



## Derrin's Fireside Chat: We CARES

### 3 June 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.
  - ▶ The next "Chat" session will be June 17. 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.



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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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### Your Presenter Today



S. Derrin Watson, J.D., APM




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Day	Date	Topic	Presenters
Thursday	June 11	The eDisclosure Regs Are Here	Ferenczy, Cohen
Wednesday	June 17	Fireside Chat 7	Watson
Tuesday	June 23	Advanced Case Studies in EPCRS (1:40)	Ferenczy, Cohen, Moore
Tuesday	July 14	Get Your Hands Off My Money!	Cohen, Moore, Starr

UPCOMING WEBINARS

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

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Announcement 2020-07: Cycle 3



- ▶ IRS plans to issue Cycle 3 DC letters June 30
- ▶ Restatement deadline July 31, 2022
- ▶ Can submit 5307 August 1, 2020 to July 31, 2022
- ▶ 3<sup>rd</sup> cycle ends January 31, 2023

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Notice 2020-42



- ▶ Applies for all of 2020
  - ▶ Temporary relief from physical presence requirement for notarization
    - ▶ Allows remote electronic notary
  - ▶ Temporary relief from physical presence requirement for witness by plan representative

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Notary requirements



► In the case of a participant election witnessed by a notary public, for the period from January 1, 2020, through December 31, 2020, the physical presence requirement in § 1.401(a)-21(d)(6) is deemed satisfied for an electronic system that uses remote notarization if executed via live audio-video technology that otherwise satisfies the requirements of participant elections under § 1.401(a)-21(d)(6) and is consistent with state law requirements that apply to the notary public

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Plan representative requirements



► if the electronic system using live audio-video technology satisfies the following requirements:

- (1) The individual signing the participant election must present a valid photo ID to the plan representative during the live audio-video conference, and may not merely transmit a copy of the photo ID prior to or after the witnessing;
- (2) The live audio-video conference must allow for direct interaction between the individual and the plan representative (for example, a pre-recorded video of the person signing is not sufficient);
- (3) The individual must transmit by fax or electronic means a legible copy of the signed document directly to the plan representative on the same date it was signed; and
- (4) After receiving the signed document, the plan representative must acknowledge that the signature has been witnessed by the plan representative in accordance with the requirements of this notice and transmit the signed document, including the acknowledgement, back to the individual under a system that satisfies the applicable notice requirements under § 1.401(a)-21(c).

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NOTICE 2020-35

More extensions



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**Reconfirmed 403(b) restatement deadline** 

- ▶ End of 403(b) remedial amendment period was 3/31/2020
- ▶ Now extended to 6/30/2020
  - ▶ 403(b) RAP
  - ▶ 403(b) restatement deadline
  - ▶ Rev. Proc. 2019-39 3/31 dates

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**Confirmed DB deadline** 

- ▶ Cycle 2 DB deadline was 4/30/2020
- ▶ Now extended to 7/31/2020
  - ▶ Preapproved restatement deadline
  - ▶ Submission deadline for 5307
- ▶ Not extended:
  - ▶ Deadline to submit for DL for amended individually designed cash balance/hybrid plan
    - ▶ August 31, 2020

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**Other DB extensions** 

- ▶ Actions otherwise due from 3/30/2020 to 7/15/2020 are extended to 7/15/2020
  - ▶ Apply for funding waiver for single employer plan
  - ▶ Multiemployer plan
    - ▶ Certification of funded status and the notice to interested parties of that certification.
    - ▶ The adoption of, and the notification to the bargaining parties of the schedules under, a funding improvement plan or rehabilitation plan.
    - ▶ The annual update of a funding improvement plan and its contribution schedules, or rehabilitation plan and its contribution schedules, and the filing of those updates with the Form 5500 annual return.
  - ▶ CSEC plan:
    - ▶ Making the contribution required to be made for the plan year.
    - ▶ Making required quarterly installments.
    - ▶ Adoption of a funding restoration plan.
    - ▶ Certification of funded status.

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Other extensions



- ▶ Actions otherwise due from 3/30/2020 to 7/15/2020 are extended to 7/15/2020
  - ▶ File Form 5330 and pay excise tax
    - ▶ No interest or nonfiling penalties
  - ▶ Implementation of corrective actions under VCP
    - ▶ Including signing corrective amendments
  - ▶ Request for approval of substitute mortality table
- ▶ 5498 series forms extended to 8/31/2020
  - ▶ Normally 5/31

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Summary of cumulative Paycheck Protection Program data as of 5:00 p.m. EDT, May 30, 2020.

Approved Loans	Approved Dollars	Average Loan Size	# of Participating L
4,475,599	\$510,234,498,923	\$114,003	5,454

PAYCHECK PROTECTION PROGRAM  
Forgiveness Interim Final Regulations

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Can include employee bonus/hazard pay in forgiveness



- ▶ Includes continuation pay to furloughed employees
- ▶ Includes extra pay to tipped employees
- ▶ "If an employee's total compensation does not exceed \$100,000 on an annualized basis, the employee's hazard pay and bonuses are eligible for loan forgiveness because they constitute a supplement to salary or wages, and are thus a similar form of compensation."

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### Caps on loan forgiveness



- ▶ Are there caps on the amount of loan forgiveness available for owner-employees and self-employed individuals' own payroll compensation?
- ▶ Yes, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation can be no more than the lesser of 8/52 of 2019 compensation (i.e., approximately 15.38 percent of 2019 compensation) or \$15,385 per individual in total across all businesses.

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### Instructions to SBA 3508



- ▶ Line 9: Enter any amounts paid to owners (owner-employees, a self-employed individual, or general partners). This amount is capped at \$15,385 (the eight-week equivalent of \$100,000 per year) for each individual or the eight-week equivalent of their applicable compensation in 2019, whichever is lower.

