

SECURE/CARES Extension; Hot Dog!

S. Derrin Watson

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Your Co-Hosts

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





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- ▶ All attendees' lines are muted.
- ▶ Use the Q&A icon for questions.
- ▶ Do NOT use the chat icon.
- ▶ Click on "Live Transcript/Closed Captioning to see a transcript of what is being said.



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CE Credits



- Our process for CE issuance is completely automated. Once registrations are submitted, **we cannot make changes.**
- Please review your registration before submitting to make sure
 - ✓ Your name is correct and spelled correctly
 - ✓ You've added your correct PTIN number for ERPA credit
 - ✓ Your email address is correct and will be the address you use when logging in
- You must access the live portion of the webcast for the requisite time to get CE credit. Watching a recording or listening in is not sufficient. The time you are logged in is recorded automatically.
- Certificates for ASPPA/NIPA will be emailed within a couple of days of the webinar.
- To find past certificates, please go to ERISApedia.com, WEBCAST tab.

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CE Credits – New ERPA Process



- We have been approved to issue ERPA credits directly.
- Attendees who wish to receive ERPA credits **MUST** answer 3 poll questions during the webinar. (ASPPA and NIPA attendees will receive credit without answering the polls, but are free to answer if they would like)
- Attendees hoping to receive ERPA credit will receive their certificate by email within a few days of the webinar **PROVIDED:**
 1. **Their email address is correct on registration and the same one is used when logging in.**
 2. **They have provided their correct PTIN number**
 3. **They have answered all 3 poll questions (per 50 minute webinar)**

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After the Webinar



- Please join us for a brief educational session on how to find more information on today's topic on ERISApedia.com.
- At the conclusion of the webinar, you will be presented with a short Google Forms survey. Please let us know how we are doing. Completion of the survey is not a requirement for CE credit but we very much appreciate your feedback!
- Slides and recordings will be available on ERISApedia.com webcast tab.

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Your Presenters Today

S. Derrin Watson, Esq., APM



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What we'll cover

- ▶Where we were
- ▶What are the new deadlines
- ▶What the IRS did and didn't extend
- ▶How does this impact me/my plan



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CARES



- ▶ Principal retirement issues:
 - ▶ Coronavirus related distributions
 - ▶ Double loan limits
 - ▶ Loan suspension/extension
 - ▶ 2020 RMD holiday
 - ▶ Impacts 2020 RMDs
 - ▶ Impacts 5-year rule distributions
- ▶ Amendment deadline:
 - ▶ Last day of first plan year beginning on or after Jan 1, 2022
 - ▶ Governmental plan: 2024 instead of 2022

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SECURE



- ▶ Many optional (discretionary) provisions
 - ▶ Retro safe harbor 401(k)
 - ▶ Retro plan adoption
 - ▶ QBADs
 - ▶ Increased QACA auto deferrals
- ▶ Several mandatory provisions
 - ▶ RMD changes
 - ▶ LTPT rules for 401(k) plans

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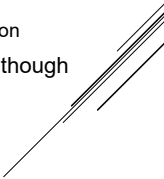
SECURE amendment deadlines



- ▶ Amendment deadline:
 - ▶ General: Last day of first plan year beginning on or after 1/1/2022, "or such later date as the Secretary of the Treasury may prescribe"
 - ▶ Governmental: 2024 instead of 2022
 - ▶ Union: 2024 instead of 2022 unless bargaining agreement ends sooner
- ▶ Prior to deadline, plan treated as operated in compliance with plan terms
- ▶ SECURE amendments do not result in anti-cutback failure

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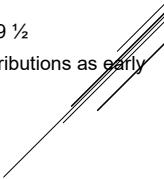
Conditions of SECURE extension



- ▶ Plan amended by deadline
- ▶ Amendment retroactively effective
 - ▶ To statutory effective date of mandatory provision
 - ▶ To operational effective date of discretionary provision
- ▶ Prior to amendment adoption, plan operated as though amendment is in place

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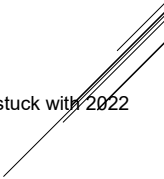
Miners Act Section 104



- ▶ Bipartisan American Miners Act
 - ▶ Enacted as part of legislation that included SECURE
- ▶ Section 104 allows:
 - ▶ Pension plans to permit in-service distributions at 59 ½
 - ▶ Governmental 457(b) plans to permit in-service distributions as early as January 1 of year participant attains 59 ½
- ▶ No extended deadline in statute

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Notice 2020-68



- ▶ Applies extensions for SECURE
- ▶ Extends deadline for Miners Act (same as SECURE)
- ▶ In general, same deadlines as statute
- ▶ Exception:
 - ▶ 403(b) plans for public schools get 2024 deadline
 - ▶ Other 403(b) plans (including governmental plans) stuck with 2022 deadline

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IRA provisions in Notice 2020-68



- ▶ B-2: "If a financial institution chooses to accept post-age 70½ contributions, must the financial institution amend its IRA contracts to provide for those contributions . . .?"
- ▶ Yes. Deadline is 12/31/2022
- ▶ IRS expects to issue model language "addressing changes made to the relevant Code provisions under the SECURE Act"
- ▶ After amendment adopted, financial institution must send copy of amendment and new disclosure statement to benefited individuals

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THE NEW DEADLINES

Notice 2022-33



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Qualified plan



- ▶ Nongovernmental
 - ▶ 12/31/2025
 - ▶ Plan year doesn't matter
- ▶ Governmental (414(d)) plan
 - ▶ "90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2023"

