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MEMO# 33514

April 30, 2021

IRS Posts Website FAQs Regarding Partial Plan Termination Relief

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TO: ICI Members
Pension Committee
Pension Operations Advisory Committee SUBJECTS: Pension RE: IRS Posts Website FAQs Regarding Partial Plan Termination Relief

The Internal Revenue Service (IRS) recently posted on its website a series of questions and answers[1] regarding section 209 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (TCDTRA),[2] which provides temporary relief from the partial plan termination rules under Internal Revenue Code section 411(d)(3).[3] Under section 209, which is intended to provide relief for employers that had to lay off workers during the pandemic, a plan shall not be treated as having a partial termination 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.

The question and answer guidance (dated April 27, 2021) addresses the following issues:

- Who is an "active participant covered by the plan"? The guidance states that a reasonable, good-faith interpretation of the term "active participant covered by the plan," applied in a consistent manner, should be used when determining the number of active participants covered by a plan on March 13, 2020, and March 31, 2021.
- How does section 209 of the TCDTRA apply to a plan year if only part of the plan year falls within the period beginning on March 13, 2020, and ending on March 31, 2021? The guidance states that if any part of the plan year falls within the period beginning on March 13, 2020, and ending on March 31, 2021, then section 209 applies to any partial termination determination for that entire plan year. The guidance provides an example for plans with a calendar year plan year.
- Is the 80 percent test applied by identifying the pool of active participants covered by a plan on March 31, 2021, and determining whether at least 80 percent of those same individuals were active participants covered by the plan on March 13, 2020? The guidance indicates that the answer to this question is no, explaining that the number of active participants covered by a plan who are counted on March 31, 2021, includes all individuals who are active participants covered by the plan on that date, regardless

of whether those same individuals were active participants covered by the plan on March 13, 2020.
- Does section 209 apply solely to reductions in the number of active participants covered by a plan that are related to the COVID-19 national emergency? The guidance indicates that the answer to this question is no, explaining that the provision is not limited to reductions related to the COVID-19 national emergency.

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endnotes

[1] The FAQs are available here: https://www.irs.gov/newsroom/coronavirus-related-relief-for-retirement-plans-and-iras-questions-and-answers#partial-termination.

[2] See ICI Memorandum No. 33027, dated January 7, 2021, available at https://www.ici.org/memo33027. On December 27, 2020, the President signed H.R. 133, the "Consolidated Appropriations Act, 2021" (CAA) (as approved by Congress on December 21), an expansive year-end spending bill with a broad range of COVID-19-related response and relief provisions. The CAA is available at: https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR133SA-RCP-116-68.pdf. In addition to funding the government through September 30, 2021, and expanding or extending various relief programs enacted under the CARES Act, the CAA includes various provisions relating to retirement plans, incorporated as part of the "COVID-Related Tax Relief Act of 2020" (incorporated as Subtitle B of Title II of Division N (Additional Coronavirus Response and Relief) of the CAA) and the "Taxpayer Certainty and Disaster Tax Relief Act of 2020" (incorporated as Division EE of the CAA).

[3] Plan termination or partial termination under Internal Revenue Code section 411(d)(3) normally triggers a 100 percent vesting requirement.
