

MEMO# 13060

February 2, 2001

INTERNAL REVENUE SERVICE ANNOUNCEMENT CLARIFYING GUST REMEDIAL AMENDMENT PERIOD FOR EMPLOYERS THAT USE PROTOTYPE PLANS

[13060] February 2, 2001 TO: PENSION MEMBERS No. 7-01 PENSION OPERATIONS ADVISORY COMMITTEE No. 11-01 RE: INTERNAL REVENUE SERVICE ANNOUNCEMENT CLARIFYING GUST REMEDIAL AMENDMENT PERIOD FOR EMPLOYERS THAT USE PROTOTYPE PLANS The Internal Revenue Service has released Announcement 2001-12,¹ which summarizes and clarifies the rules for determining the “GUST” remedial amendment period for employers that use prototype plans.² These rules were originally set forth in Section 19 of Revenue Procedure 2000-20,³ and modified by Revenue Procedure 2000-27 in connection with the general extension of the remedial amendment period under Section 401(b) of the Internal Revenue Code for GUST changes.⁴ Announcement 2001-12 states that, although 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”), an employer may have a later deadline by: (1) adopting a prototype plan (regardless of whether the plan has a TRA ’86 opinion letter); or (2) jointly certifying with a prototype sponsor that the employer intends to amend its plan for GUST by adopting the sponsor’s prototype plan after the plan has received GUST approval. This required action must take place by the end of the regular GUST remedial amendment period. In addition, the sponsor of the plan that the employer intends to adopt must have requested a complete GUST opinion letter for the plan by December 31, 2000. If the above requirements are satisfied, the employer’s deadline for amending its plan for GUST is the later of: (1) the end of the regular GUST remedial amendment period; or (2) the end of the twelfth month beginning after the date a GUST opinion letter is issued for the prototype plan (or the opinion letter application is withdrawn). By this deadline, the employer 1 The Service incorrectly numbered the Announcement as 2001-6 upon its initial release. 2 The Announcement addresses master and prototype (“M&P”) and volume submitter plans. This memorandum, however, will discuss the rules only as they apply to prototype plans. 3 See Institute Memorandum to Pension Members No. 7-00 and Pension Operations Advisory Committee No. 6-00, dated January 28, 2000. 4 See Institute Memorandum to Pension Members No. 33-00 and Pension Operations Advisory Committee No. 41-00, dated June 15, 2000. 2 must adopt one of the following: (1) the GUST-approved prototype plan referred to above; (2) another GUST-approved prototype plan; or (3) individually designed GUST amendments. The Announcement states that, in applying these rules, an employer who has adopted (or

certified its intent to adopt) a sponsor's prototype plan by the end of the regular GUST remedial amendment period also will be deemed to have adopted (or certified its intent to adopt) each other prototype plan of that sponsor. In one of the examples that follows this statement, Bank B sponsors two prototype plans, Plan 001 and 002, and Employer Z in 1996 adopted only Plan 002. If Bank B decides to discontinue Plan 002 and does not request a GUST opinion letter for the plan, then Employer Z is deemed to have adopted Plan 001 before the end of the GUST remedial amendment period for purposes of these rules. In addition, the Announcement includes answers to specific questions that the Service has received concerning the determination of the GUST remedial amendment period for employers who use prototype plans. Another section of the Announcement addresses prototype sponsors that did not request GUST opinion letters by December 31, 2000, and states that the Service will provide relief from the employer certification requirement in situations in which the sponsor did not request a GUST opinion letter because the plan is being replaced by a plan of another sponsor as a result of certain business circumstances, including the merger of one sponsor into the other. Finally, the Announcement notes that, in reviewing previously approved prototype plans for GUST amendments, the Service may request changes to plan provisions that were included in the plan when previously approved. A copy of the Announcement is attached. Kathy D. Ireland Associate Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment to which this memo refers, please call the ICI Library at (202) 326-8304 and request the attachment for memo 13060. ICI Members may retrieve this memo and its attachment from ICINet (<http://members.ici.org>). Attachment (in .pdf format)

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