TaxNewsFlash

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Final regulations: Revised 401(k) plan definitions, qualified matching and nonelective contributions

The U.S. Treasury Department and IRS today released for publication in the Federal Register final regulations (T.D. 9835) to amend the definitions of "qualified matching contributions" (QMACs) and "qualified nonelective contributions" (QNECs) under regulations relating to certain qualified retirement plans that contain cash or deferred arrangements under section 401(k) or that provide for matching contributions or employee contributions under section 401(m).

Employer contributions to a plan, thus, qualify as QMACs or QNECs if the contributions satisfy applicable nonforfeitability and distribution requirements at the time they are allocated to participants' accounts, but need not meet these requirements when they are contributed to the plan.

With today's **final regulations** [PDF 227 KB], regulations proposed in January 2017 were "adopted without substantive modification."

Reason for regulations

As explained when the regulations were proposed in January 2017—read ***TaxNewsFlash***—the IRS and Treasury had received comments that employer contributions ought to qualify as QMACs and QNECs if they satisfy applicable nonforfeitability and distribution requirements at the time they are allocated to participants' accounts, rather than when they are first contributed to the plan. If nonforfeitability and distribution requirements were required to be satisfied at the time when amounts are first contributed to the plan, this treatment would preclude plan sponsors with plans that permit the use of amounts in plan-forfeiture accounts to offset future employer contributions under the plan from applying such amounts to fund QMACs and QNECs. The amounts would have been allocated to the forfeiture accounts only after a participant incurred a forfeiture of benefits and, thus, generally would have been subject to a vesting schedule when they were first contributed to the plan.

Commenters requested that QMAC and QNEC requirements not be interpreted to prevent the use of plan forfeitures to fund QMACs and QNECs, and urged that the nonforfeitability and distribution requirements are to apply when QMACs and QNECs are allocated to participants' accounts and not when the contributions are first made to the plan.

In response, regulations were proposed to amend Reg. section 1.401(k)-6 to provide that amounts used to fund QMACs and QNECs must be nonforfeitable and subject to distribution restrictions when allocated to participants' accounts. The rules would no longer require that amounts used to fund QMACs and QNECs satisfy the nonforfeitability and distribution requirements when they are first contributed to the plan. Other changes concerned the "vesting" requirements of Reg. section 1.401(k)-1(c) by replacing the word "vesting" with "nonforfeitability" and to provide for a consistent definition of QMACs and QNECs (including the requirement that amounts used to fund QMACs and QNECs be made subject to nonforfeitability and distribution requirements when they are allocated to participants' accounts as QMACs or QNECs) throughout the regulations.

As noted in the preamble to today's final regulations, no public hearing on the proposed regulations was requested or held, but several comments on the proposed regulations were submitted. The IRS and Treasury, after considering all of the comments, adopted the changes in the proposed regulations without substantive modification.

KPMG observation

This change to the definition of QNEC makes it easier for employers to correct 401(k) actual deferral percentage (ADP) and actual contribution percentage (ACP) failures. Forfeiture amounts may be used to make additional employer contributions to correct these nondiscrimination failures. These additional contributions benefit rank-and-file employees.

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