

## Derrin's Fireside Chat: We CARES

### 6 May 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.
  - ▶ A few slots are open for next week's Fireside Chat; register today!
- ▶ 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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### 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
  - ▶ Check prior programs

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**PRELIMINARY CARES IRS FAQs**

<https://www.irs.gov/newsroom/coronavirus-related-relief-for-retirement-plans-and-iras-questions-and-answers>

Notice 2005-92

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**Key points**

- ▶ IRS will issue formal guidance
  - ▶ Expect it to follow Notice 2005-92
- ▶ IRS hasn't expanded definition of qualified individual
  - ▶ "The Treasury Department and the IRS have received and are reviewing comments from the public requesting that the list of factors be expanded."
- ▶ Reliance
  - ▶ "The administrator of an eligible retirement plan may rely on an individual's certification that the individual satisfies the conditions to be a qualified individual in determining whether a distribution is a coronavirus-related distribution, unless the administrator has actual knowledge to the contrary."
  - ▶ But IRS doesn't have to accept certificate

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**CRDs**

- ▶ "A coronavirus-related distribution is a distribution that is made from an eligible retirement plan to a qualified individual from January 1, 2020, to December 30, 2020, up to an aggregate limit of \$100,000 from all plans and IRAs."
- ▶ Include 1/3 of distribution each year (2020, 21, 22) or include all in 2020
- ▶ Can repay within 3 years after taking distribution
  - ▶ File amended returns
- ▶ Form 8915-E
- ▶ New distributable event for 401(k), 403(b), govt 457(b)
  - ▶ Not separate distributable event for pension plans

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### Plan requirements



- ▶ "It is optional for employers to adopt the distribution and loan rules of section 2202 of the CARES Act. An employer is permitted to choose whether, and to what extent, to amend its plan to provide for coronavirus-related distributions and/or loans that satisfy the provisions of section 2202 of the CARES Act."
  - ▶ Could allow distributions but not loans
  - ▶ Participant can claim favorable tax treatment regardless
- ▶ In general, it is anticipated that eligible retirement plans will accept repayments 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 repayments.

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### Is it a CRD?



- ▶ Notice 2005-92: An employer is permitted to choose whether to treat distributions under its plans as Katrina distributions. Further, the employer (or plan administrator) is permitted to develop any reasonable procedures for identifying which distributions are treated as Katrina distributions under its retirement plans. However, if an employer retirement plan treats any distribution of an amount subject to § 401(k)(2)(B)(i), 403(b)(7)(A)(ii), 403(b)(14) or 457(d)(1)(A) as a Katrina distribution, the plan must be consistent in its treatment. Thus, the amount of the distribution must be taken into account in determining the \$100,000 limit on Katrina distribution payments made under the retirement plans maintained by the employer.

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### Consequences of CRD



- ▶ Notice 2005-92: If a distribution is treated as a Katrina distribution by an employer retirement plan, the rules for eligible rollover distributions under §§ 401(a)(31), 402(f), and 3405 of the Code are not applicable with respect to the distribution. Thus, the plan is not required to offer the qualified individual a direct rollover with respect to the distribution. In addition, the plan administrator does not have to provide a § 402(f) notice. Finally, the plan administrator or payor of the Katrina distributions is not required to withhold an amount equal to 20% of the distribution, as is usually required under § 3405(c)(1). However, a Katrina distribution is subject to the voluntary withholding requirements of § 3405(b) and § 35.3405-1T of the Temporary Employment Tax Regulations.

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1099-R reporting



- ▶ Report on 1099-R, even if participant repays during 2020
  - ▶ Notice 2005-92: "If a payor is treating the payment as a Katrina distribution and no other appropriate code applies, the payor is permitted to use distribution code 2 (early distribution, exception applies) in box 7 of Form 1099-R. However, a payor is also permitted to use distribution code 1 (early distribution, no known exception) in box 7 of Form 1099-R."

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PAYCHECK PROTECTION PROGRAM



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PPP gives two things



- ▶ SBA loan on favorable terms
  - ▶ 2.5 months of 2019 payroll costs
- ▶ Potential for forgiveness of principal on loan
  - ▶ For two months

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### What can be forgiven?



