

# Benefit Plan Provisions of the Consolidated Appropriations Act – 2021



The [Consolidated Appropriations Act – 2021](#), was approved by the House and Senate late Dec. 21 but still must be signed by the President to become law. The legislation includes an extension of retirement-based disaster relief, [CARES Act](#) clarifications for money purchase pension plans, another round of Paycheck Protection Program (PPP) loans, and provisions which allow businesses to deduct expenses associated with their forgiven PPP loans. The provisions related to benefit plans are discussed below.

## Temporary Rule Preventing Partial Plan Termination

The Consolidated Appropriations Act -2021 includes a “temporary rule preventing partial plan termination.” The provision reads:

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.

In other words, sponsors of defined contribution retirement plans can avoid a partial plan termination if the active

participant count as of March 2021 is 80% of the active participant count at the time the national emergency was declared.

### **Disaster Tax Relief**

Like [past disaster relief bills](#), the Consolidated Appropriations Act -2021 includes a temporary extension for individuals to take a retirement plan distribution or loan if they reside in a presidentially declare disaster area. The extension is effective for 60 days after the date of enactment. It applies to individuals residing in presidentially declared disaster areas (other than COVID-19) declared after Dec. 31, 2019.

As such, residents are permitted to take a distribution or loan of up to \$100,000 from a retirement plan or IRA without penalty. Amounts withdrawn can be included in income ratably over a three-year period or may be recontributed to avoid tax and restore savings. Additionally, the repayment period is extended for one year for new and outstanding retirement plan loans.

The legislation does not appear to include an extension of [Coronavirus-related distributions \(CRDs\) or loan provisions under the CARES Act](#).

### **Money Purchase Pension Plans**

The Consolidated Appropriations Act -2021 clarifies that money purchase pension plans are included in the types of retirement plans qualifying for the CARES Act provisions. These provisions allow individuals to make penalty-free withdrawals from certain retirement plans for Coronavirus-related expenses and increase the allowed limits on retirement plan loans. The clarification applies retroactively as if included in Section 2202 of the CARES Act. This means that distribution or loans would still need to be made before year-end.

## **Minimum Age for Distributions During Working Retirement**

Certain construction and building trades workers age 55 or older who are receiving retirement benefits will be allowed to continue working and receiving such benefits.

## **Relief for Qualified Pension Plan Transfers for Covering Future Retiree Costs**

In general, Code Section 420 permits “qualified future transfers,” under which up to 10 years of retiree health and life costs may be transferred from a company’s pension plan to a retiree health benefits account and/or a retiree life insurance account within the pension plan. Such transfers must meet several requirements, including that the plan must be 120% funded at the outset and throughout the transfer period. Applying the current-law requirements during the market volatility related to the pandemic has caused plans that have been historically far over 120% funded to fall below 120% and face a requirement to immediately restore these large market losses in order to get back to 120% funded.

Under the provision, employers will be permitted to make a one-time election during 2020 and 2021 to end any existing transfer period for any taxable year beginning after the date of election, provided:

- the maintenance of effort continues to apply as if the transfer period were not shortened;
- the employer ensures that the plan stays at least 100% funded throughout the original transfer period;
- the plan has funding targets for the first five years after the original transfer period; and
- all amounts left in the retiree benefits account at the end of the shortened transfer period must be returned to the pension plan (without application of an excise tax to such amounts).

## **Employee Retention Tax Credit**

To help keep additional U.S. workers on payroll and more small

businesses and nonprofits afloat, the Consolidated Appropriations Act -2021 extends and expands the refundable Employee Retention Tax Credit (ERTC) established under the CARES Act through June 30, 2021. In general, the ERTC covers the wages and benefits—including **401(k) contributions**—of employees of businesses affected by COVID-19. The ERTC was originally viewed as an alternative relief mechanism for those businesses unable to take advantage of the PPP. However this legislation also modifies the ERTC for 2020 by allowing businesses with PPP loans to qualify.

The provision also:

- increases the credit rate from 50% to 70% of qualified wages;
- expands eligibility for the credit by reducing the required year-over-year gross receipts decline from 50% to 20% and provides a safe harbor allowing employers to use prior quarter gross receipts to determine eligibility;
- increases the limit on per-employee creditable wages from \$10,000 for the year to \$10,000 for each quarter;
- increases the 100-employee delineation for determining the relevant qualified wage base to employers with 500 or fewer employees;
- provides rules to allow new employers that were not in existence for all or part of 2019 to be able to claim the credit;
- clarifies that group health plan expenses can be considered qualified wages even when no other wages are paid to the employee, consistent with IRS guidance; and
- provides that employers that receive PPP loans may still qualify for the ERTC with respect to wages that are not paid for with forgiven PPP proceeds.

Plan sponsors should work with their recordkeepers and service providers to determine how the legislation could impact their Plan.