**AMENDMENT TO IMPLEMENT DEEMED IRA**

**Instructions**

FIS has developed a good-faith amendment that may be used to modify a defined contribution plan to add a deemed IRA feature described in Code §408. It is primarily designed for use with governmental 457(b) plans and with 403(b) plans. It can also be used with qualified plans, although its use there may impact reliance on the plan’s opinion letter as described below.

**What is a deemed IRA?**

A deemed IRA is a separate account maintained in a retirement plan into which a participant may contribute regular IRA contributions. Deemed IRAs can hold a traditional IRA contribution or a Roth IRA contribution. Deemed IRAs follow all IRA rules. They are not subject to any of the rules which normally apply to retirement plans. For example, the deemed IRA is not considered an annual addition for purposes of section 415, and it is not subject to the ADP or ACP test. It does not impact a participant’s 402(g) limit.

Among the rules to which the deemed IRA is subject is the requirement that there is a bank trustee, or another trustee that could be an IRA custodian. This may require a separate trustee depending on the arrangement involved. Particularly for a 403(b) plan, which does not normally have a trustee, this will require a separate trust document which is not included with this amendment. Deemed IRA funds must be held in separate recordkeeping accounts.

**Is it mandatory to adopt this amendment?**

No. This is an optional provision.

**What plans can adopt this amendment?**

Qualified defined contribution plans, 403(b) plans, and governmental 457(b) plans can adopt this amendment.

**Will use of this amendment adversely impact reliance on the plan document?**

That depends on the specific document:

* **457(b) plans** do not have IRS reliance because there is no process to obtain an opinion letter for these plans. Adopting this amendment for governmental 457(b) plans will not adversely impact those plans.
* The FIS **403(b) plan** is a volume submitter plan. Under Revenue Procedure 2013-22, an employer can adopt this amendment without adversely impacting reliance on the plan’s advisory letter. However, the amendment as such has not been submitted to or approved by the IRS, and there is no reliance on the amendment.
* Deemed IRA contributions are already available in the **PPD document** from FIS. The document refers to them as “designated IRA contributions.” The plan provisions are in section 3.12 of the cycle 3 document and closely mirror the provisions of this amendment. Elections 6(h) and 36 should be used to activate these features. There is no need for employers using the PPD document to adopt this amendment.
* Adoption of this amendment by another FIS defined contribution plan, such as the **Corbel** document will cause the plan to lose reliance. We strongly recommend that the employer submit the plan with the amendment to the IRS with Form 5307 for a determination letter prior to the restatement period ending July 31, 2022. Note that we plan to incorporate these provisions into the cycle 4 version of our preapproved document.

**When must plans be amended?**

The employer should adopt this amendment before receiving deemed IRA contributions.

**Can I adopt this Amendment on behalf of all of my employer clients?**

No. This amendment is designed to be adopted individually by employers that wish to offer this provision.

**Can I modify the Amendment?**

Yes. **This Amendment is not an IRS model amendment and has not been reviewed by the IRS.** Note, however, that it closely models corresponding provisions in the PPD document, and the IRS has reviewed and approved those provisions in the context of that document.

**How do I complete the amendment?**

Complete the identifying information and make the appropriate elections in Article 2. Then, sign and date 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, if applicable), and a sample Summary of Material Modifications (SMM) (if applicable). 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.