

You Can't Always Get What You Want – IRS Issues Notice 2022-33

Article By:

Natalie M. Nathanson

Lisa J. Goyer

On August 3, 2022, retirement plan sponsors welcomed IRS Notice 2022-33 (“Notice”), which extends the deadline for adopting amendments to comply with the [Setting Every Community Up for Retirement Enhancement Act of 2019](#) (“SECURE Act”), Section 104 of the Bipartisan American Miners Act (“Miners Act”), and certain provisions of the [Coronavirus Aid, Relief, and Economic Security Act](#) (“CARES Act”). For most plans, the amendment deadline is delayed three years to December 31, 2025, but some amendments are still required before year-end.

Deadline Extension

The most helpful delay applies to a CARES Act provision that requires changes to defined contribution plan language governing required minimum distributions. Plan sponsors were struggling with the concept of amending the plan language governing the distribution timing rules for benefits paid upon the death of a participant, given that the governing Regulations are still in proposed form. Employers now expect the Regulations to be finalized before the 2025 amendment deadline.

Under the Notice, the deadline for amending a plan for the 2020 required minimum distribution waiver under the CARES Act was extended to December 31, 2025. Likewise, the SECURE Act requirement to change the age at which required minimum distributions begin has been delayed until 2025. Other amendments for which the deadline has been delayed include the change in eligibility rules for part-time employees who work at least 500 hours during each of three consecutive years and permitting penalty-free withdrawals of qualified birth or adoption distributions of up to \$5,000 per child. The extension also applies to the provision of the Miners Act, which permits in-service distributions after age 59½ in pension and governmental 457(b) plans.

Non-Governmental Qualified Plans, 403(b) Plans, and IRAs

For those required amendment items covered by the Notice, the December 31, 2025, amendment deadline applies to non-governmental qualified plans, 403(b) plans not maintained by a public school, and IRAs. For governmental qualified plans and 403(b) plans maintained by a public school, the 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. Finally, the deadline for amending a governmental plan under Section 457(b) is the later of 90 days after the close of the third regular legislative session of the legislative body with the power 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 that the plan was administered so it is inconsistent with the requirements of Section 457(b).

CARES Act Deadline Not Universally Extended

Commentators are accusing the IRS of having missed an opportunity to extend meaningful relief by failing to include all provisions of the CARES Act. There is speculation that if Congress passes the retirement plan legislation currently pending (SECURE 2.0), the deadline for these missed CARES Act provisions will also be extended. However, if additional relief is passed, given the busy year-end schedules and winter holidays, plans may have already been amended by the time it is announced.

2022 Action Items

The deadline for the following plan amendments remains December 31, 2022:

1. Amending the plan to allow coronavirus related distributions;
2. Amending the plan to allow increased limits on plan loans; and
3. Amending the plan to allow an extended loan repayment period.

Similarly, the amendment deadline for the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (included in the Consolidated Appropriations Act of 2021) which provided limited distribution and loan relief for participants in qualified disaster areas was not extended.

Jackson Lewis P.C. © 2025

National Law Review, Volume XII, Number 238

Source URL: <https://natlawreview.com/article/you-can-t-always-get-what-you-want-irs-issues-notice-2022-33>