Amending Your Retirement Plans this Year for SECURE Act and CARES Act Changes

September 6, 2022

Last month, the IRS extended the deadline for retirement plan sponsors to adopt amendments necessary to comply with the Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act”) and the Bipartisan American Miners Act of 2019 (the “Miners Act”), and certain provisions of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”). (Here is a link to our blog post regarding IRS Notice 2022-33 and the extension of the amendment deadlines.) This extension gives sponsors of tax-qualified retirement plans and most 403(b) plans until December 31, 2025, to adopt the required amendments. The extension does not apply to non-governmental 457(b) plans, for which the amendment deadline remains December 31, 2022.

While many commentators and employee benefits publications have cheered the three-year extension, we are of the view that plan sponsors will be best served by amending their plans this year to incorporate provisions of the SECURE Act, the Miners Act, and the CARES Act that they have been applying in operation. We make this recommendation for several reasons. First, most retirement plans have been operated in accordance with some or all of the required and optional provisions of these laws since 2020. Further delay in the adoption of formal plan amendments will simply compound the opportunity for errors, and some employers may not be able to confirm with confidence which changes were implemented and when. Second, these changes in plan operations have been communicated to participants formally (through updated Summary Plan Descriptions) or informally. While some lag time and minor differences between changes in plan terms and the content of participant disclosures is difficult to avoid, confusion and uncertainty may result if a plan sponsor maintains a retirement plan in misalignment with disclosure materials for an extended period. Finally, since plan documents must be amended to incorporate the optional loan and “coronavirus-related distribution” provisions of the CARES Act by the end of this year, we think it is sensible to make the other changes at the same time. If the IRS publishes additional guidance or model language under the three laws, any refinements in language adopted prior to that time should be relatively easy to make.

We recognize that employers whose retirement plans are administered under a “pre-approved” plan document maintained by a recordkeeper may not be able to amend their plans until the recordkeeper produces and distributes approved amendments. Those employers could consider annotating their plan adoption agreements to reflect the provisions of the SECURE Act, the Miners Act, and the CARES Act under which the plans have been operated. Employers whose plans are administered under an “individually
designed” plan document can decide whether they want to adopt the full range of amendments or only the amendments necessary to incorporate the optional CARES Act provisions that they chose to make available to participants. We think such employers will benefit from adopting the full range of amendments this year.

Please click here to view a table summarizing the amendment deadlines that now apply to the provisions of the SECURE Act, the Miners Act, and the CARES Act. If you have questions regarding the content of these laws or the extension of their related amendment deadlines, please contact a member of the Verrill Employee Benefits & Executive Compensation Group.

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