



## Derrin's Fireside Chat: We CARES

### 13 May 2020

S. Derrin Watson

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### Your Co-Hosts

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



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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.
- ▶ Derrin will "roll over" unanswered questions
- ▶ Slides and a recording of the webinar also available on the /webcasts webpage.
  - ▶ 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.



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### During the Webinar



- ▶ Credit is offered for ERPA/ASPPA-ARA/NIPA.
  - ▶ To receive ERPA Credit you must answer the polling questions.
- ▶ 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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### Your Presenter Today



S. Derrin Watson, J.D., APM




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### 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
  - ▶ Check prior programs

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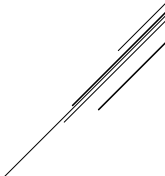
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Congress giveth; IRS taketh away



- ▶ CARES 1106(i): CARES loan forgiveness not included in income
- ▶ IRS Notice 2020-32: Expenses associated with CARES loan forgiveness not deductible
  - ▶ Congress disagrees



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Effect of nondeductibility



- ▶ Free money beats tax deduction
- ▶ Free money + deduction is even better
- ▶ Question: Does this let you contribute more than 25% to DC?
  - ▶ Suppose deduction limit is \$120,000 and PPP forgiveness is \$20,000
  - ▶ Can you contribute \$140,000?
  - ▶ I think you have a nondeductible contribution penalty on the extra \$20,000; total employer contribution can't exceed 25% limit

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There's more to think about than PPP



- ▶ Employee retention credit
  - ▶ 50% of payroll costs (up to \$10k/employee) through year end
  - ▶ Reduces payroll taxes
    - ▶ Therefore tax-exempt organizations can use it
    - ▶ Can get advance with new form 7200
- ▶ Not available if you take PPP loan

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PPP requirements; FAQ 31



- ▶ Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary.
  - ▶ Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.
  - ▶ Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.
  - ▶ For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.

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Can repay PPP loan by tomorrow



► FAQ 45: An employer that applied for a PPP loan, received payment, and repays the loan by the safe harbor deadline (May 14, 2020) will be treated as though the employer had not received a covered loan under the PPP for purposes of the Employee Retention Credit. Therefore, the employer will be eligible for the credit if the employer is otherwise an eligible employer for purposes of the credit.

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HAVE CLIENTS ASKED YOU ABOUT THE PPP?



- I've had at least 10 ask me
- I've had a few ask me
- All's quiet

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Please Notice This



SAFE HARBOR NOTICES AND CARES

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What must be in safe harbor notice?



- ▶ Identifying information
- ▶ Safe harbor contributions
  - ▶ Plan to which contribution will be made\*
- ▶ Other contributions\*
- ▶ Type and amount of compensation that may be deferred
- ▶ How to make election; administrative requirements
- ▶ Withdrawal and vesting provisions\*
- ▶ Where to go for additional information

\* Can refer to SPD

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Notice 2016-16 Midyear changes in SH



- ▶ Allowed SH plans to make midyear changes:
  - ▶ An updated safe harbor notice that describes the mid-year change and its effective date must be provided to each [participant], within a reasonable period before the effective date of the change.
    - ▶ 30-90 days in advance is deemed reasonable
    - ▶ If impractical, such as with retroactive amendment, deliver ASAP
- ▶ Participants must have reasonable period to change deferral elections after receiving notice
- ▶ "This notice does not require any additional notice or election opportunities for changes to information that is not required safe harbor notice content, even if that information is provided in a plan's safe harbor notice."

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What requires an updated notice?



- ▶ Absolutely yes: CARES distribution
  - ▶ Even if you cross-reference SPD for distribution provisions
- ▶ Absolutely no: Loan changes
- ▶ Probably not: RMD changes
  
- ▶ But you still must provide an SMM someday
- ▶ And you may have a BRF issue if people aren't informed of loan changes

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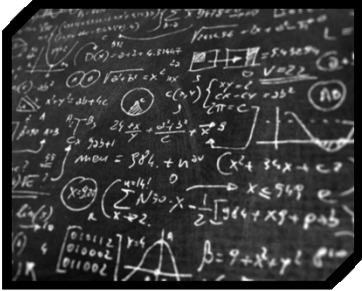
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LOAN  
CALCULATIONS

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### Maximum loan amount to Qualified Individual



▶ Lesser of:

- ▶ (i) \$100,000, less
  - ▶ the highest outstanding balance of loans from the plan during the 1-year period ending on the day before the date on which such loan was made, over
  - ▶ the outstanding balance of loans from the plan on the date on which such loan was made, or
- ▶ the greater of
  - ▶ The present value of the nonforfeitable accrued benefit of the employee under the plan, or
  - ▶ \$10,000.

