maintain tax-qualified retirement plans under section 401(a) or section 403(a) of the Internal Revenue Code generally are required to amend their plans for new law changes, which are described using the acronym "GUST," within the GUST remedial amendment period under section 401(b). (See section 1.02 of Rev. Proc. 2000-27, 2000-1 C.B. 1272, for a complete listing of the public laws described collectively as GUST.) The following is a general summary of the rules for determining the GUST remedial amendment period for employers who use M&P or volume submitter specimen plans.

1. The GUST remedial amendment period generally ends on the last day of the first plan year beginning in 2001 ("the regular GUST remedial amendment period"). However, employers may have a later deadline if the requirements of section 19 of Rev. Proc. 2000-20, 2000-1 C.B. 553, as modified by Rev. Proc. 2000-27, are met.

2. To be eligible for a later deadline under section 19 of Rev. Proc. 2000-20, an employer must either:

- (i) adopt an M&P or volume submitter specimen plan (regardless of whether the plan has a TRA '86 opinion or advisory letter); or
- (ii) jointly certify with an M&P sponsor or volume submitter practitioner that the employer intends to amend its plan for GUST by adopting the sponsor or practitioner's M&P or volume submitter specimen plan after the plan has received GUST approval.

This required action (either adoption of an M&P or volume submitter specimen plan or execution of a certification of intent to adopt) must take place by the end of the regular GUST remedial amendment period. In addition, the sponsor or practitioner of the M&P or volume submitter specimen plan which the employer has adopted or intends to adopt must have requested a complete GUST opinion or advisory letter for the plan by December 31, 2000. Thus, if a sponsor or practitioner requested a GUST opinion or advisory letter for an M&P or volume submitter specimen plan by December 31, 2000, employers who have adopted the plan by the end of the regular GUST remedial amendment period (December 31, 2001, in the case of calendar year plans) do not have to take further action until the time described in 3, following.

3. If the requirements described above are satisfied, the employer's deadline for amending its plan for GUST is the later of:

- (i) the end of the regular GUST remedial amendment period, or
- (ii) the end of the 12th month beginning after the date a GUST opinion or advisory letter is issued for the M&P or volume submitter specimen plan, or the opinion or advisory letter application is withdrawn.

By this deadline, the employer must adopt one of the following: the GUST-approved M&P or volume submitter specimen plan referred to above, another GUST-approved M&P or volume submitter specimen plan or individually-designed GUST amendments. In addition, in order to be entitled to extend the remedial amendment period under this rule, the employer must request a determination letter by the end of the extended period, if a determination letter is required for reliance.

(In cases where the M&P plan is an identical adoption or minor modification of a "mass submitter plan," or where the volume submitter specimen plan is an identical adoption of a "lead specimen plan," the date of the letter approving the mass submitter or lead specimen plan is irrelevant. It is the date the letter is issued for the sponsor or practitioner's plan that governs. A mass submitter

plan is an M&P plan that is submitted to the Service on behalf of at least 30 M&P sponsors who will sponsor the identical plan. A lead specimen plan is a volume submitter specimen plan that is submitted to the Service on behalf of at least 30 practitioners who will sponsor the identical volume submitter specimen plan.)

4. In applying these rules, an employer who has adopted (or certified its intent to adopt) a sponsor or practitioner's M&P or volume submitter specimen plan by the end of the regular GUST remedial amendment period will be deemed to have adopted (or certified its intent to adopt) each other M&P or volume submitter specimen plan of that sponsor or practitioner.

Example 1. Employer X adopted Bank A's M&P plan in 1997. Bank A does not sponsor any other plans. Bank A restates its M&P plan for GUST and files an application for a complete GUST opinion letter by December 31, 2000. X does not have to take further action until the M&P plan is approved for GUST. If a GUST opinion letter for the M&P plan is issued on May 1, 2001, X must adopt the GUST-approved plan by May 31, 2002. Alternatively, X may adopt another GUST-approved M&P or volume submitter specimen plan or individually-designed GUST amendments by this date. In addition, if a determination letter is required for reliance, for example because X's plan is a nonstandardized plan, X must also apply for a GUST determination letter by May 31, 2002.

