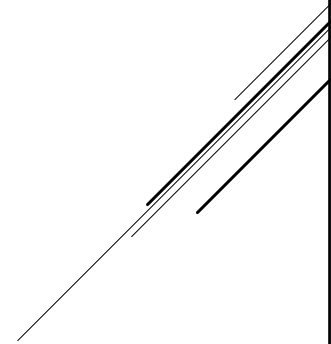




# Derrin's Fireside Chat: We CARES

## 20 May 2020

S. Derrin Watson



1

### Your Co-Hosts



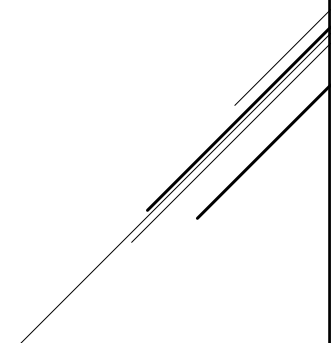
▶ Joanne Pecina



▶ 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.
  - ▶ The next "Chat" session will be June 3. We will formally announce via email.
- ▶ 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](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.

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 chat
  - ▶ If you want a reply:
    - ▶ Subscribers can use the ASK system
    - ▶ Pay me
  - ▶ Check prior programs

6



## PAYCHECK PROTECTION PROGRAM

7



### 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.

8

## New FAQ 46, 47



- ▶ “Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.”
- ▶ More than \$2M? It may be in good faith
  - ▶ Subject to SBA review
- ▶ May 14 repayment deadline extended to May 18

9

## New forgiveness application form available May 15



- ▶ Google SBA Form 3508
- ▶ 11 pages of forms and instructions
- ▶ Generally borrower-friendly

10

## Covered period



- ▶ 56 days starting when you get loan
- ▶ No mention of June 30 cutoff
- ▶ Alternative available:
  - ▶ Limited to paydays at least as frequent as every 2 weeks
  - ▶ Start at first payroll period that begins after you receive loan

11

## What Can Be Forgiven?



(b) **FORGIVENESS.**—An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs **incurred** and payments made during the covered period:

- (1) Payroll costs.
- (2) Any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation).
- (3) Any payment on any covered rent obligation.
- (4) Any covered utility payment.

12

## From the instructions



- ▶ Borrowers are generally eligible for forgiveness for the payroll costs paid and payroll costs incurred during the eight-week (56-day) Covered Period (or Alternative Payroll Covered Period) (“payroll costs”).
  - ▶ Paid when check distributed
  - ▶ Incurred when pay earned
- ▶ Payroll costs incurred but not paid during the Borrower’s last pay period of the Covered Period (or Alternative Payroll Covered Period) are eligible for forgiveness if paid on or before the next regular payroll date.

13

## Computing cash compensation



- ▶ Enter the sum of gross salary, gross wages, gross tips, gross commissions, paid leave (vacation, family, medical or sick leave, not including leave covered by the Families First Coronavirus Response Act), and allowances for dismissal or separation paid or incurred during the Covered Period or the Alternative Payroll Covered Period. For each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of \$100,000, as prorated for the Covered Period; therefore, do not enter more than \$15,385 in Table 1 or Table 2 for any individual employee.

14

## Retirement plan contributions



Non-Cash Compensation Payroll Costs During the Covered Period or the Alternative Payroll Covered Period

Line 6. Total amount paid by Borrower for employer contributions for employee health insurance:

Line 7. Total amount paid by Borrower for employer contributions to employee retirement plans:

Line 8. Total amount paid by Borrower for employer state and local taxes assessed on employee compensation:

**Line 7:** Enter the total amount paid by the Borrower for employer contributions to employee retirement plans, excluding any pre-tax or after-tax contributions by employees.