(b) **FORGIVENESS.**—An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred and payments made during the covered period:

- (1) Payroll costs.
- (2) Any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation).
- (3) Any payment on any covered rent obligation.
- (4) Any covered utility payment.

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### Congress giveth; IRS taketh away



- ▶ CARES 1106(i): CARES loan forgiveness not included in income
- ▶ IRS Notice 2020-32: Expenses associated with CARES loan forgiveness not deductible

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### 2020 RMDS

CARES  
 SECURE  
 Notice 2020-23  
 Notice 2009-82




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**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
  - ▶ Doesn't apply to 457(b) plans of tax-exempt organizations or DB
- ▶ See corresponding rules in WRERA
  - ▶ Notice 2009-82

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**2020 RMDs that are waived**



- ▶ 4/1/2020 RBD; 2020 payment of 2019 RMD
  - ▶ Individual born 7/1/1948 – 6/30/1949
  - ▶ Non-owner over 70 terminating in 2019
- ▶ Regular 2020 RMDs
- ▶ 4/1/2021 RBD, 2021 payment of 2020 RMD
  - ▶ Non-owner over 70 terminating in 2020
    - ▶ (note: if birthday was 7/1/1949, SECURE moved RBD to 4/1/2022)
- ▶ Application of 5-year rule

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**5-year rule applies to some beneficiary RMDs if owner died before RBD**



Year of Death	RMD Deadline
2013	2018
2014	2019
2015	2021
2016	2022
2017	2023
2018	2024
2019	2025
2020	2026
2021	2026

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### RMDs and Eligible Rollover Distributions (ERDs)



- ▶ An RMD is not an eligible rollover distribution
- ▶ Significance of ERD
  - ▶ Participant
    - ▶ Can roll it over
  - ▶ Plan
    - ▶ Must cooperate in direct rollover
    - ▶ Must give 402(f) rollover notice
    - ▶ Must withhold 20%

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### Can you allow participants to take RMDs?



- ▶ Yes: Possibilities
  - ▶ No RMDs distributed
  - ▶ No RMDs distributed unless participant requests
  - ▶ RMDs distributed unless participant declines
  - ▶ RMDs distributed normally
- ▶ 2020 distributions that would have been RMDs are ERD from participant's standpoint: Participant can roll

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### ERD consequences to plans



- ▶ "If all or any portion of a distribution during 2020 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under section 401(a)(9) had applied during 2020, such distribution shall not be treated as an eligible rollover distribution for purposes of section 401(a)(31) or 3405(c) or subsection (f) of this section."
  - ▶ Don't have to cooperate with direct rollover (but can)
  - ▶ Don't have to give direct rollover notice (but can)
  - ▶ CANNOT do 20% withholding
    - ▶ Must do 10% voluntary withholding
    - ▶ Provide 3405(e)(10) notice

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RMDs



- ▶ Do you know if an amendment will be required in regard to the RMD waivers for plans that terminated prior to the CARES Act being signed? For example, we had a plan terminate December 31, 2019 and the final distributions were completed on March 31, 2020.
  - ▶ Nobody needs to amend for RMD rules
  - ▶ If they didn't affect distributions, don't bother
- ▶ Can you roll a January 2020 RMD?
  - ▶ Yes, but only if you're a qualified individual, up to \$100K (other than DB or tax tax-exempt 457(b))
- ▶ Can you roll a February or March 2020 RMD?
  - ▶ Yes up to July 15 (Notice 2020-23) (or 3 years for qualified individual)

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QUESTION BOX




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Two different loan extensions



- ▶ Notice 2020-23; Rev. Proc. 2018-58
  - ▶ Extends all loan payments from April 1 to July 15
    - ▶ Maximum cure period is December 31
  - ▶ Doesn't extend 5 year loan limit (unless it comes during extension period)
  - ▶ Applies to all
- ▶ CARES
  - ▶ Extends all loan payments from March 27 to December 31
  - ▶ One-year extension
  - ▶ Extends maximum loan period
  - ▶ Limited to qualified individuals

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Loan example from Notice 2005-92



▶ On March 31, 2005, a participant with a nonforfeitable account balance of \$40,000 borrowed \$20,000 to be repaid in level monthly installments of \$394 each over 5 years, with the repayments to be made by payroll withholding. The participant makes 8 monthly payments until December 1, 2005. The participant's [was qualified]. The participant's employer takes action to suspend payroll withholding repayments, for the period from December 1, 2005, through the end of 2006, for loans to qualified individuals that are outstanding on or after August 25, 2005. . . . Because the participant is [qualified], no further repayments are made on the participant's loan until January 1, 2007 (when the balance is \$19,046). At that time, repayments on the loan resume, with the amount of each monthly installment increased to \$423 in order to repay the loan by April 30, 2011 (which is the date the loan originally would have been fully repaid, plus the 13- month loan suspension period that resulted from Hurricane Katrina).

