

PLANS GRANTED ADDITIONAL TIME TO ADOPT ALL CARES ACT AMENDMENTS

Hodgson Russ Employee Benefits Alert
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IRS Notice 2022-45 extends the amendment deadline for retirement plans and individual retirement arrangements (IRAs) to adopt permissive Coronavirus Aid, Relief, and Economic Security Act (CARES Act) amendments. If this sounds familiar, this guidance builds on Notice 2022-33 issued over the summer which already extended the amendment deadline for SECURE Act amendments as well as amendments for certain aspects of the CARES Act. See our article on Notice 2022-33 [here](#). New IRS 2022-45, together with Notice 2022-33, effectively extends the deadline for retirement plans and IRAs to adopt all conforming CARES Act amendments. Prior to these extensions, CARES Act amendments to calendar year retirement plans generally were required to be adopted by December 31, 2022.

IRS Notice 2022-45 extends by an additional three years - until December 31, 2025 – the deadline for qualified retirement plans, non-governmental 403(b) plans, and IRAs to adopt amendments conforming to the CARES Act. 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 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 new extension applies to relief found in Section 2202 of the CARES Act:

1. Permitting coronavirus-related distributions (CRDs) not exceeding \$100,000 to coronavirus-affected participants. Coronavirus-affected participants include those who tested positive for COVID, had a spouse/dependent test positive for COVID, or experienced adverse financial consequences due to COVID. To qualify, however, CRDs had to be taken between January 1, 2020 and December 31, 2020.
2. Permitting employers to increase the maximum loan amount available to coronavirus-affected participants. For plan loans made to a coronavirus-affected participant from March 27, 2020, to September 22, 2020, the limit may be increased up to the lesser of: (a) \$100,000 (minus outstanding plan loans of the coronavirus-affected participants), or (b) the coronavirus-affected participant's vested benefit under the plan.

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3. Permitting employers to delay the repayment of any outstanding loans. If a loan was outstanding on or after March 27, 2020, and any repayment on the loan was due from March 27, 2020, to December 31, 2020, employers were given the discretion to delay that due date for up to one year. Any payments after the suspension period must have been adjusted to reflect the delay and any interest accruing during the delay.

Similar to Notice 2022-33, Notice 2022-45 generally is favorable guidance. However, retirement plan sponsors should bear in mind the potential difficulties the extensions under Notice 2022-33 and Notice 2022-45 may present. The significant gap between the date a retirement plan implemented permissive CARES Act changes 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. Unlike the SECURE Act changes, however, where final guidance on the required minimum distribution rules is still pending thus making the drafting of plan amendments more challenging, there is no pending guidance for CRDs or CARES Act loan relief, for example, that necessitates further delay in adopting the conforming amendments. With that in mind, plan sponsors still might want to consider adopting CARES Act amendments sooner rather than later. Many sponsors of pre-approved plan documents have already rolled out CARES Act amendments.

Presumably, plan participants were long ago made aware of any permissive CARES Act relief offered by plans in 2020. Nonetheless, plan sponsors must consider the issue of whether there is an ongoing obligation to disclose the material aspects of any CARES Act changes implemented in 2020. CRDs, for example, were subject to special tax rules that allowed for repayments over a three-year period that has not yet expired. While regulatory disclosure rules do not mandate the issuance of a summary of material modification (SMM) until a plan is actually amended, plan sponsors that have not already done so may want to consider voluntarily adopting a SMM to inform participants of the permissive CARES Act changes implemented by the plan.