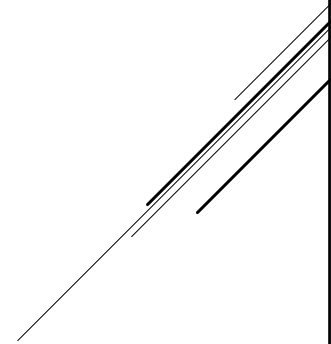




Derrin's Fireside Chat: We CARES

29 April 2020

S. Derrin Watson



1



Your Co-Hosts

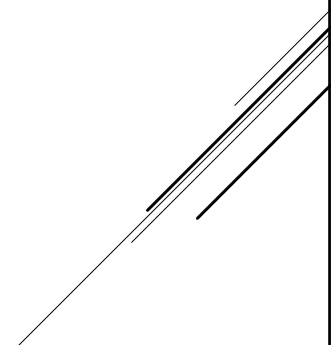
▶ Joanne Pecina



▶ Maureen Pesek



▶ Tim McCutcheon



2

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.
- ▶ Derrin will "roll over" unanswered questions
- ▶ Slides and a recording of the webinar also available on the /webcasts webpage.
 - ▶ Slides update today! Download latest copy
 - ▶ A few slots are open for next week's Fireside Chat; register today!
- ▶ 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.

3

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.
- ▶ 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.

4

Your Presenter Today



S. Derrin Watson, J.D., APM



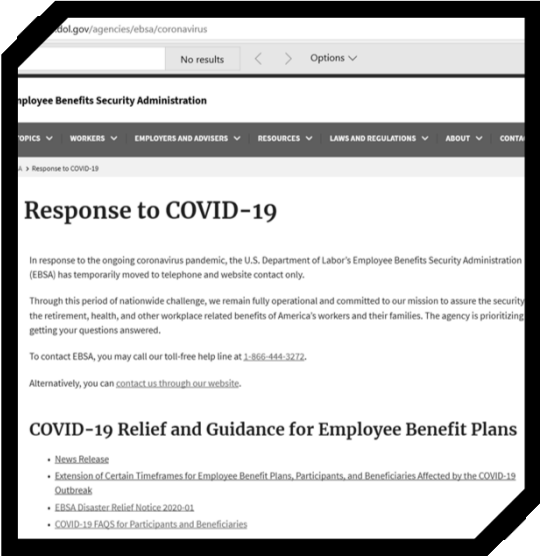
5

Introduction



- ▶ Purpose:
 - ▶ Update on COVID 19 relief and guidance
 - ▶ Answer questions
- ▶ Length: 50 minutes
 - ▶ I won't get to all the questions
 - ▶ We will roll them over
- ▶ If you email me a question, we will put it in the stack for next week
 - ▶ If you want a reply:
 - ▶ Subscribers can use the ASK system
 - ▶ Pay me

6



The screenshot shows the EBSA website with the following content:

Response to COVID-19

In response to the ongoing coronavirus pandemic, the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) has temporarily moved to telephone and website contact only.

Through this period of nationwide challenge, we remain fully operational and committed to our mission to assure the security of the retirement, health, and other workplace related benefits of America's workers and their families. The agency is prioritizing getting your questions answered.

To contact EBSA, you may call our toll-free help line at 1-866-444-3272.

Alternatively, you can [contact us through our website](#).

COVID-19 Relief and Guidance for Employee Benefit Plans

- [News Release](#)
- [Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak](#)
- [EBSA Disaster Relief Notice 2020-01](#)
- [COVID-19 FAQs for Participants and Beneficiaries](#)

TODAY'S DOL UPDATES

7

CARES LOAN RELIEF WON'T BE PROHIBITED TRANSACTION

- ▶ Potential issues:
 - ▶ Adequate security for loans of more than 50% of account balance
 - ▶ Loans available on "reasonably equivalent basis" even though higher loans and loan extensions are available to qualified individuals
 - ▶ Loans made in compliance with plan terms

8

DOL buys into IRS 5500 relief



- ▶ Whatever 5500 extensions IRS grants also apply for DOL
- ▶ Also applies to form M-1 for MEWAs
- ▶ Notice 2020-23: 5500 and 8955-SSA due between April 1 to July 15, 2020 extended to July 15, 2020

9

DOL Notices



- ▶ An employee benefit plan and the responsible plan fiduciary will not be in violation of ERISA for a failure to timely furnish a notice, disclosure, or document that must be furnished between March 1, 2020, and 60 days after the announced end of the COVID-19 National Emergency, if the plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances. Good faith acts include use of electronic alternative means of communicating with plan participants and beneficiaries who the plan fiduciary reasonably believes have effective access to electronic means of communication, including email, text messages, and continuous access websites.

