

## USEFUL DETERMINATION PROGRAM INFORMATION FOR GUST APPLICATIONS

With the upcoming deadline for the GUST Remedial Amendment Period (RAP), Employee Plans provides the following useful information:

<a href="#">Amend Your Qualified Plan on Time or Risk Loss of Valuable Tax Benefits</a>	Employers and plan sponsors must amend their plans by the end of the GUST RAP that may be as soon as February 28, 2002.
<a href="#">Completeness of GUST Applications</a>	Determination Letter Application packages must be completed appropriately for the type of ruling requested. Applications with serious defects will not be considered to have been timely submitted for GUST.
<a href="#">Avoiding Common Procedural Errors</a>	In an effort to provide Employee Plans practitioners with advice on avoiding common determination application procedural errors, the IRS is providing a list of the most common procedural submission errors. This list of errors is based on an analysis of recent applications submitted for the group of pension law changes known as GUST.
<a href="#">Required Amendments to comply with the Community Renewal Tax Relief Act of 2000 (CRA)</a>  <a href="#">Acceptable Format of a Schedule Q (Form 5300) – Demo 6</a>	Frequently Asked Questions

Go to [www.irs.gov/ep](http://www.irs.gov/ep) and under "Determination Letter Program", click on the bulleted item 'answers' for a listing of GUST guidance issued to date.

## Amend Your Qualified Plan on Time or Risk Loss of Valuable Tax Benefits

If you are an employer or plan sponsor that maintains a qualified retirement plan (for example: Defined Benefit Pension, Profit Sharing, 401(k) plans, ESOPs, Keoghs, HR-10, etc), you must amend your plans by February 28, 2002 for extensive changes in the tax rules which govern qualified plans. Fiscal year plans have a later deadline - the last day of the fiscal year that begins in 2001. Most pre-approved plans (that is, master and prototype and volume submitter plans) have until December 31, 2002, or in some cases later.

Plans directly affected by the September 11, 2001 terrorist attack on the United States automatically have an extended deadline to amend until June 30, 2002. These same plans may apply to the Service for a further extension until December 31, 2002.

Amend your plan and submit a determination letter application by the deadline and help prevent the loss of valuable tax benefits.

See [Revenue Procedure 2001-55](#) for details or call the Employee Plans toll-free customer service telephone number, 1-877-829-5500. Consult your pension plan advisor or attorney now!

**NOTE: Participants** in these retirement plans should contact their **employers** in order to ensure that these amendments are completed. Since the retirement plan is maintained by your employer and not the IRS, IRS will not have a record of whether or not these amendments have been made unless your employer submits the plan for a determination letter.

As a participant in the plan, what should you do?

1. Ask your employer if the plan has been amended for the new law, also known as GUST<sup>1</sup> (Be aware that some master & prototype and volume submitter plans may have a later deadline.)
2. Ask your employer if he or she has submitted an application for a determination letter. Although it is required that your employer amend the plan for the new law, your employer is not required to apply for a determination letter.
3. If your employer is unaware of the requirement to amend the retirement plan and needs assistance, give him or her a copy of this information.

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<sup>1</sup> "GUST" refers to the following:

- the Uruguay Round Agreements Act, Pub. L. 103-465 ("GATT");
- the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353 ("USERRA");
- the Small Business Job Protection Act of 1996, Pub. L. 104-188 ("SBJPA");
- the Taxpayer Relief Act of 1997, Pub. L. 105-34 ("TRA '97");
- the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206 ("RRA '98"); and
- the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554 ("CRA").

## Completeness of GUST Applications

Revenue Procedure 2001-55 extended the remedial amendment period for amending plans for GUST to February 28, 2002. In conjunction with the publication of this revenue procedure, the Service would like to remind plan sponsors and their representatives of the need to file complete applications.

Determination letter application packages must be appropriately complete for the type of determination letter requested. All applications will be screened for completeness. Those deemed to be deficient or seriously incomplete will be returned to the submitter. The instructions for the Form 5300 series applications and Schedule Q provide details regarding specifically what is required.

Announcements 2001-77 and 2001-109 modified the determination application procedures to allow plan sponsors to request either a full or limited review of their submission. Based on the type of determination requested, the Schedule Q, related demonstration(s) and other documentation must be submitted at the time the application is initially filed. Although the Internal Revenue Service will request and accept amendments and additional information after the initial submission as necessary based upon their review, those applications deemed to be incomplete will be returned to the plan sponsor. The Service expects applicants to make a good faith effort to comply with these requirements. Last-minute submission of a “bare bones” application form without necessary accompanying data in order to meet the February 28 deadline will not be considered to be a good faith effort, and such applications will be returned. An incomplete application that is returned by the Service will not be treated as received until the time when it is properly resubmitted to the Service by the applicant. Plans with these defective applications, even though received within the remedial amendment period, will not be considered to have been timely amended for GUST. This may result in the revocation of the plan’s tax exempt qualification under IRC section 401(a).

