



SECUREly Safe Harbor CARES Update

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Your Presenters
Today

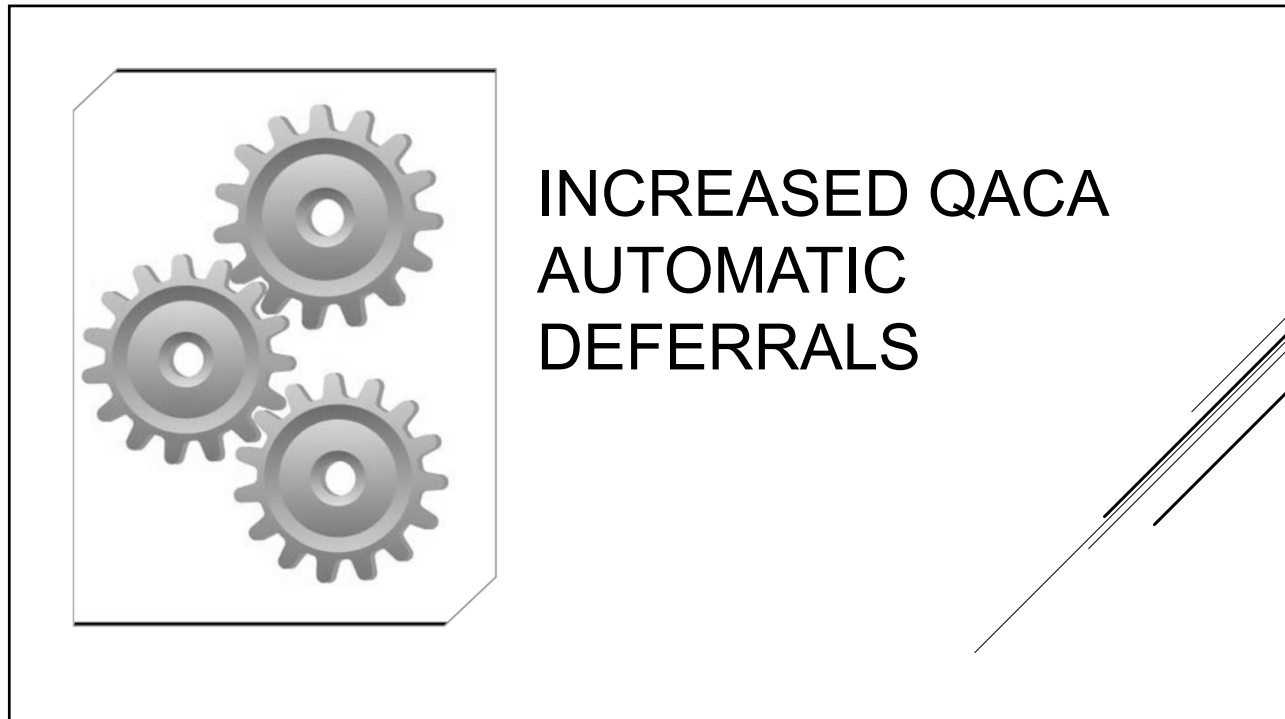
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What We'll Cover Today




- ▶ 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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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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ELIMINATION
OF SAFE
HARBOR
NOTICE

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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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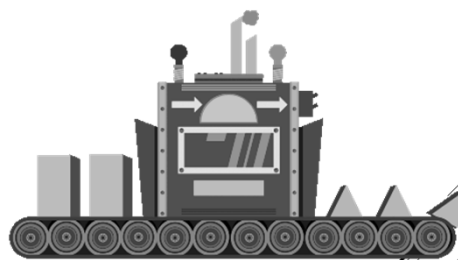
Timing of Retroactive Amendments



- ▶ 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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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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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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