As our new documents are released for you to use and the Cycle 3 restatement begins, we are updating you on some of the questions we have been receiving over the past few months. We also summarize recent law changes below and describe new FIS resources to help you better serve your clients. In many cases, we have amendments and various other materials available on the [News | Pension News | Other Resources](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.relius.net%2FNews%2FOtherResources.aspx%3FT%3DP&data=02%7C01%7Canne.dionne%40fisglobal.com%7Cd666fd68c0f54063e61608d80c760d05%7Ce3ff91d834c84b15a0b418910a6ac575%7C0%7C1%7C637273048452365016&sdata=hTfP9nQ4MVoGUWV5IIXg5WCRRRHqPWvTKCKROFqKLjE%3D&reserved=0) page of the Relius.net website. We may update these materials for subsequent guidance, so we suggest that you bookmark the page and check back frequently to make sure you have the latest edition of these important resources.

**When I start a checklist for building a plan, I see new questions asking me to either agree to terms and conditions or to enter the name of the Provider – how do I know which one I use? For example, do I have to fill out everything if I select 1u for the Corbel product?**

In order to know how to make the correct selection, you must determine if your firm is a Provider. There is a Q&A below for making that determination. If you are a Provider, you identify your firm as the Provider and enter the name that you want your clients to see (typically the same as on the IRS Letter, plus any appropriate punctuation). Otherwise, you must agree to the terms and conditions in order for the Adoption Agreement to build. There is no extra fee associated with any selection. If your firm has a professional services contract with FIS, then that contract will supersede some of the stated terms and conditions, but you need to still check the box.

**Why are you asking about a separate trust agreement? Why aren't the trust provisions in the plan documents this time?**

The IRS required that document providers such as FIS modify their Cycle 3 documents to remove certain trust provisions.  This change from previous cycles requires that trustees sign a separate trust agreement rather than the Adoption Agreement moving forward. As retirement plans are generally required to have a trust, FIS has created a separate trust agreement (available via screen entry) for clients to use along with our documents, where the trustees will be listed and have places to sign. The trust name can be the same as the plan name. As an alternative to using the FIS provided trust agreement, you may also use your own trust documents or trust documents from other providers.

**Where is the trustee supposed to sign on our new documents?**

The trustee should sign the trust agreement. The trustee does not sign the plan document.

**Why do I need to name the Trust?**

Beginning with Cycle 3, the IRS requires the trust agreement to be separate from the plan. There are no rules about how you name the separate trust. You can use the name of the plan. For example, the separate trust associated with the ABC Company Retirement Plan can use “ABC Company Retirement Plan Trust.” Other alternatives may better fit your situation.

**Flexible versus Rigid match? What does all this mean?**

Please see our webcast explaining the distinction at [LINK]. In a nutshell, if you choose to have a discretionary matching contribution, you will need to decide between two general approaches, and we created these nicknames of “flexible” and “rigid” for the two approaches. The flexible much offers complete discretion over allocation of the match but requires an annual notice to participants. The rigid match is still discretionary in amount, but has some design limitations. For example, the plan document must specify the time period (payroll by payroll, monthly, annually, etc.) used to compute a rigid match, and the same formula must apply to everyone.

In the coming weeks, we will release a sample participant communication for the flexible discretionary match. Check [FIS Pension Other Resources page](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.relius.net%2FNews%2FOtherResources.aspx%3FT%3DP&data=02%7C01%7Canne.dionne%40fisglobal.com%7Cd666fd68c0f54063e61608d80c760d05%7Ce3ff91d834c84b15a0b418910a6ac575%7C0%7C1%7C637273048452404994&sdata=ODEbub%2Bb4A2bxljjt1WHTnAIRiW3g5ivSj%2FBc2y0%2BRs%3D&reserved=0) for our most current releases.