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Beneficiaries and CRDs



▶ Is beneficiary of a DB participant who died of COVID-19 a qualified individual? (Beneficiary is also diagnosed with the disease). If so, does DB plan offer tax withholding options on a cash distribution or does 20% apply? Refer the beneficiary to tax advisor when preparing 1040?  
▶ Who is getting the distribution?  
▶ Is the recipient of the distribution a qualified individual?

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Reliance



▶ When a participant requests a CRD, the plan sponsor/trustee is able to rely on the participant's certification that they are in fact a qualified individual making them eligible for the distribution but should the plan sponsor/trustee request documentation from the participant when the amount requested seems unreasonable? For example, a participant who is furloughed for 6 weeks (and is now back working full time) requests a distribution of \$100,000 and the annual compensation for this participant is well below \$100,000?  
▶ You are relying on status as qualified individual, not on amount  
▶ This isn't a hardship distribution  
▶ Do participants, that have taken a hardship withdrawal due to covid 19, have to stop deferral contributions for 6 months?  
▶ BBA stopped suspension of deferral contributions, regardless

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Once you turn on CRDs, can you turn them off?



- ▶ Some participants are using CRDs to move money from plan to IRA
  - ▶ Could limit amount of CRD to difference between pre lockdown pay and current pay, but that has problem
- ▶ Anti-cutback issue
  - ▶ Can't take away in-service distribution events for existing account balance

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Temporary amendment



- ▶ With so many furloughs and temporary layoffs this year some clients are interested in reducing hours required for a vesting YOS for 2020 only. Is there a problem with doing this for one year only?
  - ▶ No problem. That makes sense for
    - ▶ Eligibility
    - ▶ Vesting
    - ▶ Benefit accrual
  - ▶ Plan amendment likely needed

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Qualified individuals



- ▶ Once employers start rehiring individuals back, can these rehired employees take a CRD when they are reemployed? For example, they need money in the future for financial issues related to their prior lay off.
  - ▶ Once you are a qualified individual, you remain so

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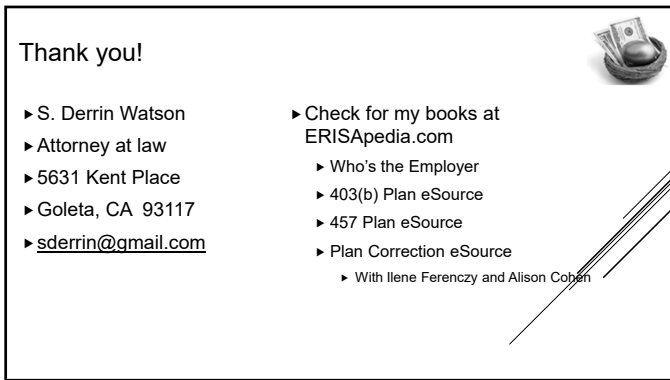
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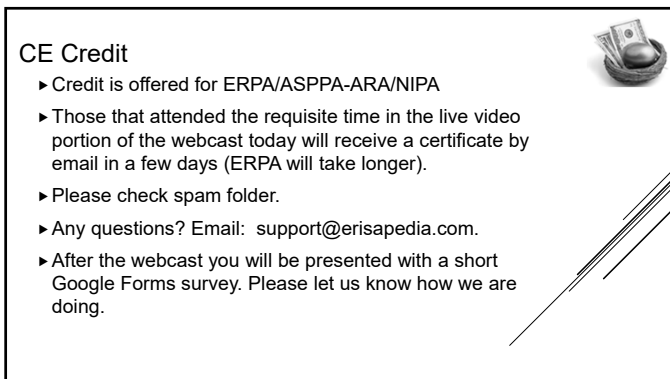
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For Further Study



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

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