Example 2 Bank B sponsors two M&P plans, Plan 001 and Plan 002. Employer Y adopted Plan 001 in 1996. Employer Z adopted Plan 002 in 1996. Bank B decides to discontinue Plan 002 and does not request a GUST opinion letter for this plan. Z does not certify its intent to adopt another sponsor or practitioner's plan. Bank B files an application for a complete GUST opinion letter for Plan 001 by December 31, 2000, and a favorable letter is issued on April 30, 2001. Because Z is deemed to have adopted Plan 001 before the end of the regular GUST remedial amendment period, Z is entitled to the same GUST remedial amendment period extension as Y. Therefore, by April 30, 2002, both Y and Z must adopt the GUST-approved Plan 001, another GUST-approved M&P or volume submitter specimen plan or individually-designed GUST amendments. Each must also request a determination letter by April 30, 2002, if a determination letter is required for reliance.

Example 3. Practitioner C sponsors three volume submitter specimen plans, Plans 1, 2 and 3. Practitioner C files applications for complete GUST advisory letters for each of the plans on June 1, 2000. Favorable advisory letters for Plans 1 and 2 are issued on November 30, 2000. A favorable advisory letter for Plan 3 is issued on March 15, 2001. Each employer who adopted (or certified its intent to adopt) Plan 1 or Plan 2 before the end of the regular GUST remedial amendment period is also deemed to have adopted

(or certified its intent to adopt) Plan 3. Therefore, the GUST remedial amendment period for each employer who adopted (or certified its intent to adopt) any of Practitioner C's volume submitter specimen plans by the end of the regular GUST remedial amendment period is extended to March 31, 2002, provided the employer adopts one of Practitioner C's GUST-approved plans, another GUST-approved volume submitter specimen or M&P plan or individually-designed GUST amendments, and requests a determination letter (if required for reliance) by this date.

Questions and Answers

The following are answers to specific questions the Service has received regarding the rules for determining the GUST remedial amendment period for employers who use M&P or volume submitter specimen plans. These Q&As address situations involving M&P plans but are equally applicable to situations involving volume submitter specimen plans.

Q1. An M&P sponsor has submitted its M&P plan for GUST approval, but has not received approval by the end of 2000. Must the sponsor or the adopting employers (i.e., employers who have either adopted the plan or certified their intent to adopt the plan by the end of the regular GUST remedial amendment period) have done anything before January 1, 2001?

A1. No.

Q2. An M&P sponsor has decided to discontinue marketing its M&P plan and will not seek approval for GUST amendments to the plan. Did the employers who have adopted the M&P plan have to do anything before January 1, 2001? Did the sponsor? Do the answers change if the plan had been approved as a regional prototype plan under Rev. Proc. 89-13, 1989-1 C.B. 801?

A2. The employers who have adopted the M&P plan did not have to do anything at this time. Assuming the M&P sponsor is not continuing to sponsor any plan (see Q&A4 below for analysis of a case where the M&P sponsor is continuing to sponsor another plan or plans), the employers must do one of the following by the end of the regular GUST remedial amendment period:

- (i) adopt a GUST-approved M&P or volume submitter specimen plan of another sponsor or practitioner, or individually-designed GUST amendments;
- (ii) extend the GUST remedial amendment period by adopting a timely submitted M&P or volume submitter specimen plan of another sponsor or practitioner; or
- (iii) extend the GUST remedial amendment period by jointly certifying with another sponsor or practitioner that the employer intends to amend its plan

for GUST by adopting the sponsor or practitioner's timely submitted M&P or volume submitter specimen plan after the plan has been approved for GUST.

The sponsor of the discontinued plan must notify the adopting employers and the Service of the discontinuance of the plan. The sponsor should also advise the adopting employers of their options for complying with GUST, as described above. It makes no difference if the plan is a regional prototype plan.

Q3. Is the answer to 2 different if the M&P plan is being discontinued by a mass submitter?

A3. The discontinuance of an M&P plan by a mass submitter does not constitute discontinuance of the M&P plans that are identical adoptions or minor modifications of the mass submitter's plan. If a mass submitter discontinues a plan, an M&P sponsor that is using the plan has the following options:

- (i) continue the plan as a nonmass submitter M&P plan;
- (ii) amend the form of the plan to be a word-for-word identical or minor modifier adoption either of another plan of the mass submitter or of a plan of another mass submitter; or
- (iii) discontinue the M&P plan as described in A2 above.

Q4. An M&P sponsor has several plans and decides to discontinue only one of them. What effect will this have on the deadline for amending for those employers who have adopted one of the other plans? What effect will this have on the deadline for amending for those employers who have adopted the plan that will be discontinued?

