

## 2021 Joint TE/GE Council Employee Plans Annual Meeting

IRS Practitioner Panel (on 2/26/21; 3 to 4 p.m. eastern)

Partial Plan Terminations

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On 12/27/20 the Consolidated Appropriations Act (“CAA”) was signed into law and it contains a temporary rule preventing partial plan terminations. The new rule provides that a plan “shall not” be treated as having a partial plan termination during any plan year that includes the period beginning 3/13/2020 and ending 3/31/2021 if the number of active participants covered by the plan on 3/31/2021 is at least 80% of the number of active participants covered by the plan on 3/13/2020.<sup>1</sup>

The rule raises several questions, including:

- What happens if an employer fully vested participants based on a partial plan termination before CAA was enacted, but determines on 3/31/2021 that no partial plan termination occurred?<sup>2</sup>
- What happens if a calendar-year plan satisfies the CAA rule, but has significant terminations during 2020 or 2021 outside the 3/13/20 to 3/31/21 period? For example, if a calendar year plan satisfies the CAA rule as of 3/31/21 and terminates 75% of its workforce in June 2021.
- How should employers administer the delayed determination? For example, if an employer terminates 50% of its workforce in April 2020, it will not know whether a partial plan termination occurred until after 3/31/21. In the meantime, terminated employees request a distribution or rollover of their vested benefit.

Guidance, particularly where employers have vested participants before enactment of the CAA, would be helpful.

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<sup>1</sup> The full rule reads: “**SEC. 209. TEMPORARY RULE PREVENTING PARTIAL PLAN TERMINATION.** A plan shall not be treated as having a partial termination (within the meaning of 411(d)(3) of the Internal Revenue Code of 1986) during any plan year which includes the period beginning on March 13, 2020, and ending on March 31, 2021, if the number of active participants covered by the plan on March 31, 2021 is at least 80 percent of the number of active participants covered by the plan on March 13, 2020.”

<sup>2</sup> Prior to the CAA, partial plan terminations were based on facts and circumstances, but included a rebuttable presumption of partial plan termination if the employer has turnover of 20% or more during a plan year.