**FIS Relius Document Update**

**Fall 2022**

This document answers frequently asked questions about the status of the SECURE and CARES amendments in light of new IRS guidance, possible upcoming legislation, and our upcoming document submissions.

**I have read that the IRS has extended the deadline for CARES and SECURE. What does that mean?**

The original deadline for a CARES or SECURE amendment for an ongoing plan was the last day of the first plan year beginning in 2022. For calendar year plans, the deadline was December 31, 2022. Governmental plans had an additional two years.

As a result of Notice 2022-33, the timing for SECURE (and the RMD provisions within CARES) has changed. Nongovernmental plans have until December 31, 2025, regardless of plan year. Governmental plans, including 457 governmental plans and 403(b) public school plans, have until 90 days after the close of the third regular legislative session beginning after December 31, 2023. Typically, that means the deadline for those plans will be in 2026. The revised deadline also applies to the Miner’s Act change allowing 59½ in-service distributions from pension plans and governmental 457(b) plans.

457(b) plans of tax-exempt organizations were not impacted by CARES, and do not need a CARES amendment. They are impacted by the RMD provisions of SECURE. 457 tax-exempt plans still have the original deadline for SECURE, the last day of the first plan year beginning in 2022.

Recently, Notice 2022-45 extended the deadline for the CARES provisions that were not originally extended under Notice 2022-33 to coincide with the SECURE deadlines noted above. 2020 coronavirus-related distribution, increased loan limit, and loan repayment extension and forbearance provisions within CARES have been extended to the same December 31, 2025 deadline for non-governmental employers. The same deadlines also apply to 2020 disaster amendments.

If the plan has not amended for SECURE or CARES and wants to wait until the end of the amendment period, it is perfectly acceptable to amend later (as in the past, with other legislative changes such as EGTRRA and PPA), and operate the plan in accordance with SECURE, regardless of the current document’s existing (pre-SECURE) language. The purpose of the SECURE and CARES amendments are to conform the employer’s plan to how it has chosen to comply with SECURE and CARES in operation. Operating in this manner will not result in an operational failure or a violation of the anti-cutback rule (so long as the amendment is timely adopted). If the amendment is not being adopted within the original SECURE and/or CARES deadlines, plan providers and sponsors may wish to consider memorializing SECURE and CARES operational elections at this time for recordkeeping and tracking purposes for future amendments and document updates. In addition, plan sponsors should notify participants of the SECURE elections to ensure effective availability of the selected options.

This change in amendment timing is for ongoing plans only. Terminating plans must still amend for CARES and SECURE no later than the plan’s stated date of termination.

**Have you issued the SECURE amendment for ongoing plans?**

The SECURE amendment is available now (in Microsoft Word format) on our [Relius | News | Other Resources](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Frelius.net%2FNews%2FOtherResources.aspx%3FT%3DP&data=04%7C01%7Cmichele.lellouche%40fisglobal.com%7Ca98b9d50944941f4f24c08d9f19f4b34%7Ce3ff91d834c84b15a0b418910a6ac575%7C0%7C0%7C637806488736588838%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=uRusJzct7%2BJoj1iVrSy9HJ9xwLoxNGQrUHTtFCmU1eo%3D&reserved=0) page. We are in the process of adding the amendment to our document systems. Please continue to monitor the Relius Document system releases for future enhancement dates.

There are two different versions of the amendment: (1) The “Employer” version is for an employer to adopt; and (2) the “Provider” version is for a pre-approved document provider to use to specify elections for all of that provider’s plans (or for individual employers to use to override the provider’s choices). For this purpose, a “Provider” is the business named on the IRS Opinion Letter.

The WORD version of this amendment contains the appropriate provisions for all types of plans: 401(k), other defined contribution, defined benefit, 403(b), and 457(b). Note that the provider amendment cannot be used for 457(b) plans because the IRS does not have a preapproved plan program for 457(b) plans. When the amendment is integrated into our system for a particular type of plan, we have tailored the amendment for that type of plan.

While we anticipate that many employers will be able to use the default options provided in the amendment, Article 2 of the amendment contains a robust set of options to allow customization for plan operations. We have also provided detailed instructions, a certificate of adoption (SECURE Certificate dated 2/3/22), and a sample Summary of Material Modifications that can be customized based on selections in the amendment (SECURE checkbox SMM 1.0, dated 8/9/22).

