



# Derrin's Fireside Chat: We CARES

## 22 April 2020

S. Derrin Watson

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► 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
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## During the Webinar



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- ▶ 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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## 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 week
  - ▶ If you want a reply:
    - ▶ Subscribers can use the ASK system
    - ▶ Pay me

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## Notice 2020-23

Extensions



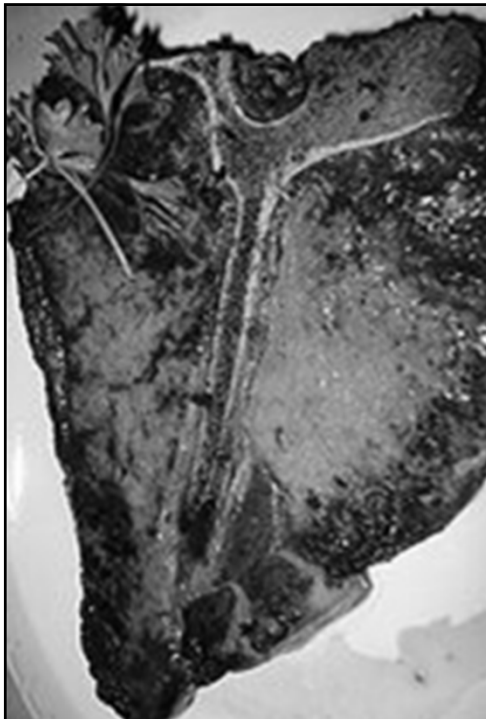
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## Code §7508A



- ▶ “In the case of a taxpayer determined by the Secretary to be affected by a federally declared disaster . . . or a terroristic or military action . . . , the Secretary **may** specify a period of up to one year that may be disregarded in determining, under the internal revenue laws, in respect of any tax liability of such taxpayer:”
  - ▶ Timeliness of certain acts
  - ▶ Application of interest and penalties

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## Rev. Proc. 2018-58 puts meat on the bones



- ▶ What to expect:
  - ▶ IRS will issue guidance
    - ▶ Outlining start and end of delay period
    - ▶ Specifying affected taxpayers
    - ▶ Specifying actions postponed:
      - ▶ Usually it's all items listed in the Rev. Proc.
- ▶ List of items that can be extended
  - ▶ 44 items related to employee benefits!

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## Notice 2020-23



- ▶ Who gets it: Everyone performing a time-sensitive action specified in the regulations or Rev. Proc. 2018-58
- ▶ When does it start? April 1, 2020
- ▶ When does extension end? July 15, 2020
- ▶ IRS could extend it further; will depend on developments

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## Tax return deadlines extended



- ▶ 1040, 1041, 1065, 1120
  - ▶ Which extends deduction deadline
- ▶ 5500 deadline extended; 8955-SSA too
  - ▶ Doesn't help calendar year taxpayers
  - ▶ Example: PYE June 30, 2019
    - ▶ Due date January 31, 2020
    - ▶ Filed 5558: Extended to April 15, 2020
    - ▶ Automatic extension to July 15, 2020

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## Retirement plan delays: Loans

- ▶ Participant loans
  - ▶ Postpones 5-year deadline if during relief period
  - ▶ Postpones deemed distribution for late payments
    - ▶ Cure period applies
  - ▶ Even for persons other than qualified individuals
- ▶ Example:
  - ▶ Participant loan taken 2/1/2017
    - ▶ Participant misses April 15, 2020 payment
    - ▶ Payment due July 15, 2020
    - ▶ Cure period ends December 31, 2020
    - ▶ 5-year deadline still ends 2/1/2022



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## RMD deadline

- ▶ CARES already waives April 1, 2020 RMD payment
  - ▶ Applies to IRAs, DC plans, 403(b), and gov't 457(b)
- ▶ CARES didn't waive it for DB or tax-exempt 457(b)
  - ▶ April 1 deadline extended to July 15, 2020



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## Other distribution deadlines



- ▶ **Deadline to distribute excess deferrals**
  - ▶ Mary, 47, deferred \$20,000 in 2019
  - ▶ Normal deadline to return 402(g) excess is April 15
  - ▶ Extended to July 15, 2020
- ▶ **Deadline for ADP/ACP corrections**
  - ▶ Three deadlines extended from April 1 to July 15
    - ▶ 12 months to correct ADP/ACP failures outside of EPCRS
    - ▶ 2½ months to make ADP/ACP refunds without 10% penalty
    - ▶ 6 months to distribute ADP/ACP in EACA

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## Rollover deadline



- ▶ **60-day rollover deadline extended**
- ▶ **Example:**
  - ▶ Mark (not qualified individual), received RMD February 1, 2020 from DC plan
  - ▶ Rollover deadline was April 1, 2020
  - ▶ Extended to July 15, 2020

