

August 2022

IRS Extends Plan Amendment Deadlines for SECURE and Miners Act and for Waiver of Required Minimum Distribution under CARES

On August 3, 2022, the Internal Revenue Service (“IRS”) released Notice 2022-33, which extends the deadline for 401(a), 401(k), 403(b), and *governmental* 457(b) plans to be amended for the Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE”) and the Bipartisan American Miners Act of 2019 (the “Miners Act”) and for the waiver of required minimum distribution under the Coronavirus Aid, Relief, and Economic Security Act (“CARES”).

As enacted, SECURE, the Miners Act, and CARES provided that a retroactive remedial amendment period for 401(a), 401(k), 403(b) and 457(b) plan documents to reflect these provisions was required to be adopted:

- by the end of the 2022 plan year if the employer is not a governmental employer; and
- by the end of the 2024 plan year if the employer is a governmental employer.

SECURE, the Miners Act, and CARES also gave the IRS the ability to provide for a later amendment date.

Pursuant to Notice 2022-33, the IRS utilized that legislative authority to extend plan amendments deadlines for SECURE, the Miners Act, and the waiver of required minimum distributions under CARES as follows:

- A 401(a), 401(k), or 403(b) plan (including a collectively bargained plan) sponsored by a *nongovernmental* employer: December 31, 2025;
- A 401(a), 401(k), or 403(b) plan sponsored by a *governmental* employer: 90 days after the close of the *third* regular legislative session for the plan year that begins after December 31, 2023 where that legislative body has the authority to amend that governmental 401(a), 401(k), or 403(b) plan;
- A 457(b) plan sponsored by a *governmental* employer: the later of (1) 90 days after the close of the *third* regular legislative session for the plan year that begins after December 31, 2023 where that legislative body has the authority to amend that 457(b) plan, or (2) if applicable, the first day of the first 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 section 457(b) of the Internal Revenue Code.

Notice 2022-33 did not extend the CARES amendment deadlines for plans that permitted a coronavirus-related distribution, a coronavirus-related increase in the loan maximum, and/or a coronavirus-related delay in loan repayments. Absent IRS guidance, the deadline for amending a plan offering such CARES features remains the last day of the 2022 plan year for nongovernmental plans and the last day of the 2024 plan for governmental plans.

The IRS notes that amendments to a retirement plan to reflect a provision of SECURE or IRS regulations issued pursuant to SECURE will not cause the retirement plan to fail to satisfy the anti-cutback requirements of Internal Revenue Code Section 411(d)(6) (or, if the plan is subject to the Employee Retirement Income Security Act (ERISA)), Section 204(g) of ERISA by reason of such amendments.

The IRS indicates in Notice 2022-33 that it is anticipated that additional guidance will be issued under the SECURE will appear on the IRS 2023 Required Amendment List to enable employers adopt all SECURE, Miners Act, and CARES amendments encompassed in Notice 2022-33 on a single date.

Notice 2022-33 does not extend the amendment deadline for 457(b) plans sponsored by a nonprofit organization. A 457(b) plan sponsored by a nonprofit organization is not subject to any provisions under CARES or the Miners Act or any permissive features under SECURE. However, a 457(b) plan sponsored by a nonprofit organization must be amended for the SECURE modifications to minimum distribution requirements. Absent any additional IRS guidance, apparently a 457(b) plan sponsored by a nonprofit organization would continue to be subject to the SECURE amendment deadline by the end of the 2022 plan year.

Voya continues to monitor these and all regulatory developments impacting retirement plans.

IRS Circular 230 Disclosure

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