

# **OPERATIONAL COMPLIANCE IS NOT DOCUMENT COMPLIANCE**

## **Preparing for the December 31, 2026 Retirement Plan Amendment Deadline Under the SECURE Act, the CARES Act, and SECURE 2.0**

*By Z. John Skapars*

Most retirement plan sponsors are aware that significant changes were made by the SECURE Act, the CARES Act and SECURE 2.0. What some sponsors may not appreciate is that the December 31, 2026 amendment deadline for many calendar-year plans is not simply another document deadline. Rather, it represents the culmination of a legislative and regulatory process that has been unfolding over several years.

Unlike many prior qualification changes, Congress and the Internal Revenue Service contemplated that plan sponsors would often implement these provisions operationally long before formal document amendments were required. As a result, many plans have already been administering required minimum distribution changes, hardship withdrawal provisions, increased involuntary cash-out limits, disaster relief provisions and numerous other SECURE-related features for several years.

The challenge now is not merely drafting amendments. The challenge is ensuring that plan documents accurately reflect how the plan has actually been operated.

**In other words**, operational compliance and document compliance are not necessarily the same thing.

For many employers maintaining qualified retirement plans, now is an appropriate time to begin reviewing whether the plan's operations, administrative procedures, payroll practices, service-provider records and plan documents remain aligned before the December 31, 2026 amendment deadline arrives.

### **WHY THE 2026 DEADLINE MATTERS**

The SECURE Act, the CARES Act and SECURE 2.0 significantly changed the retirement plan landscape. Rather than requiring immediate document amendments, Congress and the IRS generally allowed plan sponsors to implement many of these provisions operationally while postponing the formal amendment deadline.

This delayed amendment approach gave employers flexibility during implementation and allowed additional IRS guidance to develop. The consequence, however, is that many plans have now been operating under these provisions for several years before the formal amendments are adopted.

Accordingly, the amendment process should not be viewed simply as preparing another set of legal documents. It is an opportunity to verify that the documents accurately describe how the plan has actually been administered.

### **PRE-APPROVED PLANS ARE NOT ENTIRELY AUTOMATIC**

Sponsors of IRS pre-approved plans generally will receive amendment packages prepared by their document providers.

Nevertheless, employers should not assume that the process is entirely automatic.

Many SECURE and SECURE 2.0 provisions involve optional elections. Different employers have implemented different operational choices. The amendment package ultimately adopted should accurately reflect those choices.

Accordingly, employers should review amendment packages carefully with their advisors to determine whether:

- optional provisions previously selected remain appropriate and whether additional optional provisions should now be considered;
- operational practices are consistent with the proposed amendments;
- participant communications accurately describe plan operation; and
- any discretionary decisions previously made are properly reflected.

Although reliance on an IRS pre-approved document provides important protection as to plan form, it does not automatically resolve operational inconsistencies.

## **INDIVIDUALLY DESIGNED PLANS REQUIRE ADDITIONAL REVIEW**

Sponsors of individually designed plans face a somewhat different process.

Rather than receiving a standardized amendment package, amendments generally must be drafted specifically for the individual plan.

Before drafting those amendments, sponsors and their advisors should review:

- operational practices since the SECURE Act;
- CARES Act provisions actually implemented;
- SECURE 2.0 optional elections;
- committee or board decisions;
- payroll administration;
- participant communications; and
- recordkeeper procedures.

The objective is not merely to insert statutory language into the document.

The objective is to ensure that the document accurately reflects the plan that has actually been administered.

## **EXAMPLES OF SIGNIFICANT LEGISLATIVE CHANGES THAT SHOULD BE REVIEWED**

Although the required amendments will ultimately contain detailed statutory language, plan sponsors may find it helpful to review which of the following provisions have already been implemented operationally. This is not intended as an exhaustive list, and not every provision applies to every plan.

### **SECURE Act**

- Required Minimum Distribution age changes.
- Long-term part-time employee participation.
- Qualified birth and adoption distributions.
- Lifetime income disclosure provisions.
- Multiple employer plan and pooled employer plan provisions.

