**STARTER 401(K) AMENDMENT**

**Instructions**

FIS has developed a good-faith amendment that may be used to modify a 401(k) plan to be a starter deferral-only 401(k) plan described in Code §401(k)(16).

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

No. This is an optional provision. We anticipate that few plans will use it because it limits elective deferrals essentially to $6,000 plus a $1,000 catch-up. However, there is no ADP testing and no top-heavy contributions. As such, the plan offers an alternative to many state mandatory IRA contribution programs. Note that FIS is unable to comment on whether adoption of this amendment will satisfy a particular state law mandate.

**What plans can adopt this amendment?**

This amendment is available only for 401(k) plans. Any employer that can adopt a 401(k) plan can adopt this amendment. However, the starter 401(k) plan must be the only plan of the employer (other than certain union plans). If the employer or a related employer sponsors a qualified, 403(b) or 457(b) plan, or a SEP, or SIMPLE IRA, it cannot sponsor a starter 401(k) plan.

**When must plans be amended?**

Participants generally cannot defer to a 401(k) plan before the plan itself is signed. However, the amendment can be adopted any time before the end of the plan year. Because starter 401(k) plans were part of SECURE 2.0, the amendment is timely if adopted any time before December 31, 2026 (or later for governmental or certain union plans).

**What provisions should be in the plan itself?**

This amendment is designed to work with certain provisions contained in the plan document. Specifically, the document should include the following provisions:

1. The plan must be an ACA or an EACA. The plan must specify a default deferral percentage, applicable to all Participants who have not made a contrary election, or 3% - 15% of compensation. This amendment does not specify a default deferral percentage, so the plan document itself must do so.
2. The plan must not provide for any excluded classes of participants, other than nonresident aliens and collective bargaining employees. It can exclude part-time employees with fewer than 1000 hours of service, because that is a service condition, and such employees will enter after completing a Year of Service. Note that the LTPT rules will apply to starter 401(k) plans, and that leased employees, reclassified employees, and employees of nonparticipating employers will be eligible to participate.
3. The plan must not allow any employer contributions, including matching or nonelective contributions. Therefore, the plan should not be a safe harbor or QACA 401(k) plan.

With these provisions, the SPD will accurately reflect the information participants need to know about the plan, other than the reduced deferral limits, which will be described in each year’s participant notice.

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

No. This amendment is designed to be adopted individually by employers.

**Can I modify the Amendment?**

Yes. **This Amendment is not an IRS model amendment and has not been reviewed by the IRS.** This Amendment is intended to be a good‑faith amendment. We will include Starter 401(k) provisions in our Cycle 4 preapproved documents, which will supersede this amendment.

**Does the employer need to provide an annual notice in connection with this amendment?**

Yes. The plan must follow the notice rules which otherwise apply to QACAs. This means that generally the notice must be provided a reasonable time before the beginning of the plan year. 30 to 90 days is deemed reasonable. The notice must be provided sufficiently early so that the employee has a reasonable period of time after receipt of the notice to make a deferral election. The notice must include the following information:

* The type and amount of compensation that may be deferred, including the annual limits
* The default deferral contribution percentage
* The right to election not to have deferrals or to elect a different percentage
* How to make deferral elections (including administrative requirements or timing restrictions)
* How contributions are invested (including the plan’s default investment, if applicable)
* Withdrawal provisions under the plan (the notice can reference the SPD)
* Contact information

**How do I complete the amendment?**

* Complete the identifying information in Section 2.1.
* Enter the effective date in Section 3.1.
* The employer should 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), and a sample annual notice to participants. 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.

**AMENDMENT TO ADOPT STARTER 401(k) PLAN**

**ARTICLE 1. PREAMBLE**

1.1 **Adoption; purpose**. The Employer hereby adopts this Amendment to the Plan identified below.

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 **Construction.** 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. The purpose of the amendment is to implement a “Starter 401(k) deferral-only plan” as described in Code §401(k)(16) and any related IRS guidance (whether issued before or after the date of this amendment) and shall be interpreted and applied accordingly.

