

401(k) EP Phone Forum Handout

[REG-115699-09, 74 Fed. Reg. 23134 \(May 18, 2009\)](#)

This document contains the proposed amendments to the regulations relating to certain cash or deferred arrangements and matching contributions under section 401(k) plans and section 403(b) plans. The proposed regulations would allow plans that incur substantial business hardship to reduce or suspend safe harbor nonelective contributions during a plan year.

[T.D. 9447, 74 Fed. Reg. 8200 \(February 24, 2009\)](#)

These final regulations relate to automatic contribution arrangements. These regulations affect administrators of, employers maintaining, participants in, and beneficiaries of section 401(k) plans and other eligible plans that include an automatic contribution arrangement.

[Revenue Ruling 2009-30](#) provides guidance on how automatic enrollment in a § 401(k) plan can work when there is an escalator feature included. An escalator feature means that the amount of an employee's compensation that is contributed to the plan, without the employee's affirmative election, is increased periodically according to the terms of the plan. Two situations are described, one involves a basic automatic contribution arrangement and the other involves an eligible automatic contribution arrangement described in § 414(w) of the Code. Revenue Ruling 2009-30 is part of the "Savings Initiative" guidance issued by the Service.

[Revenue Ruling 2009-31](#) provides guidance on the tax consequences of an amendment to a tax-qualified retirement plan to permit annual contributions of an employee's unused paid time off under the employer's paid time off plan. A paid time off plan generally refers to a sick and vacation arrangement that provides for paid leave whether the leave is due to illness or incapacity. The amendment relates to a contribution (including a section 401(k) contribution) or cash out of the unused paid time off, determined as of the end of the plan year (December 31). Rev. Rul. 2009-31 is companion guidance to Rev. Rul. 2009-32 and is part of the "Savings Initiative" guidance issued by the Service.

[Revenue Ruling 2009-32](#) provides guidance on the tax consequences of an amendment to a tax-qualified retirement plan to permit contributions for an employee's accumulated and unused paid time off under the employer's paid time off plan at a participant's termination of employment. A paid time off plan generally refers to a sick and vacation arrangement that provides for paid leave whether the leave is due to illness or incapacity. The amendment relates to a post-severance contribution (including a section 401(k) contribution) or cash out of the accumulated and unused paid time off. Rev. Rul. 2009-32 is companion guidance to Rev. Rul. 2009-31 and is part of the "Savings Initiative" guidance issued by the Service.

[Notice 2009-65](#) provides two sample amendments that sponsors of § 401(k) plans can use to add automatic enrollment features to their plans. The first sample amendment can be used to add a basic automatic contribution arrangement with, if elected by an adopting employer, an escalation feature. The second sample amendment can be used to add an eligible automatic contribution arrangement ("EACA") as described in § 414(w) of the Code with, if elected by an adopting employer, an escalation feature. Final regulations under § 414(w) were published in the Federal Register on February 24, 2009 (74 F.R. 8200). Notice 2009-65, by providing sample amendments, facilitates the use of EACAs in § 401(k) plans. Notice 2009-65 is part of the "Savings Initiative" guidance issued by the Service.