15

## LOAN EXTENSION POSSIBILITIES AND OTHER LOAN QUESTIONS

Deadline for higher loan limits is September 22, 2020



16



## Derrin's interpretation of the rules



- ▶ Waiting for IRS guidance
- ▶ Based on Notice 2005-92
- ▶ A lot of people have different interpretations
- ▶ (2) DELAY OF REPAYMENT.— In the case of a qualified individual with an outstanding loan (on or after [March 27, 2020]) from a qualified employer plan . . . —
  - ▶ (A) if the due date pursuant to . . . section 72(p)(2) . . . for any repayment with respect to such loan occurs during the period beginning on [March 27, 2020] and ending on December 31, 2020, such due date shall be delayed for 1 year,
  - ▶ (B) any subsequent repayments with respect to any such loan shall be appropriately adjusted to reflect the delay in the due date under subparagraph (A) and any interest accruing during such delay, and
  - ▶ (C) in determining the 5-year period and the term of a loan under . . . section 72(p)(2) . . . , the period described in subparagraph (A) of this paragraph shall be disregarded.
- ▶ Three patterns involving Tom, a qualified individual
- ▶ Loans repaid monthly on the last day of the month

17

## \$20,000 loan issued 9/1/2015



- ▶ Monthly payments \$386.66 with interest at 6%
- ▶ Expected due to 8/31/2020
- ▶ Last payment was 2/29/2020 with 6 payments left
  - ▶ Balance \$2,279.87
- ▶ Payments delayed one year starting 3/31/2020
  - ▶ New payment amount is \$410.50 (6 payments)
- ▶ Due date extended to 8/31/2021

18

## \$20,000 loan issued 9/1/2017



- ▶ Monthly payments \$386.66 with interest at 6%
- ▶ Expected due to 8/31/2022
- ▶ Last payment was 2/29/2020 with 30 payments left
  - ▶ Balance \$10,746.74
- ▶ Next payment is 1/31/2021 (a delay on 10 payments)
  - ▶ New payment amount is \$382.88 (32 payments)
- ▶ Due date extended to 8/31/2023

19

## \$20,000 loan issued 9/1/2020



- ▶ Monthly payments with interest at 6%
- ▶ Expected due to 8/31/2026
- ▶ First payment is 1/31/2021 with 68 payments left
  - ▶ New payment amount is \$354.68

20

## Return to work



- ▶ If a participant starts back to work, do you resume loan payments even if they chose the 1-year suspension?
  - ▶ Once you are a qualified individual, you remain a qualified individual
  - ▶ So, no



21

## Deemed distributions as CRDs



- ▶ A true deemed distribution is likely not a CRD
- ▶ However, a loan offset to a qualified individual can be a CRD
  - ▶ Employment termination
  - ▶ Plan termination

22

## Notice 2020-23 Extension



- ▶ Extends all payment due dates from 4/1/20 to 7/15/20 to 7/15/20
  - ▶ Not limited to qualified individuals
  - ▶ Maximum cure period is 12/31/20
  - ▶ Doesn't change ultimate due date
    - ▶ Unless it was due 4/1/20 to 7/15/20
- ▶ Does this need amendment of plan or loan policy?
  - ▶ I don't think so

23

QUESTION BOX



24

## RMDs



- ▶ If a DC plan terminates on 12/31/2019 but assets haven't been paid out yet, in order to not pay an RMD to a participant who is otherwise required to take an RMD, can the plan adopt a CARES Act amendment?
  - ▶ You will distribute 100% in 2020 anyway
  - ▶ So no difference
    - ▶ Participant can have the benefit of rolling it over
    - ▶ If a CRD, can roll it within 3 years
  - ▶ Remember: 20% withholding doesn't apply to amount that would have been RMD
- ▶ Is there anything proposed to waive the 1 rollover per year rule for IRAs if someone got monthly payments?
  - ▶ No; and it wasn't waived in 2009

25

## Can updated SH notice be delivered electronically



- ▶ Yes
  - ▶ Follow IRS reasonable access rules
  - ▶ Must allow for free paper copy

26

## Spousal consent



- ▶ Can the plan allow to waive the spousal consent? I've seen a form provided to a plan that has an option to suspend the spousal consent for the coronavirus-related loan from the plan.
  - ▶ If the plan is a QJSA plan, spousal consent needed as it normally would be for
    - ▶ Coronavirus-related distributions
    - ▶ Participant loans
- ▶ How about if spouse is in quarantine and has Covid?
  - ▶ Zoom with plan representative

27

## Restatement Cycle 3




- ▶ The IRS is supposed to issue letters in August 2020 for next recycle period. Do you think this will be extended?
  - ▶ The IRS expects to issue Cycle 3 letters June 30
  - ▶ I confirmed that yesterday
- ▶ Possible restatement deadlines are July or August 2022

28



29

Thank you!



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

30

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31

## For Further Study

Joanne Pecina will demonstrate how to find more information on today's topic from the [ERISApedia.com](http://ERISApedia.com) resources.



32