



IRS NOTICE 2022-33 PROVIDES A PARTIAL EXTENSION OF THE 2022 PLAN AMENDMENT DEADLINES

The Internal Revenue Service has announced an extension of the deadlines for amending 401(a) qualified defined contribution and defined benefit plans, 403(b) plans and governmental 457(b) plans for the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), the Bipartisan American Miners Act of 2019 (Miners Act) and one provision of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). In general, IRS Notice 2022-33 extends the amendment deadlines to December 31, 2025. Special extension rules, as explained below, apply to certain governmental plans.

While the extension provides welcome relief in certain cases, some plan sponsors and Pre-Approved Plan Providers will still need to amend plans for certain CARES Act provisions and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Disaster Tax Relief Act) by the original amendment deadline - the last day of the 2022 plan year.

ASC Insight: Notice 2022-33 has the most significant impact on plan sponsors using pre-approved plan documents. Such plan sponsors and Pre-Approved Plan Providers must adopt interim amendments to timely conform plan documents to changes in the law, including the SECURE Act, Miners Act, CARES Act and Disaster Tax Relief Act. With respect to individually designed plans, Notice 2022-33 indicates that the 2023 Required Amendments List will include SECURE Act and other provisions which would then require plan sponsors with individually designed plans to make applicable amendments by December 31, 2025. Thus, the December 31, 2025 amendment deadline generally will apply to both pre-approved plans and individually designed plans. Note that December 31, 2025 is a fixed date and the deadline is not tied to a plan's plan year.

BACKGROUND

The SECURE Act, Miners Act and CARES Act significantly changed many of the plan qualification rules for 401(a), 403(b) and 457(b) plans. The SECURE Act included new rules for qualified birth or adoption distributions, pooled employer plans, safe harbor plans, long-term part-time employees, required minimum distributions and many other qualification requirements. Miners Act §104 provided for in-service distributions from defined benefit plans, governmental 457(b) plans, money purchase pension plans and transferred pension assets in other defined contribution plans at age 59½. The CARES Act provided for a waiver of required minimum distributions for 2020

for certain plans (CARES Act §2203) and for coronavirus-related distributions and loans (CARES Act §2202). In addition, the Disaster Tax Relief Act allowed certain plan distributions and loans related to specific declared natural disasters.

Generally, the statutorily imposed deadline to amend plans to reflect the various laws was the last day of a plan's 2022 plan year (or, 2024 plan year for governmental plans). The IRS confirmed and clarified the amendment deadlines in regulatory guidance. Thus, for calendar year plans, the amendment deadline for the SECURE Act, Miners Act and CARES Act would have been December 31, 2022.

While the IRS has provided some interpretive guidance on the substance of the various laws, comprehensive guidance, especially for SECURE Act provisions, is not yet available. Some practitioners, citing a lack of comprehensive guidance, asked for an extension of the amendment deadline. In response, IRS issued Notice 2022-33.

WHAT DID NOTICE 2022-33 DO?

Notice 2022-33 provides a blanket amendment deadline extension for the SECURE Act and the Miners Act. However, it only extends the amendment deadline for CARES Act §2203 relating to the 2020 waiver of required minimum distributions and not for CARES Act §2202 relating to coronavirus-related distributions and loans. Also, Notice 2022-33 does not provide for an extension for the Disaster Tax Relief Act.

ASC Insight: The IRS' reason for not providing a blanket extension for the CARES Act and the Disaster Tax Relief Act is unclear. Perhaps the IRS believes it has issued sufficient guidance relating to these provisions and no extension was necessary. In any event, the now separate amendment deadlines for CARES Act §2202 and CARES Act §2203 will require many plan sponsors (and Pre-Approved Plan Providers) that allowed coronavirus-related distributions and/or loans under CARES Act §2202 or disaster-related distributions and/or loans under the Disaster Tax Relief Act to adopt conforming amendments by the end of the 2022 plan year.

