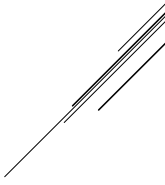


# SECUREly Safe Harbor CARES Update

S. Derrin Watson, JD, APM  
Ilene Ferenczy, JD, APA, CPC



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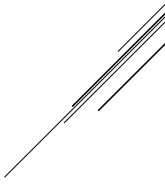

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## Your Co-Hosts

- ▶ Joanne Pecina 
- ▶ Maureen Pesek 
- ▶ Tim McCutcheon 



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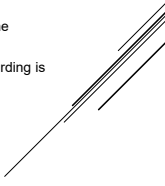

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## During the Webinar

- ▶ All attendees' lines are muted.
- ▶ Question board is available and monitored - look for Q&A icon on webcast toolbar. Please do not use chat to ask questions.
- ▶ Slides and a recording of the webinar also available on the /webcasts webpage.
- ▶ Please note that you must access the live video portion of the webcast to get CE credit.
- ▶ Merely listening on a call-in line or watching a webcast recording is not sufficient for CE credit.



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### During the Webinar



- ▶ Credit is offered for ERPA/ASPPA-ARA/NIPA.
- ▶ Those who attend the requisite time in the video portion of the webcast today will receive a certificate by email in a few days (ERPA will take several days longer). - Please check your spam folder.
- ▶ Questions about CE credit: [support@erisapedia.com](mailto:support@erisapedia.com).
- ▶ After the main presentation please join us for a brief educational session on how to find more information on today's topic on ERISApedia.com.
- ▶ At the end you will be presented with a short Google Forms survey. Please let us know how we are doing.

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Ilene H. Ferenczy, Esq., CPC, APA

S. Derrin Watson, J.D., APM

Your Presenters Today

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### What We'll Cover Today



- ▶ Notice 2020-86
  - ▶ Increased QACA automatic deferrals
  - ▶ Elimination of Safe Harbor Notice for Nonelective
  - ▶ Retroactive Adoption of Safe Harbor Nonelective
- ▶ Consolidated Appropriations Act Pension Provisions

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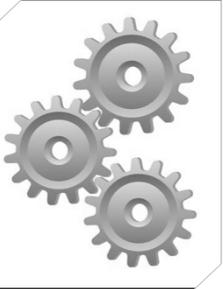
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**INCREASED QACA  
AUTOMATIC  
DEFERRALS**

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**Where We Were**



- ▶ Before 2020, maximum automatic deferral percentage in QACA was 10%
- ▶ SECURE increased limit to 15% after “initial period”
  - ▶ End of plan year following the year the participant entered
- ▶ Example: Jane enters calendar year QACA 1/15/21

Years	Minimum Auto Deferral	Maximum Auto Deferral
2021, 2022	3%	10%
2023	4%	15%
2024	5%	15%
2025 and later	6%	15%

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**What Notice 2020-86 Tells Us**



- ▶ Can plan leave maximum automatic deferral at 10% (or less)?
  - ▶ Yes
- ▶ What happens if plan incorporates limit by reference?
  - ▶ It automatically increases to 15% unless plan amended
- ▶ What happens if plan specifies 10% limit?
  - ▶ It stays at 10% unless plan amended
- ▶ Will plan have operational failure if it waits until 2022 to amend?
  - ▶ No; amendment should be retroactively effective

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Example

- ▶ Plan provides that automatic deferrals increase 1%/year
- ▶ Maximum automatic deferral in document is 10%
- ▶ Employer, learning of SECURE, allows limit to rise to 15% starting in 2020
- ▶ Doesn't amend plan document until 2022
- ▶ Result: Amendment is timely: No operational failure
- ▶ Planning question:
  - ▶ Suppose someone has been in QACA since 2008
    - ▶ They hit 10% in 2016
  - ▶ Did you increase rate to 11% or 14% for 2020?




