

CLIENT ADVISORY

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

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On August 3, 2022, 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.) On September 26, 2022, the IRS published Notice 2022-45, extending the plan amendment deadline for certain other key provisions of the CARES Act relating to optional plan loan enhancements and “coronavirus-related distributions” and for provisions of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (“Relief Act”) relating to optional plan loan enhancements, “qualified disaster distributions,” and repayment of hardship withdrawals that could not be used to purchase or build a principal residence on account of a “qualified disaster.” These extensions give sponsors of tax-qualified retirement plans and most 403(b) plans until December 31, 2025, to adopt the required amendments. The extensions do 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, the CARES Act, and the Relief Act that they have applied 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 are 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. If the IRS publishes additional guidance or model language under the four 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, the CARES Act, and the Relief Act under which the plans have been operated.

Please click [here](#) to view a table summarizing the amendment deadlines that now apply to the provisions of the SECURE Act, the Miners Act, the CARES Act, and the Relief 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](#).