**INSTRUCTIONS FOR CARES TAX ACT AMENDMENT FOR EMPLOYERS**

**Note: November 2021, we posted version 1.2 of our CARES Act Amendment for Employers. It updates version 1.1 (posted in 2020) to add functionality requested by our clients. This includes the new describe line at 2.4(h), and the SECURE Act change permitting money purchase pension plans to make Coronavirus-Related Distributions. However, Document Providers who used version 1.1 do not need to update or modify their amendment unless they wish to use the additional functionality.**

FIS has developed an amendment which may be used to update plans for the Coronavirus Aid, Relief, and Economic Security Act, the “CARES Act.” The CARES Act authorizes three types of relief for Qualified Individuals: (1) Coronavirus-Related Distributions (CRDs) of up to $100,000; (2) doubled loan limits; (3) a temporary suspension of loan repayments and an extension of the due date. It also allows a plan (other than a defined benefit plan or a tax-exempt 457(b) plan) to suspend paying required minimum distributions (RMDs) in 2020. IRS Notices 2020-50 and 2020-51 provide guidance regarding this relief. The CARES Act Communication explains this relief.

This amendment allows a plan to implement the CARES Act rules for retirement plans. 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 options in this amendment.

Each article 3-5 is self-contained. Section 1 of each article identifies the plans to which the article applies. Article 2 allows the employer to determine which CARES Act provisions the employer wishes to apply and to specify any limitations on that relief.

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| Article | Subject | Elections |
| 3 | CRD | 2.3(b) or 2.3(d) turn ON the CRD provisions for Qualified Individuals2.3(d)(1) prohibits CRDs from accounts that are not fully vested2.3(d)(2) limits the accounts from which CRDs can be made2.3(d)(3) limits the maximum amount of CRDs2.3(d)(4) allows specification of additional provisions relating to CRDs |
| 4 | Participant loan relief | 2.3(b) or 2.3(e) turn ON the provision doubling loan limits to Qualified Individuals 2.3(e)(1) limits the maximum amount of loans2.3(e)(2) limits the maximum percentage of an account that can be borrowed2.3(e)(3) allows specification of additional provisions relating to loans to Qualified Individuals2.3(b) or 2.3(f) turn ON the extension of loan repayments2.3(f)(1) allows specification of loan suspension period2.3(f)(2) allows specification of loan extension period2.3(f)(3) allows specification of additional provisions relating to loan extensions |
| 5 | RMDs | The default is to distribute RMDs unless a participant elects to waive them and to offer direct rollovers only for distributions that would be eligible rollover distributions without regard to CARES RMD changes. 2.4(a) waives distribution of RMDs unless a participant elects to receive them2.4(b) is a hybrid provision, defaulting to making distributions only if the participant would be receiving amounts in excess of the RMD2.4(c) leaves the RMD provisions of the plan untouched2.4(d) allows the employer to specify its own RMD election2.4(e) through (h) allow the employer to expand direct rollovers |

Employers wishing to implement any portion of the CARES Act should complete the information in Section 2.2 of the amendment, select appropriate options in Sections 2.3, 2.4, and 2.5, and sign the amendment. The amendment is effective March 27, 2020 unless a later date is specified in Section 2.5. There are several approaches to completing Section 2.3 of the amendment:

* If you want to provide the default RMD rule, but none of the relief for Qualified Individuals, complete 2.2, check 2.3(a) (“No”), and sign the amendment. Note that defined benefit plans do not qualify for RMD waivers, and therefore need not sign this amendment if they do not wish to implement the CRD or participant loan provisions.
* If you want to provide all of the relief for Qualified Individuals (without limitations) and the default RMD rule, complete 2.2, check 2.3(b) (“Yes”), and sign the amendment.
* If you want to provide some of the relief for Qualified Individuals and the default RMD rule, complete 2.2, check 2.3(c) (“Some”), enter the desired selections in 2.3(d), (e), and (f) as applicable, and sign the amendment.
* Sections 2.3(d)(4), 2.3(e)(3), and 2.3(f)(3) allow the specification of provisions or restrictions applicable to relief for Qualified Individuals, which would override contrary provisions in the Plan or this amendment. The following are examples of such provisions.
	+ Coronavirus-Related Distributions are limited to current Employees of the Employer.
	+ A Qualified Individual who already has an outstanding participant loan may receive an additional loan prior to September 24, 2020.
	+ The Plan’s limit on the number of in-service distributions available to a Participant during a Plan Year will apply to Coronavirus-Related Distributions to current Employees of the Employer.

**Must all employers adopt the amendment?**

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

**Are other documents available?**

In addition to the Amendment and these Instructions, 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.
* A COVID 19 Certification for employees to indicate that they are Qualified Individuals.
* Distribution and loan application forms.
* A sample Notice explaining the CARES Act provisions. Endnotes to the Notice provide detailed instructions on how to modify the Notice for different situations. The Notice serves several functions:
	+ It explains to employers the substantive provisions of the amendment.
	+ It informs employees of their options under the amendment. We recommend plan sponsors distribute it to employees as soon as practical after signing the amendment.
	+ It acts as a Summary of Material Modifications required by DOL regulations.
	+ It updates the safe harbor notice for safe harbor 401(k) and 403(b) plans. See endnote 13 of the Notice.
	+ It can be used to explain special distribution fees, if any relating to distributions and loans to Qualified Individuals. See endnote 8 of the Notice.

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

No. This amendment is designed for the employer to sign. We are, however, providing a separate 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. At present, we do not anticipate updating the document system to reflect this amendment. RMD provisions are likely to appear as part of FIS cycle 4 documents.

**Do you anticipate updating this amendment?**

We may update this amendment to reflect subsequent guidance relating to the issues discussed in this amendment, or further legislation relating to the coronavirus. An example of such legislation is the SECURE Act, which allowed money purchase pension plans to make Coronavirus-Related Distributions (which is now incorporated into Article 3). It is possible that further guidance could mandate modifications in this amendment. Note that plans can implement any and all of the provisions of the amendment prior to signing it. The latest version of the amendment will always be posted at <https://www.relius.net/News/OtherResources.aspx?T=P>.