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## Avoiding Common Procedural Errors

In an effort to provide Employee Plans practitioners with advice on avoiding common procedural errors that will slow down the processing of determination applications the IRS developed a list of the most common procedural submission errors. This list is based on an analysis of recent applications submitted for the group of pension law changes known as GUST.

**Control Group/Affiliated Service Group** (Forms 5300, 5307, and 5310 Questions 6(a) and 6(b)) This is often answered incorrectly. If answered affirmatively, required attachments are often not included. The name of each control group, names of plans and coverage information related to that group are required with affirmative answers to this question.

**Copy of latest prior letter.** Include a copy of the latest prior determination letter and copies of all amendments made to the plan since that latest letter. If no TRA 86 determination letter was issued any available TRA 86 plan documents should be enclosed with the application. If necessary, copies of the signed and dated amendments for IRC sections 401(a)(17) and 401(a)(31) should be included.

**Signed Forms 2848.** Review the entire Form 2848 for completeness before submitting. The most frequent error in completing this form is failure to include the signature of the representative. Form 5307 submissions often don't include the representation and signature from the volume submitter.

**Assemble the submission to speed processing.** Please don't use staples or binders. Butterfly clips or paper clips are okay.

**Correct user fee.** Make sure user fee is correct as described in Form 8717.

**Correct Employer Identification Number (EIN).** EIN should be that of the plan sponsor, not the trust.

**Amendments for CRA'00: Notice 2001-37** contains the Community Renewal Tax Relief Act of 2000 (CRA '00) provisions which requires the definition of compensation to now include Code Section 132(f)(4) "the qualified transportation fringes." This affects the 415 limitations, leased employee, key employee, top heavy minimum, and HCE provisions.

For a more complete listing of tips for practitioners submitting determination applications, click on the bulleted item 'tips' under Determination Letter Program at [www.irs.gov/ep](http://www.irs.gov/ep).

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## Frequently Asked Questions Regarding Required Amendments to comply with the Community Renewal Tax Relief Act of 2000 (CRA)

### ◆ Which specific Code sections were amended by CRA?

Section 415(c)(3), which defines compensation used in applying the limitations of section 415, and section 414(s)(2), which allows an employer to exclude certain deferral contributions from plan compensation for nondiscrimination testing, were amended to include elective reductions in compensation for qualified transportation fringe benefits that are excluded from an employee's gross income by reason of section 132(f)(4).

### ◆ Are other Code sections impacted by CRA?

Absolutely. The determinations of 1) who is a highly compensated employee under section 414(q), 2) the minimum contributions or benefits for top-heavy plans required by section 416(c), and 3) who is a key employee under section 416(i)(1) are all made using the definition of compensation under section 415(c)(3). The definition of compensation under 414(s) is used for nondiscrimination testing under section 401(k) and 401(m) as well as under section 401(a)(4). (Note that a plan that incorporates section 414(s) by reference, except for an election to exclude deferral contributions described in section 414(s)(2), will no longer meet the criteria for a safe harbor definition of compensation under section 1.414(s)-1(c)(3) of the Income Tax Regulations unless the plan is amended to exclude elective reductions for qualified transportation fringe benefits. If no amendment is made, plan compensation will have to be tested for nondiscrimination using Demo 9.) The new definitions also apply to any plan that defines compensation for general plan purposes by incorporating section 415(c)(3) or section 414(s) by reference.

◆ **What years are affected by CRA?**

CRA is effective for years beginning after December 31, 1997. Pursuant to [Notice 2001-37, 2001-25 I.R.B. 1340](#), qualified plans must be operated in accordance with CRA for plan and limitation years beginning on or after January 1, 2001. Any amendments to comply with CRA must be made effective no later than the earlier of: 1) the first days of the plan and limitation years after 1997 in which the plan was operated in accordance with CRA, or 2) the first days of the plan and limitation years beginning in 2001. A plan cannot be amended retroactively for CRA for years after 1997 unless the plan was operated in accordance with CRA during those years.

◆ **What is the deadline to amend for CRA?**

The end of the GUST remedial amendment period for your plan, including any extensions available under [Rev. Proc. 2001-55, 2001-49 I.R.B 551](#).

