

# IRS RELEASES PROPOSED REGULATIONS REGARDING QMACS AND QNECS

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**Practices & Industries**

Employee Benefits

To be considered a qualified cash or deferred arrangement (CODA), a 401(k) plan that allows employees to defer a percentage of their compensation must satisfy certain distribution and nonforfeiture requirements, as well as the actual deferral percentage (ADP) nondiscrimination test. Similarly, a defined contribution plan that includes employer matching contributions or employee after-tax contributions must satisfy the actual contribution percentage (ACP) nondiscrimination test.

Employer matching contributions and nonelective contributions that meet the distribution and nonforfeiture CODA requirements at the time they are contributed to the plan may be taken into account in performing the ADP or ACP nondiscrimination tests (QMACs and QNECs, respectively).

Defined contribution plans that include employer matching or nonelective contributions frequently subject those contributions to a vesting schedule. If a participant terminates employment before being 100% vested in the matching or nonelective contributions, the participant would forfeit all or a portion of those contributions. Because the current IRS regulations require that a contribution may only be a QMAC or QNEC if the distribution and nonforfeiture requirements are met at the time the contribution is made to the plan, amounts held in a forfeiture account that are used to offset an employer contribution could not qualify to be a QMAC or QNEC because those amounts were subject to a forfeiture provision at the time they were initially contributed to the plan.

Proposed regulations recently published by the IRS modify the current regulations to provide that an employer contribution may qualify as a QMAC or QNEC if the contribution satisfies the distribution and nonforfeiture requirements at the time the contribution is allocated to participants' accounts. As a result, amounts held in a forfeiture account could qualify as a QMAC or QNEC.

The proposed regulations would apply to taxable years beginning on or after the final regulations are published in the Federal Register. However, taxpayers may rely on the proposed regulations.