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# IRS Proposes Regulations on Using Forfeitures in 401(K) Plans (and Other Qualified Retirement Plans)?

Labor & Employment Workforce Watch

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The Department of the Treasury and Internal Revenue Service recently issued [proposed regulations](#) (the “Proposed Regulations”) relating to forfeitures in 401(k) plans and other tax-qualified retirement plans. Forfeitures generally arise when a participant terminates employment before completing the required service for full vesting of employer contributions under the terms of the plan. The Proposed Regulations provide much needed guidance on the permissible uses of forfeitures, as well as the timing on when a plan must expend the forfeitures. If finalized, these rules will apply to plan years beginning on or after January 1, 2024.

These rules address a challenging issue for 401(k) plan sponsors. The deadline for allocating plan forfeitures in 401(k) plans (and other defined contribution plans) has never been clear. In an Employee Plans newsletter issued in spring 2010, the IRS took the position that the Internal Revenue Code does not authorize forfeiture suspense accounts to hold unallocated monies beyond the year in which they arise, thereby requiring that all forfeitures be used or allocated in the plan year in which they were incurred. This proved to be a difficult deadline to meet, especially when a forfeiture arose late in the plan year.

The Proposed Regulations provide guidance as to when defined contribution plans must use plan forfeitures and the purposes for which plan forfeitures may be used. According to the Proposed Regulations, defined contribution plans must provide that the following:

- Forfeitures will be used no later than 12 months after the close of the plan year in which the forfeitures are incurred;
- Forfeitures will be used for one or more of the following purposes: (i) to pay plan administrative expenses, (ii) to reduce employer contributions under the plan, or (iii) to increase benefits in other participants’ accounts in accordance with plan terms.

The new single deadline is intended to simplify administration and alleviate administrative burdens that could otherwise arise in using or allocating forfeitures incurred late in a plan year.

The Proposed Regulations also include transition relief for defined contribution plans with large, long-accruing forfeiture suspense accounts. The transitional relief would allow a plan to treat forfeitures incurred during any plan year that begins before January 1, 2024, as having been incurred in the first plan year that begins on or after

January 1, 2024. This could allow plans to use the amounts in the forfeiture ?suspense accounts by the end of the 2025 plan year.?

You may access a more detailed discussion of this topic, including an overview of the treatment of these rules for defined benefit plans and a discussion regarding issues that may arise if the forfeiture balance cannot be applied during the transition period, on the [Benefits Blog](#).

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