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## Specific Retirement Deadlines Postponed



- ▶ Remedial amendment period
  - ▶ But not interim and discretionary amendment deadlines
- ▶ Plan contribution deadline
  - ▶ But not deadline to make safe harbor 401(k) contributions or give SH notices
- ▶ Distribution of nondeductible contributions
- ▶ Self-correct significant operational failures
- ▶ Elect permissible withdrawal from a EACA

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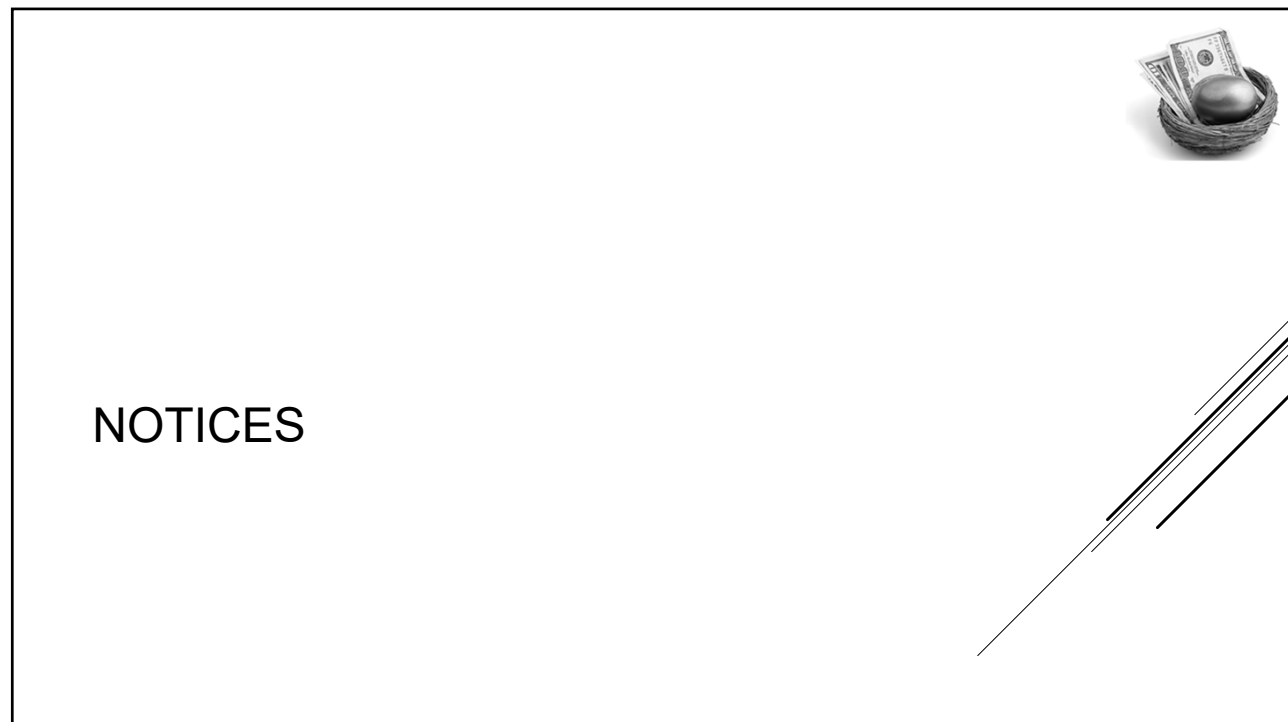
## Other IRA Related Deadlines Extended



- ▶ IRA Home Purchase Deadline (or roll)
- ▶ Repay Qualified Reservist Distribution
- ▶ Deadline to roll plan qualified plan loan offset
- ▶ IRA recharacterization
- ▶ Distribute excess contributions



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Nothing in CARES specifically requires that you give people a notice of distribution and loan provisions

But if you don't tell participants, how will they know?

