**Relius Document Update**

**Spring 2022**

This document answers frequently asked questions about the status of the SECURE amendment, possible upcoming legislation, and our upcoming document submissions.

**When do you expect to issue a SECURE amendment for ongoing plans?**

We released the SECURE amendment on February 3, 2022, and it 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 and will share additional updates as they become available.

This version of the amendment replaces the termination amendment we issued in 2020 and 2021.  Terminating plans which used those amendments do not need to be updated.  However, ongoing plans, as well as plans that are being prospectively terminated and that have not utilized one of our earlier amendments, should adopt the updated amendment. (For terminating plans, the deadline is the earlier of the date of termination or the deadline for ongoing plans.) More information on the deadline appears below.

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).  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 will tailor the amendment for that type of plan.

The new amendment reflects guidance issued prior to publication, such as the recently updated RMD tables, as well as the application of the CARES RMD holiday to the 5-year rule for beneficiaries of certain deceased participants. Future guidance might affect the content of this edition of the SECURE amendment, and could result in another amendment becoming necessary.

While we anticipate that many employers will be able to use the default options provided in the amendment, Article 2 of the amendment is a robust set of options to allow customization for plan operations.  We have also provided detailed instructions, a certificate of adoption, and a sample Summary of Material Modifications that can be customized based on selections in the amendment.

You can modify the amendment. This is a good faith amendment, and the IRS has not reviewed or approved it. We anticipate that elections available in this amendment will appear in our documents for upcoming restatement cycles, but employer modifications to this amendment may not be supported in our restatement system. As noted earlier, we may also update the amendment as needed based on IRS guidance or Congressional action. Please check online to find the most current version of the amendment.

**What is the deadline for an ongoing plan to adopt a SECURE amendment?**

At present, the deadline for a SECURE amendment for an ongoing plan is the last day of the first plan year beginning in 2022. That means for a calendar year plan the deadline is currently December 31, 2022. While it is possible that deadline will be extended, we have no additional information to share at this time. Governmental plans have an additional two years.

In the interim, it is perfectly acceptable (as in the past, with other legislative changes such as EGTRRA and PPA), and often necessary, that a plan will operate in accordance with SECURE, regardless of the current document’s existing (pre-SECURE) language. The purpose of the SECURE amendment is to conform the employer’s plan to how it has chosen to comply with SECURE in operation. Operating in this manner will not result in an operational failure or a violation of the anti-cutback rule.

**What’s 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 may receive approval as soon as 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.  The IRS has issued its Cumulative List of Changes, so we know the issues which reviewers will be examining; but they have not yet released their List of Required Modifications (“LRMs”).  The Restatement will include the relevant SECURE amendments.

FIS will be contacting our 403(b) clients beginning in the second quarter of 2022, at which time we will discuss our plan offerings, and provide dates when draft documents will be available to review as well as information on where and how to sign up for this restatement through FIS.

**What is the hardship coordinating amendment and who should be using it?**

As part of the Cycle 3 document set, FIS, as Mass Submitter, is allowed to create amendments that apply to all pre-approved plan document users. As this amendment has application to many of our clients, we adopted it at that level for all document users. For any type of plan that has had deferrals *or employee contributions* (including a money purchase plan) and that contained language suspending those elective deferrals or employee contributions upon a hardship distribution from the employer’s 401(k) plan, then unless the plan adopted the “full” hardship amendment, the plan needs an amendment to “turn off” that suspension provision (which is now against the law). The hardship coordinating amendment removes any reference in the plan to the need to suspend elective deferrals (and/or employee contributions) because of a hardship distribution of deferrals is made from another plan maintained by the Employer or any members of its controlled group.

This amendment does not override any provisions that were chosen as part of the hardship amendment for plans with hardship provisions.