

Forfeiture Stories for a Late Night Campfire
Workshop #27, October 19, 2015



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What forfeitures aren't

What forfeitures are

Timing, usage & other rules

Ghost stories

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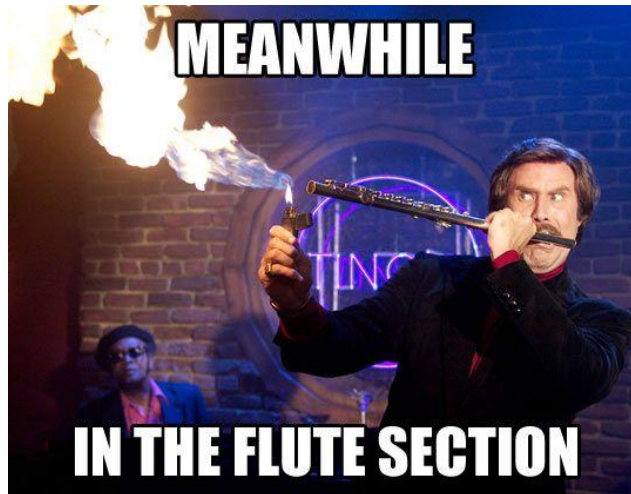
What Forfeitures Are Not



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



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- 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)



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What triggers a forfeiture?

Distribution Events

- Payout
- Termination of employment with no vested balance
 - No deferrals or rollovers and
 - 0% vested in other employer contributions



Test Failures

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

Other

- Five 1-year breaks in service
- Combination

Actual Occurrence

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



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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



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Timing of Forfeiture - Example

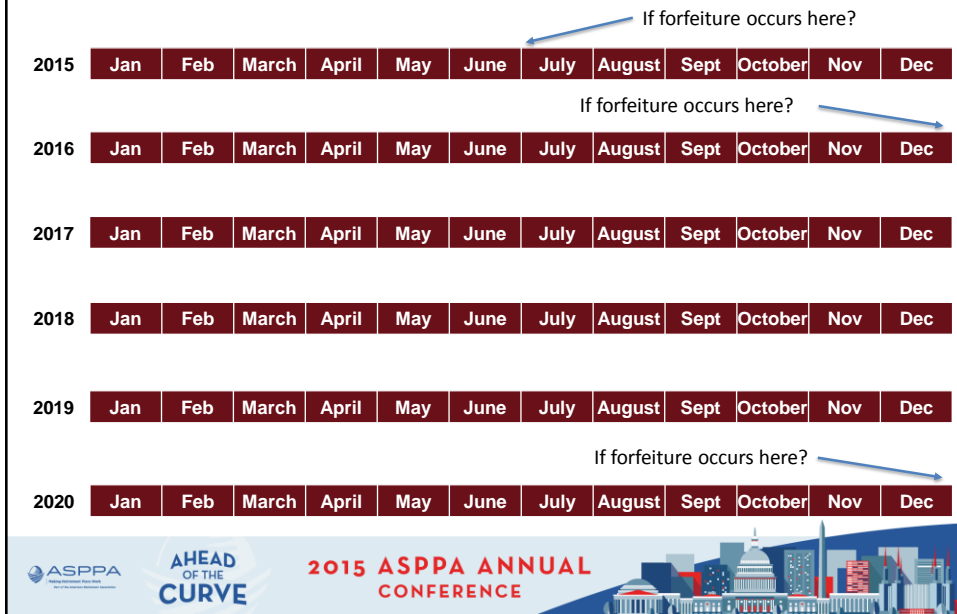


When must forfeitures be used?

- Cannot accumulate
- Year in which forfeiture occurs
- Year immediately following the year in which forfeiture occurs
- No later than the year following the year in which forfeiture occurs



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

- Cannot use to offset safe harbor contributions, QNECs or QMACs
- 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



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



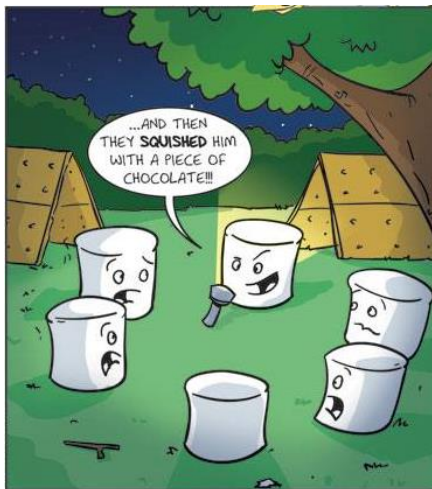
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Campfire Story #1



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

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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 recordkeeper 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: 5-year cliff
 - January 2007: 3-year cliff per PPA amendment
 - January 2007: 5-year graded per voluntary restatement
 - June 2008: 6-year graded per EGTRRA restatement
- Number of participants decreased from 147 in 2007 to 8 in 2012 due to recession.



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Questions

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Fire songs:

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



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