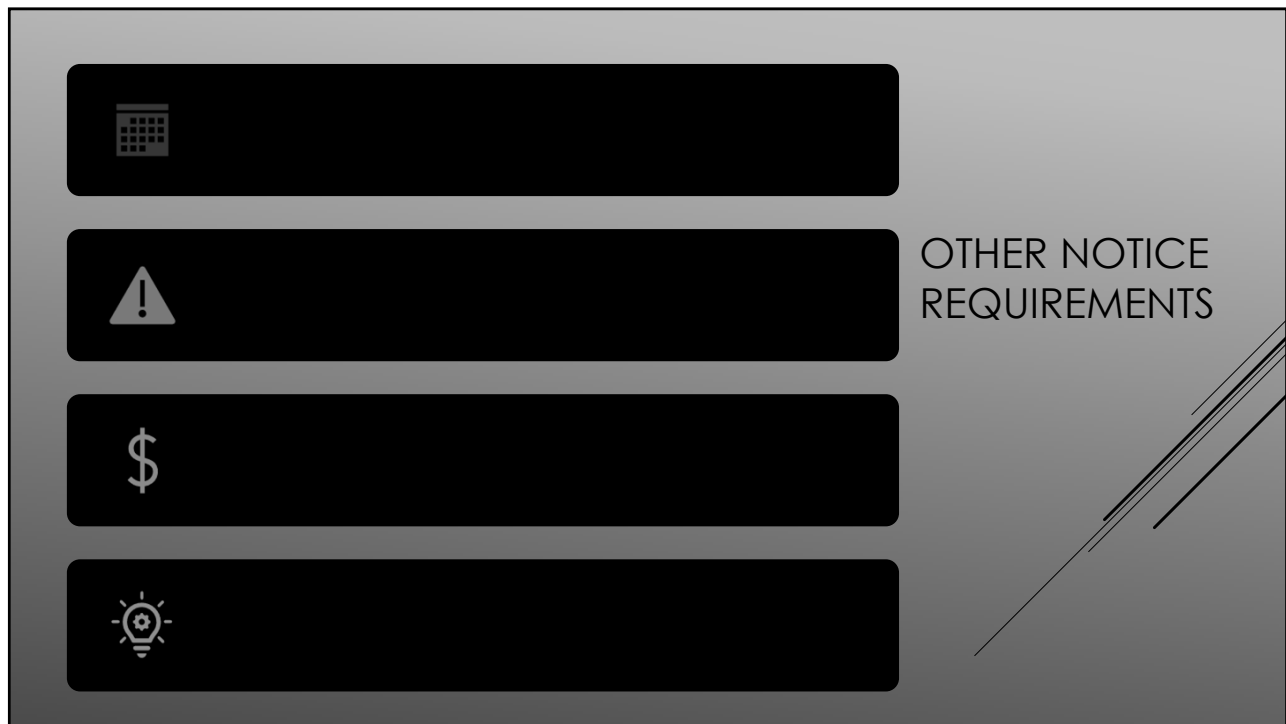
Possibly triggers BRF issue

So notify the participants when you decide to implement the CARES relief

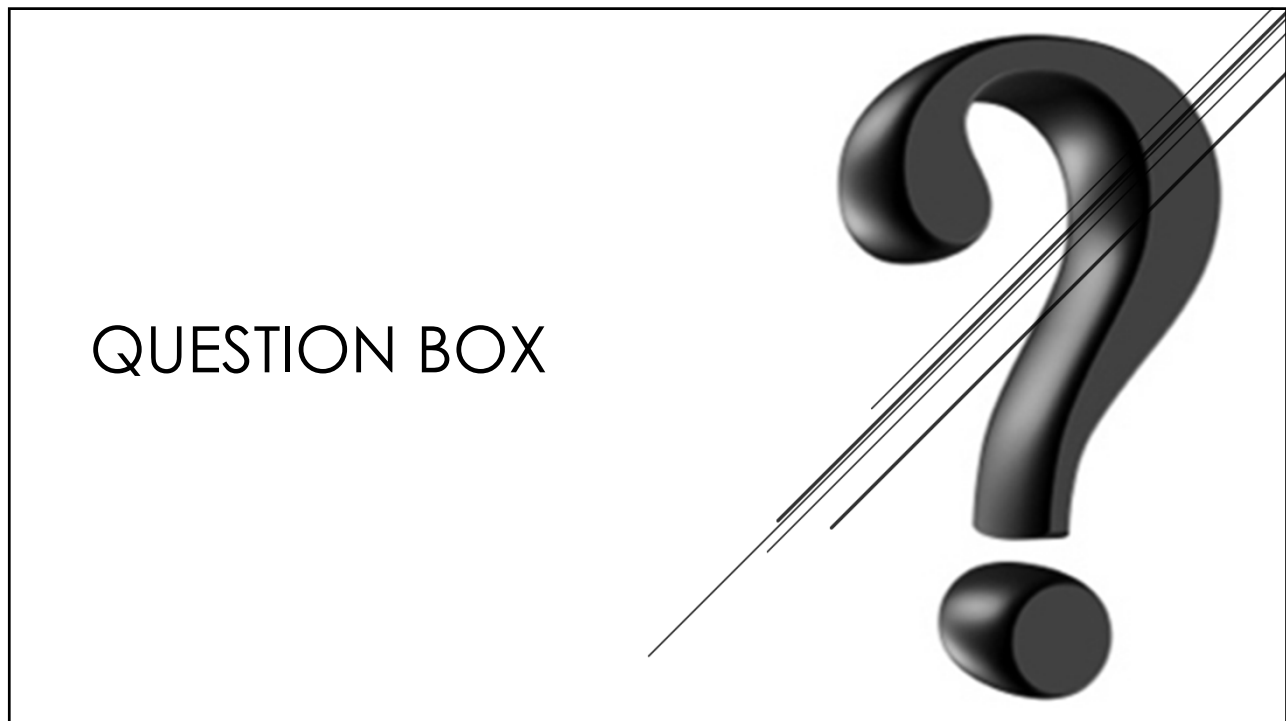
CARES NOTICE

A slide with a dark gray background and a black border. On the left side, there are four rounded rectangular boxes stacked vertically, each containing a line of text in white. The text in the boxes is: "Nothing in CARES specifically requires that you give people a notice of distribution and loan provisions", "But if you don't tell participants, how will they know?", "Possibly triggers BRF issue", and "So notify the participants when you decide to implement the CARES relief". To the right of these boxes, the words "CARES NOTICE" are written in a large, white, sans-serif font. In the bottom right corner, there are several thin, black, diagonal lines.

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## Questions



- ▶ Can you roll over a CRD from a Roth account?
  - ▶ Yes
- ▶ Can you convert a CRD to a Roth IRA?
  - ▶ Yes
- ▶ Can you make unallocated contributions to a DC plan?
  - ▶ Yes, but they need to be allocated this year
- ▶ How do we use the favorable tax treatment for CRDs?
  - ▶ 8915-B is the most recent version of the form
- ▶ Any idea what guidance we will see from the IRS?
  - ▶ Check out WRERA guidance: Notice 2009-82
  - ▶ And KETRA guidance: Notice 2005-92

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## What is a safe harbor suspension/exit



- ▶ Any midyear reduction in safe harbor contributions
  - ▶ Discontinuing future safe harbor contributions
  - ▶ Reducing rate of safe harbor contributions; for example:
    - ▶ Amending from 100% of deferrals up to 5% of comp to basic match
    - ▶ Reducing match from annual match (with true up) to payroll period match
      - ▶ You can delay contributing so long as you don't change the rate
- ▶ If you suspend or reduce
  - ▶ Must give 30 days advance notice
  - ▶ Must pass ADP/ACP full year with current year testing
  - ▶ Lose top heavy exemption
  - ▶ Must contribute full amount up through later of 30 days after notice or date amendment is signed
- ▶ It is possible Congress may give relief

