**Discretionary Matching Contribution**

**Participant Summary**

**Instructions**

As the IRS reviewed Cycle 3 401(k) plans, they initially objected to the inclusion of discretionary matching contributions. Ultimately, they relented, on condition that plan documents include a clause substantially similar to the following:

For any Plan Year beginning after the Plan Year the Employer signs its Adoption Agreement, if the Employer makes a Flexible Discretionary Match to the Plan, the Employer must provide the Plan Administrator (or Trustee, if applicable), written instructions describing (1) how the Flexible Discretionary Match Formula will be allocated to Participants (e.g., a uniform percentage of Elective Deferrals or a flat dollar amount), (2) the computation period(s) to which the Flexible Discretionary Match Formula applies, and (3) if applicable, a description of each business location or business classification subject to separate Flexible Discretionary Match Formulas. Such instructions must be provided no later than the date on which the Flexible Discretionary Match is made to the Plan. A summary of these instructions must be communicated to Participants who receive an allocation of the Flexible Discretionary Match no later than 60 days following the date on which the last Flexible Discretionary Match is made to the Plan for the Plan Year.

The key points of the requirement are:

* The Employer must tell the Plan Administrator or Trustee, in writing, at the time of making a flexible discretionary matching contribution, the formula for allocating that formula, including the time period for computing the match. If different formulas apply to different groups of participants (such as different office locations), the employer must describe the different formulas applicable to the different groups.
* The Employer or Plan Administrator must “communicate” a “summary” of the matching formula to the participants who receive an allocation of the matching contribution.
* The deadline to communicate this summary is 60 days after the employer makes the final flexible discretionary matching contribution for the Plan Year. It can be made any time before that, including at the beginning of the Plan year.
* The first year for which this communication is required is the Plan Year following the year the Employer signs the Cycle 3 restatement. So, if an employer restates its calendar year 401(k) plan in 2021 for Cycle 3, then the communication is first due for the 2022 Plan Year. If the Employer completes making the 2022 matching contribution April 1, 2023, then the deadline to provide the communication is May 30, 2023.
* The new communication requirement applies to the “Flexible Discretionary Match.” It does not apply to fixed matching contributions, or to a “Rigid Discretionary Match,” which has certain document-mandated allocation provisions.
* There is no statutory or regulatory requirement to provide this communication. However, because it is part of the plan document, failure to provide the communication will result in an operational failure.
* The IRS originally proposed that the summary be a “notice.” Ultimately, the IRS softened the requirement to a “communication.” This suggests that any method of imparting information to participants (including electronic notices) will be acceptable.

The attached document provides sample language that can be used to provide the communication to participants. In large measure, it consists of a series of optional clauses, to be used and modified as circumstances warrant. Clauses that do not apply should be deleted. Modifications will be needed if the plan matches after-tax voluntary contributions.

**Discretionary Matching Contribution**

**Participant Summary**

The Employer, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,[[1]](#footnote-1) has made a discretionary matching contribution on your behalf to the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[[2]](#footnote-2) for the Plan Year ending \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. This is in addition to any other contribution to which you are entitled under the terms of the Plan.[[3]](#footnote-3) [[4]](#footnote-4) The exact amount of your contribution is reflected in your periodic benefit statement.

*[Alternative one, simple]* This contribution is \_\_\_%[[5]](#footnote-5) of your elective deferrals, not to exceed \_\_\_%[[6]](#footnote-6) of your compensation, determined \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.[[7]](#footnote-7)

*[Alternative two, tiered]* This contribution formula depends on how much you deferred, determined \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, according to the following table

|  |  |
| --- | --- |
| Elective Deferral % | Matching Rate % |
| \_\_\_\_\_\_\_% | \_\_\_\_\_\_\_% |
| \_\_\_\_\_\_\_% | \_\_\_\_\_\_\_% |
| \_\_\_\_\_\_\_% | \_\_\_\_\_\_\_% |

*[Alternative three, service-based]* This contribution formula, determined \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, depends on your service according to the following table

|  |  |
| --- | --- |
| Years of Service | Matching Rate % |
| \_\_\_\_\_\_\_ | \_\_\_\_\_\_\_% |
| \_\_\_\_\_\_\_ | \_\_\_\_\_\_\_% |
| \_\_\_\_\_\_\_ | \_\_\_\_\_\_\_% |

 *[Alternative four, discretionary true-up]* The Plan provides for a fixed matching contribution of \_\_\_\_% of your elective deferrals, not to exceed \_\_\_\_% of your compensation, determined \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Employer has elected to determine the matching contribution on the basis of the Plan Year as a whole. In some cases, this may result in you receiving a larger matching contribution than you would have otherwise. It will not reduce the matching contribution to which you are entitled.

1. Insert the name of the Employer. The name of the Employer could be omitted it more than one employer sponsors the plan. [↑](#footnote-ref-1)
2. Insert the name of the Plan. [↑](#footnote-ref-2)
3. Delete this sentence if this flexible discretionary match is the only employer contribution for the year. [↑](#footnote-ref-3)
4. If the plan provides different matching formulas for different participants or categories of participants, add the following sentence: “The following describes the matching contribution which applies to you.” [↑](#footnote-ref-4)
5. Insert the contribution percentage. [↑](#footnote-ref-5)
6. Insert the compensation limitation percentage. Modify if needed to reflect a dollar limitation. [↑](#footnote-ref-6)
7. Insert the computation period, such as “on a payroll by payroll basis,” “monthly,” “quarterly” “for the year as a whole.” [↑](#footnote-ref-7)