

MEMO# 30532

January 23, 2017

IRS Proposed Regulation Modifying Definitions of Qualified Matching and Nonelective Contributions

[30532]

January 23, 2017 TO: ICI Members SUBJECTS: Pension RE: IRS Proposed Regulation Modifying Definitions of Qualified Matching and Nonelective Contributions

The Internal Revenue Service has proposed amendments to the regulations defining qualified matching contributions (QMACs) and qualified nonelective contributions (QNECs) for tax-qualified 401(k) and 401(m) plans.^[1] The amendments would modify the definitions in Treasury Regulation sections 1.401(k) - 6 and 1.401(m) - 5 to provide that amounts used to fund QMACs and QNECs must be nonforfeitable and subject to distribution restrictions in accordance with section 1.401(k) -1(c) and (d) *when allocated to participants' accounts*. The current rule requires that amounts used to fund QMACs and QNECs satisfy the nonforfeitability and distribution requirements when they are *first contributed to the plan*.

As the preamble explains, this change will allow plan sponsors with plans that permit the use of amounts in plan forfeiture accounts to offset future employer contributions under the plan to apply such amounts to fund QMACs and QNECs. Under the current definitions, amounts in plan forfeiture accounts may not be used to fund QMACs and QNECs because they would not satisfy the applicable nonforfeitability requirements when first contributed to the plan (as, by definition, those amounts were initially subject to a vesting schedule).

Comments on the proposal are due April 18, 2017. Although final regulations would be effective for taxable years beginning on or after the date of publication of the final regulations, taxpayers may rely on the proposed regulations for periods preceding the proposed applicability date. The proposal states that if the final regulations are more restrictive than the proposal, those more restrictive provisions will be applied prospectively.

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endnotes

^[1] The proposed regulation is available here:

<https://www.gpo.gov/fdsys/pkg/FR-2017-01-18/pdf/2017-00876.pdf>.

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