



CAA Benefits Alert: Limited Relief in the Consolidated Appropriations Act, 2021 from Partial Plan Termination Vesting Requirements

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The Consolidated Appropriations Act, 2021 (Act) includes relief for tax-qualified ERISA retirement plans with respect to partial plan terminations for the period beginning on March 13, 2020 and ending on March 31, 2021. The rules surrounding partial plan terminations are complex and include many nuances and exceptions. Please use this summary for general information purposes only and not legal advice. As always, please contact your regular Winston & Strawn attorney with any specific questions or issues you have.

Background on Partial Plan Terminations

The novel coronavirus pandemic has led to many difficult decisions for employers, including whether to implement significant employer-initiated workforce reductions. An overlooked consequence of significant workforce reductions can be a requirement that affected employees be 100% vested in their qualified retirement plan benefits.

As our colleagues discussed in more detail in our Spring 2020 blog post [“Retirement Plans: Workforce Reductions and Triggering Events Employers Should Keep in Mind,”](#) if a qualified retirement plan experiences a “partial termination,” Section 411(d)(3) of the Internal Revenue Code provides that all “affected employees” must become 100% vested in their accrued benefits (to the extent funded) or in the amounts credited to their plan account(s).

Whether a partial termination has occurred is a facts-and-circumstances determination. However, a partial termination generally may be deemed to occur if more than 20% of all plan participants are laid off in a particular year. Additionally, if the layoffs are related to the same event or circumstance, vesting of “affected employees” in future years may be required.

Plan sponsors have expressed concern that temporary layoffs or suspensions of employees or other employer action triggered by the pandemic may require partial-termination vesting of those employees, even though the employer expects to bring the affected employees back to work within a few months. Additionally, since “affected employees” can include voluntarily terminations, the employee retention incentive provided by multi-year vesting schedules loses its efficacy if all terminating employees receive full vesting.

Limited Relief

Under the Act, a plan shall not be treated as having a partial termination (within the meaning of 411(d)(3) of the Internal Revenue Code) during any plan year that 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% of the number of active participants covered by the plan on March 13, 2020. Section 209 of the Act.

As of the writing of this blog post, no guidance has been issued with respect to this provision. A plain reading of the text would suggest that any employer, even those who may have incurred partial plan terminations unrelated to the coronavirus pandemic, may be eligible for this relief so long as 80% of the number of active participants on March 13, 2020 are covered by the plan on March 31, 2021.

Winston Takeaway: The participants counting towards the 80% requirement do not need to be the same participants. However, they do need to be active participants. For example, if a plan has an eligibility requirement and an employer hires new employees following a workforce reduction in the relevant period, even if the employer's total number of employees meets or exceeds the number of employees needed to meet 80% of the plan's March 2020 active participant number, the Act does not appear to provide relief if those new hires are ineligible to participate. Further, additional guidance could clarify that if employees are eligible to participate in a plan they will be considered active participants, regardless of whether they elect to do so.

Although possibly not the intent of the Act, for plans with calendar-year plan years, the Act potentially provides relief for partial plan terminations that occur in 2020 or 2021, even if the terminations occurred before March 13, 2020 or occur after March 31, 2021.

Potential Legislative Update: We note that ERISA trade associations are pushing for additional legislation to extend the end date of the relief from March 31, 2021 to December 31, 2021. Such a change would have further bearing on whether employers will need to fully vest any affected employees in 2021.

The relief in the Act, which was not signed into law until December 27, 2020, applies retroactively, despite the fact that many employers worried about incurring a partial plan termination in 2020 likely would have already fully vested participants at the time of the employees' separation.

Winston Takeaway: Employers wishing to take advantage of this relief who have treated workforce reductions in 2020 as partial plan terminations and fully vested participants should work with legal counsel to assess whether employees separating from the employer going forward would be "affected employees" eligible for full vesting of their accounts.

We expect that additional guidance from the Internal Revenue Service and Treasury Department will be forthcoming to help clarify the full scope of the relief granted under the Act.

This article is part of our "Unpacking the Employee Benefits Provisions in the Consolidated Appropriations Act, 2021" series. Click [here](#) for other CAA-related articles. Please contact a member of the Winston & Strawn Employee Benefits and Executive Compensation Practice Group or your Winston relationship attorney for further information.

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