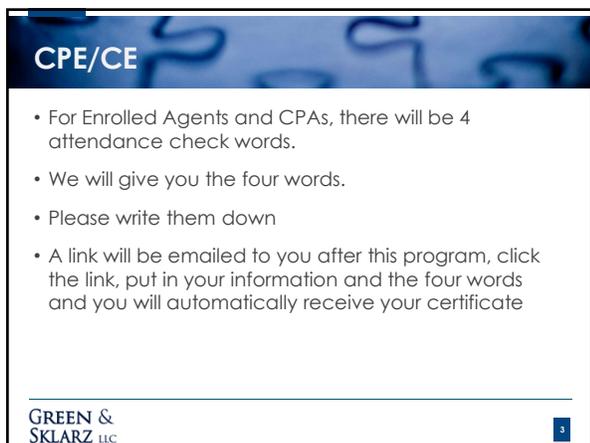


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Handouts and Q&A

- The handouts are in the Handouts tab in your control panel
- You may want to print the slides and the attendance check word form, and perhaps just download the other exhibits pdf for reference later
- We will do Q&A at the end

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Force Majeure Provisions

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Force Majeure Provisions

- **Applicability:**
 1. Event qualifies as Force Majeure under the contract (if addressed);
 2. The risk was unforeseeable and unmitigable; and
 3. Performance is truly impossible.

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Force Majeure Provisions

- **Key Considerations**
 - Is it truly impossible to perform, or just more economically difficult?
 - The relevant standard differs from jurisdiction to jurisdiction.
 - What does the relevant contract provide?

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Force Majeure Provisions

- **Contracts with Majeure Provisions**
 - Specificity is key – clauses that are silent on pandemics, epidemics or other viral outbreaks are likely to be insufficient for a force majeure defense.
 - If the contract covers COVID-19, still need to demonstrate mitigation and impossibility.
 - Recent governmental action may make it easier to invoke (e.g., executive orders closing restaurants, bars and other social gathering venues)

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Force Majeure Provisions

- **Contracts without Force Majeure Provisions**
 - Common law doctrine of impossibility/impracticability may apply.
 - Performance may be excused if:
 1. Unexpected intervening event;
 2. Agreement assumed such event would not occur;
 3. The event made performance impossible or impracticable.

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Force Majeure Provisions

- **Impossible vs. Impracticable**
 - True impossibility (e.g., New York).
 - Performance would require excessive or unreasonable expense (e.g., California).
 - Given the widespread and potentially devastating financial impact of COVID-19, the bounds of each standard will be tested in the courts.

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Force Majeure Provisions

- **Frustration of Purpose**
 - Similar to impossibility/impracticability, but focuses on whether the purpose of the contract has been obviated rather than whether performance remains viable.
 - **Example:** Deal to purchase apartment building, which is condemned by local authorities in the interim between contract and closing.

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Additional Considerations

- **Business/Contingent Business Interruption Insurance**
 - Business Interruption covers losses from direct interruptions to a business's operations
 - Loss of revenue
 - Fixed expenses (e.g., rent and utilities)
 - Contingent Business Interruption covers lost profits and costs resulting from supply-chain disruptions.

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Additional Considerations

- **Business/Contingent Business Interruption Insurance**
 - Check policies closely
 - Comply meticulously with all notice requirements
 - Apply for coverage – even if rejected, can be shown as good-faith efforts of mitigation.

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Estate Planning in a Volatile Market and Low Interest Environment

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Estate Planning in a Volatile Market and Low Interest Environment

- Historic shifts in federal and state estate and gift tax/exemptions
- Low AFRs
- Low §7520 rate
 - 1.8% for transfers made in March 2020
 - 1.2% for transfers made in April 2020
- Potential for additional leveraged gifting – use of exemptions

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IRS/Treasury Update

1. The Treasury/IRS has granted a 90-day deferral to pay income taxes due on April 15th;
2. The amount that can be deferred is up to \$10 million for C corporations or up to \$1 million for all other taxpayers;
3. It does not grant an extension to file; Taxpayers that need time to file should file an extension through normal procedures by 4/15;

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Tax Update

4. The taxes covered are income taxes, including self-employment taxes reported on a 1040. No other types of taxes are covered, so gift taxes, payroll taxes, etc remain due on April 15, 2020;
5. Interest and penalties begin to accrue on July 16, 2020 if the taxes are not paid before July 15, 2020; and
6. First quarter estimated taxes are also deferred to July 15, 2020.