10

Blackout notices



- ▶ The regulations provide an exception to the advance notice requirement [for blackouts] when the inability to provide the notice is due to events beyond the reasonable control of the plan administrator and a fiduciary so determines in writing. The above relief under Section 518 applies to blackout notices that are required to be provided under the regulation, including those required to be provided after the blackout period begins. Further, the Department will not require the written determination by a fiduciary pursuant to the regulation for blackout notices covered by this notice, as pandemics are by definition beyond a plan administrator's control.

11

Verification problems



- ▶ If an employee pension benefit plan fails to follow procedural requirements for plan loans or distributions imposed by the terms of the plan, the Department will not treat it as a failure if:
 - ▶ that failure is solely attributable to the COVID-19 outbreak;
 - ▶ the plan administrator makes a good-faith diligent effort under the circumstances to comply with those requirements; and
 - ▶ the plan administrator makes a reasonable attempt to correct any procedural deficiencies, such as assembling any missing documentation, as soon as administratively practicable.

12

Deferral deposit deadlines



- ▶ The Department recognizes that some employers and service providers may not be able to forward participant payments and withholdings to employee pension benefit plans within prescribed timeframes during the period beginning on March 1, 2020, and ending on the 60th day following the announced end of the National Emergency. In such instances, the Department will not – solely on the basis of a failure attributable to the COVID-19 outbreak – take enforcement action with respect to a temporary delay in forwarding such payments or contributions to the plan.
 - ▶ Employers and service providers must act reasonably, prudently, and in the interest of employees to comply as soon as administratively practicable under the circumstances.

13

General fiduciary compliance



- ▶ The guiding principle for plans must be to act reasonably, prudently, and in the interest of the covered workers and their families who rely on their health, retirement, and other employee benefit plans for their physical and economic wellbeing.
- ▶ Plan fiduciaries should make reasonable accommodations to prevent the loss of benefits or undue delay in benefits payments in such cases and should attempt to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established timeframes.
- ▶ Our approach to enforcement will emphasize compliance assistance and include grace periods and other relief where appropriate, including when physical disruption to a plan or service provider's principal place of business makes compliance with pre-established timeframes for certain claims' decisions or disclosures impossible.

14

Joint notice: claims extension



- ▶ All . . . employee pension benefit plans subject to ERISA or the Code must disregard the period from March 1, 2020 until sixty (60) days after the announced end of the National Emergency or such other date announced by the Agencies in a future notice (the “Outbreak Period”) for all plan participants, beneficiaries, qualified beneficiaries, or claimants wherever located in determining the following periods and dates—
 - ▶ (5) The date within which individuals may file a benefit claim under the plan’s claims procedure pursuant to 29 CFR 2560.503–1,
 - ▶ (6) The date within which claimants may file an appeal of an adverse benefit determination under the plan’s claims procedure pursuant to 29 CFR 2560.503–1(h),

15

Example: Pension plan claim



- ▶ Individual F received a notice of adverse benefit determination from Individual F’s 401(k) plan on April 15, 2020. The notification advised Individual F that there are 60 days within which to file an appeal.
- ▶ What is Individual F’s appeal deadline [assuming national emergency ends 4/30/20 and Outbreak Period ends 6/29/20]?
- ▶ When determining the 60-day period within which Individual F’s appeal must be filed, the Outbreak Period is disregarded. Therefore, Individual F’s last day to submit an appeal is 60 days after June 29, 2020, which is August 28, 2020.

16



PAYCHECK PROTECTION PROGRAM GETS NEW MONEY

17



PPP gives two things

- ▶ SBA loan on favorable terms
 - ▶ 2.5 months of 2019 payroll costs
- ▶ Potential for forgiveness of principal on loan
 - ▶ For two months
- ▶ This week: additional funding but no program changes

18

PPP in CARES



- ▶ ‘(viii) the term ‘payroll costs’— “(I) means—
- ▶ “(aa) the sum of payments of any compensation with respect to employees that is a—
- ▶ “(AA) salary, wage, commission, or similar compensation;
- ▶ “(BB) payment of cash tip or equivalent;
- ▶ “(CC) payment for vacation, parental, family, medical, or sick leave;
- ▶ “(DD) allowance for dismissal or separation;
- ▶ “(EE) payment required for the provisions of group health care benefits, including insurance premiums;
- ▶ “(FF) payment of any retirement benefit; or
- ▶ “(GG) payment of State or local tax assessed on the compensation of employees; and

