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IRS Announces 3-Year Extension of SECURE Act Amendment Deadline

In a recently published Notice, the IRS granted a three-year extension of the deadline to amend qualified retirement plan and IRA documents to reflect the SECURE Act, as well as other recent legislation.

Background

The Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE Act"), the most sweeping retirement-related legislation passed in recent years, and the Bipartisan American Miners Act of 2019 ("Miners Act") made several key changes to the rules pertaining to qualified plans and IRAs. Most notably, the SECURE Act modified the rules related to required minimum distributions ("RMDs") after the death of a defined contribution plan participant or IRA owner.

In general, the SECURE Act requires that qualified plans and IRAs amend their governing documents to reflect the new rules by the last day of the first plan year beginning on or after January 1, 2022, or a later date as the Secretary of the Treasury may prescribe. Therefore, most plans and all IRAs are required to amend their governing documents to reflect the SECURE Act by December 31, 2022. The deadline for certain collectively-bargained and governmental plans is two years later. In Notice 2020-68, the IRS applied these deadlines to the Miners Act.

Notice 2022-23

On August 3, 2022, the IRS released Notice 2022-23, which extends the deadlines for amending retirement plans and IRAs to reflect new requirements of the SECURE Act and the Miners Act. The Notice generally extends the deadlines by three years. The key deadline extensions are outlined below:

- Qualified Plan Deadline. For qualified defined benefit and defined contribution plans, including certain collectively-bargained plans, that are not governmental plans, the deadline to amend the plan to reflect the SECURE Act and the Miners Act is December 31, 2025. For qualified governmental plans, the deadline 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.
- 403(b) Plan Deadline. For section 403(b) plans, including certain collectively-bargained plans, that are not maintained by a public school, the deadline to amend the plan to reflect the SECURE Act is December 31, 2025. For 403(b) plans maintained by a public school, the deadline 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.
- Governmental 457(b) Plan Deadline. For governmental 457(b) plans, the deadline to amend the plan to reflect the SECURE Act and the Miners Act 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 Treasury Secretary that the plan was administered in a manner that is inconsistent with the requirements of Internal Revenue Code ("Code") section 457(b).
- IRA Deadline. For IRAs, the deadline to amend the governing instrument to reflect the SECURE Act is December 31, 2025, or a later date as the Treasury Secretary prescribes in guidance.

In addition to the deadline extensions, the Notice also: (1) confirms that amendments to a retirement plan to reflect the SECURE Act that are made on or before the extended deadlines will not cause the plan to fail to satisfy certain anti-cutback requirements outlined in the Code; and (2) provides similar deadline extensions to amend the CARES Act's waiver of RMDs for 2020.

The extensions come as welcome news to many plan and IRA providers, especially considering that the Treasury Department and IRS published proposed regulations on the RMD rules, which are not expected to be finalized until late 2022 at the earliest. However, plan sponsors still must operate their plans in accordance with the updated RMD rules, which generally already have taken effect.

Affordable Care Act ("ACA") Affordability Threshold Shrinks to 9.12% for 2023

Large employers may need to adjust their required employee premium contributions for self-only coverage to avoid potential ACA employer shared responsibility penalties in 2023. The ACA affordability threshold, currently at 9.61% for 2022, will be reduced to 9.12% for 2023 according to IRS Rev. Proc. 2022-34.

Why Does This Matter?

In very general terms, there are two ways "applicable large employers" (i.e., those with at least 50 full-time employees) can be subject to ACA shared responsibility penalties:

- "A" Penalty: If the applicable large employer fails to offer Minimum Essential Coverage (MEC) to at least 95% of its "full-time employees" (in general, those employees who typically work at least 30 hours per week), and at least one such employee qualifies for an ACA premium tax credit, the employer may be assessed a penalty equal to $2,750 (2022) times the number of full-time employees.
- "B" Penalty: With respect to each full-time employee who is offered MEC that is either not "affordable" or fails to provide "minimum value," the employer may be assessed a penalty equal to $4,120 (2022).

In order for MEC to be affordable to a full-time employee, the employee's required premium contribution cannot exceed a set percentage of household income (i.e., the Required Contribution Percentage). The initial Required Contribution Percentage was 9.5%, but the Code requires the IRS to adjust it annually according to a prescribed methodology that is based on the rates of premium growth relative to the rates of income growth.

The reduction of the Required Contribution Percentage from 9.61% in 2022 to 9.12% for 2023 means applicable large employers may need to adjust required

premium contributions for self-only coverage to avoid potentially greater exposure to the "B" Penalty, described above.

For More Information

The full text of Rev. Proc. 2022-34 is available here.

If you have questions about how the change to the Required Contribution Percentage might affect your plan, please contact a Deloitte professional.

Department of Labor Publishes Proposed Amendments to Prohibited Transaction Exemption for Qualified Professional Asset Managers

The proposed amendments would modify the current prohibited transaction exemption for Qualified Professional Asset Managers (QPAMS)—which generally provides relief from prohibited transaction penalties for certain actions QPAMs may take while investing plan assets—by subjecting QPAMs to new requirements related to investment management agreements, recordkeeping, and additional conditions for QPAMs convicted of a crime.

