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IRS Notice 2022-33 Extends Retirement Plan Amendment Deadlines

What Employers Need to Know

In Notice 2022-33, the IRS extended the deadlines for amending qualified retirement and 403(b) plans to comply with the Miners Act and certain provisions of the SECURE Act and the CARES Act. Broadly speaking, the deadline has been extended to **December 31, 2025**, although different deadlines apply to governmental retirement plans, including 457(b) plans. The extension is welcome relief for many employers that were facing a December 31, 2022 deadline when many questions regarding the amendments' terms and the prospect of additional legislation remain outstanding.

Background

The SECURE Act and the Miners Act, enacted in 2019, contain numerous mandatory and permissive changes for qualified retirement and 403(b) plans. For example, the SECURE Act increased the age at which benefits must begin to 72 for individuals who attained age 70½ on or after January 1, 2020. The Miners Act provides that qualified pension plans (e.g., money purchase plans or cash-balance plans) could permit in-service distributions to begin at age 59½ rather than at age 62. The CARES Act, enacted in response to the COVID-19 pandemic, contained numerous employee benefits provisions, including the option for defined contribution plans to waive the required minimum distributions for 2020 (2020 RMDs).

Although the mandated and permissive provisions were effective in prior years, the statutes, regulations and IRS guidance provided for deferred amendment deadlines. For example, under prior IRS guidance, if a nongovernmental plan sponsor decided to waive the 2020 RMDs, the plan document would be considered timely amended if the amendment were adopted before the end of the plan year beginning in 2022. In general, Notice 2022-33 extends the amendment deadline to December 31, 2025, although it must be noted that the other CARES Act employee benefits provisions are not being extended, e.g., adding coronavirus-related distributions.

When substantive retirement plan legislation is enacted, the IRS often releases model amendments to help plan sponsors document the required changes. In fact, the IRS did so for the CARES Act provisions regarding the 2020 RMDs. Given the complexity regarding some of the SECURE Act changes, practitioners are hoping the IRS will release additional model amendments in the future. Additionally, Congress is seriously considering additional retirement plan legislation—referred to as SECURE Act 2.0—that would require further amendments. While there is no way to predict whether the IRS will release model amendments or whether SECURE 2.0 will be enacted, the extended amendment deadlines provided in Notice 2022-33 will give retirement plan sponsors more time to navigate these complex rules.

If you have questions about the extended amendment deadline or any other employee benefits topic, please reach out to any of the attorneys in Day Pitney's Employee Benefits and Executive Compensation group.

Authors



David P. Doyle
Partner

Parsippany, NJ | (973) 966-8136

ddoyle@daypitney.com



Thomas F. J. O'Mullane
Partner

Parsippany, NJ | (973) 966-8413

tomullane@daypitney.com