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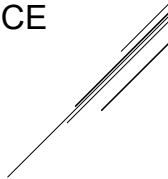
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**ELIMINATION  
OF SAFE  
HARBOR  
NOTICE**




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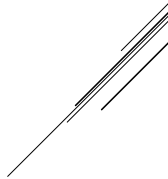
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SECURE Eliminated Notice Requirement for Safe Harbor Nonelective (SHNE)

- ▶ Applies to both
  - ▶ Classic SH
  - ▶ QACA
- ▶ Notice still required for ADP safe harbor with:
  - ▶ Basic match
  - ▶ Enhanced match
  - ▶ (Classic SH or QACA)
- ▶ Applies to 2020 plan year and beyond




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### What Was Not Eliminated? (Notice 2020-86)



- ▶ Requirement that employees have effective opportunity to make or change deferral elections
  - ▶ Notice
  - ▶ Time period to elect change
  - ▶ Any other conditions on elections
- ▶ EACA notice requirement
- ▶ ACP safe harbor notice requirement (Classic SH only)
  - ▶ No need to provide safe harbor for QACA with ACP safe harbor!
  - ▶ Either conventional or "maybe" notice before year begins will do

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### Midyear Amendments



- ▶ No change in Notice 2016-16 requirement for "updated safe harbor notice" for some midyear changes to safe harbor nonelective plans
  - ▶ See Notice 2020-52



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### Midyear Suspension or Reduction of Safe Harbor



- ▶ If you reduce or suspend safe harbor midyear, you must give a notice 30 days in advance
  - ▶ Even for SHNE
  - ▶ Notice 2020-52
- ▶ Additionally, to qualify to reduce or suspend midyear, employer must either:
  - ▶ Be operating at an economic loss for the year; or
  - ▶ Include in safe harbor notice a warning that the employer can amend to reduce or suspend contributions on 30 days notice (the "maybe not" notice)

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### How Do You Give "Maybe Not" if No Safe Harbor Notice?



- ▶ Maybe Not notice can be given as stand-alone notice
- ▶ Normal safe harbor notice requirements (other than content) apply
- ▶ Special deadline for 2021 is later of:
  - ▶ 30 days before beginning of plan year; or
  - ▶ January 31, 2021
- ▶ Notice 2020-86

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO
<input type="checkbox"/>	MAYBE

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### RETROACTIVE SHNE ADOPTION




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### Before SECURE



- ▶ Safe harbor provisions had to be in place before year begins
- ▶ Only exception: Maybe Notice
  - ▶ Limited to ADP SHNE
    - ▶ Can be used to qualify for ACP safe harbor as well
  - ▶ Give Maybe Notice before year begins
    - ▶ Just like safe harbor notice except explains:
      - ▶ Employer has not committed to 3% nonelective
      - ▶ If employer decides to give nonelective, will give follow up notice
    - ▶ At least 30 days before year end (if instituting SHNE)
      - ▶ Provide employees with follow up notice explaining that employer will contribute 3%
      - ▶ Amend plan to provide for 3% nonelective
  - ▶ Regulations (not the Code) permit Maybe Notice

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### SECURE Change



- ▶ Can retroactively amend to add SHNE to existing 401(k) plan
  - ▶ May do at any time up to 12 months after end of plan year
- ▶ Contribution rate:
  - ▶ 3% if adopted more than 30 days before end of plan year
    - ▶ November 30 or earlier for calendar year plan
  - ▶ 4% if adopted thereafter (can revert to 3% for following years)
- ▶ No requirement for notice to employees

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### It Works After Suspension! (Notice 2020-86)



- ▶ Example:
  - ▶ Employer started 2020 with SHNE
    - ▶ Calendar year plan
  - ▶ Decided to suspend safe harbor in 2020
    - ▶ Gave notice March 31
    - ▶ Amended plan to prospectively eliminate SH nonelective effective April 30
  - ▶ Now decides it wants (and can afford) SH for 2020
    - ▶ Can retroactively amend to return to SH for 2020
    - ▶ 4% if after November 30, 2020
    - ▶ Can qualify for top heavy safe harbor exemption
- ▶ Won't work if plan used safe harbor match (basic or enhanced) at any time during plan year

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### Late Amendment Doesn't Change Deduction Deadline



- ▶ Example:
  - ▶ On 11/1/2021, Employer amends 401(k) to add 4% SHNE for 2020
    - ▶ Immediately makes employer contribution
  - ▶ Assume extended tax return due date was October 15, 2021
  - ▶ Contribution is deductible only on 2021 return
  - ▶ Contribution is \$415 annual addition for 2020 (since it was within 30 days of extended due date)
- ▶ Moral: Employer probably wants to decide about safe harbor before tax return deadline

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### What Happens to the Maybe Notice?



