

More SECURE – The First IRS Guidance

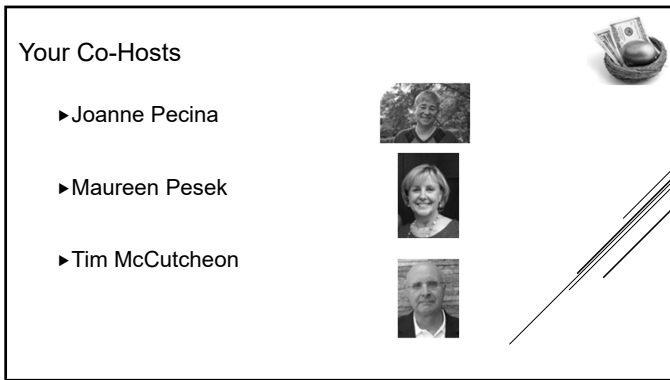
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SECURE Act

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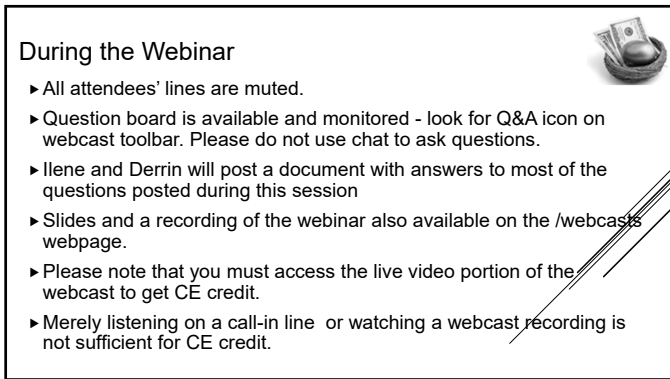
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Your Co-Hosts

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

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- ▶ All attendees' lines are muted.
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- ▶ 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 H. Ferenczy
S. Derrin Watson

Your Presenters Today

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SECURE Act



- ▶ Most significant pension legislation since PPA 2006
- ▶ Many issues effective in 2020:
 - ▶ Retroactive plan adoption
 - ▶ Retroactive safe harbor nonelective 401(k)
 - ▶ Elimination of notice requirement for safe harbor nonelective 401(k)
 - ▶ Changes in RMD rules
- ▶ PEP plans start in 2021
- ▶ And much, much more

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IRS Publishes Its First SECURE Act Guidance: Notice 2020-68

- ▶ Tells us about specific issues in SECURE
- ▶ Answers many questions
 - ▶ Leaves even more questions unanswered
- ▶ Extends deadline for some plan amendments



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Our Format Today

- ▶ Briefly explain what law says
- ▶ Identify what Notice 2020-68 adds
- ▶ List some of the open questions



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EACA TAX CREDIT



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Small Plan Tax Credits

▶ Limited to employers that could sponsor SIMPLE

▶ Increased plan start-up credit

▶ Increased prior \$500 limit to lesser of \$5,000 or number of NHCEs x \$250

▶ Available for 3 years

▶ New credit for EACA

▶ \$500/year for three years

▶ Not limited to plan operating costs

▶ Applies to new EACA plans and plans that add EACA feature



Act Section	105
Qualified	Yes
403(b)	No
457(b)	No
Eff. Date	Tax year begin after 12/31/19
Amendment Needed	No

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What Plans Qualify?

▶ 401(k)

▶ SEP

▶ SIMPLE IRA

▶ Not sponsored by government or tax-exempt

▶ That leaves out 403(b) and 457(b)



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Notice 2020-68 Clarified Only EACA Credit

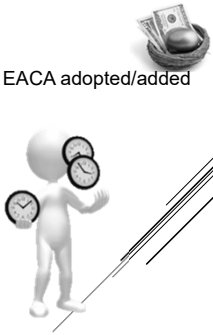
▶ But perhaps some of the guidance can be interpolated to apply to the start-up credit (?)



