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IRS Notice 2022-45 Extends Deadline for Amending Plans for CARES Act & Relief Act



In [Notice 2022-45](#), the IRS extends the deadline for amending eligible retirement plans to reflect provisions of Section 2202 of the [CARES Act](#) and Section 302 of the [Relief Act](#) to December 31, 2025, as detailed below. The deadlines set forth in this notice are the same as the deadlines set forth in Notice 2022-33. Accordingly, it is anticipated that amendments to reflect the CARES Act and Relief Act as described in Notice 2022-45, as well as the SECURE Act, Miners Act, and CARES Act amendments described in Notice 2022-33, may be adopted on a single date.

Notice 2022-45 extends the deadline for amending an eligible retirement plan (including an individual retirement arrangement (IRA) or annuity contract) to reflect the provisions of Section 2202 of the [Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281 \(2020\) \(CARES Act\)](#), and section 302 of Title III of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182.

Among other things, section 2202 of the CARES Act and section 302 of the Relief Act provide special tax treatment with respect to a coronavirus-related distribution or a qualified disaster distribution, respectively. Under Notice 2022-45, the extended amendment deadline applicable to (1) a qualified retirement plan or section 403(b) plan that is not a governmental plan or (2) an IRA is **December 31, 2025**. Later deadlines apply with respect to governmental retirement plans (including governmental plans under section 457(b) of the

Internal Revenue Code (Code)). With respect to an amendment made to reflect provisions of section 2202 of the CARES Act, the period during which the amendment is eligible, if applicable, for relief from the anti-cutback requirements of section 411(d)(6) of the Code or section 204(g) of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829, as amended (ERISA), is extended to the applicable extended plan amendment deadline.

Notice 2022-33, 2022-34 IRB 147, extends the deadlines for amending a retirement plan or IRA to reflect certain provisions of Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534 (2019), known as the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), and section 104 of Division M of the Further Consolidated Appropriations Act, 2020, known as the Bipartisan American Miners Act of 2019 (Miners Act), and extends to the extended plan amendment deadline the period during which an amendment to reflect provisions of the SECURE Act is eligible, if applicable, for relief from the anti-cutback requirements of section 411(d)(6) of the Code or section 204(g) of ERISA. Notice 2022-33 also extends the deadline for amending a retirement plan to reflect the provisions of section 2203 of the CARES Act. The deadlines set forth in Notice 2022-45 are the same as the deadlines set forth in Notice 2022-33. Accordingly, it is anticipated that amendments to reflect the CARES Act and Relief Act as described in Notice 2022-45, as well as the SECURE Act, Miners Act, and CARES Act amendments described in Notice 2022-33, may be adopted on a single date. The COVID-related Tax Relief Act of 2020 was enacted as Subtitle B, Title II, Division N, of the Consolidated Appropriations Act, 2021. References in Notice 2022-45 to section 2202 of the CARES Act are to section 2202 as modified.

BACKGROUND

Section 2202 of the CARES Act

Under section 2202 of the CARES Act, enacted on March 27, 2020, and modified by section 280 of the COVID-related Tax Relief Act of 2020,² qualified individuals receive favorable tax treatment with respect to coronavirus-related distributions from eligible retirement plans (as defined in section 402(c)(8)(B) of the Code). A coronavirus^[1]related distribution is any distribution from an eligible retirement plan made on or after January 1, 2020, and before December 31, 2020, to a qualified individual. A coronavirus-related distribution is not subject to the additional tax under section 72(t), generally is includible in income over a 3-year period, and, to the extent the distribution is eligible for tax-free rollover treatment and is recontributed to an eligible retirement plan within a 3-year period, is not includible in income. Section 2202 of the CARES Act also increases the allowable plan loan amount under section 72(p) of the Code and permits a suspension of payments for plan loans made to qualified individuals that are outstanding on or after March 27, 2020. See Notice 2020-50, 2020-28 IRB 35, for a detailed description of this relief, including a discussion of related plan amendment deadlines.

