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# IRS Permits Use of Forfeitures to Fund Safe-Harbor Contributions, QNECs and QMACs

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The IRS has reversed its unfavorable rule that prohibited the use of forfeitures to fund safe-harbor contributions, Qualified Nonelective Contributions (QNECs) and Qualified Matching Contributions (QMACs). QNECs and QMACs are employer contributions that may be used by a plan to help pass nondiscrimination testing. The IRS has issued proposed regulations which allow forfeitures to be used to fund a safe-harbor contribution, QNEC or QMAC, as long as the forfeitures are vested when allocated.

This change allows employer contributions that were made to a plan, but then subsequently forfeited, to be used to fund safe-harbor contributions, QNECs and QMACs. Although the proposed changes to the regulations are not effective until finalized, the IRS has stated that Plan Sponsors may use the new rules now. However, if the plan document states the old rule, an amendment must be signed by the end of the plan year to use forfeitures for safe-harbor, QNECs or QMACs for that plan year.

## Background

The IRS previously took the position that contributions used to fund safe-harbor contributions, QNECs and QMACs had to be nonforfeitable at the time they were contributed to a plan. Therefore, forfeitures could not be used to fund safe-harbor contributions, QNECs or QMACs. However, the IRS has now issued proposed regulations which state that amounts used to fund safe-harbor contributions, QNECs and QMACs must be nonforfeitable when allocated to participant accounts, rather than when they were originally contributed to the plan initially. This would allow forfeitures to be used to fund safe-harbor contributions, QNECs and QMACs.

## Amending Your Plan

The IRS previously required many plans to contain language prohibiting the use of forfeitures to fund safe-harbor contributions, QNECs and QMACs. Therefore, you may need to amend your current plan if you wish use forfeitures to fund those types of contributions.

## When Must Plans be Amended?

If a plan amendment is needed to allow forfeitures to be used to fund safe-harbor contributions, QNECs and QMACs, the amendment must be signed by the last day of the plan year for which the amendment is first effective. For example, plans that have the old rule prohibiting forfeitures and a calendar plan year must be amended by December 31, 2017 to permit forfeitures to be used to fund those contributions for the 2017 plan year.

## Next Steps

Plan sponsors who wish to use forfeitures to fund safe-harbor contributions, QNECs and QMAC should check with your plan document provider to see if your pre-approved plan has been amended, or if your plan needs an amendment if your plan document is individually designed.

Please contact one of FBT's [Employee Benefits/Executive Compensation Practice Group](#) members if you have questions regarding the IRS' change in position on the use of forfeitures or about the information in this publication.

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