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Credit Period

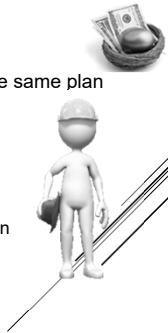
- ▶ Credit available for three years starting with year EACA adopted/added
- ▶ Only one three-year period per employer
 - ▶ So adopting a second EACA doesn't help you
- ▶ Credit available only after 2019
- ▶ Example
 - ▶ Employer adopted EACA in 2018
 - ▶ Credit available for 2020
 - ▶ Credit not available thereafter



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Same Plan Requirement

- ▶ Employer qualifies for credit in years 2 and 3 only if the same plan continues EACA feature in those years
 - ▶ Can't switch it to a new plan
- ▶ Spin-off counts as same plan
 - ▶ Employer sets up EACA in Plan 1 in 2022
 - ▶ Spins it off into Plan 2 in 2023 and continues to maintain it in Plan 2
 - ▶ It qualifies for the credit in 2023 and 2024



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Credit Available for Adopting Employer in a MEP

- ▶ Credit applies separately to each eligible adopting employer of multiple employer plan
 - ▶ Related employers treated as a single employer
- ▶ 3-year clock starts when employer's employees first covered under EACA
- ▶ Can spin-off before end of three years and maintain credit
- ▶ Does this apply to the start-up credit, too?
 - ▶ Determination of whether an employer is eligible for both credits is determined by section 408(p)(2)(C)(i) – so if one credit works with a MEP, the other should, too.



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LONG-TERM PART-TIME EMPLOYEES




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Long-term Part-time (LTPT) Employee Deferrals

- ▶ 401(k) plans *must* allow certain part-time employees to defer
- ▶ LTPT Defined:
 - ▶ Three consecutive eligibility computation periods with at least 500 HOS each
 - ▶ Don't count ECP beginning before 1/1/2021
 - ▶ Can impose age 21 condition (by end of service period)
 - ▶ Can impose standard entry date
 - ▶ So earliest entry would typically be 1/1/2024

Act Section	112
Qualified	Yes 401(k) only
403(b)	No
457(b)	No
Eff. Date	Start counting years in 2021
Amendment Needed	Yes



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- ▶ Must be allowed to defer to 401(k) plan
- ▶ Can exclude LTPT from:
 - ▶ Safe harbor contributions (including QACA)
 - ▶ Other employer contributions
 - ▶ Top-heavy minimums and vesting
 - ▶ Coverage
 - ▶ ADP
 - ▶ ACP
 - ▶ 401(a)(4)

LONG-TERM PART-TIME (LTPT)

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Special Rules



▶ Vesting

- ▶ If employer chooses to contribute for LTPT
 - ▶ Vesting YOS is any vesting computation period with at least 500 HOS
 - ▶ Vesting break in service is period with less than 500 HOS

▶ 1000 Hours

- ▶ What happens if LTPT has eligibility computation period with 1000 HOS?
 - ▶ Participate as other employees do (eligible for employer contribution if meet conditions)
 - ▶ Still credited with prior years with at least 500 HOS

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Notice 2020-68 Doesn't Tell Us Much



- ▶ Don't have to count years before 2021 to determine if worker is LTPT
- ▶ But must count all years to determine vesting
 - ▶ Even years before 2021
 - ▶ Unless they can be excluded under normal vesting rules (e.g., under 18)

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Notice 2020-68 Doesn't Tell Us Much



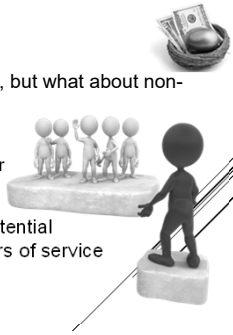
▶ Example:

- ▶ Jane worked 550 HOS/year during 2020 – 2023 (4 years)
- ▶ Enters plan January 1, 2024 under LTPT rules – 3 years of LTPT eligibility service, starting in 2021
- ▶ She's 80% vested when she enters on 2/20 schedule (3 years of vesting service)
- ▶ Suppose Jane works 1,000 HOS in 2024
 - ▶ In 2025 Jane becomes regular participant
 - ▶ She retains 80% vesting
 - ▶ Her future vesting will continue to be based on 500-hour rule, not 1,000 hour rule