A4. Each employer who has adopted any of the M&P sponsor's plans (including the discontinued plan) before the end of the regular GUST remedial amendment period is deemed to have adopted all of the sponsor's plans. It is assumed that the M&P sponsor requested GUST opinion letters by December 31, 2000, for each M&P plan that will continue. Therefore, the GUST remedial amendment period for each employer who adopted any of the M&P sponsor's plans (including the discontinued plan) before the end of the regular GUST remedial amendment period will be extended until the end of the 12th month beginning after the date of approval of the last plan of the sponsor to receive a GUST opinion letter. By this time, the employers (including those who had adopted the discontinued plan) must:

- (i) adopt any of the GUST-approved plans of the sponsor, or any other GUST-approved M&P or volume submitter specimen plan; or
- (ii) adopt individually-designed GUST amendments; and

(iii) request a determination letter, if a determination letter is required for reliance.

Extending the GUST Remedial Amendment Period When Sponsor or Practitioner Does Not Timely Request Opinion or Advisory Letter

If an M&P sponsor or volume submitter practitioner did not request GUST opinion or advisory letters for its plans by December 31, 2000, employers who have adopted the plans must take one of the following steps by the end of the regular GUST remedial amendment period:

- (i) adopt a GUST-approved M&P or volume submitter specimen plan of another sponsor or practitioner, or individually-designed GUST amendments;
- (ii) extend the GUST remedial amendment period by adopting a timely submitted M&P or volume submitter specimen plan of another sponsor or practitioner; or
- (iii) extend the GUST remedial amendment period by jointly certifying with another sponsor or practitioner that the employer intends to amend its plan for GUST by adopting the sponsor or practitioner's timely submitted M&P or volume submitter specimen plan after the plan has been approved for GUST.

The Service is aware that some sponsors and practitioners will not be requesting GUST opinion or advisory letters for their M&P or volume submitter specimen plans because the plans are being replaced by plans of other sponsors or practitioners as a result of business circumstances. In order to ameliorate the burden of requiring employers to take one of the intermediate steps described in (ii) or (iii) above in these situations, the Service is adopting the policy described in the next paragraph. This policy aims to reduce burden by providing relief from the certification requirement in appropriate, clearly defined situations.

If a sponsor or practitioner of an M&P or volume submitter specimen plan did not request a GUST opinion or advisory letter for the plan by December 31, 2000, because the plan is being replaced by an M&P or volume submitter specimen plan of another sponsor or practitioner, the Service will not require an employer who has adopted the "replaced plan" to sign a certification of intent to adopt the "replacement" plan in order to be eligible for the extension under section 19 of Rev. Proc. 2000-20, provided the following conditions are met:

- (i) the employer has adopted the replaced plan by the end of the regular GUST remedial amendment period;

(ii) the sponsor or practitioner of the replacement plan has submitted the plan to the Service for a GUST opinion or advisory letter by December 31, 2000; and

(iii) the sponsor or practitioner of the replacement plan and the sponsor or practitioner of the replaced plan are related in one of the following ways: (a) one was merged into the other before January 1, 2001; or (b) as of December 31, 2000, both are members of the same controlled group of corporations within the meaning of section 414(b) or are trades or businesses which are under common control within the meaning of section 414(c).

If these conditions are met, the employer will have until the end of the 12th month beginning after the date of issuance of a GUST opinion or advisory letter for the replacement plan to adopt the GUST-approved replacement plan. (Alternatively, the employer may, on or before the end of the 12th month beginning after the date of issuance of a GUST opinion or advisory letter for the replacement plan, adopt another GUST-approved M&P or volume submitter specimen plan or individually-designed GUST amendments). If a determination letter is required for reliance, the employer must also request the determination letter on or before the end of the 12th month beginning after the date of issuance of a GUST opinion or advisory letter for the replacement plan.

The determination letter request should include a statement from the sponsor or practitioner of the replacement plan, which indicates that the sponsor has satisfied the requirements described above and which lists the sponsor, file folder number and name of the M&P or volume submitter specimen plan(s) being replaced. (This statement should also be included with the GUST opinion or advisory letter application for the replacement plan.) The determination letter request should also include evidence of the employer's prior adoption of the replaced plan.

Service Procedures for Reviewing M&P and Volume Submitter Specimen Plans

The Service may, at its discretion, require any additional information it considers necessary to the issuance of a favorable opinion or advisory letter. Although the Service's review of a previously approved M&P or volume submitter specimen plan is focused primarily on the requirements of GUST and plan provisions affected by the GUST requirements, the Service may request changes to any provisions of the plan when necessary, notwithstanding that the plan included the provisions when it was previously approved.