



# Fireside Chat 8: We CARES

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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.
- ▶ Ilene and Derrin will post a document with answers to most of the questions posted during this session
- ▶ Slides and a recording of the webinar also available on the /webcasts webpage.
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- ▶ 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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Ilene Ferenczy  
S. Derrin Watson

Your Presenters Today

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Day	Date	Topic	Presenters
Tuesday	July 14	Get Your Hands Off My Money!	Cohen, Moore, Starr
Wednesday	Aug 5	The Pendulum Swings: Retooled Fiduciary Guidelines	Watson, Schultz

UPCOMING WEBINARS

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## The Fire Slowly Fades



- ▶ This is the last of the prescheduled CARES Fireside Chats
  - ▶ We will schedule one if there are significant new developments
- ▶ We will answer as many questions as we can
  - ▶ Printed Q&A document after the program
- ▶ Deadline to submit questions for Q&A: today

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## NOTICES, NOTICES

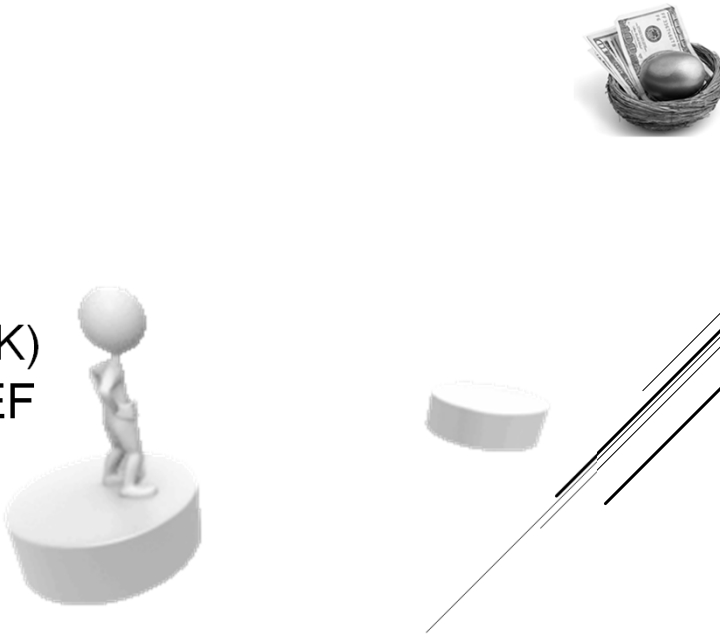
Notice 2020-51: CARES RMDs

Notice 2020-52: Safe harbor 401(k) suspension

Other Updates



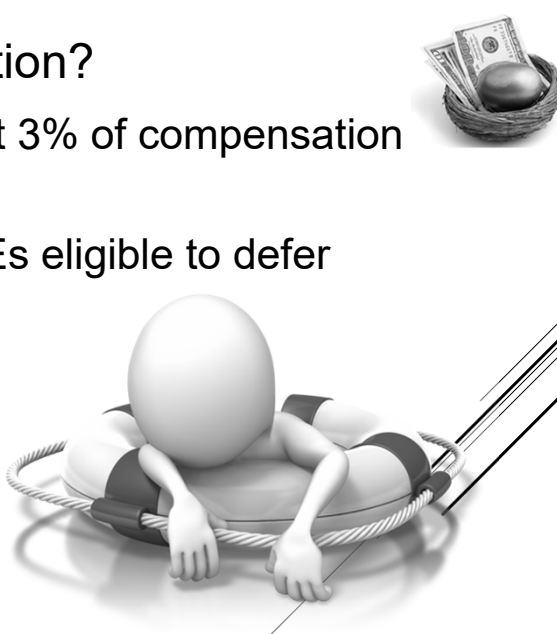
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**SAFE HARBOR 401(K)  
SUSPENSION RELIEF**

Notice 2020-52

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**What is a Safe Harbor Contribution?**

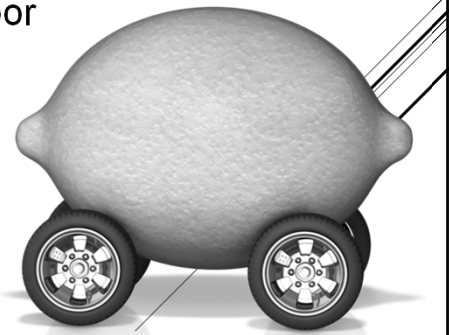
- ▶ Nonelective contribution of at least 3% of compensation to all NHCEs eligible to defer
- ▶ Matching contribution for all NHCEs eligible to defer
  - ▶ Basic match
  - ▶ Enhanced match
- ▶ Classic safe harbor
  - ▶ All contributions fully vested
- ▶ QACA safe harbor
  - ▶ All contributions fully vested in two years