Wages likely includes deferrals

19

PPP SBA FAQs



- ▶ 7. Question: The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of \$100,000. Does that exclusion apply to all employee benefits of monetary value?
- ▶ Answer: No. The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:
 - ▶ employer contributions to defined-benefit or defined-contribution retirement plans;
 - ▶ payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
 - ▶ payment of state and local taxes assessed on compensation of employees.

20

Calculating loan amount



- ▶ Regardless of whether you have filed a 2019 tax return with the IRS, you must provide the 2019 Form 1040 Schedule C with your PPP loan application to substantiate the applied-for PPP loan amount
 - ▶ Schedule C net profit (line 31)
 - ▶ 2019 gross wages
 - ▶ 2019 employer health insurance contributions (health insurance component of Form 1040 Schedule C line 14), retirement contributions (Form 1040 Schedule C line 19), and state and local taxes assessed on employee compensation

21

How much can be forgiven?



- ▶ The amount of loan forgiveness can be up to the full principal amount of the loan plus accrued interest. The actual amount of loan forgiveness will depend, in part, on the total amount spent over the covered period on:
 - i. payroll costs including salary, wages, and tips, up to \$100,000 of annualized pay per employee (for eight weeks, a maximum of \$15,385 per individual), as well as covered benefits for employees (but not owners), including health care expenses, retirement contributions, and state taxes imposed on employee payroll paid by the employer (such as unemployment insurance premiums);
 - ii. owner compensation replacement, calculated based on 2019 net profit as described in Paragraph 1.b. above, with forgiveness of such amounts limited to eight weeks' worth (8/52) of 2019 net profit, but excluding any qualified sick leave equivalent amount for which a credit is claimed under section 7002 of the Families First Coronavirus Response Act (FFCRA) (Public Law 116-127) or qualified family leave equivalent amount for which a credit is claimed under section 7004 of FFCRA;

22

Questions







- ▶ Can ER claim forgiveness for contributions paid after 6/30/2020?
 - ▶ Derrin's guess: No
- ▶ Can we allocate PS contribution midyear?
 - ▶ Depends on document
 - ▶ Making it and allocating it are two different things
 - ▶ Can't allocate to participant who hasn't satisfied allocation conditions
 - ▶ Any contribution made for this plan year must be allocated for this plan year
- ▶ Can contributions for 2019 count?
 - ▶ Derrin's guess: It looks like they can
- ▶ If PPP forgiveness used to fund contribution, is it deductible?
 - ▶ Yes

23

QUESTION BOX



24

	Summary of material modifications	Due 210 days after end of plan year amendment adopted
	Updated safe harbor notice	Due ASAP after amendment
	Change notice related to participant expenses	Due ASAP
	You can do them all with a single form!	

OTHER NOTICE REQUIREMENTS

25

CRDs

- ▶ Our plans usually have a restriction of 1 in-service distribution per plan year, if a qualified participant has taken an in-service distribution already and now wants to take a Corvid in service distribution, do we need to amend the document to allow more than 1 in service distribution? Will the timing of the amendment be before the plan distributes the second distribution?
 - ▶ Suggestion: Address in your CARES amendment
 - ▶ The provisions of this Section will apply notwithstanding any limitation in the Plan on partial distributions or any otherwise applicable plan or administrative limits on the number of allowable distributions
 - ▶ Amendment deadline is last day of 2022 plan year
- ▶ Are CRDs limited to fully vested accounts?
 - ▶ Not in law; address in CARES amendment

26

CRDs



- ▶ CRD benefits available to participants who terminated years ago if they are now qualified individuals
- ▶ If a person is signing a statement that they are in financial need due to COVID-19, then it would appear that a rollover would not be an option...even Roth?
 - ▶ Disagree; CRDs can be rolled over; even if obtained under plan's hardship language
- ▶ What distribution code should be used for a CRD for an individual under age 59 1/2?
 - ▶ Code 1

