BENEFITS BRIEF

**UPCOMING AMENDMENT DEADLINES FOR
TAX-QUALIFIED AND TAX-FAVORED RETIREMENT PLANS**

July 2026

Most tax-qualified and tax-favored plans must be amended by the end of 2026 to preserve the plan's favorable tax status.[1]

SECURE and SECURE 2.0 ACTS, BAMA, AND CARES ACT AMENDMENTS

December 31, 2026 is the absolute deadline for tax-qualified and tax-favored plans of private (non-governmental) employers to be amended to reflect the provisions of the Setting Each Community Up for Retirement Enhancement Act of 2019 (SECURE Act), the Bipartisan American Miners Act (BAMA), the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act), and the SECURE 2.0 Act of 2022 (SECURE 2.0).[2] For plans of governmental employers, the deadline is December 31, 2029. Although plans have been required to operate in compliance with the mandatory and elected optional provisions of these laws since the applicable effective dates, many plan sponsors have not yet formally amended their plan documents to reflect those operational changes. Plan amendments are now required by these deadlines.

403(b) PLAN RESTATEMENTS

Tax-sheltered annuity and custodial account plans qualified under Section 403(b) of the Internal Revenue Code maintained on a pre-approved plan document sponsored by tax-exempt entities must be amended and restated on the new pre-approved document by December 31, 2026 -- in addition to being amended to reflect the SECURE Act, BAMA, the CARES Act, and SECURE 2.0 by that same date. Section 403(b) plans maintained on a pre-approved plan document by a governmental employer (i.e., a public school) must also be amended and restated on the new pre-approved document by December 31, 2026 even though the deadline to amend the plan to reflect the SECURE Act, BAMA, the CARES Act, and SECURE 2.0 is not required until December 31, 2029.

OTHER AMENDMENT CONSIDERATIONS

In addition to making these changes, plan sponsors and plan administrators may find it prudent to review other aspects of their plans in light of recent developments.

---

[1] This *Benefits Brief* does not discuss amendments needed to defined benefit, collectively bargained or church plans, Section 457(b) plans, simplified employee pensions under IRC 408(k) (SEPs), or SIMPLE IRAs.

[2] There is one minor exception to the December 31, 2026 deadline; the amendment deadline to allow distributions from tax-qualified or tax-favored plans of private employers for the payment of qualified long-term care insurance premiums has been extended to December 31, 2027.

Use of Forfeitures. There has been a fair amount of litigation in the past couple of years (targeting primarily larger retirement plans) alleging plan administrators have been improperly utilizing forfeitures of nonvested benefits in violation of the plan document. Most of the cases have focused on discretionary plan language giving the plan administrator the option to utilize forfeitures to offset employer contributions or pay administrative expenses of the plan. These lawsuits generally allege that a prohibited transaction and/or a breach of fiduciary duty occurred when the plan administrator utilized those funds to offset employer contributions rather than satisfy administrative expenses that would otherwise be paid by participants. Even though participants in most of these cases have been unsuccessful, merely defending a claim is both administratively burdensome and expensive, so plan sponsors and administrators may wish to review their plan document to ascertain if any clarification of the plan document is needed to minimize this risk.

Comparison of Plan Administration to the Current Plan Document. Prudent plan sponsors and administrators may find this an opportune time to review the overall administration of their plan to ensure it is consistent with the terms of the written plan document.[3]

Although the IRS maintains a correction program under which plan documents can be retroactively amended to conform the document to plan operations, such an amendment will be permitted only if the amendment is consistent with the employer's intent and the reasonable expectations of participants as established *by clear and convincing written evidence.* For this purpose, the lack of participant claims or complaints is insufficient and affidavits executed by the employer or participants to support the corrective amendment are not considered. But the reality is that a vast majority of retirement plans are now maintained on IRS pre-approved plan documents from which participant disclosures are automatically generated by the provider's system. Thus, participant disclosures will automatically repeat any error or inconsistency in the plan document that differs from the plan's operation, so a plan sponsor's ability to satisfy the IRS' high evidentiary threshold for approval of a retroactive amendment could be extremely challenging in most situations, particularly for smaller plans. If a retroactive amendment is not permitted, both contributions mandated under the (incorrect) document and earnings on the corrective contributions will be required until the plan document is corrected.

Differences between administration and the plan document often arise when a plan changes recordkeepers and the new recordkeeper requires the plan to be amended and restated on the recordkeeper's preferred plan document. In those transitions, plan sponsors should (1) *carefully* review the new plan document (or have it reviewed by an independent experienced advisor), (2) document in writing to the recordkeeper the substantive changes, if any, intended as part of the amendment and restatement, and (3) if possible, obtain written confirmation from the recordkeeper regarding those intended changes. In addition, the plan sponsor should contemporaneously notify participants in writing of the changes, if any, being made in the amended and restated plan document.

NEXT STEPS FOR PLAN SPONSORS AND PLAN ADMINISTRATORS

[3] The most common discrepancy according to the IRS is a difference between "compensation" as defined in the plan and the compensation actually being utilized in operation. Similar problems abound with eligibility and distribution provisions.

While the amendment deadline is not until year end, plan sponsors and administrators should begin coordinating now with their document providers and advisors to identify actions needed to meet these compliance obligations and ensure their timely completion.

Gilbert C. Van Loon is an attorney in the Ridgeland office of Butler Snow LLP. Gilbert can be contacted by phone at 601.985.4556 or via email at gilbert.vanloon@butlersnow.com.

Mark D. Lennon is an attorney in the Nashville office of Butler Snow LLP. Mark can be contacted by phone at 615.651.6613 or via email at mark.lennon@butlersnow.com.