

IRS Provides Three-Year Extension for SECURE Act Amendments and Additional Limited Relief

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[IRS Notice 2022-33](#) provides extensions to the amendment deadlines for certain provisions of the [Setting Every Community Up for Retirement Enhancement Act of 2019](#) (“SECURE Act”), the [Bipartisan American Miners Act of 2019](#) (“Miners Act”), and the [Coronavirus Aid, Relief, and Economic Security Act](#) (“CARES Act”). This Notice comes as welcome relief, albeit limited in some instances.

SECURE Act and Miners Act

Section 601 of the SECURE Act generally provides that plan amendments must be adopted by the end of the 2022 plan year or such later date as Treasury prescribes.

The Notice extends the deadline for amendments under the SECURE Act as follows:

- For non-governmental qualified and 403(b) plans, the amendment deadline is December 31, 2025.
- For governmental qualified and 403(b) plans, the amendment deadline is 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2023.
- For governmental 457(b) plans, the amendment deadline is the later of (1) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2023, or (2) the first day of the first plan year beginning more than 180 days after the date of notification by the IRS that the plan was administered inconsistent with Code section 457(b) (if applicable).

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The Notice also extends anti-cutback relief to amendments made before these deadlines. In all cases, the plan must be operated as if the amendment applied as of its original effective date.

In addition, the above deadlines apply to amendments to lower the in-service distribution age to 59 ½ in pension and governmental 457(b) plans under the Miners Act.

CARES Act

With respect to amendments due under the CARES Act, the Notice extends the deadline solely with respect to the 2020 waiver of required minimum distributions. The deadline to amend for this provision generally tracks the above deadlines – December 31, 2025 for non-governmental plans and, for governmental plans, 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2023 (subject to the special rule for 457(b) plans).

What's Next?

The IRS expects that certain SECURE Act guidance will be included on the 2023 Required Amendments List for individually-designed plans, which would keep the amendment timing in line with the above deadlines. Further, it is anticipated that pre-approved defined contribution plans will see SECURE Act, CARES Act, and Miners Act provisions on the cumulative list for their Cycle 4 filings.

Unfortunately, the Notice does not address an extension for coronavirus-related distributions and loans, and as these provisions are optional and we do not expect any future guidance, presumably they will not be reflected on a required amendments list. Therefore, pending additional guidance, amendments for those provisions remain due by the end of first plan year beginning on or after January 1, 2022.

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