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GRIST

IRS extends amendment deadlines for SECURE, Miners and CARES acts

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Just-released [IRS Notice 2022-33](#) extends the deadlines for employers to amend their retirement plans to reflect the Setting Every Community Up for Retirement Enhancement (SECURE) Act ([Div. O of Pub. L. No. 116-94](#)), the Bipartisan American Miners Act of 2019 ([Div. M of Pub. L. No. 116-94](#)), and the waiver of 2020 required minimum distributions (RMDs) from defined contribution (DC) plans under the Coronavirus Aid, Relief and Economic Security (CARES) Act ([Pub. L. No. 116-136](#)).

New deadlines

Notice 2022-33 pushes out the plan amendment deadlines for these changes by two to three years for many plans. Before the extension, amendments generally were due by the end of the first plan year starting in 2022 (2024 for governmental plans under all three laws and for collectively bargained plans under the SECURE and Miners acts). With the extension, amendments for these changes now have the following deadlines:

- Sponsors of nongovernmental qualified and 403(b) plans not for public school employees must adopt plan amendments by Dec. 31, 2025. This deadline applies to both nonbargained and collectively bargained plans.
- Sponsors of governmental qualified and 457(b) plans and 403(b) plans for public school employees must adopt plan amendments within 90 days after the close of the third regular session beginning after Dec. 31, 2023, of the legislative body with authority to amend the plan. (Certain 457(b) plan sponsors making amendments to resolve compliance issues may have a later deadline.)

Preapproved plans. The extended amendment deadlines apply to both interim and discretionary amendments to preapproved qualified plans. IRS expects to include provisions of the SECURE, Miners and CARES acts in the cumulative list for the fourth remedial amendment cycle for preapproved DC plans, requiring documents submitted for opinion letters in that cycle to reflect all three statutes. For preapproved 403(b) plans, the cumulative list for the second remedial amendment cycle already includes changes for the SECURE and CARES acts (the Miners Act changes didn't affect 403(b) plans).

Future guidance shouldn't affect deadlines. IRS anticipates that any future SECURE Act guidance requiring plan amendments will appear on the 2023 Required Amendments (RA) List. Changes on the 2023 RA list will generally have the same amendment deadline as the new deadlines for the SECURE, Miners and CARES acts, allowing employers to adopt all amendments for all three laws at the same time.

SECURE, Miners acts provisions

The SECURE Act includes a host of retirement plan reforms requiring amendments, including expanded coverage rules for long-term part-time workers; an increase to the safe harbor auto-enrollment deferral cap; an increase in the starting age for RMDs to 72 (from 70-1/2); the elimination of lifetime “stretch” payments for all but certain DC plan beneficiaries; and an option for employers to offer penalty-free distributions for the birth or adoption of a child. The Miners Act lowered the age for permissible in-service distributions to 59-1/2 (from 62). The new deadlines apply to all provisions of the two statutes requiring plan amendments.

Anti-cutback relief. The SECURE Act grants anti-cutback relief for plan amendments adopted by the applicable deadline. Notice 2022-33 confirms that amendments for the SECURE Act (and any related regulations) adopted by the extended deadline will receive the anti-cutback relief.

Not all CARES Act deadlines extended

Notice 2022-33 extends the deadline for the CARES Act waiver of 2020 RMDs. But the CARES Act also allowed employers to temporarily offer employees affected by the COVID-19 pandemic special coronavirus-related distributions, a higher plan loan cap and a suspension of loan repayments. The notice does not extend the amendment deadline for these other changes, so the original deadline — the end of the first plan year beginning on or after Jan. 1, 2022 (Jan. 1, 2024, for governmental plans) — still applies.

Related resources

Non-Mercer resources

- [Notice 2022-33](#) (IRS, Aug. 3, 2022)
- [Pub. L. No. 116-136](#), the CARES Act (Congress, March 27, 2020)
- [Div. O of Pub. L. No. 116-94](#), the SECURE Act (Congress, Dec. 20, 2019)
- [Div. M of Pub. L. No. 116-94](#), Bipartisan American Miners Act of 2019 (Congress, Dec. 20, 2019)

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- [IRS issues FAQs on SECURE and Bipartisan American Miners acts](#) (Sept. 22, 2020)

- [Administering CARES Act's waiver of 2020 RMDs from DC plans](#) (June 25, 2020)
- [Delving into CARES Act relief for retirement plan participants](#) (June 22, 2020)
- [SECURE Act set to become law](#) (Dec. 19, 2019)

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