

2025 Is the New 2022: IRS Extends Deadline to Adopt SECURE Act Amendments and CARES ACT Waiver of 2020 RMDs Amendment

by [Anna Mikhaylina](#) on August 5, 2022

On August 3, 2022, the IRS released [Notice 2022-33](#), which extends the deadline for plans to adopt:

- all SECURE Act^[1] amendments, optional or required (a summary of SECURE Act changes can be found [here](#));
- CARES Act^[2] amendments relating to relief from 2020 required minimum distributions; and
- Miners Act^[3] amendments lowering the permitted age for in-service distributions to 59½ for defined benefit plans and money purchase pension plans.

The extended deadline for adopting these amendments is December 31, 2025, for qualified non-governmental retirement plans, including 401(k) plans, money purchase pension plans, and defined benefit plans, and for 403(b) plans not maintained by public schools.^[4] Notably, unlike the deadline set forth in prior IRS guidance as “the last day of the first plan year beginning on or after January 1, 2022,” the December 31, 2025 deadline is a set date, independent of plan year end.

To take advantage of the extended deadline, the plan needs to be operated consistently with the terms of the amendments, as if the amendments were in effect during the entire period beginning with the effective dates of the amendments. In other words, the amendments can apply retroactively to the effective date specified by the plan, but plan operations must be consistent with the amendments from that date.

Notice 2022-33’s extended deadline to adopt amendments and the prospect of further guidance from the IRS on SECURE Act provisions (particularly the provisions affecting the RMD rules and the provisions relating to 401(k) plan eligibility for certain long-term, part-time employees) might be advantageous for plan sponsors. Of note, Notice 2022-33 does not extend the previously established plan amendment deadline for optional CARES Act changes, such as coronavirus-related withdrawals and increased loan limits for participants affected by coronavirus. Unless the IRS provides a similar deadline extension for the optional CARES Act provisions, a calendar year plan that, in operation, increased loan limits, suspended certain loan payments otherwise due in 2020, and/or permitted coronavirus-related withdrawals, must be amended to reflect these provisions by December 31, 2022.

Why extend the deadline to 2025

There may be several reasons for the extended deadline:

1. The extension gives the IRS more time to issue further guidance on the SECURE Act changes to the RMD rules, after taking into consideration comments received on the proposed RMD regulations it issued on February 24, 2022.
2. Notice 2022-33 states that the IRS anticipates that certain guidance issued under the SECURE Act will appear on its 2023 Required Amendments List ("RAL"), and if that happens the extended deadline would "synch up" the deadline for all SECURE Act, Miners Act and CARES Act amendments described in Notice 2022-33 to a single date - - December 31, 2025 - - for individually designed nongovernmental qualified retirement plans.^[5]
3. There is a good chance federal legislation may be enacted this year that will include further changes to the RMD rules.

Takeaways

While the latest deadline extension is generous, plan sponsors do not have to wait until 2025 to adopt relevant amendments and should consider the extended deadline an opportunity to:

- solidify internal operations, procedures and manuals with respect to plan provisions affected by the SECURE Act, the CARES Act, and the Miners Act (which may be more difficult to accomplish in the absence of formal plan amendments);
- revisit the plan's recordkeeping practices and administration, including consistent documentation of processes relating to these amendments;
- determine the initial dates when changes allowed by the SECURE Act, CARES Act, and Miners Act were implemented, to retroactively amend the plan to that date; and
- refine the language of amendments if already adopted or if the amendments will be adopted well ahead of the deadline.

If you have questions regarding the extended plan amendment deadline described in this post, or any other aspect of the SECURE Act, the CARES Act, or the Miners Act, please contact a member of Verrill's Employee Benefits & Executive Compensation Group.

[1] Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).

[2] Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

[3] Bipartisan American Miners Act of 2019 (Miners Act).

[4] The extended deadline is different for governmental plans and 403(b) plans of public schools. The previous deadline for plans other than governmental or applicable collectively bargained plans was the last day of the first plan year beginning on or after January 1, 2022; for governmental and applicable collectively bargained plans the previous deadline was the last day of the first plan year beginning on or after January 1, 2024.

[5] If the general plan amendment timing principles in IRS Revenue Procedure 2016-37 were applied to that SECURE Act guidance, the plan amendment deadline for such plans would be December 31, 2025, the last day of the second calendar year that begins after the issuance of the RAL in which the change in qualification requirements appears.

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