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### Example



- ▶ April 1, 2019, Kim borrowed \$32,000 from plan
- ▶ June 1, 2019 loan balance is \$30,000
- ▶ June 1, 2020 loan balance is \$18,000
- ▶ June 1, 2020 total account balance (including loan) is \$95,000
- ▶ Maximum total loans available is greater of:
  - ▶ \$100,000 - (\$30,000 - \$18,000) = \$88,000
  - ▶ \$95,000
- ▶ Maximum new loan is \$88,000 - \$18,000 = \$70,000
- ▶ Could also refinance to single \$88,000 loan
  - ▶ Latest due date of refinanced loan is 4/1/2025

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HAVE YOU HAD MANY PEOPLE REQUEST HIGHER LOANS?



- ▶ We don't do this higher loan stuff
- ▶ We'd do it, but nobody asks
- ▶ A few have
- ▶ We've gotten a bunch of requests

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QUESTION BOX



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Correction



- ▶ Someone asked about suspending deferrals after a hardship distribution
- ▶ I distinguished between hardship distributions and CRDs
  - ▶ CRDs don't require deferral suspension
- ▶ But starting January 1 you can't suspend deferrals because of a hardship distribution

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**CARES and integral provisions deadline last day of 2022 plan year**

- Same as SECURE changes

**No need to amend if you don't implement CARES provisions**

- Terminating plan need not implement if it won't implement

**Is adding loan provision integral?**

- My take: No, unless it is limited to Qualified Individuals

PLAN AMENDMENTS

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**HAS YOUR DOCUMENT PROVIDER ISSUED A CARES AMENDMENT?**

- ▶ Yes
- ▶ Not that I've heard of
- ▶ I don't know




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**Spousal consent**

- ▶ If a plan currently requires spousal consent for distributions, is spousal consent required for a CRD Distribution?
  - ▶ Yes
  - ▶ Also applies to loans to Qualified Individuals
- ▶ No softening yet from IRS on notary or witness by plan representative




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### RMD rollovers



- ▶ 2020 RMDs waived for DC plans and IRAs
  - ▶ RMDs not eligible rollover distribution
- ▶ CRDs to QIs can be rolled up to three years after receipt
- ▶ 60-day rollover deadline extended from April 1 to July 15
  - ▶ Covers distributions on or after February 1

	CRD to Qualified Individual	Others
DB; Tax-exempt 457(b)	Not eligible	Not eligible
DC, 403(b), gov't 457(b) received in January	Three years after receipt	Too late (IRS may extend)
DC, 403(b) gov't 457(b) received after January	Three years after receipt	Later of 60-days or July 15

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### IN GENERAL, HOW ARE YOU HANDLING RMDs?

- ▶ No change: Follow normal rules
- ▶ Distribute unless participant waives
- ▶ Don't distribute unless participant asks
- ▶ Don't distribute
- ▶ Other



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### Loan suspension

- ▶ If a Loan Program has a Leave of Absence clause (permits suspension up to 1 Year for an approved LOA); and a participant with a loan is furloughed, can the Employer use this clause to suspend loan payments, rather than the CARES Act provision? Of course no extension of time on the loan.
- ▶ Advantages to CARES suspension
  - ▶ Extends length of loan
  - ▶ Applies even without leave of absence
- ▶ Advantage of LOA suspension
  - ▶ Covers payments for full year; CARES payments restart after 12/31



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MORE  
QUESTIONS

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HOW HAVE YOU ADAPTED TO  
COVID-19 WORK CHANGES?

- ▶ I love working from home!
- ▶ I'm managing
- ▶ I can't wait to get back to the office
- ▶ It's really not a big deal for me



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Thank you!

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- ▶ [sderrin@gmail.com](mailto: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



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### CE Credit

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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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