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## Examples of Contributions that Aren't Safe Harbor Contributions for Purposes of Suspension Rules



- ▶ Contribution for HCEs
- ▶ Discretionary matching contribution
  - ▶ Whether or not it qualifies for ACP safe harbor
- ▶ Matching contribution subject to 6-year vesting schedule
- ▶ Discretionary profit sharing contribution



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## Requirements to Suspend Safe Harbor Contributions: Normal Rules



- ▶ Applies to any suspension or reduction of safe harbor contributions
- ▶ Qualification: Either:
  - ▶ Operate at economic loss
  - ▶ Gave "maybe not" notice as part of safe harbor notice
- ▶ Requirements
  - ▶ Give 30 days advance notice
  - ▶ Allow all participants to change deferral elections
  - ▶ Execute amendment
    - ▶ Can't be effective retroactively
    - ▶ Can't be effective sooner than 30 days after notice
  - ▶ Fund safe harbor contributions through effective date of amendment
  - ▶ Pass ADP/ACP for full year using current year testing

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## Notice 2020-52: Special Suspension



- ▶ Reducing HCE contributions isn't subject to safe harbor suspension requirements
- ▶ Relief for suspensions up to August 31, 2020
  - ▶ No need to satisfy qualification requirements
  - ▶ Can suspend SH nonelective without advance notice
- ❖ Doesn't address impact of SECURE Act elimination of safe harbor notice for nonelective contribution plans

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## Reducing HCE Safe Harbor Nonelective



- ▶ "Contributions made on behalf of HCEs are not included in the definition of safe harbor contributions."
- ▶ So, midyear reduction/elimination of SH contributions for HCEs only is not suspension or reduction of safe harbor contributions
  - ▶ Don't lose safe harbor status
- ▶ Must fund up to effective date of amendment
  - ▶ Anti-cutback rule applies

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## Requirements to Reduce HCE Contributions



- ▶ Notice 2016-16 rules for midyear amendments applies
- ▶ Must give to affected HCEs
  - ▶ Updated safe harbor notice
    - ▶ Reasonable period before it takes effect (facts and circumstances)
      - ▶ 30 days in advance deemed reasonable
      - ▶ In any case, give notice ASAP and not more than 30 days after adoption
  - ▶ Opportunity to change deferral elections
    - ▶ 30-day period after giving updated notice
- ▶ Don't have to provide updated notice to everyone

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## Temporary Waiver of Qualification Requirements



- ▶ Applies to suspensions/reductions adopted between March 13, 2020 and August 31, 2020
  - ▶ Safe harbor matching contributions
  - ▶ Safe harbor nonelective contributions
- ▶ No need to either:
  - ▶ Be operating at an economic loss
  - ▶ Include maybe not notice in safe harbor notice

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## Safe Harbor Nonelective Contribution Suspensions



- ▶ Normally, must give 30-day notice for suspension or reduction of safe harbor nonelective contributions
- ▶ Exception under Notice 2020-52: No need for advance notice for suspension or reduction of safe harbor nonelective between March 13, 2020, and August 31, 2020
  - ▶ Must give updated notice no later than August 31, 2020

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## RMD HIGHLIGHTS

Notice 2020-51

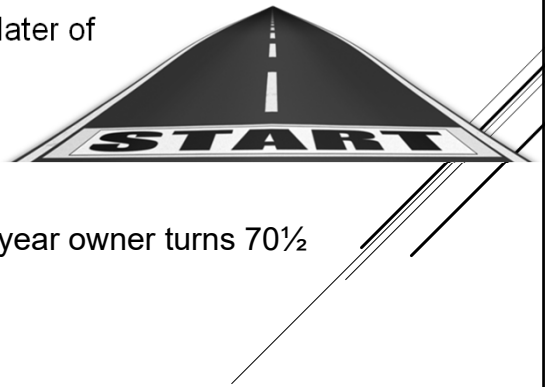
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## Required Beginning Date (RBD)



### ► Before SECURE

- For non-5% owner retirement plan participant
  - April 1 of the calendar year following the later of
    - The year participant retires
    - The year participant turns 70½
- For 5% owner or IRA owner
  - April 1 of the calendar year following the year owner turns 70½



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## First Distribution Calendar Year (DCY)



