

"GUST" AMENDMENT

What is the "GUST" amendment?

GUST is an abbreviation for a decade worth of laws affecting pension plans. During 2002 and 2003 all plans are required to adopt required language into their plans. Details of the actual laws, their effective dates and their provisions are located further on in this document.

When is it due?

All plans must be amended by 09/30/2003. However, some plans must be updated earlier than that.

Will my plan benefits change?

While all plans are adding this required language now, plans have been required to operate in compliance with the requirements since the laws were actually passed. There will be no operational changes to your plan unless you request them.

Will the cost of operating my plan change?

There is a cost for us to update all of our plans for these requirements on a one-time basis. This will not affect the ongoing cost of your plan.

What is the cost?

Our base update fee is \$375 until 01/31/2002. After that date, the fee will increase to \$500. Clients who transferred their plans to PAi after the initial effective date of some of the required changes may pay more. In addition, you may elect to have your plan individually reviewed by the IRS. The IRS requires a fee for doing so (generally \$125). You should consult with an attorney to determine whether you would like to have that review done for your plan. The IRS has recently changed its position on the determination letter.

"GUST" Details and References

The following is a list of the plan provisions that are affected by the GUST amendment process. "GUST" refers to the laws that contain the provisions that are required to be incorporated into retirement plans this year. Those laws are listed here;

- Uruguay Round Agreements Act, Pub. L. 103-464 ("GATT");
- Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353 ("USERRA");
- Small Business Job Protection Act of 1996, Pub. L. 104-188 ("SBJPA");
- Taxpayer Relief Act of 1997, Pub. L. 105-34 ("TRA '97");

New or Amended Provision	Effective Date	Statute and Guidance	Law
Matching contributions for self-employed persons are not treated as elective deferrals	Post-1997 plan years	Code § 402(g)(9)	TRA '97
A plan is not required to obtain a copy of a determination letter in order to conclude that a rollover is from a qualified plan	Rollovers made after December 31, 1997	TRA '97 § 1509 Prop. Treas. Reg. § 1.401(a)(31)-1 Prop. Treas. Reg. § 1.401(c)-2	TRA '97
New coverage, vesting credit, and benefit accrual requirements for certain reemployed veterans	December 12, 1994	Code § 414(u) Rev. Proc. 96-49	USERRA
Defined contribution/defined benefit fraction under Code § 415(e) repealed	Post-1999 limitation years	Code § 415(e)	SBJPA
Special aggregation rules that applied to owner-employees are repealed	Post-1996 plan years	Code § 401(d)	SBJPA
Increase in involuntary cash-out from \$3,500 to \$5,000; elimination of "look back rule" for determining \$5,000 cash-out	Plan years beginning after August 5, 1997; look back rule eliminated March 22, 1999	Code § 411(a)(7)(B) Code § 411(a)(11) Rev. Proc. 98-14 Treas. Reg. §§ 1-411(a)(7) and 1-411(a)(11), and proposed amendments thereto	TRA '97
Notice of Qualified Joint and Survivor Annuity may be provided after annuity starting date; waiver of minimum 30-day notice period	Post-1996 plan years	Code §§ 417(a)(7)(A) and 417(a)(7)(B) Treas. Reg. § 1.417(e)-1T	SBJPA
Change in required beginning date and timing of distribution election for non-5% owners to April 1 following the later of (a) the year in which the employee attains age 70_ and (b) the year in which the employee retires	Post-1996 plan years	Code § 401(a)(9)(C) Prop. Treas. Reg. § 1.411(d)-4, Q/A 10 Notice 96-67 Ann. 97-24 Ann. 97-70 Notice 97-75	SBJPA
401(k) hardship distributions are not "eligible rollover distributions," and therefore are not eligible for rollover treatment or subject to 20% withholding requirement	Post-1998 or Post-1999 plan years, at employer's election	Code § 402(c)(4)(C) Notice 99-5	RRA '98
10% early distribution penalty does not apply to tax levy distributions	Tax levy distributions after December 31, 1999	Code § 72(t)(2)(A)(vii)	RRA '98
Five-year income averaging for lump sum distributions is repealed	Post-1999 plan years	Code § 402(d)	SBJPA
15% excess distribution/accumulation taxes repealed	Distributions received or deaths after December 31, 1996	Code § 4980A (repealed)	SBJPA TRA '97
Change in the definition of "highly compensated employee" (including elimination of calendar year election, addition of calendar year data election and repeal of family aggregation)	Post-1996 plan years	Code § 414(q); IRS Notice 97-45	SBJPA