**ARTICLE 2. IDENTIFICATION**

2.1 **Identifying information.**

A. Name of Employer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

B. Name of Plan: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ARTICLE 3. STARTER 401(k)**

3.1 **Effective Date.** This amendment applies as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which is the first day of the Plan Year. [Enter date after December 31, 2023]

3.2 **Contributions.** The Plan is an Automatic Contribution Arrangement as more fully set forth in the Plan. The automatic contribution provisions of the Plan call for a uniformly determined default Elective Deferral percentage that is not less than 3% or more than 15% of compensation, and those provisions apply to all Participants (other than those who make an affirmative deferral election or who have filed an election not to defer). In no event shall the default deferral percentage exceed those limitations. No contributions other than Elective Deferrals and rollover contributions may be made to the Plan.

3.3 **Only Plan.** The Plan is and shall be the only Retirement Plan with respect to which contributions are made or benefits are accrued after the Effective Date in Section 3.1. However, if the Employer is involved in an acquisition, disposition, or similar transaction under which the Employer satisfies Code §410(b)(6)(C)(i), the Employer remains eligible to maintain the Plan under this amendment for two additional Plan Years following the Plan Year in which the Employer last satisfied the requirements. For purposes of this section, the term “Retirement Plan” refers to a plan described under Code §§401(a), 403(b), 457(b) or 219(g)(5), other than a plan covering only collectively bargained employees described in Code §410(b)(3)(A).

3.4 **Participation.** Each Employee of the Employer who meets the age and service conditions of specified in the plan, which may not exceed the limitations of Code §410(a)(1) (age 21/1 Year of Service) shall enter the plan on his or her Entry Date (or such earlier time as may be specified in the Plan), other than Employees described in Code §410(b)(3) or (4) (nonresident aliens without US Source income and certain collective bargaining employees). Other exclusions, such as those which apply to leased employees, reclassified employees, or employees of nonparticipating related employers, will not apply.

3.5 **Deferral Limitation.** A Participant's annual Elective Deferrals may not exceed the amount as in effect under Code §401(k)(16)(D) ($6,000 in 2024) under which Treasury adjusts the limit in $500 increments. However, if the Plan permits Catch-Up Deferrals, a Catch-up Eligible Participant may make Catch-up Deferrals not in excess of the limitation determined under Code §401(k)(16)(D)(iii) ($1,000 in 2024).

3.6 **Annual Notice.** The Plan will provide to each Participant an annual notice which complies with the timing and content requirements which apply to a qualified automatic contribution arrangement (QACA) under Code §401(k)(13)(E), Treas. Reg. §1.401(k)-3(d), (k)(4).

3.7 **Testing Exemptions.** The Plan is not subject to nondiscrimination testing under Code §401(k)(3) or the corresponding Plan provisions. The plan is not subject to the top-heavy provisions of Code §416 or the corresponding Plan provisions.

3.8 **Definitions.** The following definitions will apply for purposes of this Amendment.

1. “**Elective Deferrals**” means elective contributions that are made by the Employer on behalf of the Participants that are not includible in gross income under Code §§125, 402(e)(3), 402(h), or 403(b), and Roth elective deferrals described under Code §402A.
2. “**Catch-up Deferrals**” means additional Elective Deferrals described in Code §414(v).
3. “**Catch-up Eligible Participant**” means an eligible participant described in Code §414(v)(5) who would attain age 50 before the end of the calendar year.
4. “**Employer**” includes any Related Employer or Affiliated Employer described in Code §414(b), (c), (m), or (o).

This Amendment has been executed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_\_.

Name of Employer:

By:

**SUMMARY PLAN DESCRIPTION**

**MATERIAL MODIFICATIONS – STARTER 401(k) PLAN**

This is a Summary of Material Modifications regarding the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Plan"). This is merely a summary of important changes 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.

The Plan is a special kind of 401(k) plan, commonly known as a “starter 401(k).” A starter 401(k) plan has reduced employee deferral limits, which are similar to those available for an IRA. Each year, you should receive a notice from the Plan Administrator explaining the limits which apply to that year. For 2024, that limit is $6,000, with a possible catch-up contribution (for Participants who have attained age 50) of an additional $1,000.

