

Forfeiture Stories for a Late Night Campfire



ASPPA

Making Retirement Plans Work

Part of the American Retirement Association

Adam C. Pozek, ERPA, QPA, QPFC

Partner

DWC ERISA Consultants, LLC

William C. Presson, ERPA, QPA, QKA, APR

VP

Economic Group Pension Services, Inc.

What forfeitures aren't

What forfeitures are



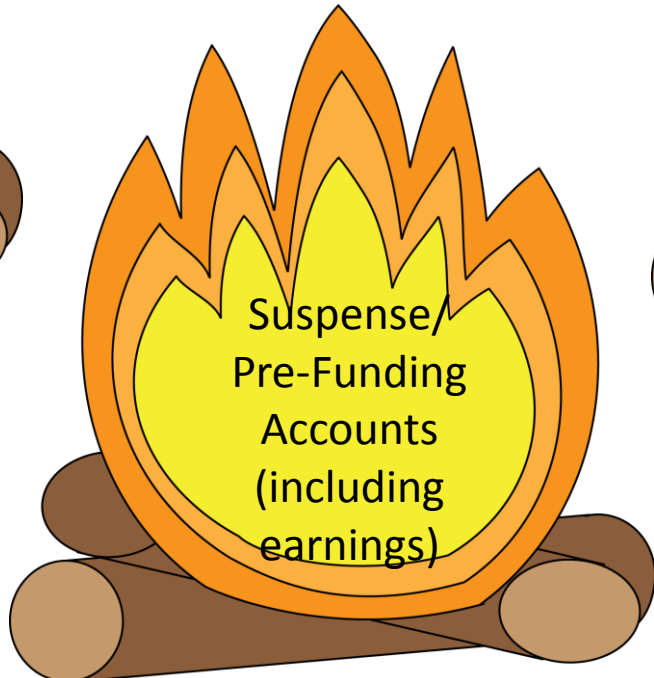
Timing, usage & other rules

Ghost stories

What Forfeitures Are Not

A stylized illustration of a campfire with orange and yellow flames, sitting on three brown logs.

ERISA
Recapture
Accounts*

A stylized illustration of a campfire with orange and yellow flames, sitting on three brown logs.

