



Derrin's Fireside Chat: We CARES

17 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 July 8. 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.
- ▶ 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
Tuesday	June 23	Advanced Case Studies in EPCRS (1:40)	Ferenczy, Cohen, Moore
Wednesday	July 8	Fireside Chat	Watson
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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PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT

HR 7010



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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
- ▶ Deadline to get loan is June 30, 2020

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Change in compensation limits



- ▶ Non-owner:
 - ▶ Old limit: \$15,385 (still applies if you elect 8 weeks)
 - ▶ New limit: \$46,154 (for 24 week)
- ▶ Owner:
 - ▶ Old limit: 15,385 (still applies if you elect 8 weeks)
 - ▶ New limit: \$20,833 (for 24 week)

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New application form



- ▶ if a 24-week Covered Period applies, does not exceed 2.5 months' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$20,833 per individual; and
- ▶ if the Borrower has elected an 8-week Covered Period, does not exceed 8 weeks' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$15,385 per individual.

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Interim final reg issued today



- ▶ The Administrator, in consultation with the Secretary, has determined that it is appropriate to limit the forgiveness of owner compensation replacement for individuals with self-employment income who file a Schedule C or F to either eight weeks' worth (8/52) of 2019 net profit (up to \$15,385) for an eight-week covered period or 2.5 months' worth (2.5/12) of 2019 net profit (up to \$20,833) for a 24-week covered period per owner in total across all businesses

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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

What if Payroll only \$90,000? Still can count \$60,000 in Rent/Utilities; Max forgiveness = \$150,000

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PPP forgiven payment nondeductible



- ▶ CARES says PPP forgiveness isn't taxable
- ▶ IRS said that means the expenses weren't deductible
- ▶ HEROES says we can deduct
 - ▶ Stalled in Senate
- ▶ If we pay plan expenses, do we have a problem that they are/may be nondeductible?
- ▶ No
 - ▶ Penalty applies to contributions that exceed the limit.

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QUESTION BOX



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Has there been a severance of employment?



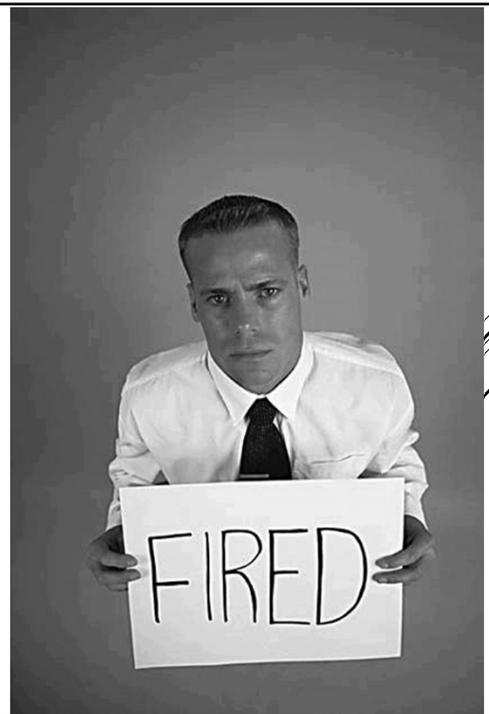
- ▶ Eligibility
 - ▶ Consecutive employment
 - ▶ Elapsed time
 - ▶ Entry date
- ▶ Allocation
 - ▶ Last day clauses
 - ▶ Top heavy minimums
- ▶ Distribution
- ▶ Loans



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What's in a word?

- ▶ Leave of absence
- ▶ Furlough
- ▶ Layoff
- ▶ Reduction in force
- ▶ Fired



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Example: Eligibility condition



- ▶ “How does a layoff or furlough (such as being experienced in this pandemic) affect eligibility provisions that require ‘consecutive service?’”
- ▶ Would service not be consecutive if:
 - ▶ The worker goes takes the weekend off?
 - ▶ The worker goes on a vacation?
 - ▶ The worker is sick?
 - ▶ The business is flooded?
- ▶ The real issue is severance

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POLL: WHO HAS AUTHORITY TO INTERPRET AND APPLY THE PLAN DOCUMENT?

- ▶ A. The Plan Administrator
- ▶ B. The plan’s TPA
- ▶ C. The plan’s recordkeeper
- ▶ D. The plan’s attorney
- ▶ E. The mass submitter that drafted the plan
- ▶ F. Some dude who’s never seen the document before but gives webcasts

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Suspension of safe harbor contributions



- ▶ Either:
 - ▶ Be operating at a loss for the year
 - ▶ Have given a maybe not notice
- ▶ Give 30 days advance notice
- ▶ Give opportunity to change deferral election
- ▶ Fund SH to effective date of suspension
- ▶ Amend plan prospectively
- ▶ Pass ADP/ACP for full year using current year testing