If you are using the provider amendment, employers only need to sign the amendment if they are selecting different options from the “main” set. If using the employer amendment, the employer needs to adopt the amendment.

You can modify the amendment. This is a good faith amendment, and the IRS has not reviewed or approved it. However, we anticipate that elections available in this amendment will appear in our documents for upcoming restatement cycles. Therefore, employer modifications to this amendment may not be supported in our restatement system.

**What if I want to provide two versions of the SECURE (or CARES) amendments – two different “default sets” for employers?**

We would advise that there be one SECURE amendment and, if an employer wishes to select different options, they select and adopt the amendment at the employer level. The difficulty of having two sponsor level amendments with differing provisions is that there would need to be a way to track which employers adopted each amendment. Plan operations need to follow the document and any amendments need to be definitely determinable as to which groups are impacted. Having two sponsor level amendments could lead to confusion as to which amendment controls for a particular adopting employer’s plan.

**What about the CARES amendment?**

We provided our original CARES amendments in 2020. As noted above, the ongoing RMD provision of CARES related to the 5-year rule has been added to the SECURE amendment. The other provisions of CARES (i.e., dealing with Covid-related relief and the 2020 RMD holiday) are available in the CARES amendment. Currently, we do not plan on incorporating the 2020 CARES amendment to the document systems (not even for Cycle 4) but may include questions related to RMD provisions within the language systems. We also do not plan to update the CARES amendment from its current version based upon the most recent Notices.

**What is the latest version of the CARES amendment and its instructions?**

For the CARES files, the version number of the amendment and the version number of the instructions may not match because we only update each file as necessary. You can find the latest applicable file by starting at the top of the listing on our webpage and working your way down (we typically delete the older versions when we post a new one). The current CARES amendment versions are dated 11/02/21. The most recent CARES instructions are dated 2/3/2022. The SMM for CARES is the “CARES Notice” posted on 5/7/2020.

**What should we do if we have already updated for SECURE?**

The amendment we have provided currently reflects guidance issued prior to the publication date. Future guidance might affect the content of this edition of the SECURE amendment and could result in another amendment becoming necessary. We will make a determination with respect to necessary adjustments in the existing SECURE amendment when such future guidance is received.

**What is the status of the Cycle 3 DB plan?**

We are currently working with IRS reviewers on the content of our defined benefit plans. We anticipate that we will receive approval in early 2023.

**What is happening with the Cycle 2 403(b) plan?**

We are beginning work on drafting our Cycle 2 403(b) plans. As outlined in Rev. Proc. 2021-37 the opening date for submission by mass submitters to the IRS is May 2, 2022, with the submission deadline set for May 1, 2023. Most SECURE provisions will appear in the Cycle 2 403(b) document, although the IRS has already announced that they expect the typical 403(b) plan to incorporate the RMD rules by reference. Note, however, that the restatement deadline for the cycle 2 document is likely to extend beyond the December 31, 2025 deadline to amend for SECURE.

FIS sent an initial communication to our 403(b) clients, and will continue to communicate via the FIS Client Portal throughout 2022 and early 2023. These communications will discuss our plan offerings, provide dates when draft documents will be available to review, and provide information on where and how to sign up for this restatement through FIS.

**I missed the Cycle 3 restatement or the BBA hardship amendment or both – what should I do?**

Generally, the employer should be able to self-correct the failure to timely adopt the hardship amendment. The deadline was December 31, 2021. The employer can self-correct by adopting the amendment no later than the last day of the third plan year beginning after the deadline. For a calendar year plan, the self-correction deadline is December 31, 2024. However, if the IRS audits the plan in the interim, self-correction will no longer be possible and the plan will likely be subject to Audit CAP. Therefore, it is important to do that amendment as soon as possible.

The situation is somewhat more complex with regard to a failure to timely restate. On May 23, 2022, the IRS [released a bulletin](https://www.irs.gov/retirement-plans/employee-plans-news) that the failure to timely restate does not result in a qualification failure. However, it does convert the plan to an individually designed plan, and subject it to the standards and deadlines of an individually designed plan, retroactively. In the case of an employer that did not timely adopt a Cycle 3 defined contribution document, it should be reviewed for compliance going back to 2010. The employer should correct any errors through EPCRS and then restate the plan. The employer will have the benefit of reliance going forward, but the restatement will not necessarily cure past defects.