

## IRS Releases Additional FAQs on Partial Plan Terminations

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During the pandemic, many employers laid off and terminated employees as businesses shut-down and then rehired employees when businesses reopened. Employers who sponsored retirement plans and incurred these fluctuations in their workforce risked that the layoffs and terminations could trigger partial retirement plan terminations, which would require 100% vesting of affected participants. Whether a partial plan termination has occurred is generally based on the facts and circumstances, but there is a rebuttable presumption that a partial plan termination has occurred if 20% or more of a plan's active participants have had an employer-initiated termination within a given plan year. In September of 2020, the IRS issued FAQs to clarify that when an employee was terminated and rehired within 2020, they would not be counted for purposes of determining whether a partial plan termination occurred (we reported on this guidance [here](#)). Section 209 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (the "**Relief Act**"), which is part of the Consolidated Appropriations Act of 2021, provided additional relief to employers by modifying current partial plan termination rules for 2020 and 2021 to provide that a partial plan termination would not occur if the active participant count for the plan as of March 31, 2021 was at least 80% of the number of active participants in the plan as of March 13, 2020 (as we reported [here](#)). The IRS recently issued a list of five additional FAQs (the "**FAQs**") on the partial plan termination provisions of Section 209 of Relief Act, clarifying that:

1. A qualified retirement plan will not be treated as having a partial plan termination 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 was at least 80% of the number of active participants covered by the plan on March 13, 2020;
2. In determining who is an active participant covered by the plan, plan sponsors should use a reasonable, good-faith interpretation of the term and apply such interpretation in a consistent manner;
3. The partial plan termination provisions under the Relief Act apply for the entire plan year if any part of the plan year falls within the period beginning on March 13, 2020 and ending on March 31, 2021;
4. The 80% test is applied by counting the number of active participants covered by the plan on each of the two specified dates. All active participants covered by the plan are counted on March 31, 2021 regardless of whether such individual was considered an active participant covered by the plan on March 13, 2020; and
5. The application of the Relief Act's provisions is not limited to reductions in the number of active participants covered by the plan related to COVID-19.

While the guidance provided will make it less likely that workforce fluctuations caused by the pandemic will trigger a partial plan termination, it is important that retirement plan sponsors review their plans and active participant counts to determine whether a partial plan termination has occurred. The FAQs are available [here](#).