

September 2022

IRS Extends Plan Amendment Deadlines for Coronavirus-Related Distributions and Increased Loan Amounts under CARES and Relief Act

On September 26, 2022, the Internal Revenue Service (“IRS”) released Notice 2022-45, which extends the deadline for 401(a), 401(k), 403(b), and *governmental* 457(b) plans to be amended for the coronavirus-related provisions – namely, coronavirus-related distributions, coronavirus-related increase in the loan maximum, and/or coronavirus-related delay in loan repayments under Section 2202 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES”). The IRS had previously provided an extension for the CARES waiver of 2020 required minimum distributions under Notice 2022-33.

Additionally, the Notice extends the deadline for qualified plans to be amended under for temporary disaster relief provisions under Section 302 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (“Relief Act”).

A 457(b) plan sponsored by a nonprofit organization is not subject to any provisions under CARES or the Relief Act.

Background

CARES permitted 401(a), 401(k), 403(b) and *governmental* 457(b) plans to:

- offer coronavirus-related distributions;
- increase the allowable plan loan amount under section 72(p) of the Code; and
- permit a suspension of payments for plan loans made to qualified individuals.

The Relief Act permitted 401(a), 401(k), 403(b) and *governmental* 457(b) plans to:

- offer qualified disaster distributions;
- increase the allowable plan loan amount under section 72(p) of the Code related to a qualified disaster; and
- permit a suspension of payments for plan loans made to qualified individuals.

Amendments related to an employer’s adoption of these provisions under CARES and the Relief Act were required to be executed:

- 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.

CARES and the Relief Act gave the IRS the ability to provide for a later amendment date.

While Notice 2022-33 (issued in August 2022) extended plan amendments deadlines for SECURE, the Miners Act, and the waiver of required minimum distributions under CARES, that IRS guidance *did not* extend the plan amendment deadline for plans permitting coronavirus-related distributions, coronavirus-related increase in the loan maximum, and/or coronavirus-related delay in loan repayments under CARES or qualified disaster provisions under the Relief Act.

Deadline Extension

Pursuant to Notice 2022-45, the IRS utilized that legislative authority to extend plan amendments deadlines for these provisions under CARES and the Relief Act 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.

The IRS notes that amendments to a retirement plan to reflect provisions related to coronavirus-related distributions, coronavirus-related increase in the loan maximum, and/or coronavirus-related delay in loan repayments 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.

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

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