**What effective date should I use for my restatements when I start producing my plans?**

Frequently, the best effective date is the first day of the plan year in which the restatement is being adopted because any discretionary change must be adopted within the plan year of its implementation. New to Cycle 3, if you want reliance, the effective date cannot be any earlier than that date. There may be good reasons for choosing a date that is later, such as the first day of the forthcoming plan year, as when a profit sharing plan is to become a 401(k) plan as of the start of the new year.

**When will the PEP amendment be available?**

We posted it November 18, 2020 at the [FIS Pension Other Resources page](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.relius.net%2FNews%2FOtherResources.aspx%3FT%3DP&data=02%7C01%7Canne.dionne%40fisglobal.com%7Cd666fd68c0f54063e61608d80c760d05%7Ce3ff91d834c84b15a0b418910a6ac575%7C0%7C1%7C637273048452404994&sdata=ODEbub%2Bb4A2bxljjt1WHTnAIRiW3g5ivSj%2FBc2y0%2BRs%3D&reserved=0). The amendment is based on the rules as they currently stand. We expect to update it as we receive further guidance. Pooled Plan Providers will need to register online with the DOL in order to offer PEPs. DOL registration should open November 25, 2020.

**Should I use the Provider-level amendment or the Employer-level amendment for a particular amendment?**

Whenever feasible, if you are a Provider, you should use the Provider-level amendment for your plans – we create those amendments to have the most common provisions and then the employers on your plan do not have to execute the amendment. However, if FIS is the provider, then you will need to use an employer level amendment. Employer-level amendments are also required if there is no Provider amendment or if the provisions of the Provider amendment are not suitable for a particular employer.

**Who is the Provider?**

The Provider is the entity shown on the IRS Opinion Letter for the product you are using. The only way for your firm to have such a Letter is by your having applied to the IRS (via Relius) to have your own IRS Letter. If your firm is not the Provider, then FIS is the Provider. IRS Letters are not interchangeable, i.e., you cannot use an IRS Letter for the Corbel document if the plan at issue is our PPD document. FIS does not adopt sponsor-level amendments for our IDP-formatted products, so employers using that product need employer-level amendments.

**The COLA limits are out – are these part of the Cycle 3 documents? What about the other documents?**

We are updating our documents to reflect the COLA limits. Our priority has been issuing the Cycle 3 documents, but we will update the other documents for the COLA limits.

**What is the deadline for the Cycle 3 restatement period?**

July 31, 2022 (see IRS Announcement 2020-7).

**What do I need to do before the end of the year? I thought we had to execute the CARES and SECURE amendments?**

There are no required amendments or end-of-year deadlines for 2020.

**What is the CARES Act?**

The "Coronavirus Aid, Relief, and Economic Security Act" (the "CARES Act") was enacted to address the economic impacts associated with the COVID-19 virus. For more details about the CARES Act, please see our [CARES Act communication](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.relius.net%2FNews%2FDocs%2FCARES%2520Act%2520Communication.docx&data=02%7C01%7Canne.dionne%40fisglobal.com%7Cd666fd68c0f54063e61608d80c760d05%7Ce3ff91d834c84b15a0b418910a6ac575%7C0%7C1%7C637273048452365016&sdata=PAGf3fOhgtHzEAlCqWmmJA6x6JigViIfJ%2BoPfVljg7g%3D&reserved=0). In short, the CARES Act allows defined contribution plans (including 403(b) and governmental 457(b) plans) and IRAs to waive required minimum distributions which would have been due in 2020. It also authorizes three optional forms of relief to Qualified Individuals (as defined below):

* The CARES Act generally provides for a new "distributable event" of up to $100,000 that is exempt from the 10% premature distribution penalty tax. The deadline for these distributions is December 30, 2020 (not December 31).
* Participant loan limits are increased to the lesser of $100,000 or 100% of the account if made before September 23, 2020.

An individual is a Qualified Individual if the individual or the individual’s spouse or dependent is diagnosed with COVID-19 or if the individual experiences adverse financial consequences as a result of the virus.