- ▶ There is only one time it is needed:
  - ▶ ACP safe harbor in connection with Classic (not QACA) SH
  - ▶ In that situation, you must follow the Maybe Notice rules
    - ▶ Deadline to amend is 30 days before end of year
- ▶ In other situations, it is essentially repealed:
  - ▶ Notice 2020-86
  - ▶ ADP safe harbor (Classic or QACA)
  - ▶ ACP safe harbor with QACA SHNE

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### Timing of Retroactive Amendments



- ▶ SECURE amendment deadline applies: adopt by
  - ▶ Last day of 2022 plan year (2024 for governmental)
  - ▶ Even if that is more than 12 months after end of plan year
- ▶ Example:
  - ▶ Employer began 2020 with ADP-tested plan
  - ▶ Employer amends plan May 30, 2022 to add SH nonelective for 2020
    - ▶ 4% contribution
    - ▶ Amendment is timely

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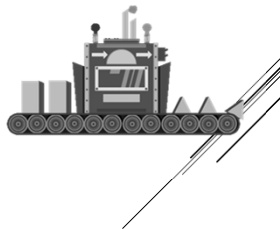
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### PENSION CHANGES IN CONSOLIDATED APPROPRIATIONS ACT



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**Partial Termination Protection (Div. EE, §209)**



- ▶ **No partial termination:**
  - ▶ For plan year which includes period from March 13, 2020 to March 31, 2021
    - ▶ Protects 2020 and 2021 for calendar year plans
  - ▶ **If**
    - ▶ Number of active participants on March 31, 2021 is at least 80% of
    - ▶ Number of active participants on March 13, 2020
- ▶ **Active participant not defined**
  - ▶ Presumably includes employees eligible to defer, whether or not they actually do so

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**Partial Termination Protection (Div. EE, §209)**



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**Change to CRDs (Div. N, §280)**



- ▶ **Under CARES:**
  - ▶ Coronavirus-related distributions to qualified individuals could be distributable event for 401(k), 403(b), Governmental 457(b)
    - ▶ Presumably qualifies as stated event for profit sharing
  - ▶ **But not for pension plans**
    - ▶ Prohibits in-service distributions before 59½/NRA
- ▶ **CAA amends to permit money purchase plans to make CRDs in-service before 59½**
  - ▶ Only two types of plans can use this rule:
    - ▶ Plans that were making the distributions when they were illegal
    - ▶ Plans that distributed between December 27 and December 30

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**PPP Changes (Div. N, §§276, 278)**



- ▶ Even if payments are forgiven in PPP, they are still deductible
  - ▶ Take THAT, IRS Notice 2020-32!
- ▶ PPP extended and expanded with changes
  - ▶ Expect SBA guidance soon
  - ▶ Borrowers must have 300 or fewer employees/location
  - ▶ Borrowers must have had 25% less revenue in one 2020 quarter compared to same quarter in 2019
  - ▶ The maximum loan amount is \$2 million
  - ▶ More flexibility on use of funds
  - ▶ Streamlined forgiveness for loans under \$150,000

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**Standard Disaster Relief for 2020 Non-COVID Disasters (Div. EE, §302)**



- ▶ Allows plans to provide relief for major 2020 disasters
  - ▶ Other than COVID-19
  - ▶ Think wildfires, hurricanes, etc.
  - ▶ Deadline June 25, 2021
  - ▶ Relief for those living in disaster area who suffered economic loss
    - ▶ \$100,000 qualified disaster distribution
      - ▶ Distributable event for 401(k), 403(b), gov't 457(b), MPP
    - ▶ Double loan limit for loans to June 25, 2021
    - ▶ Extension and suspension of loan repayment
  - ▶ Opportunity to repay some hardship distributions

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**New Code §401(a)(36)(B) Authorizes In-Service Pension Distributions at 55 (Div. EE, §208)**



- ▶ Limited to:
  - ▶ Multiemployer defined benefit plans
  - ▶ Employer in building/construction industry
  - ▶ Participants before May 1, 2013
  - ▶ Trust in existence before 1970
  - ▶ Before 12/31/11 plan provided for in-service distributions at 55 and received favorable determination letter

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For Further Study



Joanne Pecina will demonstrate how to find more information on today's topic from the ERISApedia.com resources.

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Contact Information



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