**AMENDMENT TO IMPLEMENT VOLUNTARY ESCHEAT**

**Instructions**

FIS has developed an amendment which may be used to update qualified and 403(b) plans to allow for voluntary escheat of small lost participant accounts and uncashed checks. It is designed to implement the temporary safe harbor procedures the DOL announced in FAB 2025-01

Employers who wish to implement this amendment should complete the plan information on the first page and complete the signature block on the second page.

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

No. This amendment is designed for an individual employer to adopt. We have provided a separate amendment which can be used by a document Provider.

**When should this amendment be adopted?**

This is a discretionary amendment unrelated to qualification requirements. Therefore, the deadline to adopt it is the last day of the plan year the amendment is put into effect.

**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 may update this amendment to reflect DOL guidance, as warranted.

Please check the Relius.net [Other Resources](https://www.relius.net/News/OtherResources.aspx?T=P) page to find the most current version of 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) and a sample Summary of Material Modifications for distribution to participants.

**What does this amendment allow a plan to do?**

This amendment gives the Plan Administrator an option for dealing with lost participant accounts, including uncashed checks, in addition to any other options provided in the plan. With this option, the plan can voluntarily distribute small lost participant accounts to a state unclaimed property fund. However, there are several conditions the plan must follow to use this option:

* The amount must not exceed $1,000. This includes rollovers but is reduced by plan loan offsets.
* The amount must be distributable under the terms of the plan. For example, if the plan does not allow distribution of the account without participant consent, then the participant must have consented to the distribution.
* The plan administrator must determine that escheat is a prudent distribution option.
* The plan must have a prudent program to locate lost participants consistent with [DOL best practices](https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/retirement/missing-participants-guidance/best-practices-for-pension-plans).
* The plan must describe the program in its summary plan description. The attached Summary of Material Modifications should satisfy this requirement.
* Under IRS rules, the plan should treat the escheat of the funds as a distribution. It would report the distribution on Form 1099-R and withhold 20% of the distribution for federal income tax.
* The distribution should go to the Eligible State Fund of the lost participant’s last known residence. This amendment does not apply if that state’s unclaimed property fund is not an Eligible State Fund.
* The plan administrator can rely on the state Treasurer, or similar official’s statement that their state unclaimed property fund is an Eligible State Fund. The term “eligible state fund” means a state unclaimed property fund that:
  1. acts as the custodian of the funds for the benefit of the affected participants, beneficiaries, and their heirs and allows for claims to be made and paid in perpetuity regardless of when unclaimed property was received by the state;
  2. does not reduce the transfer amount by any fees or other charges (i.e., pays the approved claimant not less than 100% of the amount reported and remitted by the fiduciary);
  3. maintains or causes to be maintained a searchable website that reliably shows, at no charge, the name of the missing participant or beneficiary and the name of the plan in the results page of a search and permits an electronic claims process;
  4. provides the public with the ability to make inquiries concerning unclaimed property by physical mail, electronic mail, and telephone;
  5. participates in the National Association of Unclaimed Property Administrators MissingMoney.com website or similar non-commercial unclaimed property database operated under the auspices of the National Association of State Treasurers, Inc.;
  6. provides streamlined processing for small claims (e.g., claims of $1,000 or less);
  7. diligently searches at least annually for an updated address for missing participants and beneficiaries for amounts in excess of $50, and, upon obtaining an updated address, notifies the owner in writing that the state fund is holding the owner’s money;
  8. permits a plan whose fiduciary has transferred the unclaimed property to the state to pay a reappearing participant or other payees directly, and then obtain reimbursement from the state; and
  9. participates in the States’ Unclaimed Property Clearing House, as operated by the National Association of State Treasurers, Inc.

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**ARTICLE 1**

**PREAMBLE**

1.1 **Adoption and effective date of Amendment**. This Amendment applies to the following Plan: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Employer hereby adopts this Amendment to the Plan, effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

1.2 **Superseding of inconsistent provisions**. This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment. Except as otherwise provided in this Amendment, terms defined in the Plan will have the same meaning in this Amendment.

1.3 **Numbering.** Except as otherwise provided in this Amendment, any “Section” reference in this Amendment refers only to this Amendment and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to the Plan article, section, or other numbering designations.