**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 Adopt Starter 401(k) Plan (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:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[print name/title]

**STARTER 401(k) NOTIFICATION TO PARTICIPANTS[[1]](#endnote-1)**

This is an annual notice and only applies to the Plan Year beginning on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

You can find out more information about the Plan in the Plan's Summary Plan Description (SPD). You can obtain a copy of the SPD from the Plan Administrator.

**<R01>Employee deferral contributions**

You are allowed to defer a portion of your compensation to the Plan. These amounts are referred to as deferrals and are held in an account for your behalf. When you are permitted to take a distribution from the Plan, you will be entitled to all of your deferrals, as adjusted for any gains or losses. The type of compensation that may be deferred under the Plan is explained in the Summary Plan Description. You are always 100% vested in all of your deferrals.

Your total deferrals in any taxable year may not exceed the dollar limit which is set by law. The dollar limit may increase each year for cost‑of‑living adjustments. For this year, the limit is $6,000. If you are at least age 50 or will attain age 50 during a calendar year, then you may elect to defer additional amounts (called "catch‑up contributions") to the Plan. These are additional amounts that you may defer, up to an annual limit imposed by law, regardless of any other limits imposed by the Plan. For this year, the limit is $1,000.

**Automatic deferrals.** The Plan includes an automatic enrollment feature. **If you do not complete and return a salary reduction agreement**, then the Employer will automatically withhold \_\_\_\_% of your eligible compensation from your pay each payroll period and contribute that amount to the Plan as a deferral. If you wish to defer the automatic deferral amount, then you do not need to complete a salary reduction agreement. However, you may choose a different amount (including zero). You may make this election by submitting a salary reduction agreement to the Plan Administrator in accordance with the deferral procedures of the Plan.

**Distribution provisions**

The Plan and law impose restrictions on when you may receive a distribution from the Plan. See the SPD for details on how benefits are paid. Also, at the time you are entitled to receive a distribution, the Plan Administrator will provide you with a notice explaining the rules regarding the taxation of the distribution.

**Administrative procedures**

The amount you elect to defer will be deducted from your pay in accordance with a procedure established by the Plan Administrator. Your election will become effective as soon as administratively feasible. Your election will remain in effect until you modify or terminate it.

You may revoke or make modifications to your salary deferral election in accordance with procedures that the Plan Administrator provides.

In addition to any other election periods provided by the plan administrator, you may make or modify a deferral election during the 30‑day period immediately preceding the Plan Year for which this notice is being provided. For the Plan Year you become eligible to make deferrals, you may complete a salary deferral agreement during a 30-day period that includes the date you become eligible.

If you decide to start or change your elective deferral, you must complete the salary reduction agreement and return it to the Plan Administrator.

**Investments**

**Right to direct investment/default investment.** You have the right to direct the investment of your deferrals in any of the investment choices explained in the investment information materials provided to you.

We encourage you to make an investment election to ensure that amounts in the Plan are invested in accordance with your long-term investment and retirement plans. However, if you do not make an investment election, then the amounts that you could have elected to invest will be invested in a default investment that the Plan officials have selected.

**Employer's right to terminate Plan**

Pursuant to the terms of the Plan, your Employer has the right, at any time, to terminate the Plan. Termination of the Plan will result in the discontinuance of all contributions to the Plan with respect to any compensation you receive after the effective date of the termination. Termination of the Plan will not affect your right to receive any contributions you have accrued as of the effective date of the termination.

**Additional information**

**This notice is not a substitute for the Summary Plan Description.** The provisions of the Plan are very complex and you should always look at the Summary Plan Description if you have any questions about the Plan. If, after reading the Summary Plan Description, you still have questions, contact the Plan Administrator.

The Plan Administrator is the Employer, with the following contact information:

Contact:

Address:

Telephone:

Fax:

E‑mail address:

**Where to go for further investment information.** You can obtain further investment information about the Plan's investment alternatives by contacting the Plan Administrator.

1. This is a generalized annual notice to participants for a starter 401(k) plan. You will need to modify the notice if the plan allows Roth deferrals or does not allow catch-up contributions. You may also need to modify it to address specific plan procedures, such as minimum deferral amounts, or if the Plan Administrator is not the Employer. [↑](#endnote-ref-1)