

**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, making a Discretionary Employer Match to the Plan, the Employer must provide written instructions describing (1) the Discretionary Match Formula (e.g., a uniform percentage of Elective Deferrals or a flat dollar amount), (2) the computation period(s) to which the Discretionary Match will be applied. A summary of these instructions must be communicated to Participants who receive an allocation of the Discretionary Match no later than 60 days following the date on which the last Discretionary Match is made to the Plan for the Plan Year.

The key points of the requirement are:

- The new communication requirement applies to the “Discretionary Match.” It does not apply to Safe Harbor matching contributions, which has its own 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 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/or modified as circumstances warrant.

- Complete the Discretionary Matching Contribution Notice with the Matching allocation formula and the frequency in which the contribution will be submitted.

Discretionary Matching Contribution Annual Notice

Your Employer has elected to make a Flexible Discretionary Matching contribution on your behalf to the 401(k) Plan for the Plan Year ending December 31, 2025. This is in addition to any other contribution to which you are entitled under the terms of the Plan. The exact amount of your contribution is reflected in your periodic benefit statement.

This contribution is _____% of your elective deferrals, not to exceed _____% of your compensation, determined _____.

Or

This contribution is _____% of your elective deferrals, not to exceed \$ _____, determined _____.

Your Employer has the right to elect to change and/or stop the discretionary matching contributions at any time during the plan year. In the event your Employer elects to do so you will be notified.