27

RMDs



- ▶ Will amounts that were previously RMDs (now "2020 RMDs") still qualify for partial withdrawal if the plan only permits partial withdrawal for RMD participants?
 - ▶ Depends on document
 - ▶ Tip: Address in CARES amendment
- ▶ If an IRA has been making monthly RMD payments to the IRA holder, what is allowed within the 60 day rollover rule in regard to the one rollover per year rule?
 - ▶ 2009 guidance: Rollover relief for IRAs. In the case of IRA owners who have already received distributions of 2009 RMDs in 2009, the Service, under the authority of § 408(d)(3)(l), is hereby extending the 60-day rollover period for any such distribution so that it ends no earlier than November 30, 2009. However, because of the one-rollover-per-year rule in § 408(d)(3), which was unchanged by WREERA, no more than one distribution from an IRA in 2009 will be eligible for this rollover relief.

28

RMDs



- ▶ Would you speak on RMDs for participants whose RBD is 4/1/2021? Confirm these are waived? Assuming yes, how is withholding is handled if paid in 2021? We read it as if paid in 2021, 20% withholding is mandatory.
 - ▶ Example: Ellen turned 70.5 in 2019 but was still employed
 - ▶ Terminates 5/1/2020
 - ▶ RBD is 4/1/2021
 - ▶ First distribution is for 2020; waived by CARES
 - ▶ Ellen asks for distribution anyway: Eligible rollover distribution
 - ▶ Based on Notice 2009-82, 20% withholding would apply
- ▶ Regarding the RMD waiver for those who reached 70.5 in 2019 and postponed their 2019 RMD to 4/1/2020, they do not have to take the 2019 and 2020 RMD but it does not require them to take (MAKE UP) the 2019 RMD by 4/1/21 correct?
 - ▶ No; first RMD is 12/31/21 for 2021 distribution calendar year
- ▶ Beneficiary RMDs are also waived

29

Extensions from April 1 to July 15



- ▶ Is the 410(b) transition period extended under Rev Proc 2018-58? For instance, we have a 5/31 PYE who has a transition period ending on 5/31/20. Can that be extended to 7/15?
 - ▶ No
- ▶ Does Notice 2020-23 extend 990-T deadlines to July 15?
 - ▶ Yes; other 990 forms also extended
- ▶ Is IRA correction deadline extended?
 - ▶ Yes
- ▶ Loan payment deadline suspended from 4/1/20 to 7/15/20. Must participant make it up 7/16/20?
 - ▶ No; cure period extends to 12/31/20
- ▶ 403(b) deadline is June 30
- ▶ Annual addition deadline for nonprofits not extended
- ▶ No extension for March 15 deadline for calendar year ADP/ACP refunds

30

DB Extensions



- ▶ Is the extension of the deadline to make DB minimum required contribution (MRC) limited to the amount of the MRC? For example, if the MRC for a calendar 2019 plan year is \$20,000 and the plan sponsor makes a \$50,000 contribution on 12/1/2021, will it be allowed to count the \$50,000 as a 2019 plan year contribution?
 - ▶ CARES limits it to MRC itself
- ▶ What about 5500s for DB plans who have extended contribution date of 1/1/2021? How do we prepare a Schedule SB in October for plan whose contribution isn't due until January?
 - ▶ I don't know; I expect we will receive instructions

31

Safe harbor 401(k)




- ▶ Can you stop HCE safe harbor contributions midyear but leave NHCE contributions alone?
 - ▶ Yes, but it is a suspension or reduction
 - ▶ 30 day notice
 - ▶ Lose safe harbor status
- ▶ Supplemental notice needed to remove SHNE?
 - ▶ Until IRS modifies regulations, I recommend you give notice

32



33

Thank you!



- ▶ S. Derrin Watson
- ▶ Attorney at law
- ▶ 5631 Kent Place
- ▶ Goleta, CA 93117
- ▶ sderrin@gmail.com

- ▶ Check for my books at ERISApedia.com
 - ▶ Who's the Employer
 - ▶ 403(b) Plan eSource
 - ▶ 457 Plan eSource
 - ▶ Plan Correction eSource
 - ▶ With Ilene Ferenczy and Alison Cohen

34

CE Credit



- ▶ Credit is offered for ERPA/ASPPA-ARA/NIPA
- ▶ Those that attended the requisite time in the live video portion of the webcast today will receive a certificate by email in a few days (ERPA will take longer).
- ▶ Please check spam folder.
- ▶ Any questions? Email: support@erisapedia.com.
- ▶ After the webcast you will be presented with a short Google Forms survey. Please let us know how we are doing.

35

For Further Study



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

36