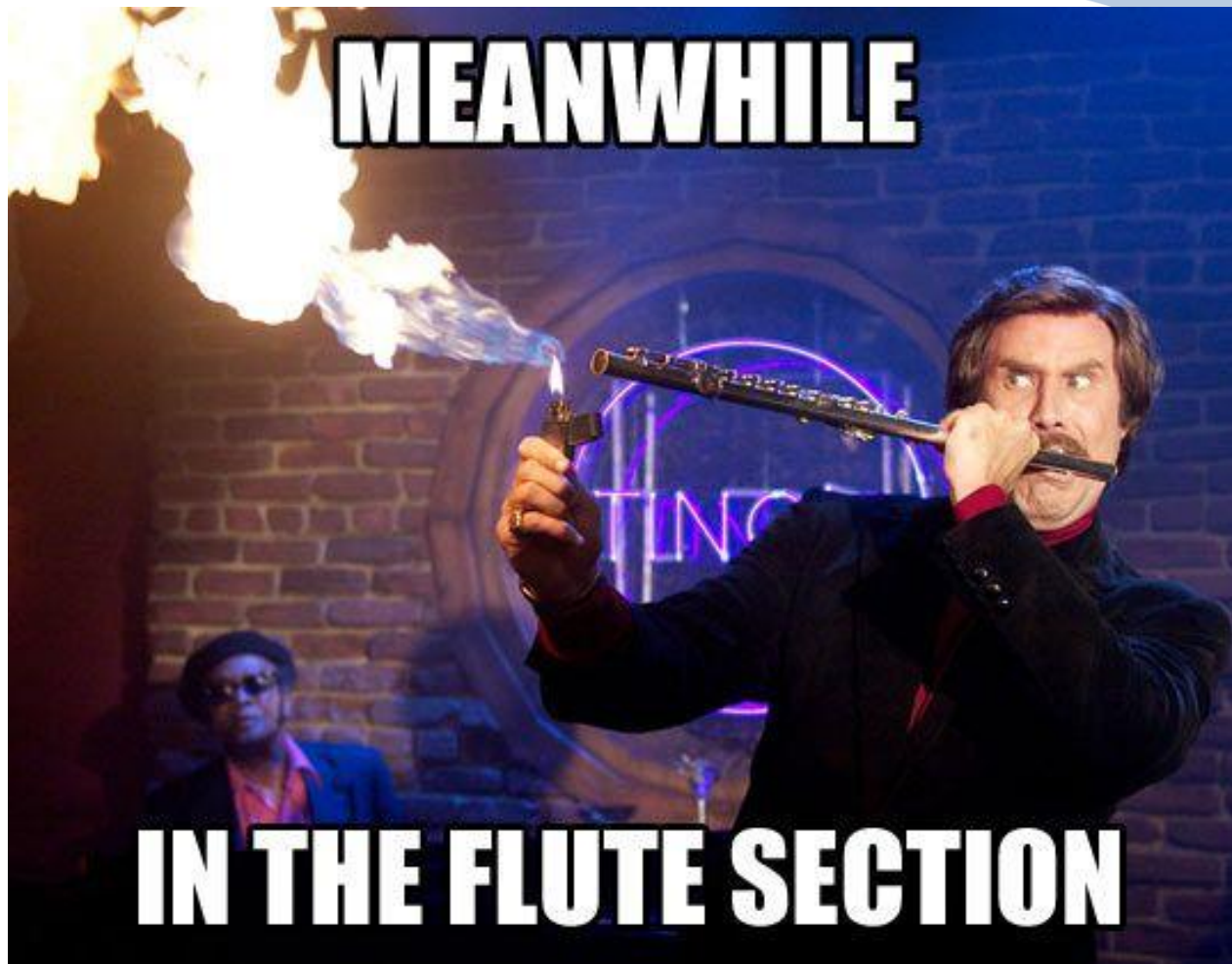
Suspense/
Pre-Funding
Accounts
(including
earnings)

A stylized illustration of a campfire with orange and yellow flames, sitting on three brown logs.

Excess
Amounts/Fund
Litigation
Amounts

What Forfeitures Are

- Nonvested “leftovers” generated by:
 - Distribution-related transactions
 - ADP test failures
 - ACP test failures
- Held in a separate account for future use
- *Plan assets*



Timing, Usage & Other Rules



Fire Safety

- Plan document
- IRS Retirement News for Employers, Volume 7
Spring 2010
 - www.irs.gov/pub/irs-tege/rne_spr10.pdf
- IRS Revenue Rulings
 - 80-155 and 84-156
- Treasury Regulation §1.401-7(a)

What Triggers a Forfeiture?

Distribution Events

- Payout
- Termination of employment with no vested balance
 - No deferrals or rollovers and
 - Zero percent vested in other employer contributions



Test Failures

- ADP test
 - Rate of match
- ACP test
 - Partially/non-vested HCE

Other

- Five one-year breaks in service
- Combination

Actual Occurrence

- Date of event or last day of the plan year in which event occurs?

Timing - Example

- S'mores, Inc. 401(k) Plan
 - Calendar-year plan
 - BIS = fewer than 501 hours of service
- Charlie
 - Participant
 - Terminates employment on July 1, 2015 with 1,040 hours of service

Timing of Forfeiture - Example



When Must Forfeitures Be Used?

1. Cannot accumulate
2. Year in which forfeiture occurs
3. Year immediately following the year in which forfeiture occurs
4. No later than the year following the year in which forfeiture occurs

Rate of Match Forfeiture

Rate of match is determined AFTER corrections. See 1.401(a)(4)-4(e)(3)(iii)(G).

