

## IRS Extends Deadline for Plan Amendments Under the SECURE Act, Miners Act, and Certain CARES Act Provisions

The Internal Revenue Service (the "IRS") recently issued [Notice 2022-33](#) (the "Notice"), providing extensions to certain upcoming plan amendment deadlines under certain provisions of 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"). The Notice extends the deadline for nongovernmental 403(b) and qualified retirement plans (including 401(k) plans, money purchase pension plans, and defined benefit plans), and individual retirement arrangements ("IRAs") to **December 31, 2025**.<sup>1</sup> (Previously, for nongovernmental calendar year plans, the deadline for adopting plan amendments was December 31, 2022.) It is important to note that the deadline for certain amendments required under the CARES Act has not been extended and these amendments will still be required prior to the end of 2022 for calendar year plans. In addition, these extensions do not apply to nongovernmental 457(b) plans; therefore, plan sponsors maintaining nongovernmental 457(b) plans should review those plans to determine if SECURE Act amendments are required to be made by the end of this year.

### **Applicable Amendments**

#### *SECURE Act*

The extended deadline applies to amendments under the SECURE Act including: (i) the increase in the required beginning date for distributions from qualified plans to age 72 (from 70½); (ii) eliminating the ability of certain beneficiaries to stretch out required minimum distributions over their lifetime; (iii) extending plan participation to certain long-term part-time employees; (iv) an increase in the maximum automatic enrollment safe harbor contribution from 10 percent to 15 percent of eligible pay; and (v) the option for employers to offer penalty-free distributions from certain plans, including 401(k) and 403(b) plans, for the birth or adoption of a child. Note that the amendment deadline extension does not delay the effective date for those provisions, most of which are already effective, but only delays the date by which the formal plan amendments will be required to be adopted.

#### *Miners Act*

The extended deadline applies to amendments pursuant to Section 104(a) of the Miners Act, which lowers the permissible in-service distribution age to 59 ½ (from 62) for qualified pension and governmental 457(b) plans.

#### *CARES Act*

With respect to amendments under the CARES Act, the Notice extends the deadline solely to the 2020 waiver of required minimum distributions and exclusion of the year 2020 in the calculation of the five-year period in which non-spousal beneficiaries are required to take a full distribution. The Notice does not extend the amendment deadline for optional CARES Act changes such as coronavirus-related withdrawals, increased loan limits for participants affected by coronavirus and the delayed repayment of plan loans, which, in each case and absent additional guidance, must still be adopted by December 31, 2022 for nongovernmental calendar year plans.

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<sup>1</sup> For most governmental plans, the amendment deadline is generally ninety (90) days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2023.

## **Other Considerations**

The Notice does not explicitly provide an extension of the amendment deadline for tax-exempt (nongovernmental) 457(b) plans, which are subject to the required minimum distribution rules, and by extension, the changes to such rules under the SECURE Act. As such, plan sponsors maintaining tax-exempt 457(b) plans may still need to amend their 457(b) plans by December 31, 2022 (for calendar year plans), if their plan does not already satisfy those requirements.

## **Next Steps**

Helpfully, the extended deadlines provide additional time for plan sponsors to prepare certain amendments and give the IRS additional runway to issue guidance that could impact the implementation of these amendments. The Notice indicates that the IRS expects to include certain guidance under the SECURE Act on its 2023 Required Amendments List, and it is anticipated that eligible plan sponsors will be able to adopt all applicable SECURE Act, Miners Act, and CARES Act amendments on a single date. However, it is very important to remember that several amendment deadlines were not extended, and those amendments are still due by the end of the year for calendar year plans. Therefore, plan sponsors should review their plans to determine which, if any, amendments they will be required to adopt this fall and early winter.

**This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.**

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