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### 2019 compensation



- ▶ Shareholders:
  - ▶ In particular, owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement and health care contributions made on their behalf.
- ▶ Self-employed:
  - ▶ Schedule C filers are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit.
  - ▶ General partners are capped by the amount of their 2019 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235.
  - ▶ No additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals, including Schedule C filers and general partners, as such expenses are paid out of their net self-employment income.

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Example: non-owner



- ▶ Mary earns \$2,000 week (\$104,000/year)
- ▶ Health insurance payments during 8 weeks: \$600
- ▶ Retirement plan contributions during 8 weeks:
  - ▶ Deferrals: \$2,000
  - ▶ Match: \$1,000
- ▶ Forgiveness: \$16,985

Category	Amount
Cash compensation	\$15,385
Health insurance	\$600
Match	\$1,000
<b>Total</b>	<b>\$16,985</b>

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Example: shareholder



- ▶ Sharon earns \$2,000 week (\$104,000/year)
- ▶ Health insurance payments during 8 weeks: \$600
- ▶ Retirement plan contributions during 8 weeks:
  - ▶ Deferrals: \$2,000
  - ▶ Match: \$1,000
- ▶ Forgiveness: \$15,385
- ▶ Assume 2019 comp > \$100K

Category	Amount
Cash compensation	\$15,385
Health insurance	\$600
Match	\$1,000
<b>Total</b>	<b>\$16,985</b>
<b>CAP</b>	<b>\$15,385</b>

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Example: shareholder with bad 2019



- ▶ Sharon's 2019 comp:

Category	Amount
Cash compensation	\$72,000
Health insurance	\$3,600
Match	\$4,000
<b>Total</b>	<b>\$79,600</b>

- ▶ Forgiveness cap:  $\$79,600 \times 8/52 = \$12,246$

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Example: sole proprietor



- ▶ 2019 bottom line Schedule C: \$80,000
  - ▶ Forgiveness:  $\$80,000 \times 8/52 = \$12,308$
- ▶ 2019 bottom line Schedule C: \$200,000
  - ▶ Forgiveness = \$15,385

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Question: Attribution rules



- ▶ Suppose the employee is the spouse/child of the owner
- ▶ Does the \$15,385 limit apply?
  - ▶ No attribution rules in the statute
  - ▶ No attribution rules in the instructions
  - ▶ No attribution rules in the IFR
- ▶ Right now, it appears the spouse/child is a nonowner

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PAYCHECK PROTECTION PROGRAM  
FLEXIBILITY ACT

HR 7010  
Passed House 417-1



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Extends covered period



- ▶ Old language: the term "covered period" means the 8-week period beginning on the date of the origination of a covered loan
- ▶ New language: the term 'covered period' means. . . the period beginning on the date of the origination of a covered loan and ending the earlier of—(A) the date that is 24 weeks after such date of origination; or (B) December 31, 2020
  - ▶ Eligible recipient who got loan before passage can keep 8 week period

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Extends amount that can be spent outside of payroll costs



- ▶ Permitted nonpayroll costs:
  - ▶ Mortgage interest (not principal, not prepayments)
  - ▶ Rent
  - ▶ Utilities
- ▶ Old limits
  - ▶ 75% payroll/ 25% other
- ▶ New limits
  - ▶ 60% payroll/ 40% other

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Example



	75/25 Split	60/40 Split
Payroll	\$150,000	\$120,000
Rent/Utilities	\$50,000	\$80,000
Total	\$200,000	\$200,000

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QUESTION BOX



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**PPP and prepaid rent/utilities**



- ▶ Required documentation:
  - ▶ Business rent or lease payments: Copy of current lease agreement and receipts or cancelled checks verifying eligible payments from the Covered Period; or lessor account statements from February 2020 and from the Covered Period through one month after the end of the Covered Period verifying eligible payments.
  - ▶ Business utility payments: Copy of invoices from February 2020 and those paid during the Covered Period and receipts, cancelled checks, or account statements verifying those eligible payments.
- ▶ An eligible nonpayroll cost must be paid during the Covered Period or incurred during the Covered Period and paid on or before the next regular billing date, even if the billing date is after the Covered Period. Eligible nonpayroll costs cannot exceed 25% of the total forgiveness amount. Count nonpayroll costs that were both paid and incurred only once

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**CARES for beneficiaries**



- ▶ “We have had several plans with participants who have passed away from the Coronavirus. Are the beneficiaries eligible for any relief under the CARES Act?”
- ▶ CRD and loan relief only available to qualified individuals
  - ▶ You aren’t a QI based on someone else having COVID-19 other than spouse or dependent
- ▶ DC plans need not pay 2020 RMDs

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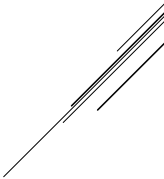
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### Creative refinancing



- ▶ Mark took \$40,000 loan 3/1/2018
  - ▶ Payment \$773.31/month
  - ▶ 5% interest
  - ▶ 60 payments
- ▶ May 31, 2020
  - ▶ Mark is qualified individual
  - ▶ Balance is \$23,471.20
  - ▶ Mark takes CRD of \$23,471.20 and repays loan
  - ▶ Mark immediately takes new loan for \$23,471.20
    - ▶ 60 payments of \$453.76




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MORE  
QUESTIONS




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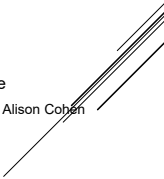
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### Thank you!



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  - ▶ 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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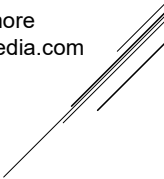
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**For Further Study**

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



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