**Should a plan be amended for the CARES Act?**

There is no need to amend the plan (or loan policy) for the CARES Act if the plan is going to administer the plan (and any loan policy) as currently written (including making RMDs for 2020). However, if a plan will be implementing at least one of the changes made by the CARES Act, then an amendment to the plan and/or the loan policy is required. Note that the CARES amendment we have provided on at Other Resources may be used by either an ongoing plan or a terminating plan.

**What is the deadline to amend a plan for the CARES Act?**

The statutory language provides that, except for terminating plans, plan amendments related to the CARES Act are required by the last day of the plan year that begins on or after January 1, 2022, the same deadline that applies to SECURE Act changes. (A longer deadline applies to governmental plans.) However, as with the SECURE Act (see below), the CARES Act provides that the plan may operate in accordance with the new legislation so long as a retroactive amendment is adopted by the deadline. The provisions relating to relief to Qualified Individuals are temporary provisions and will not be incorporated into the Relius document system.

**What resources has FIS provided regarding the CARES Act?**

FIS has created an amendment that can be adopted. One version of the current amendment is designed for individual employers, and another version is available for prototype sponsors and volume submitter practitioners to adopt on behalf of their clients. We also have posted a sample notice and distribution forms for CARES, as well as detailed instructions. The notice serves as both an SMM and an update to the safe harbor notice. All of these resources were posted May 7 on the [FIS Pension Other Resources page](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.relius.net%2FNews%2FOtherResources.aspx%3FT%3DP&data=02%7C01%7Canne.dionne%40fisglobal.com%7Cd666fd68c0f54063e61608d80c760d05%7Ce3ff91d834c84b15a0b418910a6ac575%7C0%7C1%7C637273048452375011&sdata=xAgxJN9kHlG7%2BT0vpvapzexZsr1on%2BkLkA3fhDlpHeY%3D&reserved=0). Many of these provisions are only temporarily effective and will not be carried over to the document system (only the RMD provisions are expected to become part of the Cycle 4 document).

**What is the SECURE Act?**

The SECURE Act makes many changes to retirement plans. Chief among them are (1) a new type of multiple employer plan (PEP plans); (2) new, more flexible rules for ADP safe harbor plans, (3) extended time frames to adopt new plans, and (4) new rules for required minimum distribution. We published a full summary in our [January 8 Technical Update](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.relius.net%2FNews%2FTechnicalUpdateDetails.aspx%3FT%3DP%261%3D1%26ID%3D1130&data=02%7C01%7Canne.dionne%40fisglobal.com%7Cd666fd68c0f54063e61608d80c760d05%7Ce3ff91d834c84b15a0b418910a6ac575%7C0%7C1%7C637273048452385005&sdata=6gCqrdHaZa7nEsNQS%2FtwlllMm6iItmhWJqKGk3aCwCw%3D&reserved=0).

**Is immediate action required for the SECURE Act?**

We recommend that an ongoing plan not amend at the present time because amendments are not required until 2022 and because we believe that many provisions of the Act will remain unclear until government guidance is issued. Terminating plans, though, most likely need a SECURE amendment on or before the date of plan termination. The delay for ongoing plans gives the government time to issue guidance and allows practitioners to evaluate the approaches that will be best for the plans they serve. Until then, plans are to be administered in accordance with SECURE Act provisions (as they become effective). SECURE provides that it is not an operational failure or a cutback to operate in accordance with the new law so long as a timely retroactive amendment is adopted by the 2022 deadline. We posted an updated SECURE amendment for terminating plans on our [FIS Pension Other Resources page](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.relius.net%2FNews%2FOtherResources.aspx%3FT%3DP&data=02%7C01%7Canne.dionne%40fisglobal.com%7Cd666fd68c0f54063e61608d80c760d05%7Ce3ff91d834c84b15a0b418910a6ac575%7C0%7C1%7C637273048452385005&sdata=k97WpzTkigxZViG9n0mBDahPVBsIm7d5GpXAan6DT%2FI%3D&reserved=0) on November 20, 2020. (Search on the page for “SECURE Act Termination Amendment”)

Because the current SECURE Act amendment is available for terminating plans only, there are not yet any components of the SECURE Act incorporated into the Relius system at this time. As FIS receives further guidance specific to the SECURE Act, we will communicate again when an expanded amendment or additional information becomes available.