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401(a)(17) proration



- ▶ Preamble to proposed regulations:
 - ▶ A plan that is amended during the plan year to reduce or suspend safe harbor contributions (whether nonelective contributions or matching contributions) must prorate the otherwise applicable compensation limit under section 401(a)(17) in accordance with the requirements of §1.401(a)(17)-1(b)(3)(iii)(A).
- ▶ Calendar year plan
- ▶ Suspends SH contribution effective May 1
- ▶ 401(a)(17) limit is $\$285,000 \times 4 / 12 = \$95,000$

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Where does this come from? Counting comp



- ▶ (iii) Compensation for a period of less than 12-months—(A) Proration required. If compensation for a period of less than 12 months is used for a plan year, then the otherwise applicable annual compensation limit is reduced in the same proportion as the reduction in the 12-month period.
 - ▶ For example, if a defined benefit plan provides that the accrual for each month in a plan year is separately determined based on the compensation for that month and the plan year accrual is the sum of the accruals for all months, then the annual compensation limit for each month is $\frac{1}{12}$ th of the annual compensation limit for the plan year.

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Where does this come from? Counting period



- ▶ In addition, if the period for determining compensation used in calculating an employee's allocation or accrual for a plan year is a short plan year (i.e., shorter than 12 months), the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short plan year, and the denominator of which is 12.

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Proration problem



- ▶ Diamond Jim makes \$50,000 month
- ▶ Participates in SH match plan: 100% of deferrals up to 4%, computed on annual basis
 - ▶ Employer suspends match June 30
- ▶ Jim defers \$2,000/month January – June, 2020
 - ▶ Match is \$11,400
- ▶ Jim has accrued the benefit and anti-cutback rule protects it
- ▶ So where do we get off saying benefit reduced to \$5,700 when match suspended June 30?

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Proration with SH nonelective



- ▶ Doctor Dana earns \$50,000/month
- ▶ Participates in SH plan with 3% nonelective
- ▶ Maximum SH contribution for 2020 = \$8,550
- ▶ By June 30, Dana's comp is \$300,000
 - ▶ She has earned \$8,550 allocation
- ▶ If employer suspends plan June 30 how do we reduce her allocation to \$4,275?

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LRM language



- ▶ The annual compensation of each participant taken into account in determining allocations shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with § 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). . . .
- If a determination period consists of fewer than 12 months the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12

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What about a non-SH plan



- ▶ “If a plan has a fixed or discretionary match or nonelective (non-safe harbor) and the plan is amended to suspend contributions for example or for 4 months during 2020” do we pro rate?
- ▶ It depends on how you structure the amendment
 - ▶ Sample clause: “In computing the 2020 match, the plan will disregard compensation paid and deferrals made between March 1 to June 30.”
 - ▶ Pro rate the limit, \$190,000
 - ▶ Suspend match March 1 and restart July 1
 - ▶ Same result unless match considers comp for entire year

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Does this require 415 proration?



- ▶ No
- ▶ Triggered only by short limitation year
 - ▶ Plan termination (not suspension)
 - ▶ Change in limitation year

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5500 extension for calendar year plans



- ▶ Latest extension ends July 15
- ▶ Nothing yet
- ▶ If you want extension, file 5558



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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
- ▶ I'm a notary; does that mean I have to follow my state's oppressive online notary rules
 - ▶ Yes, unless you qualify as a plan representative

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Plan representative requirements



- ▶ if the electronic system using live audio-video technology satisfies the following requirements:
 - ▶ (1) Present photo ID during online session
 - ▶ (2) Direct interaction (not recording)
 - ▶ (3) Transmit document (fax, email) on day signed
 - ▶ (4) Plan representative acknowledges and transmits

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Spousal consent



- ▶ So the IRS guidance for spousal consent could be used to designate a non-spouse beneficiary? If so, does that "expire" 12/31/2020 and new spousal consent is required to continue the non-spouse beneficiary designation?
- ▶ Yes, it can be used for spousal consent to beneficiary
- ▶ The consent does not expire

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DOL granted extension to deposit deferrals



- ▶ Must deposit "as soon as immediately practicable under the circumstances"
- ▶ Must act "reasonably, prudently, and in the interest of employees"
- ▶ Due to elderly parent care related to Covid quarantining, there was a period from April 10 through May 26 where sponsor was out of state and not submitting payrolls. They deposited ASAP once they could again access payroll records. As this is within the timeframe provided on the notice, and was related to care issues for the sponsor, would they be allowed relief on calculation of lost earnings and 5330 submit?
- ▶ Facts and circumstances

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POLL: You're the DOL



- ▶ Would you impose a prohibited transaction under those circumstances?
 - ▶ Yes
 - ▶ No
- ▶ Due to elderly parent care related to Covid quarantining, there was a period from April 10 through May 26 where sponsor was out of state and not submitting payrolls. They deposited ASAP once they could again access payroll records.

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MORE
QUESTIONS

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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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For Further Study



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