

Rev. Proc. 2002-35

SECTION 1. PURPOSE

This revenue procedure establishes streamlined procedures to avoid the disqualification of plans intended to satisfy § 401(a) or § 403(a) of the Internal Revenue Code on account of failure to be timely amended for GUST.¹ These streamlined procedures are available only if the plan sponsor applies for a determination letter by September 3, 2002.

SECTION 2. BACKGROUND

.01 Plans intended to satisfy § 401(a) or § 403(a) (“Qualified Plans”) are required to be amended for GUST within the GUST remedial amendment period. A plan’s GUST remedial amendment period generally ends on the later of February 28, 2002, or the last day of the first plan year beginning on or after January 1, 2001. See Rev. Proc. 2001-55, 2001-49 I.R.B. 552. Special rules apply to governmental plans, plans directly affected by the terrorist attack of September 11, 2001, and plans that are eligible for the extended GUST remedial amendment period that applies to master and prototype and volume submitter plans under section 19 of Rev. Proc. 2000-20, 2000-1 C.B. 553, as modified by Rev. Proc. 2000-27, 2000-1 C.B. 1272, Notice 2001-42, 2001-30 I.R.B. 70, and Rev. Proc. 2001-55.

.02 Rev. Proc. 2001-17, 2001-1 C.B. 589, describes the Employee Plans Compliance Resolution System (“EPCRS”), a comprehensive system of correction programs that, with respect to Qualified Plans, permits plan sponsors to correct qualification failures and thereby preserve the plans’ tax-favored status.

.01 The streamlined procedures in this section apply to Eligible Qualified Plans. The term “Eligible Qualified Plan” means a Qualified Plan that has not been amended for GUST within its GUST remedial amendment period and for which an application for a determination letter that considers all of the requirements of GUST is filed by September 3, 2002. However, a plan is not an Eligible Qualified Plan if the plan is a late amender without regard to GUST (for example, in the case of a plan other than a governmental or nonelecting church plan, if the plan was not timely amended for the Tax Reform Act of 1986, the Unemployment Compensation Act of 1992 or the Omnibus Budget and Reconciliation Act of 1993.) For purposes of this revenue procedure, the failure to amend any disqualifying provision for which the GUST remedial amendment period is available will be treated as a failure to amend the plan for GUST.

.02 The procedures in this section apply to Eligible Qualified Plans in lieu of the procedures in Rev. Proc. 2001-17. Rev. Proc. 2001-17 will continue to apply to late amended plans that are not eligible under this revenue procedure, including late amended plans for which determination letter applications are not filed by September 3, 2002.

.03 The Service will, upon resolution of the determination letter application, treat an Eligible Qualified Plan as having been amended for GUST within the GUST remedial amendment period and issue a favorable determination letter if the plan sponsor has submitted payment of the fee described in section 3.04. This fee is in addition to the determination letter user fee, if applicable.

.04 The amount of the fee is as follows:

Number of Participants (per Form 5300 or Form 5307)	Fee
1 – 100	\$1,000
101 – 1000	\$3,000
1001 or more	\$10,000

.05 If the plan sponsor of a late amended Qualified Plan does not resolve the failure to timely amend the plan under this revenue procedure or under Rev. Proc. 2001–17, the plan will be subject to disqualification.

SECTION 4. APPLICATION PROCEDURES

.01 A plan sponsor of an Eligible Qualified Plan may apply to have the failure to timely amend the plan resolved under this revenue procedure by filing a complete GUST determination letter application by September 3, 2002. If the application is filed on or after July 17, 2002, the application should include a check or money order, made payable to the U.S. Treasury, in the amount of the fee determined under section 3.04. This fee and the appropriate determination letter user fee, if applicable, should be paid using separate checks or money orders, each appropriately annotated. The phrase “Rev. Proc. 2002–35” should be written in bold at the top of the Form 5300 or Form 5307. The application should be sent to the appropriate address in section 6.18 of Rev. Proc. 2002–6, 2002–1 I.R.B. 203.

.02 If the Service determines that a plan for which a GUST determination letter application has been filed by September 3, 2002, is a GUST late amender, and the plan sponsor has not submitted payment of the fee under section 3.04, the Service will contact the plan sponsor to offer the sponsor the opportunity to request consideration under this procedure, or, if the plan is not an Eligible Qualified Plan, under Rev. Proc. 2001–17. Therefore, plan sponsors of late amended plans that have filed GUST determination letter applications before July 17, 2002, need take no further action until contacted by the Service.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2001–17 is modified.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective on June 17, 2002.

DRAFTING INFORMATION

The principal author of this revenue procedure is James Flannery of 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 between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday (a toll-free number). Mr. Flannery may be reached at 1–202–283–9888 (not a toll-free call).