**When should we distribute an SMM for all these changes?**

DOL Reg. 2520.104b-3 provides that the deadline for the SMM is based on the year the modification is *adopted*, not the year the change goes into effect. So, if a calendar year plan waits until 2022 to adopt a SECURE or CARES amendment, the SMM deadline is July 29, 2023, even though provisions of that amendment will be retroactively effective to earlier years. Having said that, as a practical matter, most employers wish to provide guidance sooner rather than later, and often use the term "SMM" to describe that general notice, which is why we also use the term SMM in this context. There is no reason a participant notice cannot function as an SMM if it is identified as such.

**What about a terminating plan?**

As noted above, we have posted an amendment for terminating plans to adopt the provisions of SECURE that are currently effective. This plan-termination edition of the amendment can be used for all types of qualified plans, 403(b) plans, and 457(b) plans, but the type of plan must be specified by selecting the applicable option on the amendment. Please note that FIS reserves the right to make changes to this amendment upon receipt of further guidance so please be sure to visit the link provided above for the latest edition of the amendment.

We have also posted CARES amendments (both for qualified plans and for cafeteria plans), and any version of the amendment is versatile enough to be used with either an ongoing or terminating plan.

**What other amendments are required by a terminating plan?**

Every terminating plan is advised to adopt an amendment that formally implements the termination. Relius has had a sample amendment available for that purpose since 2012. It needs no updating because its sole purpose is to terminate the plan. It needs to be accompanied by every other applicable amendment for a particular plan on a particular date of termination.

The amendments required for a terminating plan not only can change from day to day, but will depend upon the type of plan, the features that are present, the date of plan termination, and the effective dates of changes in the rules governing plans. Care should be taken with regard to allocation conditions, short plan years, safe harbor provisions, and more. Legal counsel should assist in the determination of any amendments required on or before the date of plan termination. (For example, if a new law is enacted or the IRS issues new guidance prior to termination which requires a plan modification, then the employer should amend the plan to address these matters prior to, or as a part of, termination.) The SECURE Act and the [final hardship regulations](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.relius.net%2FNews%2FTechnicalUpdateDetails.aspx%3FT%3DP%261%3D1%26ID%3D1128&data=02%7C01%7Canne.dionne%40fisglobal.com%7Cd666fd68c0f54063e61608d80c760d05%7Ce3ff91d834c84b15a0b418910a6ac575%7C0%7C1%7C637273048452394999&sdata=FU6D8gdIhzRlmkrLfqSwBQDRZVGrxS75Oa%2FGLI%2B%2FvbA%3D&reserved=0) are examples of such changes.

**What about the disaster relief provisions in the Further Consolidated Appropriations Act?**

We posted a separate amendment, on April 9, for the 2018-2019 disaster relief provisions. You can find it on our [FIS Pension Other Resources page](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.relius.net%2FNews%2FOtherResources.aspx%3FT%3DP&data=02%7C01%7Canne.dionne%40fisglobal.com%7Cd666fd68c0f54063e61608d80c760d05%7Ce3ff91d834c84b15a0b418910a6ac575%7C0%7C1%7C637273048452404994&sdata=ODEbub%2Bb4A2bxljjt1WHTnAIRiW3g5ivSj%2FBc2y0%2BRs%3D&reserved=0).

**Are there any other amendments for ongoing DC plans and 403(b) plans?**

At the present time, there is an amendment required for 401(k) and 403(b) plans for the final hardship regulations issued after the enactment of the Bipartisan Budget Act of 2018 ("BBA"). The deadline for both 401(k) and 403(b) plans is December 31, 2021 (including for plans that are not using the calendar year as the plan year). We posted the most up-to-date version of this amendment February 24 on our [FIS Pension Other Resources page](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.relius.net%2FNews%2FOtherResources.aspx%3FT%3DP&data=02%7C01%7Canne.dionne%40fisglobal.com%7Cd666fd68c0f54063e61608d80c760d05%7Ce3ff91d834c84b15a0b418910a6ac575%7C0%7C1%7C637273048452404994&sdata=ODEbub%2Bb4A2bxljjt1WHTnAIRiW3g5ivSj%2FBc2y0%2BRs%3D&reserved=0). and the Relius Documents system has been updated for these provisions.