- Calendar year before year of RBD
- Example:
  - Kim's RBD is 4/1/2022
  - First DCY is 2021
    - Based on her age in 2021
    - Based on her account balance 12/31/2020
  - First RMD due between 1/1/2021 – 4/1/2022
  - Second RMD due between 1/1/2022 – 12/31/2022
- First money distributed during DCY must be RMD

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## SECURE Act Change



- ▶ Change RBD age from 70½ to 72
- ▶ Applies to individuals born who turn 70½ after 2019
  - ▶ Individuals born after June 30, 1949
- ▶ Effect: Who has April 1, 2021 RBD?
  - ▶ Retirement plan
    - ▶ Nonowner born before July 1, 1949, who retired in 2020
  - ▶ No IRA owners with April 1, 2021, RBD
  - ▶ No retirement plan 5% owners with April 1, 2021, RBD

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## Plan Treatment of RMDs



- ▶ Plan required to distribute in compliance with RMD rules
  - ▶ Most qualified plans spell them out
  - ▶ Some plans incorporate them by reference
- ▶ Plan treats RMD as not being eligible rollover distribution (ERD) for purposes of:
  - ▶ Not required to cooperate with direct rollover
  - ▶ Not required to give direct rollover (Section 402(f)) notice
  - ▶ Not required to withhold 20%
    - ▶ Use voluntary withholding
    - ▶ Give Section 3405 Notice

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## RMDs under CARES Act



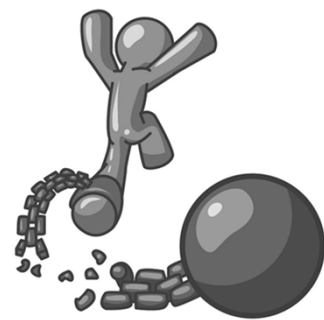
- ▶ CARES Act allows participants and beneficiaries to forego taking 2020 RMDs
  - ▶ Limited to defined contribution plans
  - ▶ Doesn't apply to 457(b) plans of tax-exempt organizations
- ▶ Plan doesn't treat 2020 RMDs as eligible rollover distributions
  - ▶ 20% mandatory withholding doesn't apply
  - ▶ Voluntary withholding does apply

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## What's Being Waived




- ▶ RMDs to be paid in 2020
  - ▶ Includes 2019 RMDs with April 1, 2020, RBD that weren't paid in 2019
- ▶ 2020 RMDs for participants with April 1, 2021, RBD
  - ▶ After SECURE Act, this is limited to non-owners born before July 1, 1949, who retired in 2020
- ▶ Notice 2020-51 calls these "2020 RMDs"




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## Distributions After Death




- ▶ Normally start by December 31 of year following year of participant's death
  - ▶ Extend over life expectancy of designated beneficiary
  - ▶ Called the "life expectancy rule"
- ▶ Alternative: 5-year rule



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## 5-Year Rule



- ▶ Distribute entire balance by 12/31 of year with 5<sup>th</sup> anniversary of participants death
- ▶ Applies to participant who dies before RBD, where either:
  - ▶ Recipient is not "designated beneficiary"
  - ▶ Recipient is designated beneficiary but plan
    - ▶ Imposes 5-year rule; or
    - ▶ Allows election of 5-year rule
      - ▶ Normal election deadline is December 31 of year following calendar year of participant's death
- ▶ CARES impact: 2020 doesn't count

Year of death	Distribute Deadline
2013	12/31/2018
2014	12/31/2019
2015	12/31/2021
2016	12/31/2022
2017	12/31/2023
2018	12/31/2024
2019	12/31/2025
2020	12/31/2025
2021	12/31/2026

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## Extended 2020 RMDs



- ▶ Eligible rollover distributions ERDs don't include:
  - ▶ RMDs
  - ▶ One of a series of substantially equal periodic payments made over a specified period
- ▶ Notice 2020-51 gives special treatment to Extended 2020 RMDs
  - ▶ One or more in a series of substantially equal periodic payments (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancies) of the participant and the participant's designated beneficiary, or for a period of at least 10 years

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## Transition Relief – SECURE



- ▶ SECURE Act Slips:
  - ▶ 2020 RMD distribution
  - ▶ To participant who would have had 4/1/2020 RBD if SECURE hadn't passed
    - ▶ Individual born between July 1, 1949 – June 30, 1950
    - ▶ Thanks to SECURE, RBD moved to 2022 or 2023
- ▶ Plan, thinking it was RMD, didn't treat as ERD
  - ▶ They're forgiven
- ▶ Participant has until August 31, 2020 to roll over
  - ▶ If it's a CRD, 3-year recontribution deadline