Background

ERISA's prohibited transaction rules generally forbid transactions involving a "party in interest" to a retirement plan. These broad rules can cause issues for investment managers managing plan assets for many plans at once because a manager may not be privy to every party in interest to every one of its plan clients. Investment managers may therefore unwittingly enter into a transaction with a party in interest, thereby running afoul of ERISA's prohibited transaction rules. Prohibited Transaction Exemption 84-14 resolves this problem by providing class-wide relief for many inadvertent prohibited transactions that may occur as Qualified Professional Asset Managers ("QPAMs") invest plan assets.

The QPAM exemption is generally available only to large registered investments advisers ("RIAs") and certain other financial institutions, such as banks and insurance companies, and requires that these entities meet a long list of conditions. One of those conditions is that a QPAM is ineligible to rely on the exemption for a period of ten years if the QPAM, various affiliates, or 5% or more owners of the QPAM are convicted of certain crimes. Another condition is that a financial institution must meet certain minimum size requirements. For an RIA, the entity must have assets under management of at least $85 million and shareholder or partner equity of at least $1 million. If the QPAM is a bank, it must have equity capital of at least $1 million, and an insurance company must have a net worth of at least $1 million.

Proposed Amendments

On July 27, 2022, the Department of Labor ("DOL") released proposed amendments to the QPAM exemption. The amendments fall into two broad categories: (1) changes that would affect all QPAMs; and (2) changes that would only impact a QPAM that has, or has an affiliate that has, been convicted of a crime or engaged in certain prohibited conduct.

First, with respect to changes that would affect all QPAMs, the proposed amendments would require all QPAMs to follow certain new, additional requirements, including:

- New Provision in Management Agreements. QPAMs would be required to include a provision in their agreement providing that, in the event that the QPAM, its affiliates, or 5% or more owners engage in conduct resulting in a criminal conviction or receive a written "Ineligibility Notice" (described below), the QPAM would not restrict its client plan's ability to terminate or withdraw from its arrangement with the QPAM. The QPAM would also be required to include a provision in its agreement that would require it to indemnify, hold harmless, and restore actual losses to each client plan for any damages directly resulting from a violation of applicable laws, a breach of contract, or a claim arising out of the failure of the QPAM to remain eligible for relief under the QPAM exemption as a result of conduct that leads to a criminal conviction or written Ineligibility Notice.
- New Filing Requirement. All entities relying on the QPAM exemption would be required to report their reliance to DOL via email and include certain information in the report, such as the legal name of each business entity that is relying on the exemption.
- Increase in Equity and "Assets Under Management" Threshold. The equity threshold for entities allowed to use the QPAM exemption would be increased from $1 million to $2.72 million, and the required assets under management requirement would be increased from $85 million to $135.87 million.
- New Rule Regarding Discretion. The relief provided by the QPAM exemption would only apply to transactions involving investments where the QPAM is exercising discretion.
- New Recordkeeping Requirements. QPAMs would be required to maintain certain records for six years demonstrating compliance with the exemption. The proposed amendments would also implement requirements to make the records accessible for examination.

Second, some of the proposed amendments would apply only to QPAMs that have, or have an affiliate that has, been convicted of a crime or engaged in certain prohibited conduct. Those amendments include:

- Modified Definitions. The proposed amendments would make several changes to the kinds of convictions that would disqualify an entity from relying on the QPAM exemptions. For instance, convictions relevant to being barred from using the exemption would include foreign convictions.
- New Prohibited Conduct. The following conduct could result in a disqualification from use of the QPAM exemption: (1) engaging in a systematic pattern or practice of violating the conditions of the exemption in connection with otherwise non-exempt prohibited transactions; (2) intentionally violating the conditions of the exemption in connection with otherwise non-exempt prohibited transactions; or (3) providing materially misleading information to the DOL in

connection with the conditions of the exemption. It appears that the DOL would have fairly large discretion in determining an entity's disqualification under these new standards.

- Written Ineligibility Notice. An entity that receives a written "Ineligibility Notice" issued by the DOL would be disqualified from using the QPAM exemption for 10 years. Before disqualification, an entity would receive warnings and the opportunity for a hearing. It does not appear that there would be a right to appeal a disqualification.
- Winding-Down Period. A QPAM that is ineligible to use the exemption because of a criminal conviction or written Ineligibility Notice would be required to follow a "winding-down period" of one year, during which additional conditions would apply, including the requirement to provide notice to the DOL and its client plans of its ineligibility date.

The proposed amendments would be effective 60 days after publication of the final rule in the Federal Register, with no transition rules. Comments on the proposal are due September 26, 2022.

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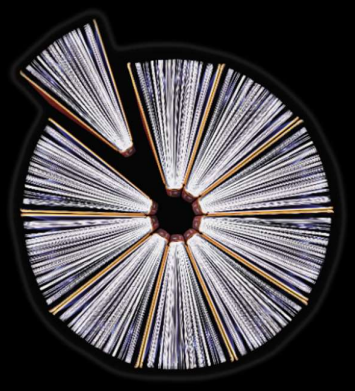

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