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What We Still Don't Know

- ▶ LTPT rules eliminate service-based exclusions, but what about non-service exclusions?
 - ▶ Employees in Denver office
 - ▶ Employees at related nonparticipating employer
 - ▶ Janitors
- ▶ IRS asked for comments on "how to reduce potential administrative burdens related to counting years of service beginning before January 1, 2021"



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QUALIFIED BIRTH AND ADOPTION DISTRIBUTIONS (QBAD)



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Withdrawals After Birth/Adoption

- ▶ New defined contribution distributable event
 - ▶ Qualified birth or adoption distribution
 - ▶ Distribution in one-year period after birth/finalized adoption
 - ▶ Up to \$5,000
 - ▶ Applies to all plans of related employers
 - ▶ Applies to qualified DC, 403(b), gov't 457(b), and IRAS
- ▶ No 10% premature distribution penalty
- ▶ Can recontribute it to distributing plan or to an IRA
 - ▶ Treated as direct rollover contribution
- ▶ EE must include name, age, and TIN of child on return

Act Section	205
Qualified	DC Yes
403(b)	Yes
457(b)	Govt Yes
Eff. Date	Distributions after 12/31/19
Amendment Needed	Yes

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Who is an Eligible Adoptee?



- ▶ Any individual who has not attained age 18 or is physically or mentally incapable of self-support.
 - ▶ Other than the child of the taxpayer's spouse
- ▶ Incapable of self-support:
 - ▶ §72(m)(7) disability
 - ▶ Unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected
 - ▶ to result in death or
 - ▶ to be of long-continued and indefinite duration

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Multiple Parents/Kids



- ▶ Each parent can take distribution
- ▶ Distribution available for each child
- ▶ Example
 - ▶ John and Mary have twins
 - ▶ Each works at same company
 - ▶ Each can take up to \$10,000 from DC plan during year following birth (\$5,000 x 2 kids)
 - ▶ Octamom could get \$40,000!

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Plan Provisions

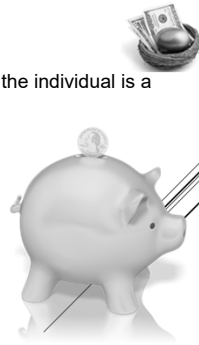


- ▶ Plan need not provide for QBADs
 - ▶ Participant can claim QBAD treatment for otherwise permissible distribution if requirements are met
- ▶ If plan permits QBADs:
 - ▶ Plan administrator can rely on individual's reasonable representation of eligibility unless actual knowledge to the contrary
 - ▶ Satisfies distribution restrictions for §§401(k), 403(b), 457(b) (but not pensions)
 - ▶ Not treated as eligible rollover distribution for purposes of:
 - ▶ Cooperate with direct rollover
 - ▶ Give special tax notice (§402(f))
 - ▶ 20% withholding (10% waivable withholding applies)
 - ▶ Plan must give voluntary withholding notice

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Recontribution Issues

- ▶ Recontribution can go to any IRA or plan in which the individual is a participant that will accept the rollover
- ▶ Distributing plan must permit recontribution if
 - ▶ Plan permits QBADs and
 - ▶ The participant is then eligible to make a rollover contribution to that plan
- ▶ QBAD recontributed to a plan is treated as direct trustee-to-trustee transfer within 60 days
- ▶ Call always recontribute to IRA



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Reporting

- ▶ 2020 1099-R instructions: Code 1 if under 59 ½
 - ▶ Even though exempt from §72(t) penalty
 - ▶ Same as qualified reservist distribution
- ▶ 2020 Form 5498 instructions for IRAs
 - ▶ New Code BA for recontributions