Notice 2022-33 separately addresses the new extended deadlines for 401(a) qualified plans, 403(b) plans and governmental 457(b) plans. The extended deadlines apply to all applicable provisions of the SECURE Act, Miners Act §104 (relating to distributions upon the attainment of age 59½) and CARES Act §2203 (relating to the 2020 waiver of required minimum distributions).

401(a) Qualified Plans

- In general, for a 401(a) qualified defined contribution or defined benefit plan (including a collectively bargained plan) that is not a governmental plan, the deadline to amend a plan for applicable provisions is **December 31, 2025**.
- The plan amendment deadline for a 401(a) qualified governmental plan (within the meaning of Code §414(d)) 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**.

403(b) Plans

- In general, for a 403(b) plan (including a collectively bargained plan) that is not maintained by a public school, the deadline to amend a plan for applicable provisions is **December 31, 2025**.
- The plan amendment deadline for a 403(b) plan that is maintained by a public school (within the meaning of Code §403(b)(1)(A)(ii)) 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**.

Governmental 457(b) Plans

- The deadline to amend a governmental 457(b) plan for applicable provisions is the later of:
 - 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
 - if applicable, 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 in a manner that is inconsistent with the requirements of Code §457(b).

ASC Insight: Notice 2022-33 did not provide an extension of the amendment deadline for tax-exempt 457(b) plans. Tax-exempt employers maintaining 457(b) plans should, if they have not already done so, amend their plans by end of the 2022 plan year.

WHAT THE AMENDMENT EXTENSION MEANS TO PLAN SPONSORS AND PRE-APPROVED PLAN PROVIDERS

The extension provided in Notice 2022-33 gives plan sponsors and Pre-Approved Plan Providers some breathing room for amending plans to comply with the SECURE Act, Miners Act and CARES

Act §2203. However, the Notice does not relieve plan sponsors of the requirement to operationally comply with the relevant provisions as of the applicable effective dates.

The decision by the IRS to not extend the amendment deadlines for CARES Act §2202 and the Disaster Tax Relief Act will require plan sponsors that utilized those laws to amend their plans by the previously announced amendment deadlines. For most plans, this deadline remains the end of the 2022 plan year.

ASC Insight: Pre-Approved Plan Providers will need to decide how they will proceed with their SECURE Act, Miners Act, CARES Act and Disaster Tax Relief Act amendments for their adopting employers. Despite the amendment deadline extension, some Pre-Approved Plan Providers may stay the course and decide to adopt a comprehensive Pre-Approved Plan Provider-level interim amendment (including all provisions relating to the SECURE Act, CARES Act, Disaster Tax Relief Act and the Miners Act) and require adopting employers to make appropriate elections by the original deadline (generally, December 31, 2022).

Alternatively, a Pre-Approved Plan Provider may decide to adopt an interim amendment only dealing with CARES Act §2202 and the Disaster Tax Relief Act by December 31, 2022 and then adopt the more comprehensive interim amendment sometime before December 31, 2025.

Plan sponsors and Pre-Approved Plan Providers also may consider other alternatives for adopting the interim amendments.

Plans terminating before the applicable extended amendment deadline will need to be amended to comply with the provisions of the SECURE Act, Miners Act, CARES Act and the Disaster Tax Relief Act (if applicable to such terminating plan) that are in effect as of the date of plan termination.

Also on the horizon is the prospect of Congress passing significant, new retirement plan legislation (often referred to as SECURE 2.0) later this year. Under the various SECURE 2.0 proposals being considered, the amendment deadlines for the SECURE Act, Miners Act, CARES Act and the Disaster Tax Relief Act may be extended legislatively. Currently, some of the possible legislative amendment deadline extensions are more expansive than the IRS extension.

ASC Insight: We believe that Congress will consider the IRS amendment deadline extension under Notice 2022-33 and conform any legislative amendment deadline extension accordingly.

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