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## SECURE Act RMD Rollover



- ▶ Diane turns 70½ in 2020
- ▶ Before SECURE Act, RBD would have been 4/1/21
- ▶ Thanks to SECURE, Diane doesn't need to take a distribution until 2022
- ▶ Plan distributed to her in 2020 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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## Transition Relief – CARES



- ▶ 2020 RMDs and Extended 2020 RMDs can be rolled over
- ▶ Rollover deadline is later of
  - ▶ August 31, 2020
  - ▶ Normal 60-day deadline
- ▶ If from an IRA
  - ▶ Can repay to the IRA by August 31, 2020
  - ▶ Not subject to the one-rollover-per-year limitation
  - ▶ Applies to SECURE and CARES

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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
- ▶ Could choose to make RMDs according to document
- ▶ **Employer** must sign amendment and enter effective date
  - ▶ Deadline for most plans is last day of 2022 plan year

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## What Happens if You Don't Amend



- ▶ Plan still qualified
- ▶ If there aren't 2020 RMDs, no impact
- ▶ If there are 2020 RMDs, and plan doesn't amend, must follow terms of plan document
  - ▶ If plan spells out RMD rules
    - ▶ Distribute RMDs as though CARES not passed
  - ▶ If plan incorporates RMD rules by reference
    - ▶ Do not distribute RMDs
- ▶ No choice for participant unless you amend

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## Impact of Anti-Cutback Rule



- ▶ Cannot eliminate optional form of benefit
  - ▶ Benefit form not eliminated if participant given choice to receive benefit
    - ▶ But that requires plan amendment
  - ▶ Choice of default (distribute or not) not subject to anti-cutback rule
- ▶ So if:
  - ▶ Plan terms mandate RMD distribution
    - ▶ Plan amended to stop 2020 RMD distributions without participant election
      - ▶ Anti-cutback violation
  - ▶ Plan terms simply incorporate RMD rules by reference
    - ▶ Plan amended to force 2020 RMD distributions without participant election
      - ▶ Anti-cutback violation because participant not given right to defer

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## Additional Model Amendment Choice



- ▶ What distributions are eligible for direct rollover from plan?
  - ▶ Distributions that would have been ERDs if CARES hadn't passed are, of course, eligible for direct rollover
  - ▶ Choices: Allow direct rollover for:
    - ▶ 2020 RMDs
    - ▶ 2020 RMDs and Extended 2020 RMDs
    - ▶ 2020 RMDs but only if paid with an additional amount that would have been an ERD without CARES
    - ▶ None of the above

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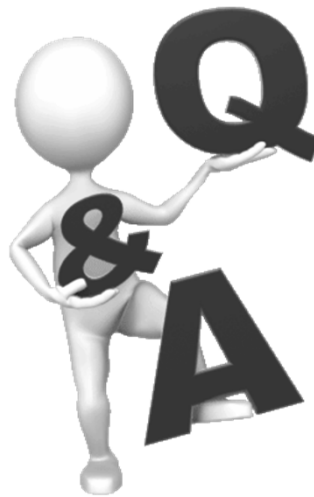
## Key Difference From WRERA Guidance



- ▶ Notice 2009-82 had an important transition rule:
  - ▶ Transition relief through November 30, 2009, for a plan that is not operated in accordance with its terms with respect to waived required minimum distributions
  - ▶ Meant you didn't have to be too particular with effective date of WRERA amendment
- ▶ That transition relief is absent from 2020-51
  - ▶ So pick your effective date carefully
    - ▶ Operate in conformance with plan document before date
    - ▶ Operate in conformance with amendment after date

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2020-51 Q&AS



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## Do IRAs Need to be Amended for CARES?



- ▶ No
- ▶ 2020 RMD waiver applies to RMDs, but IRA's don't have to be amended

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## Is Deadline to Elect 5-Year Rule Extended?



- ▶ Yes
- ▶ Example:
  - ▶ Participant died in 2019, before RBD
  - ▶ Left retirement plan funds to daughter
  - ▶ Plan lets daughter choose between 5-year rule and life expectancy rule
- ▶ May require plan amendment

	Before CARES	After CARES
First distribution life expectancy rule	12/31/2020	12/31/2021
Distribution deadline under 5-year rule	12/31/2024	12/31/2025
Election deadline	12/31/2020	12/31/2021

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## Is Deadline for Nonspouse Beneficiary Rollovers Extended?



- ▶ Nonspouse beneficiaries can do only direct rollover to IRA
- ▶ IRA follows life expectancy or 5-year rule based on plan terms
- ▶ Exception: If plan uses 5-year rule beneficiary can elect life expectancy rule for IRA
  - ▶ Deadline to complete rollover is December 31 of year following year of participant's death
- ▶ For participants dying in 2019, deadline extended one year
  - ▶ Don't have to take 2020 RMD to do rollover

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## Does CARES Change RBD?