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403(b) plan

- ▶ In general
 - ▶ 12/31/2025
 - ▶ Plan year doesn't matter
- ▶ Public school 403(b) plan
 - ▶ "90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2023"



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Governmental 457(b) plan

- ▶ The later of:
 - ▶ 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2023, or
 - ▶ If applicable, the first day of the first plan year beginning more than 180 days after the date of notification by the Secretary that the plan was administered in a manner that is inconsistent with the requirements of section 457(b) of the Code



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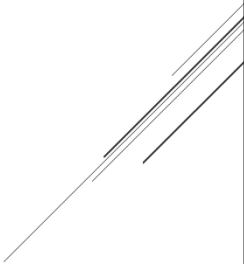
IRAs

- ▶ 12/31/2025
- ▶ Or later date prescribed by IRS



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WHAT THE IRS DID AND DIDN'T EXTEND



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NO LOVE FOR TAX-EXEMPT 457(B) PLANS

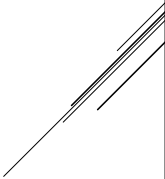
- ▶ Stuck with SECURE 2022 deadline
 - ▶ CARES didn't apply
 - ▶ Only relevant SECURE provisions are RMDs

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CARES



- ▶ Only RMD related deadlines extended
- ▶ No extensions for:
 - ▶ Coronavirus related distributions
 - ▶ Double loan limits
 - ▶ Loan suspension/extension
- ▶ 2022 deadline still applies to all except RMDs



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What deadlines did they extend?



- ▶ All other provisions:
 - ▶ All provisions of SECURE
 - ▶ RMD provisions of CARES
 - ▶ Miners Act Section 104
- ▶ Even if the deadline had already expired
- ▶ Applies to preapproved and individually designed plans
- ▶ Applies to interim (mandatory) and discretionary amendments
- ▶ Includes relief from
 - ▶ Operational failure
 - ▶ Anti-cutback

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Anti-cutback, RMD example



- ▶ Plan currently provides that RMDs of participants who die before Required Beginning Date (RBD) will be distributed no later than December 31 of year with 5th anniversary of death
- ▶ SECURE amendment provides that for all designated beneficiaries of participants who die after 2019 and before RBD will be distributed no later than December 31 of year with 10th anniversary of death
- ▶ Doesn't violate anti-cutback rule

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Anti-cutback, QACA example



- ▶ Plan currently provides for QACA auto increase of 1% per year up to mandatory QACA limit
 - ▶ Mandatory limit was 10%
 - ▶ SECURE allowed it to increase to 15% beginning after initial period
- ▶ Employer continues to apply 10% limit
- ▶ Employer amends plan by 2025
- ▶ No operational or anti-cutback violation

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Amendment requirements



- ▶Adopt by extended deadline
- ▶Have correct effective date
- ▶Accurately reflect plan operations
 - ▶ May require multiple effective dates if operations changed

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Why?



- ▶IRS didn't say
- ▶My guesses:
 - ▶ Congress has been planning to do something similar
 - ▶ So, this gives us certainty
 - ▶ IRS hopes to provide more guidance
 - ▶ RMD
 - ▶ LTPT
 - ▶ QBAD

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HOW DOES THIS IMPACT ME AND MY PLAN?

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Should I adopt amendments?

► CARES amendment? Yes, if one is needed

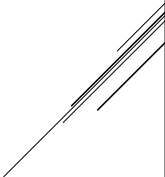
► SECURE amendment?

► Tax-exempt 457(b): Yes

► Other plans: Could go either way

► Anti-cutback relief lets you make changes if needed

► Gives you record of what decisions have been made



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What if I've already adopted an amendment?

► Probably best to leave it alone

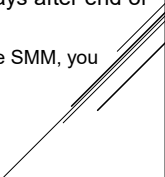
► Adopt supplemental amendment if needed

► Remember to provide SMM no later than 270 days after end of plan year amendment is adopted

► If you don't adopt amendment and you don't provide SMM, you should still let people know about new features:

► QBAD

► Changes to auto enrollment



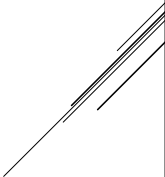
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Wait and see

Let's see what's on the model amendment

Can apply SECURE in the meantime

IRAS



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IRS notes on IDP



- "It is anticipated that certain guidance issued under the SECURE Act will appear on the 2023 [Required Amendments] List. The extended deadlines . . . are consistent with the deadlines that would apply if the general amendment timing principles . . . were applied to that SECURE Act guidance. Accordingly, it is anticipated that sponsors will be able to adopt all SECURE Act, Miners Act, and CARES Act amendments described in this notice on a single date."

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Pre-approved plans



- "It is anticipated that the cumulative list for the fourth remedial amendment cycle for pre-approved defined contribution plans (pre-approved plans for which the opinion letter application submission window falls between February 1, 2024, and January 31, 2025) will include provisions of the SECURE Act, Miners Act, and CARES Act. Accordingly, it is anticipated that the pre-approved defined contribution plans submitted for that cycle will need to include provisions that reflect provisions of the SECURE Act, Miners Act, and CARES Act."

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Thank you!



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- Derrin's books are available at ERISApedia.com
 - Who's the Employer (8th ed)
 - 403(b) Plan eSource
 - 457 Plan eSource
 - Plan Correction eSource (with Ilene Ferenczy and Alison Cohen)

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A Few Reminders



- ▶ ASPPA/NIPA certificates will be emailed within a day or two. ERPA certificates may take up to two weeks.
- ▶ Go to ERISApedia.com WEBCAST tab to retrieve previous certificates.
- ▶ After the webcast you will be presented with a short Google Forms survey. Please let us know how we are doing.

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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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