**AMENDMENT TO IMPLEMENT SECURE ACT PROVISIONS FOR TERMINATING PLAN**

**Instructions**

FIS has developed an amendment which may be used to update terminating plans for most provisions of the Further Consolidated Appropriations Act (and particularly the SECURE Act) which are effective in 2020. The amendment can be used for all types of qualified plans, 403(b) plans, and 457(b) plans. It reflects the guidance contained in Notice 2020-68.

We anticipate that most employers of terminating plans can simply fill in the identifying information in section 2.1 and sign the amendment. Section 2.3 lists the amendment’s default provisions. If an employer wishes to override one or more of those defaults, to reflect provisions that the plan had implemented prior to termination, the employer can make an election to do so in sections 2.4 through 2.9.

Each article 3-13 is self-contained and lists the statutory citation for ease of reference. Section 1 of each article identifies the plans to which the article applies.

|  |  |  |  |
| --- | --- | --- | --- |
| Article | Subject | Plan Types | Elections |
| 3 | No need for notice for safe harbor 401(k) plans with nonelective contributions; allows retroactive amendment to add SHNEC | 401(k) | None |
| 4 | Amendment to facilitate 403(b) plan terminations with custodial accounts | 403(b) | None |
| 5 | Qualified birth and adoption distributions | DC, 403(b), gov’t 457(b) | Turned OFF by default. To allow distributions, select one or more options in Section 2.4 |
| 6 | Required beginning date (RBD) based on age 72 rather than 70 ½ | All | If plan disregarded RBD change in making distributions, check box in Section 2.5 |
| 7 | 10-year limit on most beneficiary RMD distributions | DC, 403(b), 457(b) | None |
| 8 | In-service distributions at age 59 ½ | Pension, gov’t 457(b) | Turned OFF by default. To allow in-service distributions, select Section 2.6(a) or (b). To apply a later in-service distribution age than 59 ½, select 2.6(c) and enter the age. |
| 9 | Distributions of lifetime income investments | DC, 403(b), Gov’t 457(b) | Turned OFF by default. To allow such distributions, check box in Section 2.7 and enter the effective date. |
| 10 | Permit retroactive plan adoption after end of tax year | Qualified | None |
| 11 | QACA maximum default deferral can be 15% after first year | 401(k), 403(b) | Turned OFF by default. To allow automatic deferrals to increase to 15%, check box in Section 2.8 and enter the effective date. |
| 12 | Difficulty of care payments | DC, 403(b) | None |
| 13 | Employees participating in 403(b) retirement income account plan | Church 403(b) | Turned OFF by default. To expand participants, check box in Section 2.9, enter effective date, and select/enter participants. The effective date can be retroactive to reflect prior operations. |

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

No. It is designed exclusively for terminating plans. Ongoing plans can be amended in 2022 to reflect the SECURE Act, including mandatory and discretionary amendments. Doubtless, we will receive additional guidance from the IRS which will need to be incorporated into the amendment for ongoing plans.

**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, because it is limited to terminating plans.

**Does this amendment contain all the provisions the terminating plan will require?**

No. It does not contain any provisions related to the termination itself, such as freezing the plan. It does not include provisions which are contained in other FIS amendments, such as the hardship distribution amendment, the CARES amendment, or other disaster relief amendments. Ideally, employers sponsoring preapproved defined contribution plans should restate to the cycle 3 preapproved document prior to terminating, but this is not required.

Note that this amendment does not include provisions related to pooled employer plans (PEPs) or modifications of the “bad apple rule” for multiple employer plans. We have a separate amendment for PEPs. It also does not include provisions relating to long-term part-time employees. SECURE Act §112 does not require that these employees participate until they have completed three consecutive eligibility computation periods beginning after December 31, 2020 with 500-999 hours of service. In all but the rarest of situations, these individuals will not be eligible to defer until 2024. We hope to have additional IRS guidance about long-term part-time employees before then.

**When should this amendment be adopted?**

The employer should adopt the amendment prior to, or coincident with, terminating the plan. However, if the employer failed to do so, the employer can likely self-correct the failure within two years under new EPCRS rules.

**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.

**Will FIS update this amendment?**

We anticipate updating the amendment based on IRS guidance. Please check online to find the most current version of the amendment.

**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 prepared a Summary of Material Modifications (SMM) because the plan will be terminating. 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.