New or Amended Provision	Effective Date	Statute and Guidance	Law
ADP and ACP of nonhighly compensated is based on preceding plan year, unless the employer elects to use the current plan year	Post-1996 plan years	Code § 401(k)(3)(A) Code § 401(m)(2)(A) Notice 97-2 Notice 98-1	SBJPA
Safe harbor ADP and ACP for nonhighly compensated employees for plan's first plan year is 3% or current year's ADP/ACP, if elected by the employer	Post-1996 plan years	Code § 401(k)(3)(E) Code § 401(m)(3)	SBJPA
Compensation definition: (a) Code § 415 definition of compensation includes deferrals and cafeteria plan reductions, (b) plan may elect not to include deferrals and cafeteria plan reductions for purposes of Code § 414(s), (c) family aggregation is eliminated, and (d) Compensation limit is \$160,000 for 1997 and 1998, and indexed thereafter	Post-1997 plan years	Code § 415(c)(3) Code § 414(s)(2) Code § 401(a)(17)	SBJPA
"Leased Employee" definition changed to "under primary direction or control by the recipient"	Post-1996 plan years	Code § 414(n)(2)(C)	SBJPA
Minimum coverage test (that a plan cover the lesser of 40% of the employees and 50 employees) does not apply to defined contribution plans	Post-1996 plan years	Code § 401(a)(26)	SBJPA
Distribution of excess contributions and excess aggregate contributions is based on deferral or matching dollar amount, not percentages	Post-1996 plan years	Code § 401(k)(8)(C) Code § 401(m)(6)(C) Notice 97-2	SBJPA
Safe harbor method of meeting ADP and/or ACP nondiscrimination requirements	Post-1998 plan years	Code § 401(k)(12) Code § 401(m)(11) Notice 98-52	SBJPA
Elective contributions that are required to be invested in employer stock in a non-ESOP 401(k) plan are generally limited to 10% of plan assets	Post-1998 plan years	ERISA § 407(b)	TRA '97
Initial level tax on prohibited transactions increased to 10%, then to 15%	10% for prohibited transactions occurring after August 20, 1996; 15% for those occurring after August 5, 1997	Code § 4975	SBJPA TRA '97
Creation of SIMPLE 401(k) plans and SIMPLE IRAs	Post-1996 plan years	Code § 401(k)(11) Code § 401(m)(10) Notice 98-4 Rev. Proc. 97-2	SBJPA
Social Security retirement age may be treated as a uniform retirement age for purposes of the nondiscrimination rules	Post-1996 plan years	Code § 401(a)(5)(F)	SBJPA
\$5,000 death benefit exclusion is repealed	Decedents dying after August 20, 1996	Code § 101(b)	SBJPA
Offset of participant's benefit for criminal conviction relating to the plan or for a civil judgment for breach of fiduciary duty with respect to the plan	Judgments, orders, decrees, and settlement agreements occurring after August 4, 1997	Code § 401(a)(13) ERISA § 206(d)	TRA '97

New or Amended Provision	Effective Date	Statute and Guidance	Law
Elimination of requirement that summary of material modifications and summary plan descriptions be automatically provided to the DOL	August 5, 1997	TRA '97 § 1503	TRA '97