Order:

- Run ADP and ACP test
- Make any necessary corrections for failed test(s)
- Check for Benefits, Rights & Features issue
- Related match is never distributed but rather forfeited

(hat tip to Tom Poje)

Rate of Match Forfeiture

Name	Comp	Deferral	ADP	Match	ACP
Larry	\$200,000	\$12,000	6.00%	\$6,000	3.00%

- Plan provides match of 50 percent of the first six percent deferred
- Plan fails ADP and ACP tests
 - ADP refunds = \$4,000
 - ACP refunds = \$1,500

Rate of Match Forfeiture

Name	Comp	Deferral	ADP	Match	ACP
Larry	\$200,000	\$8,000	4.00%	\$4,500	2.25%

Larry's matching contribution no longer follows the plan's matching formula, so it must be adjusted.

Rate of Match Forfeiture

- Assume Larry is 80 percent vested.
- Refunds/forfeitures determined as follows:
 - Excess contributions = \$4,000
 - Refunded to Larry
 - Excess aggregate contributions = \$1,500
 - \$1,200 refunded to Larry
 - \$300 forfeited
 - Rate of match adjustment = \$500
 - Forfeited

Name	Comp	Deferral	ADP	Match	ACP
Larry	\$200,000	\$8,000	4.00%	\$4,000	2.00%

Timing of Use of Forfeiture - Example



Uses For Forfeitures

- Pay eligible plan expenses
 - Non-settlor
- Offset employer contributions
 - Other than safe harbor, QNEC, QMAC
- Reallocate to participants
 - Even if not specifically provided in the adoption agreement
- Reinstate participant accounts



Don't Get Burned I

Cannot use to offset:

- Safe harbor contributions
- QNECs; or
- QMACs



Poll Question:

What About Qualified Automatic Contribution Arrangement Amounts?

These amounts provide the same employer benefits as other safe harbor plans, but can forfeited amounts be used to reduce QACA contributions?

1. Yes
2. No

QACA forfeitures CAN be used to reduce QACA contributions.

According to IRS in 2011 ASPPA Q & A 21 since contributions don't have to be 100 percent vested at contribution

Don't Get Burned II

- Some plans limit use of forfeitures by source
 - Match forfeitures for match
 - Profit sharing forfeitures for profit sharing
- Forfeitures that aren't forfeitures
- Impact of mandatory distribution provisions
- Be aware of redeposited checks



And I would've gotten away with it, too, if it wasn't for you meddling kids!

Mr. Forfeiture?!



Campfire Ghost Stories a/k/a Case Studies

Common Facts

- Calendar-year plan
- Forfeitures used in year of occurrence
- All forfeitures can be used for all purposes



Campfire Story #1



- Existing client
- Forfeiture balance as of December 31, 2015 is \$2,000
- Plan is not safe harbor
- Plan has outstanding fees for the year

Campfire Story #2

- Existing client
- Forfeiture balance as of December 31, 2015 is \$2,000
- Plan is a safe harbor match plan
 - Match not yet deposited
- Plan is top heavy
- All expenses have already been paid



Campfire Story #3

- Conversion plan as of October 1, 2015
- Forfeiture balance at conversion is \$20,000
- Review of YTD record-keeper reports indicates only \$1,500 in forfeitures have occurred during the year



Campfire Story #4

- Conversion plan as of October 1, 2012
- Accumulated forfeitures from 2009 – 2011
- No contributions made since 2006
- Vesting changes
 - Pre-2007: five-year cliff
 - January 2007: three-year cliff per PPA amendment
 - January 2007: five-year graded per voluntary restatement
 - June 2008: six-year graded per EGTRRA restatement
- Number of participants decreased from 147 in 2007 to eight in 2012 due to recession

Questions?

Adam Pozek

DWC ERISA Consultants, LLC

651-204-2600 ext. 107

Adam.Pozek@DWCconsultants.com

Bill Presson

EGPS, Inc.

205-994-4070

Bpresson@EGPS.com



Fire songs:

<https://open.spotify.com/user/12136827127/playlist/2DAXajyW1sQYuSrYaFUceH>