Under section 2202(c) of the CARES Act, an eligible retirement plan will not be treated as failing to operate in accordance with its terms merely because the plan implements the provisions of section 2202, or any regulations thereunder, if the plan is amended within a prescribed time period and the amendment applies retroactively to the beginning of the period. The period begins on the date that section 2202 (or any regulation thereunder) takes effect, and ends on or before the earlier of (1) the date the amendment is adopted, or (2) the last day of the first plan year beginning on or after January 1, 2022 (or January 1, 2024, in the case of a governmental plan within the meaning of section 414(d) of the Code), or a later date prescribed by the Secretary of the Treasury or the Secretary's delegate (Secretary). A plan

satisfying these conditions will not fail to meet the requirements of section 411(d)(6) of the Code and section 204(g) of ERISA by reason of that amendment, except as provided by the Secretary.

Section 302 of the Relief Act

Section 302 of the Relief Act, enacted on December 27, 2020, provides favorable tax treatment to qualified individuals with respect to qualified disaster distributions from eligible retirement plans (as defined in section 402(c)(8)(B) of the Code). In general, section 302 of the Relief Act provides qualified individuals favorable tax treatment that is similar to that provided by section 2202 of the CARES Act; however, the relief provided by section 302 of the Relief Act differs from the relief provided by section 2202 of the CARES Act in certain respects. For example, (1) section 302 of the Relief Act provides favorable tax treatment with respect to qualified disaster distributions, which are defined generally as distributions from an eligible retirement plan that are made on or after the date a disaster begins (no earlier than December 28, 2019) and before June 25, 2021, to a qualified individual; (2) the relief granted by section 302 permits a qualified individual, under certain circumstances, to recontribute a qualified distribution that was made to purchase or construct a principal residence in a qualified disaster area but was not so used on account of the qualified disaster; and (3) section 302 does not provide relief with respect to amendments to a plan from the anti-cutback requirements of section 411(d)(6) of the Code and section 204(g) of ERISA. See Form 8915-F, Qualified Disaster Retirement Plan Distributions and Repayments, and related instructions, for a detailed description of relief provided with respect to qualified disaster distributions and repayments, including relief provided under section 302 of the Relief Act.

Under section 302(d) of the Relief Act, an eligible retirement

plan will not be treated as failing to operate in accordance with its terms merely because the plan implements the provisions of section 302, or any regulations thereunder, if the plan is amended within a prescribed time period and the amendment applies retroactively to the beginning of the period. The period begins on the date that section 302 (or any regulation thereunder) takes effect, and ends on or before the earlier of (1) the date the amendment is adopted, or (2) the last day of the first plan year beginning on or after January 1, 2022 (or January 1, 2024, in the case of a governmental plan within the meaning of section 414(d) of the Code), or a later date prescribed by the Secretary.

EXTENSION OF PLAN AMENDMENT DEADLINES; ANTI-CUTBACK RELIEF

Extension of plan amendment deadlines

Pursuant to the authority of the Secretary under section 2202(c) of the CARES Act and section 302 of the Relief Act, the deadlines for amending an eligible retirement plan (including an IRA or annuity contract) to reflect the provisions of section 2202 of the CARES Act or section 302 of the Relief Act, or any regulations thereunder, are hereby extended as follows:

(1) Qualified plans

In general, for a qualified plan that is not a governmental plan within the meaning of section 414(d) of the Code, the deadline to amend a plan is December 31, 2025. The plan amendment deadline for a qualified governmental plan, within the meaning of section 414(d), is 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.

(2) Section 403(b) plans

In general, for a section 403(b) plan that is not maintained

by a public school, as described in section 403(b)(1)(A)(ii), the deadline to amend a plan is December 31, 2025. The plan amendment deadline for a section 403(b) plan that is maintained by a public school, as described in section 403(b)(1)(A)(ii), is 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.

(3) Section 457(b) plans

The deadline to amend a governmental plan under section 457(b) of the Code is the later of (1) 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, 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 Code

(4) IRAs

The deadline to amend the trust governing an IRA that is an individual retirement account or the contract issued by an insurance company with respect to an IRA that is an individual retirement annuity is December 31, 2025.

Anti-cutback relief



Amendments to an eligible retirement plan (including an annuity contract) to reflect a provision of section 2202 of the CARES Act or any regulations thereunder that are made on or before the dates as extended under section III.A of Notice 2022-45 will not cause the plan to fail to satisfy the anti-cutback requirements of section 411(d)(6) of the Code or section 204(g) of ERISA, if applicable, by reason of the amendments.



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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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