For plans without hardship provisions, an amendment should be made to address any coordinating language within that plan referring to suspension of deferrals or employee contributions. We posted a coordinating plan amendment for this purpose on March 24 on our [FIS Pension Other Resources page](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.relius.net%2FNews%2FOtherResources.aspx%3FT%3DP&data=02%7C01%7Canne.dionne%40fisglobal.com%7Cd666fd68c0f54063e61608d80c760d05%7Ce3ff91d834c84b15a0b418910a6ac575%7C0%7C1%7C637273048452414994&sdata=PXru7THQPZk50mR2twrpghjApq5uJmsN0rkLehZv3mg%3D&reserved=0). This coordinating amendment does not impact the effectiveness of the BBA hardship amendment and is only necessary for those plans that do not contain hardship provisions. However, we continue to advise that Document Providers adopt this amendment for all their plans. FIS has adopted this amendment for plans where it is the Provider.

**What rules were changed with regard to suspending or reducing ADP safe harbor contributions?**

No rules have changed in this regard. While some special rules applied prior to August 31 [see Notice 2020-52], those have now lapsed. Employers must take the same steps to reduce or eliminate ADP safe harbor contributions as were needed to be taken, for example, in 2019. To summarize briefly, a 30-day advance notice must be distributed prior to the effective date of a required amendment to reduce or eliminate the contribution. The employer will need to make the full safe harbor contribution calculated to the later of the effective date or the adoption date of the amendment. The plan must pass the ADP test (and, if applicable, the ACP test) for the entire plan year using the "current-year" method. That means the employer cannot change its mind and reinstate any type of ADP safe harbor for the plan year in which the safe harbor contribution has been reduced or eliminated. The plan will lose the benefit of the safe harbor top-heavy exemption.

For your convenience, on April 9 we posted sample template amendments and notices on our [FIS Pension Other Resources page](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.relius.net%2FNews%2FOtherResources.aspx%3FT%3DP&data=02%7C01%7Canne.dionne%40fisglobal.com%7Cd666fd68c0f54063e61608d80c760d05%7Ce3ff91d834c84b15a0b418910a6ac575%7C0%7C1%7C637273048452424989&sdata=CxzrRfEwPrggql%2FjSqSEKKFx5nuIy06yDlp8HIEe1oc%3D&reserved=0).

**Are any amendments needed for 457(b) plans?**

There are no amendments currently needed for 457(b) or 409A plans. These plans will eventually need to be amended for the SECURE Act and governmental 457(b) plans may be amended for the CARES Act. A terminating 457(b) plan should adopt our SECURE Act Terminating Plan Amendment, discussed earlier.

**Are any amendments needed for Cafeteria Plans and consumer driven health plans?**

The CARES Act added the ability to reimburse over the counter drugs without a doctor’s prescription, reimburse menstrual products, allow for telehealth reimbursement, expanded change in status rules and set a new limit for health FSA carryovers. There was also an extension for the claims procedure deadlines. We posted an amendment and SMM to cover all these on our [FIS Pension Other Resources page](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.relius.net%2FNews%2FOtherResources.aspx%3FT%3DP&data=02%7C01%7Canne.dionne%40fisglobal.com%7Cd666fd68c0f54063e61608d80c760d05%7Ce3ff91d834c84b15a0b418910a6ac575%7C0%7C1%7C637273048452434991&sdata=TsrQFXa1h8Rhj1up55jbH5L7Fyr5g2Zh7Iv%2BeV6umuA%3D&reserved=0). Only some of these provisions will be incorporated into our document system as many of these provisions are only applicable on a temporary basis.