MEMO# 31296

July 23, 2018

IRS Finalized Regulation Modifying Definitions of Qualified Matching and Nonelective Contributions

[31296]

July 23, 2018 TO: ICI Members
Pension Committee
Pension Operations Advisory Committee SUBJECTS: Pension RE: IRS Finalized Regulation Modifying Definitions of Qualified Matching and Nonelective Contributions

The Internal Revenue Service (IRS) has finalized 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 final regulations are substantially the same as the proposed regulations that IRS published on January 18, 2017.[2] The amendments 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 limitations in accordance with section 1.401(k) –1(c) and (d) *when allocated to participants' accounts*. Prior to this change, the rule required 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 allows 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 prior definitions, amounts in plan forfeiture accounts could 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).

The final regulations apply to plan years beginning on or after July 20, 2018; however, taxpayers are permitted to apply the regulations to earlier periods.[3] In the preamble, the IRS clarifies that a plan amendment to change the QMAC and QNEC definitions as described in the regulation, if applied prospectively to future plan years, will not implicate Internal Revenue Code section 411(d)(6) (plan amendments may not decrease a participant's accrued benefit). Further, for plans that currently provide that forfeitures will be used to pay plan expenses incurred during the plan year and that any forfeitures remaining at the end of the plan year will be allocated among active participants, IRS makes clear that it is acceptable to amend the plan midyear to allow forfeitures to be used to fund QMACs and

QNECs.[4]

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endnotes

[1] The final regulation is available here: https://www.gpo.gov/fdsys/pkg/FR-2018-07-20/pdf/2018-15495.pdf.

[2] *See* ICI Memorandum No. 30532, dated January 23, 2017, available here: https://www.ici.org/my_ici/memorandum/memo30532.

[3] Similarly, the preamble to the proposal included a statement permitting taxpayers to rely on the proposed regulations for periods preceding the proposed applicability date. 82 Fed. Reg. 5477, at 5479 (January 18, 2017).

[4] 83 Fed. Reg. 34469, at 34470 (July 20, 2018).
