

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1****[REG-108639-99]****RINs 1545-AX26, 1545-AX43****Retirement Plans; Cash or Deferred Arrangements Under Section 401(k) and Matching Contributions or Employee Contributions Under Section 401(m)****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would provide guidance for certain retirement plans containing cash or deferred arrangements under section 401(k) and providing for matching contributions or employee contributions under section 401(m). These regulations affect sponsors of plans that contain cash or deferred arrangements or provide for employee or matching contributions, and participants in these plans. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written and electronic comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for November 12, 2003, must be received by October 22, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG-108639-99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG-108639-99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS Internet site at: www.irs.gov/regs. The public hearing will be held in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, R. Lisa Mojiri-Azad or John T. Ricotta at (202) 622-6060 (not a toll-free number); concerning submissions and the hearing, and/or to be placed on the building access list to attend the hearing, Lanita Van Dyke, (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP Washington, DC 20224. Comments on the collections of information should be received by September 15, 2003. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are contained in §§ 1.401(k)-1(d)(3)(iii)(C), 1.401(k)-2(b)(3), 1.401(k)-3(d), 1.401(k)-3(f), 1.401(k)-3(g), 1.401(k)-4(d)(3), 1.401(m)-3(e), 1.401(m)-3(g) and 1.401(m)-3(h). The information required by §§ 1.401(k)-3(d), 1.401(k)-3(f), 1.401(k)-3(g), 1.401(m)-3(e), 1.401(m)-3(g) and 1.401(m)-3(h) is required by the IRS to comply with the requirements of sections 401(k)(12)(D) and 401(m)(11)(A)(ii) regarding notices that must be provided to eligible participants to apprise them of their rights and obligations under certain plans. This information will be used by participants to determine whether to participate in the plan, and by the IRS to confirm that the plan complies with applicable qualification requirements to avoid adverse tax consequences. The information required by § 1.401(k)-4(d)(3) is required by the IRS to comply with the requirements of section 401(k)(11)(B)(iii)(II) regarding notices

that must be provided to eligible participants to apprise them of their rights and obligations under certain plans. This information will be used by participants to determine whether to participate in the plan, and by the IRS to confirm that the plan complies with applicable qualification requirements to avoid adverse tax consequences. The information required by § 1.401(k)-2(b)(3) will be used by employees to file their income tax returns and by the IRS to assess the correct amount of tax. The information provided under § 1.401(k)-1(d)(3)(iii)(C) will be used by employers in determining whether to make hardship distributions to participants. The collections of information are mandatory. The respondents are businesses or other for-profit institutions, and nonprofit institutions.

Estimated total annual reporting burden: 26,500 hours.

The estimated annual burden per respondent is 1 hour, 10 minutes.

Estimated number of respondents: 22,500.

The estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed new comprehensive regulations setting forth the requirements (including the nondiscrimination requirements) for cash or deferred arrangements under section 401(k) and for matching contributions and employee contributions under section 401(m) of the Internal Revenue Code (Code).

Comprehensive final regulations under sections 401(k) and 401(m) of the Code were last published in the **Federal Register** in TD 8357 (published August 9, 1991) and TD 8376 (published December 2, 1991) and amended by TD 8581 published on December 22, 1994. Since 1994, many significant changes have been made to sections 401(k) and 401(m) by the Small Business Job Protection Act of 1996, Public Law 104-188 (110 Stat. 1755) (SBJPA), the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788) (TRA '97), and the Economic Growth and Tax Relief