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What We Still Don't Know

- ▶ "The Treasury Department and the IRS intend to issue regulations under § 72(t) that will address the recontribution rules, including rules related to the timing of recontributions"
 - ▶ The law doesn't provide a recontribution deadline



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DIFFICULTY OF CARE PAYMENTS

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Difficulty of Care Payments

- ▶ Difficulty of care payments (in re foster care providers) are exempt from tax under Code §131
 - ▶ Therefore, they haven't historically been considered to be compensation for plan purposes
- ▶ Now they can be treated as compensation
 - ▶ For IRAs
 - ▶ §415 compensation for DC and 403(b) plans
 - ▶ Contributions treated as after-tax
 - ▶ Doesn't cause failure of "any requirement"
 - ▶ IRS clarifies it applies to Code §§1 – 1400Z-2


Act Section
116
Qualified
DC Yes
403(b)
Yes
457(b)
No
Eff. Date
Plan year begin aft 12/31/2015
Amendment Needed
Yes



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What the IRS Told Us

- ▶ §415 adjustment only considers difficulty of care payments from employer
 - ▶ So likely limited to government agencies and contractors
- ▶ §415 adjustment is mandatory plan provision for employers that make difficulty of care payments



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What We Don't Know

- ▶ "The applicability of the excise tax on excess IRA contributions under §4973 to nondeductible IRA contributions that are based on difficulty of care payments will be addressed in future guidance"
- ▶ How does ADP/ACP/§401(a)(4) testing apply to these contributions?



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PENSION IN-SERVICE AGE 59 ½ DISTRIBUTIONS



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Lower In-Service Distribution Ages

▶ Bipartisan American Miners Act §104



- ▶ Lowers in-service pension distribution age from 62 to 59½ in Code §401(a)(36)
- ▶ Lowers in-service government 457(b) distribution age from 70½ to 59½
 - ▶ Technically: January 1 of year in which participant attains age
 - ▶ Tax-exempt stays at 70½



Act Section	BAMA 104
Qualified Pension, Yes	403(b)
	No
457(b)	Govt Yes
Eff. Date	PY begin after 12/31/2019
Amendment Needed	Yes

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What We've Learned



- ▶ Not required to permit in-service distributions or lower in-service distribution age
- ▶ Doesn't change normal retirement age (still need to comply with rule that provides that NRA cannot be earlier than the earliest age reasonably representative of the typical retirement age for the industry)
- ▶ SECURE amendment deadline applies
 - ▶ No need to adopt this year

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IRA CONTRIBUTIONS AFTER 70 ½



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Older Employees Can Make IRA Contributions



- ▶ Old law prohibited non-Roth IRA contributions for tax year owner turns 70½ and subsequent years
- ▶ Repealed
- ▶ However, IRA deductions after 70½ reduce IRA charitable distribution exclusion

Act Section
107
Qualified
No
403(b)
No
457(b)
No
Eff. Date
Tax years begin after 12/31/19
Amendment Needed
No

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What the IRS Told Us



- ▶ Institution not required to accept post 70½ contributions
- ▶ Amendment required to IRA if institution wants to implement
 - ▶ IRS will provide model amendment
 - ▶ General SECURE amendment deadline applies
 - ▶ Must deliver updated disclosure materials and amendment to owner within 30 days after later of adoption or effective date
- ▶ Cannot offset RMDs by contributions; separate transactions
- ▶ Detailed example of reduction of charitable exclusion

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AMENDMENT DEADLINE



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2022 Amendment Deadline



- ▶ No operational failure if amend by last day of first plan year beginning on or after 1/1/2022
 - ▶ IRS can grant later deadline
 - ▶ Governmental and certain union plan deadlines extended two years
 - ▶ Amendment must be retroactively effective
- ▶ Anti-cutback relief also available
- ▶ Must operate in accordance with law and amendment as ultimately adopted
- ▶ Applies to required and discretionary amendments
 - ▶ Includes Bipartisan American Miner's Act 59 ½ amendment

Act Section
601
Qualified
Yes
403(b)
Yes
457(b)
Yes
Eff. Date
N/A

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