



# TaxNewsFlash

## United States

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### **Proposed 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 proposed regulations (REG-131643-15) that would 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).

The [proposed regulations](#) [PDF 207 KB] explain that employer contributions to a plan would qualify as QMACs or QNECs if the contributions satisfy applicable nonforfeatability 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.

#### **Background**

The IRS and Treasury received comments that employer contributions ought to qualify as QMACs and QNECs if they satisfy applicable nonforfeatability and distribution requirements at the time they are allocated to participants’ accounts, rather than when they are first contributed to the plan.

If nonforfeatability and distribution requirements were required to be satisfied at the time when amounts are first contributed to the plan, this 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 nonforfeitable 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.

## **Proposed regulations**

The preamble explains that Reg. section 1.401(k)-6 would be amended 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 nonforfeitable and distribution requirements when they are first contributed to the plan.

Today's release would amend the second sentence of the current definitions of QMACs and QNECs that refers to the "vesting" requirements of Reg. section 1.401(k)-1(c), and clarify those references by replacing the word "vesting" with "nonforfeitable" in each definition. The preamble states that these changes are not intended to have any substantive impact on this or any other section of the regulations.

The proposed regulations would also amend the definitions of QMACs and QNECs in other parts of the regulations, so as 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 nonforfeitable and distribution requirements when they are allocated to participants' accounts as QMACs or QNECs).

## **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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