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| |  |  |  |  | | --- | --- | --- | --- | |  |  |  |  | |  | | | | |  | (This announcement is for informational purposes only. Do not reply to this e-mail; you will not receive a response. If you have any questions, please call FIS Relius Support at 800-326-7235, or create an Incident using our Customer First feature located at <http://www.relius.net/Support/>.)   |  |  | | --- | --- | | **DATE:** | Tuesday, June 9, 2020 | | **SUBJECT:** | Recent Legislation Technical Update | | **DISTRIBUTION:** | FIS Relius Pension Technical Update Subscribers |   **SUMMARY**  Plan Update – Second Quarter 2020   **PURPOSE**  There have been many recent changes in retirement plan law. We summarize the 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 | Other Resources](https://www.relius.net/News/OtherResources.aspx?T=P) 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.  **What is the deadline for the Cycle 3 restatement period?**  We should receive approval for the FIS Cycle 3 document on or shortly after June 30, 2020, and the IRS has announced that the restatement window will begin on August 1, 2020. We will provide further information regarding the availability of the Relius Documents Cycle 3 Language systems throughout the summer.  **What retirement plan changes are required because of new laws?**  There are two new laws with major implications for retirement plans – i.e., the CARES Act and the SECURE Act. There are also separate disaster-relief provisions in the Further Consolidated Appropriations Act. There may be more laws in the near future as Congress continues to respond to the economic issues caused by COVID-19.  **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://www.relius.net/News/Docs/CARES%20Act%20Communication.docx). 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. * Participant loan limits are increased to the lesser of $100,000 or 100% of the account if made before September 23, 2020. * A one-year extension to the repayment due date can be added for loan payments becoming due between March 27, 2020 and December 31, 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 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. (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 now, but a follow-up amendment may be required based on future IRS guidance. 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://www.relius.net/News/OtherResources.aspx?T=P). Many of these provisions are only temporarily effective and will not be carried over to the document system.  **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 safe harbor plans, (3) extended time frames to adopt the new plans, and (4) new rules for required minimum distribution. We published a full summary in our [January 8 Technical Update](https://www.relius.net/News/TechnicalUpdateDetails.aspx?T=P&1=1&ID=1130).   **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 a SECURE amendment for terminating plans on our [FIS Pension Other Resources page](https://www.relius.net/News/OtherResources.aspx?T=P) on March 20.  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.  The amendments required for a terminating plan can change from day to day, depending 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://www.relius.net/News/TechnicalUpdateDetails.aspx?T=P&1=1&ID=1128) (see below) 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://www.relius.net/News/OtherResources.aspx?T=P).  **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 is December 31, 2021 (including for plans that are not using the calendar year as the plan year), although we advise preapproved 403(b) plan to adopt the amendment no later than December 31, 2020. We posted the most up-to-date version of this amendment February 24 on our [FIS Pension Other Resources page](https://www.relius.net/News/OtherResources.aspx?T=P). 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://www.relius.net/News/OtherResources.aspx?T=P). 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. FIS will also adopt this amendment for all plans where it is the provider and other document providers should adopt this amendment as well.  **Have the restatement deadlines for 403(b) or defined benefit plan restatements been extended?**  As a matter of IRS policy, [the IRS extended the deadline](https://www.irs.gov/retirement-plans/deadlines-extended-for-403b-plans-and-pre-approved-defined-benefit-plans) for adopting a PPA preapproved DB plan from April 30, 2020 to July 31, 2020, and extended the general deadline for a 403(b) plan to restate as a preapproved plan from March 31, 2020 to June 30, 2020.  **What rules were changed with regard to suspending or reducing ADP safe harbor contributions?**  No rules have changed in this regard. 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://www.relius.net/News/OtherResources.aspx?T=P).  **Does a terminating defined benefit plan need to be restated onto the PPA approved document prior to being terminated?**  Defined benefit plans terminating before July 31, 2020 do not need to be restated for PPA, whether or not the plan is being submitted to the IRS for a determination letter upon termination using Form 5310. If, however, a pre-approved plan is not being submitted to the IRS for a determination letter on plan termination, then we recommend the pre-approved plan be restated onto one of the PPA pre-approved documents. This way the employer can be assured the plan language satisfies the changes made by PPA (and the other changes in the law that are included in the PPA document). If the plan is not restated, then there is no reliance on the interim good-faith amendments that had been adopted and this could be a potential problem upon an IRS audit (if the auditor finds any defects in those good-faith amendments). In contrast, plans that are currently not on a pre-approved document continue to have reliance on any determination letter issued to the plan only to the extent provided by IRS Revenue Procedure 2016-37. As a result, in may be more important for an non-preapproved plan to be submitted for a determination letter.  **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.  **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, and also reimburse menstrual products. We posted an amendment on our [FIS Pension Other Resources page](https://www.relius.net/News/OtherResources.aspx?T=P) on May 7. However, we will be updating this amendment due to the IRS and DOL issuing further guidance concerning change in status, health FSA carryovers, and the extension of deadlines under the claims procedures. The new amendment and SMM will be posted in the coming weeks at the link. Although the IRS provisions have a longer deadline, we are advising the amendment be adopted by December 31, 2020 because of the provisions relating to the CARES Act, which do not have an extended due date. Only some of these provisions will be incorporated into our document system as many of these provisions are only applicable on a temporary basis.   **WHERE TO GO FOR MORE INFORMATION**  If you have further questions, please submit an incident via our support site at <https://www.relius.net//Support/Login.aspx>.  [Privacy Policy](http://www.relius.net/Legal/Privacy.aspx)   FIS, Copyright 2020. All rights reserved.  CONFIDENTIALITY: This email (including any attachments) may contain confidential, proprietary and privileged information, and unauthorized disclosure or use is prohibited. If you received this email in error, please notify the sender and delete this email from your system. | |  | |

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