**Relius Document Update**

**Summer 2021**

This document answers frequently asked questions about the status of the SECURE amendment, possible upcoming legislation, and our Cycle 3 documents.

On April 27, 2021, we posted a document labeled “[Amendment Adoption Deadline Information](https://relius.net/News/Docs/Amendment%20Adoption%20Deadline%20Information.docx).” This document introduces the amendments and other resources that we have posted on our [News | Pension News | Other Resources](https://www.relius.net/News/OtherResources.aspx?T=P) page. It also discusses the deadlines for the CARES amendment and other optional amendments. Please refer to that document for additional information.

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

As explained below we do not yet have a definitive time for the release of the SECURE amendment. We have released a [SECURE amendment for terminating plans](https://relius.net/News/Docs/SECURE%20Termination%20amendment%20v2.0.docx), but we do not intend to release an amendment for ongoing plans until we have additional clarifications from the IRS and now from Congress about the requirements for such an amendment. Regardless of the status of that guidance, we expect to issue such an amendment at least a year prior to any deadline for adoption.

Note that while we have not yet released a SECURE amendment for ongoing plans, we have issued amendments to address specific SECURE provisions:

* [An amendment to retroactively add a safe harbor nonelective feature](https://relius.net/News/Docs/Retro%20SH%20401%28k%29%20Amendment%20v1.0.docx) to an ADP-tested 401(k) plan
* [An amendment in implement a Pooled Employer Plan (PEP) feature](https://relius.net/News/Docs/PEP%20Amendment%201.0.docx) in a multiple employer plan
* [An amendment to allow in-service distributions at age 59½](https://relius.net/News/Docs/BAMA%2059.5%20v%201.0.docx) in a qualified pension or governmental 457(b) plan.

Each of these is discussed further in the [Amendment Adoption Deadline Information](https://relius.net/News/Docs/Amendment%20Adoption%20Deadline%20Information.docx).

**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. As discussed below, it is possible that deadline will be extended. Governmental plans have an additional two years.

In the interim, it is perfectly acceptable, and in fact it is expected, that a plan will operate in accordance with SECURE, regardless of the existing language. The employer can then adopt an amendment prior to the deadline to conform the document to the plan operations. Operating in this manner will not result in an operational failure or a violation of the anti-cutback rule.

**What additional guidance do you hope the IRS will issue?**

Notice 2020–68 provided helpful guidance on several issues related to SECURE. However, the IRS noted that it planned to issue additional guidance regarding re-contribution of qualified birth or adoption distributions, and regarding long-term part-time employees. The LTPT guidance is particularly important, because there are many issues that are still up in the air. The IRS may very well be waiting for Congress, to issue additional rules on both of these subjects, as discussed below.

There is still a great deal of uncertainty about how the IRS will handle some of the new rules related to required minimum distributions. Specifically, there are several questions that surround the new 10-year distribution limit on beneficiaries that are not eligible designated beneficiaries.

**What congressional action is pending?**

The Ways and Means Committee of the House of Representatives has unanimously passed a bill formally known as the ‘‘Securing a Strong Retirement Act of 2021,’’ but better known informally as SECURE 2.0. This bill still needs to be considered by the entire House and has not been introduced in the Senate.

In the Senate, Senators Portman and Cardin have introduced a bill known as ‘‘Retirement Security and Savings Act of 2021’’ (RSSA). RSSA incorporates many of the provisions of SECURE 2.0 and adds some additional provisions. These bipartisan senators are responsible for much of the positive retirement plan legislation of the 21st century, and their views are widely respected. The bill has been referred to the Senate Finance Committee.

Both of these bills have a long way to go before they become law. It is impossible to predict when or whether they would pass or what the final provisions will be. However, the bipartisan nature of both bills makes their passage realistic if they are given floor time. It is particularly difficult to speculate regarding effective date provisions in the bills because those could easily be postponed if Congress delays passage.

**How would SECURE 2.0 and RSSA impact the substance of the SECURE amendment?**

Each bill has roughly 150 pages of provisions relating to retirement plans, covering a variety of issues. Many of those directly impact provisions changed or added by recent legislation.

* They would shorten the service required for a long-term part-time employee to be able to defer. Under current law, LTPT employees need not be entered into the deferral portion of the plan until they have three consecutive years of at least 500 hours of service. Both bills would reduce the requirement to two years, potentially moving the date of entry forward to January 2023.
* SECURE 2.0 limits the time to recontribute a qualified birth or adoption distribution to three years. Currently, there is no deadline on recontribution.
* 403(b) plans would be allowed to participate in a PEP.
* Several of the 2018 changes relating to the source of hardship distributions would be expanded to 403(b) plans.

**How would SECURE 2.0 and RSSA impact the deadline for adopting a SECURE amendment?**

Both bills provide for an adoption deadline of the last day of the first plan year beginning in 2023. They also extend the adoption deadline for each of the following amendments:

* The SECURE amendment
* The CARES amendment
* The 2020 Disaster Relief amendment

Therefore, there would be one additional year to adopt all of these amendments, and they could be done in a coordinated fashion. On our [Other Resources](https://relius.net/News/OtherResources.aspx?T=P) page you will find copies of the [CARES amendment](https://relius.net/News/Docs/CARES%20Act%20Amendment%20Employer.docx) and [2020 Disaster Relief amendment](https://relius.net/News/Docs/Disaster%20%282020%29%20Relief%20Amendment%20v%201.0.docx). We do not anticipate revising either amendment. But particularly if one of the new bills passes and is signed into law, it would make sense to do a single amendment for SECURE and SECURE 2.0.

**Why don’t you just issue a SECURE amendment now, based on what you know, and modify it if the IRS issues new guidance or Congress passes new legislation?**

Ultimately, such an approach would be wasteful for us, our customers, and the employers who adopt our plans. We anticipate that the SECURE amendment, while initially issued as a Word document, will ultimately be a part of our document system, in much the same way as the hardship amendment is today. This will allow providers to capture document provisions, and to preserve them in client files for Cycle 4 documents.

It is problematic for providers to go back repeatedly to clients with new interim amendments, particularly where those amendments have optional provisions that will need to be customized to a particular employer’s plan. Many of the issues to be addressed in the SECURE amendment will be customized, allowing an employer to specify whether they do or do not want the provision, and to add any limitations on the provision. From every perspective, it makes sense to do this only once.