IRS Notice 2022-33 Extends Deadline for Retirement Plan Amendments

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The Internal Revenue Service (IRS) recently published Notice 2022-33, extending the deadlines for amending most retirement plans and individual retirement arrangements (IRAs) to comply with certain changes made by 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"). Prior to Notice 2022-33, the amendment adoption deadline for most plans was December 31, 2022 (or December 31, 2024 for governmental plans and for collectively bargained nongovernmental plans under the SECURE Act and Miners Act). Below is a discussion of what amendments must be adopted by plan administrators and the deadlines for adopting such amendments.

SECURE Act and Miners Act

First, the SECURE Act requires significant amendments to retirement plan provisions, including, but not limited to, the following: increasing the starting age of required minimum distributions (RMDs) from age seventy and one-half (70½) to age seventy-two (72); expanding coverage rules for long-term part-time workers; increasing the safe harbor auto-enrollment deferral cap; and eliminating lifetime "stretch" payments for most beneficiaries under defined contribution plans.

Second, the Miners Act allows for an optional amendment to the in-service distribution rules for certain retirement plans. Section 104 of the Miners Act amends the Internal Revenue Code (IRC) to lower the minimum age for in-service distributions under a qualified pension plan (including money purchase pension plans and profit-sharing plan accounts holding amounts transferred from a money purchase pension plan) from age sixty-two (62) to age fifty-nine and one-half (59½). Moreover, in the case of governmental 457(b) plans, the minimum age for in-service distributions has been lowered from age seventy and one-half (70½) to age fifty-nine and one-half

(59½).

Under Notice 2022-33, the revised deadline for adopting such amendments depends on the type of plan. For example, Notice 2022-33 extends the amendment deadline for non-governmental qualified plans, 403(b) plans not maintained by public schools, and IRAs to December 31, 2025.

Likewise, Notice 2022-33 extends the amendment deadline for governmental qualified plans and 403(b) plans maintained by public schools to ninety (90) days after the close of the third regular legislative session of the legislative body with the authority to amend the plans that begin after December 31, 2023.

Further, Notice 2022-33 extends the amendment deadline for governmental 457(b) plans to the later of (i) ninety (90) days after the close of the third regular legislative session of the legislative body with the authority to amend the plans that begin after December 31, 2023, or (ii) if applicable, the first day of the plan year beginning more than one-hundred eighty (180) days after the date of notification by the Secretary that the plan was administered in a manner that is inconsistent with the requirements of IRC 457(b). **However, the amendment deadline of December 31, 2022 (or, if later, the end of the plan year beginning in 2022) for tax-exempt organization 457(b) plans remains unchanged by Notice 2022-33.**

CARES Act

The extended deadline for required CARES Act amendments is more limited. The CARES Act provided for the waiver of RMDs for defined contribution plans and IRAs for 2020. In addition, the CARES Act allowed for special limited-time loan and withdrawal provisions for certain participants affected by COVID-19.

Notice 2022-33 extends the amendment deadline for waiver of 2020 RMDs to December 31, 2025.

Yet, Notice 2022-33 does not extend the amendment deadline for the CARES Act loan and withdrawal provisions. **Thus, plans that implemented the optional special CARES Act loan and**

withdrawal provisions still must be amended to reflect those changes by the original deadline of December 31, 2022 (or, if later, the end of the plan year beginning in 2022).

Table of Revised Amendment Deadlines

Finally, below is a table of the amendment deadlines as of the publication of Notice 2022-33 on August 3, 2022.

Type of Plan	Revised Amendment Deadline
Non-Governmental Qualified Plans	December 31, 2025
Governmental Qualified Plans	90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plans that begins after December 31, 2023
403(b) Plans (*not maintained by a public school*)	December 31, 2025
403(b) Plans (*maintained by a public school*)	90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plans that begins after December 31, 2023

Governmental 457(b) Plans	The later of: (i) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plans that begins after December 31, 2023; or (ii) if applicable, the first day of the plan year beginning more than 180 days after the date of notification by the Secretary that the plan was administered in a manner that is inconsistent with the requirements of IRC 457(b).
Tax-Exempt Organization 457(b) Plans	December 31, 2022 (or, later, the end of the plan year beginning in 2022) *As discussed above, the original deadline was not revised for tax-exempt organization 457(b) plans.*
Individual Retirement Arrangements	December 31, 2025

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