Proposed Regulations Regarding the Use of Forfeitures in Qualified Retirement Plans

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The IRS recently issued proposed regulations clarifying the use of forfeitures in defined contribution and defined benefit plans (the "***Proposed Forfeitures Regulations***"). Forfeitures generally result when a participant terminates employment prior to completing the service required for full vesting under the terms of the plan for purposes of employer contributions.

The existing regulations provide that forfeitures "must be used as soon as possible." Informal IRS guidance issued in 2010 interpreted this to mean that forfeitures must generally be allocated in the plan year incurred, or, in appropriate situations, no later than the immediately succeeding plan year. Defined contribution plan sponsors may use forfeitures for any of the following purposes specified in the plan's document: (i) to pay the plan's reasonable administrative expenses, (ii) to reduce future employer contributions under the plan, or (iii) to increase benefits in other participants' accounts.

The Proposed Forfeitures Regulations provide clear guidance as to when plans must use forfeitures. For defined contribution plans, plans must use forfeitures no later than 12 months following the close of the plan year in which the forfeitures were incurred under the plan. For this purpose, a transition rule states that any forfeitures incurred during any plan year that begins before January 1, 2024 will be treated as having been incurred in the first plan year that begins on or after such date. In addition, with respect to defined benefit plans, although the plan must expressly provide that forfeitures may not be applied to increase the benefits any employee would receive under the plan, the effect of forfeitures may be anticipated for purposes of planning for minimum funding.

If finalized, the forfeitures guidance applies for plan years beginning on or after January 1, 2024, but plan sponsors may rely on this guidance immediately.

The Proposed Forfeitures Regulations are available here.

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