

IRS Blesses Use of Forfeitures for QNEC/QMAC/Safe Harbor Contributions

The IRS has finalized regulations that allow employers to use forfeitures as qualified nonelective and qualified matching contributions to help pass nondiscrimination tests and as safe harbor contributions. The change is effective for plan years beginning on or after July 20, but, as previously offered in IRS' proposed regulation, can be relied on for earlier periods.

Background

As explained in our [January 18, 2017 For Your Information](#), final IRS regulations had restricted the funding of Qualified Nonelective Contributions (QNECs), Qualified Matching Contributions (QMACs), and safe harbor 401(k) contributions to new employer contributions that were fully vested at the time they were contributed to the plan. This meant that forfeitures from the accounts of participants who were not fully vested could not be used as a source of funding for these amounts. Most constituents had assumed in practice that plan forfeitures used for contributions would be treated the same as new money deposited by the employer — as long as the nonforfeitability requirement and distribution limitations were met when allocated to participants' accounts. IRS' proposed rule signaled their acceptance of this rational view of the requirement. Those that did not make this assumption generally only used the forfeitures for the payment of plan expenses.

Final Rule Adopted Without Substantive Modification

In their [final regulation](#), IRS affirms the ability to use forfeitures for these purposes. In response to comments, IRS offers guidance on how the anticutback rule would need to be addressed assuming the plan document requires an amendment to switch gears. The anticutback rule will not limit prospective amendments nor will it prohibit the change for plans that normally allocate forfeitures to all eligible participants at the end of the plan year to the extent funds remain after paying plan expenses.

Comment. With both the anticutback concern and because this would be a discretionary change, plan amendments will need to be adopted before the end of the plan year — don't expect extra time under a remedial amendment rule.



In Closing

If not addressed in response to the proposed rule in 2017, plan sponsors may wish to consider their options now that the rule is in final form and revise documents and administrative procedures accordingly.

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