



**We CARES: Now We Know!
SPECIAL EDITION**

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Ilene Ferenczy
S. Derrin Watson


Your Presenters Today

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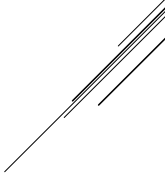
Day	Date	Topic	Presenters
Wednesday	July 8	Fireside Chat	Watson
Tuesday	July 14	Get Your Hands Off My Money!	Cohen, Moore, Starr

UPCOMING WEBINARS

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NOTICE 2020-50! NOTICE 2020-51!
31 pages of CARES Act guidance

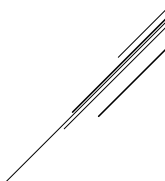


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Notice 2020-50




- ▶ Follows closely KETRA guidance (Notice 2005-92)
- ▶ Addresses:
 - ▶ Qualified Individual; reliance
 - ▶ CRDs
 - ▶ What they are
 - ▶ Significance for plan
 - ▶ Significance for recipient
 - ▶ Recontribution
 - ▶ Double loan limit
 - ▶ Payment suspension
 - ▶ Safe harbor
- ▶ Doesn't address CARES RMD holiday

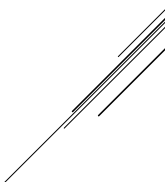


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Notice 2020-51




- ▶ Like WRERA RMD holiday guidance (Notice 2009-82)
- ▶ Addresses some SECURE Act RMD issues
- ▶ Answers CARES RMD questions
- ▶ Authorizes some rollovers
- ▶ Gives model amendments
- ▶ Coming in July 8 Fireside Chat



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QUALIFIED INDIVIDUAL (QI)




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CARES Definition

▶ A QI is someone:

1. Who is diagnosed with COVID19 by CDC recognized test,
2. Whose spouse or dependent is diagnosed with COVID19, or
3. Who experiences adverse financial consequences as a result of
 - ▶ being quarantined,
 - ▶ being furloughed or laid off,
 - ▶ having work hours reduced,
 - ▶ being unable to work due to lack of childcare as a result of COVID19, or
 - ▶ the closing or reduction of hours of a business owned or operated by the individual due COVID19

▶ IRS could add to the list




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More Adverse Consequences for QI

▶ QI had adverse financial consequences from COVID-19 because

- ▶ QI had a reduction in pay
- ▶ QI had reduction in self-employment income
- ▶ QI had a job offer rescinded
- ▶ QI had start date for a job delayed due;



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More People Impact QI



- ▶ QI experienced adverse financial consequences because spouse or a member of QI's household as a result of COVID-19:
 - ▶ being quarantined, furloughed or laid off,
 - ▶ having work hours reduced,
 - ▶ being unable to work due to lack of childcare,
 - ▶ having a reduction in pay (or self-employment income),
 - ▶ having a job offer rescinded or start date for a job delayed, or
 - ▶ Suffering closure or reduction of hours of a business owned or operated by the QI's spouse or member of household

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- ▶ "Someone who shares the individual's principal residence"
- ▶ Children; other family
- ▶ Lover
- ▶ Roommate
- ▶ Boarder

MEMBER OF HOUSEHOLD

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Put it All Together



Event	QI	Spouse	Dependent	Household
Diagnosed by approved test	X	X	X	
Quarantined	X	X		X
Furloughed, laid off, hours cut	X	X		X
Can't work because of childcare	X	X		X
Close or reduce hours of business	X	X		X
Reduction in pay	X	X		X
Reduction in self-employment income	X	X		X
Job off rescinded or start date delayed	X	X		X

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Employer Can Rely on QI Certification



- ▶ Plan administrator can rely unless administrator has actual knowledge to the contrary
 - ▶ No obligation to inquire or investigate
 - ▶ Limited to situations administrator already knows enough
 - ▶ Almost never happens with employee
- ▶ Applies for all recipients
 - ▶ Employees
 - ▶ Former employees
 - ▶ Alternate payees
 - ▶ Beneficiaries of deceased participants
- ▶ Applies for all CARES relief, including recontributions

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Model Certification



I certify that I meet at least one of the following conditions:

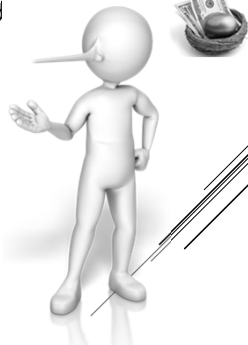
- (1) I was diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (referred to collectively as COVID-19) by a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug, and Cosmetic Act);
- (2) my spouse or my dependent was diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug, and Cosmetic Act); or
- (3) I have experienced adverse financial consequences because:
 - (i) I, my spouse, or a member of my household was quarantined, furloughed or laid off, or had work hours reduced due to COVID-19;
 - (ii) I, my spouse, or a member of my household was unable to work due to lack of childcare due to COVID-19;
 - (iii) a business owned or operated by me, my spouse, or a member of my household closed or reduced hours due to COVID-19; or
 - (iv) I, my spouse, or a member of my household had a reduction in pay (or self-employment income) due to COVID-19 or had a job offer rescinded or start date for a job delayed due to COVID-19.