◆ **How can I amend my plan for CRA?**

It's easy, if you use the model amendments contained in the appendix to [Notice 2001-37](#). If you have adopted an individually designed or volume submitter plan, the amendments can be used as needed to amend your plan for CRA changes to sections 414(s) and 415. You will not lose reliance on a determination letter currently in effect if you adopt the amendments on a word-for-word basis.

If you are a practitioner who sponsors a volume submitter plan, you can incorporate the amendments into your specimen plan document without affecting your advisory letter. If you sponsor a master or prototype plan, you can provide the amendments to each adopting employer as a supplement to their approved adoption agreement.

Employers and sponsors of volume submitter and master and prototype plans should be aware that the Service will not issue a new determination, advisory or opinion letter solely for the model amendments.

◆ **Do I need to amend my plan for CRA even if I don't currently maintain a qualified transportation fringe benefit plan?**

Yes. Because determination letters are issued for the form of the plan, the plan must be amended for the CRA changes to ensure that it will remain qualified in form even if the sponsoring employer later decides to offer qualified transportation fringe benefits.

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## **Frequently Asked Questions Regarding Schedule Q (Form 5300) – Demo 6**

◆ **What information do I need to submit for a ruling under Code section 401(a)(4) using the general test?**

What is generally required is a copy of the nondiscrimination test showing that the plan passes the relevant general test and the information listed in the

instructions to Schedule Q. The precise amount of data that must be disclosed will vary among plans, but all plan sponsors are required to provide certain information, including, but not limited to: plan year being tested, basis of testing (contributions or benefits), description of the method used to determine allocation or accrual rates, what, if any, special attributes (imputing disparity, grouping of accrual rates, etc.), were used, and, if cross-tested, the interest rate and mortality table used to normalize benefits. (See [Schedule Q instructions](#) for complete list).

◆ **Can I still provide sample calculations?**

Yes, the Service will accept sample calculations, especially for cases with a large number of participants (such as greater than 500). The calculations should show what method was used and how the accrual or allocation rate was calculated for each participant. If the test imputed permitted disparity, we would like the samples to include at least one participant above and one below the covered compensation level (taxable wage base if tested on a contributions basis). The material submitted should also include any additional information described in the instructions to Schedule Q that is applicable to the plan being tested.

◆ **Is there a preferred format for submitting the general test?**

No, any format is acceptable as long as the information enables the Service to determine how the test was run and if the allocations or benefits used in the test conform to plan provisions. If this data is present, the Service can follow the methodology used in performing the test and make a final determination as to whether the plan satisfies section 401(a)(4). For example, The ABC Company could submit the following (in accordance with pages 4 –5 of the instructions for Schedule Q Demo 6 General Test):

1. See attached demo 6
2. Three rate groups – see page 5 of demo 6.
3. Tested on a benefits basis
4. 1999 plan year
5. Method of determining allocation/accrual rates- PV \$1 using UP 84 and 8 ½%
6. Not imputing disparity
7. No grouping was done.
8. Demonstration of how benefits are normalized- see attachment.
9. Definition of compensation – W2 compensation with no exclusions and satisfies 1.414(s)-1(c)(2).
10. Period used in determining compensation - plan year 1/1-12/31.
11. Testing age- 65
12. -19. Not applicable (DB only)
20. - 21. Cross testing- see attachment

The above, along with a copy of the general test and any attachments mentioned, would be acceptable.

◆ **When can salary deferrals be taken into consideration?**

Salary deferral contributions, which are tested separately for nondiscrimination using the actual deferral percentage test of section 401(k), are not included in the determination of allocation or accrual rates used to form rate groups for purposes of a general test for nondiscrimination under section 401(a)(4). However, if the average benefit percentage test is used to demonstrate that rate groups established under a general test satisfy the coverage requirements of section 410(b), the computation of the benefit percentage of each participant must include salary deferral contributions.

◆ **Must I use a testing age of 65?**

If the plan does not provide for a uniform normal retirement age, the employee's testing age is 65. If the plan defines a uniform normal retirement age, this is the age that should be used. A plan is permitted to use different uniform normal retirement ages for different employees or different groups of employees, and the testing age of an employee who is beyond the plan's testing age is his or her current age. For more information, see Regulations section 1.401(a)(4)–12.

◆ **What is the minimum amount of information needed for a Demo 6?**

The items of data that are necessary to perform a general test include plan participants (names need not be disclosed on the actual test), birth date or attained age of each participant (applicable to defined benefit plans or defined contribution plans cross-tested on a benefits basis), allocations or accruals for the plan year being tested, compensation, and relevant plan provisions for allocations or accruals.

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