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## Certification



- ▶ Do I need to have the participant sign a certificate if I terminated his or her employment because of COVID 19?
  - ▶ No; but it never hurts to have the proof
- ▶ What if I know the participant's certification is false?
  - ▶ How do you know that?
    - ▶ Example: I work two jobs and get laid off from the "other one"
- ▶ Cut in employee pay doesn't make EE qualified individual
  - ▶ Cut in hours does; could be reduction in overtime hours
- ▶ I've seen language that allowed for distributions based upon "other factors as determined by the Secretary of the Treasury." If the spouse's job loss was the result of cut-backs due to the current quarantines around the country, could that be part of that "other factors" option?
  - ▶ Yes, but only if the IRS announces it is so

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## Amendments




- ▶ Do we need to amend to authorize CRDs?
  - ▶ If you want to make a distribution that is otherwise unavailable, yes
- ▶ Do we need to amend to authorize the higher loan limits; extensions?
  - ▶ If you want to authorize them, you'll need to amend the plan or loan policy
- ▶ Do we have to amend before we start using CRDs/loans?
  - ▶ No; you can wait until 2022 (or date of plan termination)

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Thank you!



<ul style="list-style-type: none"> <li>▶ S. Derrin Watson</li> <li>▶ Attorney at law</li> <li>▶ 5631 Kent Place</li> <li>▶ Goleta, CA 93117</li> <li>▶ <a href="mailto:sderrin@gmail.com">sderrin@gmail.com</a></li> </ul>	<ul style="list-style-type: none"> <li>▶ Check for my books at <a href="http://ERISApedia.com">ERISApedia.com</a> <ul style="list-style-type: none"> <li>▶ Who's the Employer</li> <li>▶ 403(b) Plan eSource</li> <li>▶ 457 Plan eSource</li> <li>▶ Plan Correction eSource               <ul style="list-style-type: none"> <li>▶ With Ilene Ferenczy and Alison Cohen</li> </ul> </li> </ul> </li> </ul>
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- ▶ 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](http://ERISApedia.com) resources.



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