

IRS EXTENDS DEADLINES TO ADOPT SECURE AND CARES ACT AMENDMENTS

Hodgson Russ Employee Benefits Alert
August 10, 2022

In an unexpected notice, the IRS has extended certain deadlines for amending retirement plans and individual retirement arrangements (IRAs) to reflect changes required by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and the Bipartisan American Miners Act of 2019 (Miners Act). Prior to the extension, amendments to calendar year retirement plans generally were required to be adopted by December 31, 2022.

IRS Notice 2022-33 extends by an additional three (3) years - until December 31, 2025 – the deadline for qualified retirement plans, non-governmental 403(b) plans, and IRAs to adopt amendments conforming to the legislation. The deadline applies regardless whether the plan operates on a calendar year or non-calendar plan year basis. Governmental plans, including 457(b) plans, must adopt retirement plan amendments by the date that is ninety (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.

This extension applies to all amendments required by the SECURE Act and its accompanying regulations, including the required minimum distribution rule changes. The extension also applies to optional amendments to defined benefit retirement plans and governmental 457(b) plans to implement Section 104 of the Miners Act, which permits lowering the minimum age for allowable in-service distributions from age 62 to age 59½. For the CARES Act, this extension only applies to amendments needed to reflect the 2020 waiver of required minimum distributions. The Notice states that the IRS anticipates issuing further guidance in the 2023 Required Amendments List.

Significantly, amendments required by the CARES Act to implement optional coronavirus-related distributions and loans are not extended and must be adopted by December 31, 2022, for calendar year plans. Non-calendar year plans must be amended by the last day of the first plan year beginning after January 1, 2022. Plan administrators should consult with their plan document providers and legal counsel to ensure the timely adoption of amendments consistent with the retirement plan's implementation of any coronavirus-related distributions and loans under the CARES Act.

Attorneys

Peter Bradley
Michael Flanagan
Richard Kaiser
Ryan Murphy
Amy Walters

Practices & Industries

Employee Benefits

IRS EXTENDS DEADLINES TO ADOPT SECURE AND CARES ACT AMENDMENTS

While it is generally favorable guidance, retirement plan sponsors should be aware of the difficulties the Notice 2022-33 extensions may present. The significant gap between the date such retirement plan changes were implemented and the date the plan document will eventually be amended creates the potential for a disconnect between plan operations and the plan document, giving rise to possible qualification defects. In addition, plan sponsors must address the issue of how participants will be made aware of the plan's implementation of important new design features and rules. While regulatory disclosure rules do not mandate the issuance of a summary of material modification (SMM) until a plan is actually amended, plan sponsors may want to consider voluntarily adopting a SMM in order to inform participants of the significant changes made during the last few years.