### **CARES Act**

- Coronavirus-related distributions.
- Expanded participant loan limits.
- Loan repayment suspension.
- Waiver of 2020 Required Minimum Distributions.
- Other temporary COVID-19 relief provisions adopted by the plan.

### **SECURE 2.0**

- Increase in the involuntary cash-out limit.
- Additional Required Minimum Distribution age changes.
- Roth treatment of employer contributions.
- Catch-up contribution changes.
- Student loan matching contributions.
- Emergency savings provisions.
- Emergency withdrawals.
- Domestic abuse withdrawals.
- Qualified long-term care distributions.
- Automatic enrollment provisions for certain new plans.
- Additional disaster relief provisions.
- Various technical and administrative changes.

Several provisions have delayed or special effective dates. Sponsors should therefore review not only the applicable statutory provisions but also the actual operational history of their plans.

Most of these provisions became effective long before the document amendment deadline. Consequently, the central question today is often not whether a provision applies, but whether the plan has already been operating under the intended rule and whether the amendment ultimately adopted accurately reflects that operation.

## **A PRACTICAL REVIEW CHECKLIST**

Before the amendment deadline arrives, plan sponsors should consider asking:

1. Which SECURE, CARES Act and SECURE 2.0 provisions have actually been implemented?
2. Were optional provisions formally approved?
3. Are participant communications consistent with plan operations?
4. Do payroll and recordkeeping practices match the intended plan design?
5. Are there any operational issues that should be corrected before amendments are adopted?
6. Should benefits counsel review whether any issues warrant correction under EPCRS or another available correction program?

Addressing these questions now is generally far easier than attempting to reconstruct several years of operational history after amendments are prepared.

## **ADDRESSING ISSUES IDENTIFIED DURING THE REVIEW**

If the review process identifies differences between plan operations and plan documentation, plan sponsors should not assume that qualification problems necessarily result. In many cases, established IRS correction procedures remain available.

The IRS Employee Plans Compliance Resolution System (EPCRS), as modified from time to time by legislation and IRS guidance, provides established methods for correcting many qualification failures. Depending upon the facts and the guidance then in effect, many document and operational failures may be eligible for self-correction, while other matters may warrant consideration of a Voluntary Correction Program (VCP) submission or another available correction method.

The amendment review process provides an excellent opportunity to identify and resolve inconsistencies before the amendments are finalized. Early identification generally provides greater flexibility in selecting the appropriate correction method and often permits corrections to be made more efficiently and at lower cost than if the issues are discovered later during an IRS examination, audit, or corporate transaction.

Accordingly, if questions arise during the amendment review process, plan sponsors should consult experienced retirement plan counsel before assuming that operational differences cannot be corrected or that a particular correction method is required.

## **WHAT PLAN SPONSORS SHOULD BE DOING NOW**

Although the amendment deadline is still months away, prudent sponsors should begin preparing now.

Among other things, sponsors should:

- determine when amendment packages are expected from their document providers;
- identify optional provisions already implemented;
- review operational practices for consistency with intended plan design;
- gather committee records and administrative documentation; and
- consult with qualified retirement plan counsel regarding any uncertainties before amendments are finalized.

## **CONCLUSION**

The December 31, 2026 amendment deadline should not be viewed merely as a document drafting exercise. It represents the final stage of a multi-year implementation process that began with the SECURE Act, continued through the CARES Act and was significantly expanded by SECURE 2.0.

For many plans, the most important question is not whether amendments will be signed. It is whether those amendments accurately reflect the way the plan has actually been operated.

Beginning that review now can help ensure that operational compliance and document compliance remain aligned, identify potential issues while correction opportunities remain available, and reduce the likelihood of unnecessary qualification problems in the future.

## **ABOUT THE AUTHOR**

Z. John Skapars is President of Skapars & Associates, P.C., Dover, Massachusetts. For more than fifty years, he has concentrated his practice in employee benefits law, including retirement plan design, IRS qualification, plan corrections, fiduciary compliance, executive compensation and ERISA matters for employers, consultants and financial institutions.

For additional information, please contact:

Skapars & Associates, P.C.  
2 Tower Drive  
Dover, Massachusetts 02030  
(508) 785-0250  
zjskapars@skapars.com  
www.skapars.com