**AMENDMENT TO PROVIDE FOR MULTIPLE EMPLOYER PLAN**

**(INCLUDING A POOLED EMPLOYER PLAN)**

**Instructions**

FIS has developed an amendment which may be used to update a multiple employer qualified defined contribution plan for the pooled employer plan (PEP) provisions of SECURE Act §101. PEPs and certain other MEPs can also use this amendment to comply with the IRS proposed regulations under Code §413(e) to have relief from the unified plan rule, sometimes known as the “one bad apple” rule. 403(b) plans cannot use this amendment. This document explains the use of this amendment.

**What is a PEP and a PPP?**

A pooled employer plan, or “PEP” is a type of multiple employer plan (MEP) operating under ERISA §3(43) and Code §413(e). The Named Fiduciary and Plan Administrator of the PEP is the Pooled Plan Provider (PPP).

**What is the unified plan rule?**

The unified plan rule states that a MEP is a single plan for qualification purposes, and that if any portion of the plan fails to satisfy the qualification requirements, the entire plan is subject to disqualification or other IRS sanctions.

**What relief is available in the proposed §413(e) regulations?**

The proposed regulations allow a plan to avoid the disqualification resulting from a participating employer that fails to provide information or take needed action to maintain the qualified status of a plan. The MEP Administrator, after providing notices to the “unresponsive participating employer,” then has the ability to remove that employer from the plan, and thereby preserve the qualified status of the plan as a whole. However, to do so, the MEP Administrator must go through a detailed series of steps outlined in Article 3 of the Amendment, and the written plan document must provide for those steps.

**What plans can use the §413(e) relief?**

The §413(e) relief in the proposed regulations is available to three types of plans: (1) PEPs, (2) Other MEPs which have a PPP, and (3) Other MEPs maintained by employers that all have a common interest other than having adopted the Plan. This amendment is designed to be used by all three types of plans. Section 2.1 allows the plan to specify which type of plan it is, and therefore which set of provisions will apply.

**How does this amendment relate to the plan document for a PEP? How is it adopted?**

This amendment is designed to modify a MEP to make it a PEP. It contains the provisions the law requires for a PEP. It can be used with the “Corbel,” “PPD,” or “Governmental” PPA or Cycle 3 preapproved plan documents created using the Relius Document software. (The amendment is not designed for use with the ESOP, Solo(k), or IDP-formatted documents.) It is anticipated that the plan document will reflect that the plan is a MEP, and that adopting employers will sign participation agreements. It is not designed to be used for IRA arrangements.

To adopt this amendment, complete the information in Article 2. It should be signed by the employer adopting the plan, the PPP, and the trustee, if any, named in Section 2.1(D).

**When should this amendment be adopted?**

Because this is a SECURE Act amendment, it can be adopted as late as the last day of the 2022 plan year (or 2024 for a governmental plan). However, because of the importance of the provisions and the central role the PPP plays in the PEP, we are providing this amendment now.

**Can I modify this amendment?**

Yes. This is a good faith amendment, and the IRS has not reviewed or approved it.

**What is Section 2.4 of the amendment? Should I select it?**

Section 2.4 addresses a situation in which the PPP or other MEP Administrator is the “lead employer” sponsoring the plan but is not using the plan for its own employees. Checking box 2.4(a) says that the employees of the MEP Administrator will not participate in the plan. This functionality already exists in the Cycle 3 PPD document (see election 51(b)(2)) but is provided here for other documents. (PPD document users can use 2.4(a) of the amendment and/or election 51(b)(2) of the adoption agreement to accomplish the same thing.) If the employees of the MEP Administrator will participate, the Administrator can complete a Participating Agreement to specify the plan options that will apply to those employees.

**Will FIS update this amendment?**

We anticipate updating the amendment based on IRS and DOL guidance when it is issued. SECURE requires the IRS to provide a model PEP amendment, but we do not anticipate that they will do so until both agencies have issued guidance relating to the application of the new law. **Almost surely that guidance will require modification of this amendment.** Note that Code §413(e) and ERISA §3(44) state that an employer or PPP “shall not be treated as failing to meet a requirement” of ultimately issued IRS and DOL guidance if “before the issuance of such guidance, the employer or pooled plan provider complies in good faith with a reasonable interpretation of the” law. We believe this amendment to represent such a reasonable, good faith interpretation until the agencies provide guidance. The IRS has said that compliance with the proposed §413(e) regulations constitutes such reasonable, good faith compliance. While we have no submitted this amendment to the IRS for review, we believe in complies with the proposed regulations.

The most current version of this amendment will be posted at <https://www.relius.net/News/OtherResources.aspx?T=P>.

**Our plan adopted the PEP amendment FIS issued in October 2020. Should I update it to the May 2022 release?**

Yes. The original PEP amendment was issued over a year before the IRS issued the proposed §413(e) regulations, and does not comply with those regulations. Now that those regulations have been proposed, PEPs and other MEPs wishing to take advantage of relief from the unified plan rule should update their plans to conform to the current IRS interpretation.