

Frequently Asked Questions for the SECURE Act of 2019, BAM Act of 2019, and CARES Act of 2020 Amendment

Why am I receiving this amendment to my plan?

As you know, the law requires tax-qualified and tax-favored retirement plans to be operated based upon written documents that contain various required provisions. As a result, the Internal Revenue Service (IRS) requires employers to amend their plan documents to reflect any regulatory or legislative changes that impact the provisions of their plan document. Adopting these amendments in a timely manner is necessary to avoid a document compliance failure, jeopardizing the tax-qualified or tax-favored status of your plan.

The following legislative acts contain provisions that impact the terms of your plan document, and your plan document must be amended to remain current with these changes.

- The Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019
- The Bipartisan American Miners (BAM) Act of 2019
- The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020

Why aren't these provisions included in my plan's regular adoption agreement?

Legislation, regulations, and other guidance that become effective after the IRS determines the parameters of its plan document program for a particular restatement cycle are not permitted to be included in the plan document and must be added to the plan document using a separate amendment until a future restatement cycle.

Do I need to sign an amendment?

If your plan was operated or is being operated based on the established defaults (see SECURE/CARES Act Default Provisions document), your document sponsor has adopted the amendment on your behalf. In this scenario, the amendment to the Basic Plan Document (BPD) and a Summary of Material Modifications (SMM) will be provided. The SMM will need to be distributed to your plan participants and beneficiaries. Note that FuturePlan will distribute the SMM, if applicable, on behalf of any client utilizing FuturePlan 3(16) services.

If your plan was operated or is being operated differently than one or more of the document defaults, a plan-level signature amendment will be provided to you for your signature through DocuSign, along with an SMM.

How was it determined if my plan is operating differently than the document defaults?

If you 1) informed your dedicated FuturePlan consultant of a decision to implement a discretionary provision within SECURE; 2) previously completed or worked with your consultant to complete a *CARES Act Election Form*; or 3) had assets held with Empower during 2020, this information was used to identify if you are required to execute an amendment and how the amendment should be completed.

What if, upon review of the document defaults, I discover I was operating or am currently operating my plan differently than the identified defaults, but I did not receive a plan-level signature amendment to sign through DocuSign or the plan-level signature amendment I received does not properly account for my election(s)?

If, upon review of the document defaults, you discover your plan has been operated or is being operated differently than such defaults, a plan-level signature amendment will need to be provided that contains the correct provisions. For example, a plan-level signature amendment will be required if you have permitted a participant to withdraw funds from the plan as a qualified birth or adoption distribution. Please contact your dedicated FuturePlan consultant so the necessary information can be obtained and a plan-level signature amendment or an updated plan-level signature amendment can be provided for signature.

If applicable, who is required to sign the plan-level signature amendment?

If your plan was operated or is being operated differently than the document default(s) and a plan-level signature amendment has been provided through DocuSign, we have selected an authorized representative of the employer based on the information we have on file. If the designated signer is not available or is not the correct individual to sign on behalf of your company for this amendment, please contact your dedicated FuturePlan consultant to request a correction.

If applicable, when does my plan-level signature amendment need to be signed?

The IRS recently delayed the amendment deadline for these amendments to December 31, 2026 (later for governmental plans).

What if my plan-level signature amendment is not signed by the deadline?

As noted earlier in this FAQ, if your plan was operated, or is being operated, based on the document defaults, the amendment has been timely adopted on your behalf by your document sponsor. If a plan-level signature amendment is provided and is not signed by the deadline, compliance issues may arise that will require correction under the IRS' Employee Plan Compliance Resolution System (EPCRS) program.

If I receive a plan-level signature amendment to sign through DocuSign, what do I need to do once the document has been signed by an authorized signer for the employer?

When you receive the email confirmation that the document is fully signed, you should download a complete copy of your amendment and SMM and file it with your other plan documents. The SMM will need to be distributed to your plan participants and beneficiaries. Note that FuturePlan will distribute the SMM, if applicable, on behalf of any client utilizing FuturePlan 3(16) services.