

## Use of Forfeitures in Safe Harbor 401(k) and 403(b) Plans

In January 2017, the IRS issued a proposed regulation under which forfeitures may now be utilized to fund Qualified Non-Elective Contributions (QNECs) and Qualified Matching Contributions (QMacs), including ADP safe harbor matching and non-elective contributions (fully vested sources) at the time the amounts are funded<sup>1</sup>. Previously, forfeiture amounts could only be applied to sources of funding subject to a vesting schedule, such as matching and/or profit sharing contributions. Additionally, certain pre-approved plan documents included language prohibiting the use of forfeitures to fund safe harbor contributions. The limitations imposed by the funding source requirements and plan document stipulations created administrative challenges for plan sponsors attempting to appropriately apply forfeitures to select funding sources. The proposed regulation significantly impacts the use of forfeitures for safe harbor 401(k) plans and 403(b) plans and is anticipated to be a help to administrators of 403(b) plans that utilize fully-vested funding options since the proposed regulation will provide more viable funding options.

Even though the regulation is proposed, it may be relied upon. While this does not permit a retroactive application to the 2016 plan year, forfeitures may be applied to current 2017 funding, such as matching contributions.

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<sup>1</sup> QNECs and QMACS are special discretionary contributions allowed in the plan document that are contributed to employees, using specific formulas, as a method of correcting testing failures. However, since these contributions are 100% vested and are non-forfeitable at the time they are allocated to participant accounts, this previously meant that forfeitures could not be used to fund those types of contributions.

Contributed by [Kimberly Flett](#)