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IRS Doesn't Have to Take QI's Word



- ▶ Yes, the administrator can rely
 - ▶ Plan is still qualified
- ▶ But QI is entitled to favorable tax treatment only if certification is true




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CORONAVIRUS-RELATED DISTRIBUTIONS (CRD)


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CRDs


- ▶ Available to Qualified Individuals
- ▶ Maximum amount \$100,000
 - ▶ Maximum not related to amount of "need"
- ▶ Distributed between 1/1/20 – 12/30/20
 - ▶ Distribution can come before becoming qualified individual
- ▶ Available from
 - ▶ Qualified plans
 - ▶ 403(b) plans
 - ▶ Governmental 457(b) plans
 - ▶ IRAs

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Two Perspectives

<ul style="list-style-type: none"> ▶ Plan <ul style="list-style-type: none"> ▶ Distributable event ▶ Not eligible rollover distribution <ul style="list-style-type: none"> ▶ No rollover notice ▶ No 20% withholding ▶ No automatic rollover ▶ Eligible for retribution 	<ul style="list-style-type: none"> ▶ QI recipient <ul style="list-style-type: none"> ▶ No 10% penalty ▶ 3-year tax option ▶ Recontrubution option
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What Can (and Cannot) be a CRD



- ▶ Can be CRD
 - ▶ Severance distribution
 - ▶ Plan termination distribution
 - ▶ Hardship distribution
 - ▶ RMD
 - ▶ Substantially equal payments
 - ▶ Plan loan offset
 - ▶ In-service withdrawal
 - ▶ Beneficiary distributions
- ▶ Cannot be CRD
 - ▶ 402(g) correction
 - ▶ ADP/ACP correction
 - ▶ 415 correction
 - ▶ Deemed distribution
 - ▶ EACA permissible withdrawal
 - ▶ Current costs of life insurance
 - ▶ Premiums for health insurance
 - ▶ Dividends on employer securities
 - ▶ ESOP prohibited allocations

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PLAN'S PERSPECTIVE



- ✓ Plan doesn't have to offer CRDs
- 📄 Plan doesn't have to authorize maximum amount
- 🌐 Allowable distributions for 401(k), 403(b), gov't 457(b)
- ✗ Doesn't change distribution rules for pension plans
 - Not distributable before 59 ½
 - QJSA still applies

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Is it CRD or Not From Plan's Viewpoint?



- ▶ If made under plan CRD rules, then it's a CRD
 - ▶ Maximum CRD from all plans of all related employers is \$100,000
- ▶ Otherwise, plan administrator can develop any reasonable procedures for identifying which distributions are treated as CRDs

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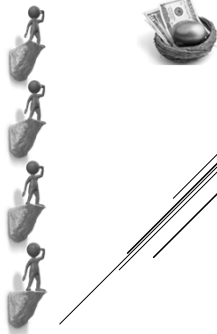
Significance from Plan's Standpoint



- ▶ Report on Form 1099 using:
 - ▶ Code 7 if 59½
 - ▶ Code 2 or Code 1 if under 59½
- ▶ Don't have to cooperate with direct rollover
 - ▶ But you can
- ▶ Don't have to give rollover (402(f)) notice
 - ▶ But you can
- ▶ Don't do 20% withholding
 - ▶ Voluntary withholding under Code §3405(b)
 - ▶ Remember to give Notice and Election
 - ▶ Sample in ERISApedia COVID-19 materials

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QI VIEWPOINT ON CRD



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QI Can Claim Benefits



- ▶ If its CRD, QI claims benefits whether or not plan treats it as CRD
- ▶ Can include multiple distributions from different sources
- ▶ If more than \$100K in possible CRD, QI chooses
- ▶ Example
 - ▶ QI takes \$50K from IRA; \$75K from 403(b) plan
 - ▶ QI designates \$100K as CRD
 - ▶ Remaining \$25K is subject to normal rules
 - ▶ Report on Form 8915-E

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CRD NOT SUBJECT TO PREMATURE DISTRIBUTION PENALTY



- No 10% penalty on distributions before 59 1/2
- No 25% penalty on SIMPLE IRA distributions
- Doesn't blow substantially equal payments