1.4 **Intention; Construction**. The purpose of this amendment is to amend the Plan to use allow for distribution of missing participant accounts to state unclaimed property funds in accordance with FAB 2025-01.

**ARTICLE 2**

**ESCHEAT OF CERTAIN “LOST PARTICIPANT” ACCOUNTS**

2.1 **Lost Participants.** If the Plan Administrator is unable to locate any Participant, Beneficiary, or Alternate Payee whose Vested Accrued Benefit becomes distributable under the Plan, or if the Plan has made a distribution but the check is uncashed (a "Lost Participant"), then the provisions of this Article will apply. This Article supplements any existing Plan provisions relating to Lost Participants and is intended to provide the Plan Administrator with an additional option in addressing Lost Participants. It does not replace or supersede the existing Plan provisions and alternatives regarding Lost Participants.

2.2 **Limitation.** This Article applies to a Lost Participant only if the present value of the Lost Participant’s vested accrued benefit is $1,000 or less. In determining this amount, the Plan Administrator will disregard the amount of outstanding plan loans but must include rollover contributions described in Code §411(a)(11)(D).

2.3 **Action.** If this Article applies to a Lost Participant, and the Plan Administrator has satisfied the following conditions, the Plan Administrator may, in its discretion, transfer the Lost Participant’s Vested Accrued Benefit to the Eligible State Fund offered by the state of the Lost Participant’s last known address:

(a) The plan fiduciary determines that the transfer to an Eligible State Fund is a prudent destination for the Lost Participant’s retirement benefit payments.

(b) The Plan Administrator has implemented a prudent program to find Lost Participants and nevertheless has been unable to locate the Lost Participants. Such a program should be consistent with best practices published by the Department of Labor from time to time.

(c) The Plan’s summary plan description or a summary of material modifications (or a similar document for a plan not subject to ERISA) explains that retirement benefit payments of Lost Participants may be transferred to an Eligible State Fund and identifies the name, address, and phone number of a plan contact for further information concerning the eligible state funds to which the retirement benefit payments are transferred.

2.4 **Definitions.** The following terms have the meaning set forth in this paragraph.

(a) A Lost Participant’s “**Vested Accrued Benefit**” means the nonforfeitable balance of the individuals account or accrued benefit under the Plan. If the Plan has previously distributed the Participant’s Vested Accrued Benefit but the check remains uncashed, the Vested Accrued Benefit is the amount of the uncashed check.

(b) An “**Eligible State Fund**” is a State Unclaimed Property Fund which satisfies the conditions described in FAB 2025-01 to be an Eligible State Fund.

2.5 **Cross-reference.** See Rev. Proc. 2020-24 regarding withholding and reporting obligations of amounts transferred to an Eligible State Fund.

This Amendment has been executed this \_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_.

Name of Employer:

By:

**SUMMARY PLAN DESCRIPTION**

**MATERIAL MODIFICATIONS**

This is a Summary of Material Modifications regarding the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Plan"). This is merely a summary of an important change to the Plan and information contained in the Summary Plan Description ("SPD") previously provided to you. It supplements and amends that SPD so you should retain a copy of this document with your copy of the SPD. If you have any questions, contact the Administrator. If there is any discrepancy between the terms of the Plan, as modified, and this Summary of Material Modifications, the provisions of the Plan will control.

Beginning \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, if there is an uncashed check from the Plan to you, and your vested accrued benefit under the Plan totals $1,000 or less, and your Employer is unable to locate you so that it can distribute the amount to you, you may be considered a “lost participant.” Your beneficiary, former spouse, or other alternate payee can also be treated as a “lost participant.” In that case, your Employer may transfer the amount of unclaimed or uncashed funds to the state unclaimed property fund of the state of the lost participant’s last known address. The following person can be contacted for further information regarding the eligible state fund that received the transferred funds:

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CERTIFICATE OF ADOPTING RESOLUTION**

The undersigned authorized representative of (the Employer) hereby certifies that the following resolution was duly adopted by Employer on , and that such resolution has not been modified or rescinded as of the date hereof:

RESOLVED, the Amendment to Implement Voluntary Escheat (the Amendment) is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Plan Administrator the Amendment and to take any and all actions as it may deem necessary to effectuate this resolution.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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[print name/title]