- ▶ No
- ▶ Example 1:
  - ▶ Doug's RBD was 4/1/2021
  - ▶ RMD for 2020 DCY is waived
  - ▶ 2021 RMD must be paid by 12/31/2021
- ▶ Example 2:
  - ▶ Dora's RBD was 4/1/2020
  - ▶ Didn't take 2019 or 2020 DCY RMD
  - ▶ Dora dies 6/8/2020
  - ▶ She died after her RBD for purposes of distributions to beneficiary

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## How Does CARES Impact 4/1/2021 RBD?



- ▶ Don't have to take 2020 DCY RMD
- ▶ Still must take 2021 DCY RMD during 2021
- ▶ Example:
  - ▶ Earl is nonowner, born in 1948, retires in 2020
  - ▶ RBD is 4/1/2021
  - ▶ No requirement to take distributions in 2020
  - ▶ First distribution in 2021 is RMD and is not ERD
    - ▶ Even if it comes before 4/1/2021
    - ▶ Subsequent amounts are ERD

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## Are Other Deadlines Extended?



- ▶ No
- ▶ CARES doesn't extend post-death deadlines:
  - ▶ September 30 beneficiary determination date
  - ▶ October 31 trust documentation deadline
  - ▶ December 31 separate share deadline
- ▶ CARES doesn't extend effect of SECURE 10-year distribution rule for participants who die in 2020

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## Spousal Consent Needed?



- ▶ Issue for plan distributing QJSA
  - ▶ 2020 RMD could be part of a QJSA
  - ▶ Not taking it results in stopping and restarting QJSA
- ▶ Detailed rules in SBJPA guidance, Notice 97-75, Q&A 8
  - ▶ Choice:
    - ▶ No new annuity starting date; doesn't require spousal consent
    - ▶ Have new annuity starting date; requires spousal consent
      - ▶ Could impact QPSA

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## Can Distributions be Rolled Back to Same Plan?



- ▶ Yes, if plan permits rollovers
- ▶ Rollover complies with timing restrictions

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## May Payor Withhold 20% from 2020 RMDs?



- ▶ No; follow voluntary withholding rules and give 3405 Notice
- ▶ Example 1:
  - ▶ 2020 RMD amount would have been \$20K
  - ▶ Plan distributes \$20K to participant in 2020
  - ▶ Must do voluntary withholding
- ▶ Example 2:
  - ▶ 2020 RMD amount would have been \$20K
  - ▶ Plan distributes \$50K to participant in 2020
  - ▶ Plan must withhold \$6K (20% of \$30K); voluntary withholding on \$20K
- ▶ Example 3:
  - ▶ Plan distributing \$20K/year for 20 years
  - ▶ Voluntary withholding automatically applies

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## Impact of CARES on 10% Penalty for Premature Distributions



- ▶ Distributions before age 59½ normally subject to 10% penalty
- ▶ Exception: substantially equal payments over life expectancy
  - ▶ RMD rules can be used to determine these payments
- ▶ 10% penalty applies if payments are modified:
  - ▶ Before 59½ or
  - ▶ Within 5 years from start of payments
- ▶ CARES doesn't change these distributions
  - ▶ Stopping them in 2020 triggers penalty tax

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## IRA Custodian Must Notify Owner about CARES



- ▶ IRA custodian/trustee/issuer must notify IRA owner that no RMD due for 2020
- ▶ Give IRA owner copy of 5498

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## Effect on DB plans



- ▶ DB plans have their own set of RMD rules
- ▶ DB plans can use DC rules to compute RMDs on lump sum distributions
- ▶ CARES doesn't change DB RMDs
- ▶ DB plan must compute 2020 RMD as though CARES hadn't been passed


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## Paycheck Protection Program



- ▶ Loan application deadline extended from June 30 to August 8
- ▶ \$130 billion still available
- ▶ June 26 revisions to loan forgiveness rule
- ▶ Clarifies that owner caps apply to C and S corporation shareholders
- ▶ Cap on total forgiveness related to owners:
  - ▶ \$20,833

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Partial termination

Midyear restarts of suspended safe harbor plans

Severance of employment

5500 deadlines (July 15)

Schedule SB reporting with funding waiver

**NO NEW GUIDANCE**

**For updates:**  
Ferenczy Flash  
<https://ferenczylaw.com/flashpoint-sign-up/>

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Questions?



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## Contact Information



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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.