**AMENDMENT FOR 2020 DISASTER RELIEF TAX ACT AMENDMENT**

**Instructions**

FIS has developed an amendment which may be used to update plans for the disaster relief provisions (“Disaster Act”) adopted as part of the Consolidated Appropriations Act, 2021. This relief applies to major disasters for 2020, other than COVID-19. The amendment can be used for all types of qualified plans, 403(b) plans, and governmental 457(b) plans. Tax-exempt organization 457(b) plans cannot use the amendment. This document describes the relief the Disaster Act provides as well as the options in this amendment.

Each article 3-5 is self-contained. Section 1 of each article identifies the plans to which the article applies. Section 2.2 allows the employer to select which Disaster Act provisions the employer wishes to apply.

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| Article | Subject | Elections |
| 3 | Qualified Disaster Distributions (QDD) | 2.2(a) turns ON the QDD provisions2.2(a)(1) allows rollover of QDDs2.2(a)(2) prohibits QDDs from accounts that are not fully vested2.2(a)(3) limits the accounts from which QDDs can be made. |
| 4 | Participant loan relief | 2.2(b) turns ON a provision doubling loan limits2.2(c) allows extension of loan repayments. |
| 5 | Hardship repayments | 2.2(d) turns ON a provision allowing repayment of prior hardship distributions for home purchase |

Employers wishing to implement any portion of the Disaster Act should complete the information in Section 2.1 of the amendment, select appropriate options in Sections 2.2, 2.3, and 2.4, and sign the amendment. While the amendment is written to apply to all 2020 major disasters other than COVID-19, the employer can limit it to specific disasters, such as Hurricanes Laura, Sally, Delta or Zeta, or the summer wildfires on the West Coast, by selecting Section 2.3 and listing the selected disasters. In general, the amendment is retroactively effective for each disaster to the first day of the disaster; however, in Section 2.4 the employer has the option to specify a later effective date.

**Must all employers adopt the amendment?**

No. Only employers who wish to implement some or all of the Disaster Act provisions must adopt the amendment.

**What is a QDD?**

A Qualified Disaster Distribution (QDD) is a distribution to a Qualified Individual of up to $100,000. Defined benefit pension plans cannot make QDDs to an employee currently in service unless the employee has attained age 59 ½. There is no age limitation for 401(k) plans, 403(b) plans, governmental 457(b) plans, money purchase pension plans, or profit sharing plans. The deadline to take a QDD is June 25, 2021. To implement QDDs, check box 2.2(a) on the amendment. To limit the accounts from which QDDs can be made, select 2.2(a)(2) and/or 2.2(a)(3).

**Can a participant repay a QDD?**

Yes, the Disaster Act allows a participant to repay a QDD (without earnings) up to three years after the QDD. The plan treats it as a rollover. To permit QDD rollover contributions, check box 2.2(a)(1). Note that the plan can permit QDD rollovers only if the plan allows participants to take QDDs.

**Who is a Qualified Individual?**

An individual is a Qualified Individual if the individual’s principal residence was located in the disaster area and the individual suffered economic loss as a result of the disaster. Participants, alternate payees and beneficiaries of deceased participants can be treated as Qualified Individuals. Only Qualified Individuals can receive QDDs or benefit from the participant loan relief.

**What loan relief is offered by the Disaster Act?**

The loan limits for Qualified Individuals are double the normal limits. A Qualified Individual can borrow up to $100,000 or the full vested account balance. All other normal rules and adjustments apply. This applies to loans between December 27, 2020 and June 25, 2021. To implement this option, check box 2.2(b) on the amendment.

If a Qualified Individual had an outstanding loan on or after the first day of the disaster, the due date for any payments that are due during the period beginning at the start of the disaster and ending 180 days after the end of the disaster (as defined by FEMA) is delayed one year, or, if later, until June 25, 2021. For loans subject to the 5-year Code §72(p)(2)(B) limit on repayment, the 5-year deadline is suspended during the extension period. Naturally, the subsequent payments are adjusted to take into account the delay and accrued interest. To implement this option, check box 2.2(c) on the amendment.

For example, the incident period for Hurricane Laura in Louisiana began August 22, 2020 and ended August 28. Suppose Mary lived in Cameron Parish (which was in the disaster area qualifying for individual assistance) during the incident and suffered economic loss as a result of the incident. Mary had a general-purpose participant loan outstanding August 22, 2020. If the employer checks box 2.2(c), then all payments due between August 22, 2020 and February 24, 2021 (180 days after the incident) can be extended one year. The 5-year repayment period could be extended by the one year extension.

**What hardship payment relief is offered?**

If a participant received a hardship distribution from a 401(k) plan, a profit sharing plan, or a 403(b) plan to purchase a principal residence in a disaster area, and ultimately did not purchase the residence (for example, if the home was destroyed in the disaster prior to purchase), the participant can repay the distribution (without interest) to the plan. The repayment is treated as a rollover. The deadline to repay the distribution is June 25, 2021. The distribution must have been received during the period beginning 180 days before the start of the incident and ending 30 days after the incident. To implement this option, check box 2.2(d) on the amendment.

**Does this amendment provide additional relief in connection with the coronavirus?**

No. Congress already provided pension relief for COVID-19 in the CARES Act. The period for making coronavirus-related distributions ended December 30, 2020. However, if an individual was laid off because of COVID-19 and later lost their home in the Oregon wildfires, the individual could qualify for distributions of up to $100,000 under both CARES and the Disaster Act.

**Can a document sponsor sign this amendment on behalf of the employer?**

No. This amendment is designed for the employer to sign. We do not anticipate developing a document sponsor version of this amendment.

**Can I use this amendment for ongoing and terminating plans?**

Yes.

**When should this amendment be adopted?**

The employer should adopt the amendment no later than the last day of the 2022 plan year (2024 for governmental plans). Terminating plans which implemented the relief provisions should adopt the amendment prior to, or coincident with, terminating the plan.

**Can I modify this amendment?**

Yes. This is a good faith amendment, and the IRS has not reviewed or approved it. We will not incorporate this amendment into the Relius document system.

**Are other documents available?**

In addition to the Amendment, we have provided a sample Adopting Resolution (for an employer to evidence adoption of the Amendment). We have not provided a unanimous written consent or other form to actually adopt the amendment, because this will vary depending on local law and on the structure of the employer.