

Grantor trust developments

This Finseca Policy Deep Dive publication was prepared exclusively for Finseca members by Josh Caron, Finseca VP Federal Affairs and Alex Kim, Finseca VP Public Policy.

October 5, 2021

Contained in the House Ways & Means version of the reconciliation package was a significant change that would materially impact the usage of grantor trusts for estate planning.

Since its release, Finseca has been advocating to preserve the tax treatment of life insurance death benefits and to protect the clients who utilize your services to meet the anticipated liquidity needs at death inclusive of the taxes to be paid.

Your Finseca team has had several constructive conversations with policymakers in Congress about correcting the unintended impact on life insurance. As always, nothing is final until the President signs the bill, and we do expect changes. We anticipate an updated draft of the bill in a few weeks when it moves to the House Rules Committee.

Notably, the crafters of the provision have changed effective date for Section 1062 that would disregard ownership for any sales/transfers/swaps between the grantor and the trust and subject them to a tax realization event.

In its original draft, Ways & Means had the effective date for Section 1062 as the date of enactment – meaning if you could set up a grantor trust before then you would preserve the ability to make sales/transfers/swaps in the future. The date of enactment is determined by the date the legislation is signed by the President. Many estate tax attorneys had been counseling their clients to do just that.

But W&M has indicated they are likely to change the effective date to capture not only new trusts created in the future, but also pre-enactment date trusts, meaning that any future sales/transfers/swaps would be subject to a realization event in the future. Effectively, they are seeking to close the door on some aspects of estate planning quicker than initially anticipated, leaving many to walk back advice given just a week ago.



This experience highlights the struggle of trying to plan with clients based on legislation that is still being negotiated (as opposed to using the final product).

As always, Finseca will advocate on behalf of our members and the clients you serve – providing you with the most up-to-date and accurate information. If you have feedback or questions, please reach out to Josh Caron (caron@finseca.org).