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Reporting Options



- ▶ Pay tax in year of distribution
- ▶ Pay tax over 3 years
- ▶ Default: 3 year
- ▶ Irrevocable election
- ▶ Example:
 - ▶ Kevin receives \$45,000 CRD
 - ▶ Can Include \$15,000 in income in 2020, 2021, and 2022
 - ▶ Or Can include \$45,000 in 2020 income
- ▶ If QI dies before 2023, include balance in final return

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Recontribution Option

- ▶ QI can "recontribute" CRD within 3-year period
 - ▶ Beginning on date of CRD
- ▶ Can go to:
 - ▶ Plan that distributed (if QI is still participant)
 - ▶ Another plan
 - ▶ IRA
- ▶ Limited to eligible rollover distributions or hardship distributions
 - ▶ Can't roll over RMD (such as from DB plan)
 - ▶ Can't roll over series of substantially equal payments

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Notes on Recontribution



- ▶ Doesn't apply to non-spouse death beneficiaries
- ▶ Treated as rollover in direct trustee-to-trustee transfer
 - ▶ Allows rollover of Roth and after-tax to plans
 - ▶ Not subject to one-rollover-per-year IRA limitation
- ▶ Limited to amount of CRD (not subsequent earnings)

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How to Handle Taxes; 2020 Recontribution



- ▶ Recontribute in 2020
- ▶ File Form 8915-E
 - ▶ Report distribution
 - ▶ Report recontribution
- ▶ No tax on recontributed amount



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How to Handle Taxes; 2021 Recontribution



- ▶ Angela received \$30,000 CRD
- ▶ Recontributed \$18,000 in 2021 before filing 2020 return
- ▶ Attach 8915-E to 2020 return
 - ▶ Show distribution and recontribution
 - ▶ Reduce income by \$18,000
 - ▶ Net \$12,000 tax on 2020 return



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How to Handle Taxes; 2021 Recontribution



- ▶Angela received \$30,000 CRD
- ▶Recontributed \$18,000 in 2021 after filing 2020 return
- ▶Attach 8915-E to 2020 return
 - ▶ Show distribution
 - ▶ 2020 return initially recognizes \$30,000 in income
- ▶File amended 2020 return after recontribution
 - ▶ Attach 8915-E to 2020 1040X
 - ▶ Reduce 2020 income by \$18,000
 - ▶ Get refund



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How to Handle Taxes; 2021 Recontribution



- ▶Angela received \$30,000 CRD
- ▶Reported only \$10,000 on 2020 return
- ▶Recontributed \$18,000 in 2021
 - ▶ After filing 2020 return
- ▶Attach 8915-E to 2021 return showing \$10K income and \$10K recontribution; wash
- ▶Angela has a choice for remaining \$8,000
 - ▶ Claim reduction on 2022 return
 - ▶ File amended return for 2020



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Plan Protection for Recontribution



- ▶Plan can claim normal rollover protection
 - ▶ Invalid rollover won't disqualify plan if:
 - ▶ Plan administrator reasonably concluded it was valid when received
 - ▶ Upon determining that the amount was an invalid rollover, the plan distributes the invalid amount, plus earnings, to the employee
- ▶How to determine recontribution was valid when received?
 - ▶ Rely on employee certification, unless contrary actual knowledge

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Does a Plan *Have to* Accept Recontributions?



- ▶ In general, it is anticipated that eligible retirement plans will accept recontributions of coronavirus-related distributions, which are to be treated as rollover contributions.
- ▶ However, eligible retirement plans generally are not required to accept rollover contributions.
 - ▶ For example, if a plan does not accept any rollover contributions, the plan is not required to change its terms or procedures to accept recontributions of coronavirus-related distributions.

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PARTICIPANT LOANS

Debt



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Double Loan Limits



- ▶ Limited to QIs
- ▶ Limited to loans taken *before* September 23, 2020
- ▶ Total loans limited to lesser of:
 - ▶ \$100,000 (with adjustments)
 - ▶ 100% of vested account balance
- ▶ Plan doesn't have to implement
 - ▶ Or can use lower limits
- ▶ DOL has said it won't result in prohibited transaction

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Loan Suspension and Extension



- ▶ Allows plan to:
 - ▶ Suspend loan repayments from QIs that would otherwise be due March 27 to December 31, 2020
 - ▶ Payments delayed one year
 - ▶ Payments restart January 2021
 - ▶ Allows plan to extend loan term (normally 5 years) one year
 - ▶ Reamortize loan
- ▶ Participant at mercy of plan
 - ▶ Deemed distribution if plan doesn't extend, and participant misses payment
 - ▶ Plan can do all, part, or none of extension

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Suspension Rules



- ▶ Plan chooses suspension (and can choose none)
 - ▶ Start dates
 - ▶ No early than March 27
 - ▶ Could start with furlough
 - ▶ Could start July 1
 - ▶ End dates
 - ▶ No later than December 31
 - ▶ Could end when employee returns to work
 - ▶ Could end July 15 (Notice 2020-23 suspension)
 - ▶ Could be extended
 - ▶ Could have multiple suspension periods (e.g. with several furloughs)
- ▶ Regardless, plan can add up to one year to length of loan



