**AMENDMENT TO PROVIDE FOR POOLED EMPLOYER PLAN (PEP)**

**Instructions**

FIS has developed an amendment which may be used to update a multiple employer qualified defined contribution plan for the pooled employer plan (PEP) provisions of SECURE Act §101. 403(b) plans cannot use a PEP. This document explains the use of this amendment.

**What is a PEP and a PPP?**

A pooled employer plan, or “PEP” is a type of multiple employer plan (MEP) operating under ERISA §3(43) and Code §413(e). The Named Fiduciary and Plan Administrator of the PEP is the Pooled Plan Provider (PPP).

**When is the earliest a PEP can be established, or a MEP can be amended to become a PEP?**

The new PEP rules are not effective until the first plan year beginning after December 31, 2020. Additionally, to be a PPP, an organization must register with the DOL. Under proposed rules, registration will be completed using an online Form PR, which would need to be submitted at least 30 days before a PPP begins operating as such. Operations include marketing services as a PPP. (As of this writing, Form PR is not available because the implementing regulations have not been finalized.)

**How does this amendment relate to the plan document for a PEP? How is it adopted?**

This amendment is designed to modify a MEP to make it a PEP. It contains the provisions the law requires for a PEP. It can be used with the “Corbel,” “PPD,” or “Governmental” PPA or Cycle 3 preapproved plan documents created using the Relius Document software. (The amendment is not designed for use with the ESOP, Solo(k), or IDP-formatted documents.) It is anticipated that the plan document will reflect that the plan is a MEP, and that adopting employers will sign participation agreements.

To adopt this amendment, complete the information in Article 2. It should be signed by the employer adopting the plan, the PPP, and the trustee named in Section 2.1(C).

**When should this amendment be adopted?**

Because this is a SECURE Act amendment, it can be adopted as late as the last day of the 2022 plan year (or 2024 for a governmental plan). However, because of the importance of the provisions and the central role the PPP plays in the PEP, we are providing this amendment now.

**Can I modify this amendment?**

Yes. This is a good faith amendment, and the IRS has not reviewed or approved it.

**Will FIS update this amendment?**

We anticipate updating the amendment based on IRS and DOL guidance when it is issued. SECURE requires the IRS to provide a model PEP amendment, but we do not anticipate that they will do so until both agencies have issued guidance relating to the application of the new law. **Almost surely that guidance will require modification of this amendment.** Note that Code §413(e) and ERISA §3(44) state that an employer or PPP “shall not be treated as failing to meet a requirement” of ultimately issued IRS and DOL guidance if “before the issuance of such guidance, the employer or pooled plan provider complies in good faith with a reasonable interpretation of the” law. We believe this amendment to represent such a reasonable, good faith interpretation until the agencies provide guidance.

The most current version of this amendment will be posted at <https://www.relius.net/News/OtherResources.aspx?T=P>.