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Safe Harbor Rule



- ▶ Add up to a year to the loan
- ▶ Suspend no earlier than March 27
- ▶ Restart payments at end of suspension
 - ▶ No later than January 2021
- ▶ Reamortize at end of suspension so level repayments over remaining term
 - ▶ Add interest that accrued during suspension

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Example in Notice



- ▶ Mary, QI, has \$40,000 vested account
- ▶ April 1, 2020, she borrows \$20,000
 - ▶ Level monthly payments of \$368.33 over 5 years
 - ▶ Due date March 31, 2025
 - ▶ Payroll withholding
- ▶ Employer suspends payments from July 1 to December 31
- ▶ January 1, 2021 balance is \$19,477; payments restart
 - ▶ New due date is March 31, 2026
 - ▶ New payment is \$343.27

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More Complex Approaches



- ▶ "There may be additional reasonable, if more complex, ways to administer section 2202(b) of the CARES Act."
- ▶ Example
 - ▶ Suspension begins April 2021
 - ▶ Payments resume January 2021 at original level
 - ▶ Reamortized payments start April 2021

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Difference Between Deemed Distribution and Plan Loan Offset



Deemed Distribution	Plan Loan Offset
<ul style="list-style-type: none"> ▶ Generally when employee is in-service ▶ Not actual distribution ▶ Account balance isn't reduced ▶ Not CRD <ul style="list-style-type: none"> ▶ 10% penalty can apply ▶ Pay tax in year of default ▶ Can repay loan and get basis 	<ul style="list-style-type: none"> ▶ Generally if employment or plan terminates ▶ Actual distribution ▶ Account balance is reduced ▶ Can be CRD to QI <ul style="list-style-type: none"> ▶ No 10% penalty ▶ Can pay tax over 3 years ▶ Can retribute within 3 years

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BONUS GUIDANCE!
409A plans

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Nonqualified Deferred Comp Plan Deferrals

- ▶ Can't accelerate under §409A
- ▶ Stopping deferrals midyear treated as acceleration unless
 - ▶ Unforeseeable emergency
 - ▶ Hardship distribution
- ▶ CRD will be treated as hardship distribution for this purpose
 - ▶ Permit midyear cancellation of deferral election
 - ▶ Not reduction

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RMD HIGHLIGHTS
Notice 2020-51

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RMDs under CARES Act



- ▶ CARES Act allows participants and beneficiaries to forego taking 2020 RMDs
 - ▶ Includes participants with 2020 Required Beginning Date if RMD not taken in 2019
 - ▶ Limited to defined contribution plans
 - ▶ Doesn't apply to 457(b) plans of tax-exempt organizations
- ▶ Plan doesn't treat 2020 RMDs as eligible rollover distributions
 - ▶ 20% mandatory withholding doesn't apply
 - ▶ Voluntary withholding does apply

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CARES Act Rollovers



- ▶ DC plan participant received \$30,000 distribution in January
 - ▶ \$20,000 RMD (until CARES passed)
 - ▶ Deadline to roll over excess \$10,000 60 days after distribution
- ▶ 60-day rollover deadline for \$20,000 (would have been RMD) extended to August 31, 2020

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SECURE Act RMD Rollover



- ▶ Diane turns 70½ in 2020
- ▶ Before SECURE Act, RMD would have been 4/1/21
- ▶ Thanks to SECURE Diane's RBD is 2022
- ▶ Plan distributed to her anyway
- ▶ 60-day rollover deadline extended to August 31, 2020
- ▶ Plan doesn't violate
 - ▶ Requirement to give special tax notice
 - ▶ Requirement to permit direct rollover
 - ▶ 20% withholding requirement

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IRA Rules on RMD Rollovers



- ▶ Applies to both CARES and SECURE rollovers
- ▶ Rollovers of 2020 RMDs are not subject to 1-rollover/year IRA limitation
- ▶ Nonspouse beneficiaries can roll over 2020 RMDs

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IRS Model Amendment



- ▶ Won't result in loss of reliance or preapproved status
- ▶ Choice:
 - ▶ Distribute 2020 RMDs unless participant says NO
 - ▶ Don't distribute 2020 RMDs unless participant says YES
- ▶ Either way, participant has choice
 - ▶ No anti-cutback waiver if you don't give choice
- ▶ Could choose to make RMDs according to document
- ▶ Also select what distributions mandate plan provide direct rollover option
- ▶ **Employer** must sign and enter effective date
 - ▶ Deadline for most plans is last day of 2022 plan year

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Questions?



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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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