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Tax Update

- Collections is standing down regarding issuing new liens and levies
- IA and OIC payments are NOT deferred
- Refunds will not be delayed (\$3 Trillion vs \$50 billion)
- Paper filings all done at campuses – one case of Covid-19 and the whole works shut down

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Families First Coronavirus Response Act
(HR 6201)
Signed into law 3/18/2020

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Nutritional Waivers (Division A, B)

- Adds \$500 million to SNAP, WIC
 - Suspension of work requirements for SNAP
 - Provides additional assistance to families with school age children receiving so-called "free lunch" (when schools are closed more than 5 days in fiscal 2020)
- States can also carry out this function
- The new rules have a funding sunset 9/30/2020
- Provides the Agriculture Department additional authority to purchase key commodities
- Allocates \$250 million for home nutrition programs for the elderly

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Worker Protection (Division C)

- OSHA to promulgate rules on workplace safety for dealing with COVID-19
- OSHA has issued guidance for preparing your workplace for COVID-19
 - <https://www.osha.gov/Publications/OSHA3990.pdf>

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Emergency Paid Sick Leave (Division D)

- Establishes rules and rule-making authority for who qualifies (typically, if you are sick, quarantined, or caring for someone who is sick)
- **Applies only to employers with less than 500 employees.** Employers with less than 50 employees can ask for waivers.
- Also applies to self-employed individuals

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- If employers offer emergency paid sick leave, they can claim refundable tax credits of 100% of the amount paid credited against the employer portion of Social Security taxes, subject to certain caps.
 - Self-employed individuals qualify for this tax credit
 - The employer must apply for reimbursement (although the IRS is granted rule making authority to implement this aspect of the law)
- Benefits are paid under the Social Security Act and through the Social Security Administration
- Individuals must apply

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- Benefit amount: 2/3rd of an individual's average monthly earnings, capped at \$4000
- Benefit time: up to 30 days
- The amount is reduced by state and private benefits received
- Sunsets on 1/18/2021
- Benefits may be applied for retroactively for the 180-day period prior to the end of the benefit period

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• Application:

- "An application for an emergency paid leave benefit under this section for a 30-day period shall include— "(A) an attestation by the individual— "(i) that he or she is an eligible individual; "(ii) that at least 14 emergency leave days with respect to the individual occurred, or are expected to occur, during such period; and "(iii) that the individual has informed his or her employer of the individual's need to take emergency leave, if the individual has an employer."
- The right to receive benefits will be presumed. The SSA must prove you are NOT entitled to benefits
- No application form has been created yet

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- If states offer similar coverage, they may apply for federal reimbursement
- The emergency sick pay does not affect SSDI or SSI
- Public health emergencies (such as caring for someone struck by COVID-19) is a qualifying event under FMLA
- Emergency leave benefits are not taxable income

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Unemployment Insurance (Division E)

- Allocates \$1 billion to additional unemployment insurance (administrated by the states)
- Provides state flexibility in extending unemployment benefits

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Health Provisions (Division G)

- COVID-19 tests are paid for by federal government

There are additional measures in the legislation concerning protections for health care providers, waiver of certain HIPPA rules and other technical provisions

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SBA Guidance

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SBA Programs for Small Businesses

- SBA COVID-19 page: <https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-provide-disaster-assistance-loans-small-businesses-impacted-coronavirus-covid-19>
- Qualifying businesses and non-profits are eligible for emergency loan program
 - Must show no other source of credit
 - Must have collateral for loans over \$25,000 and show how the loan will be repaid
 - Interest rate is 3.75% for up to 30 years (2.75% for non-profits)
 - Underwriting can take more than 3 weeks
- SBA is overwhelmed by applications

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CARES Act

- At about 4:30 Thursday Senate Republicans introduced the *Coronavirus Aid, Relief, and Economic Security Act* ("CARES Act")
- Senate Democrats have floated their own plan
- House Democrats are in the process of creating a plan as well
- Industry has also proposed concepts

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CARES Act

- On Wednesday, the Washington Post obtained a copy of a Treasury Department memo outlining the following, which was confirmed and augmented on Thursday.
- Certain changes were made Thursday
- At of Thursday, Sen. McConnell apparently had not discussed the CARES Act with Democrats – negotiations started Friday morning

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Small Business Interruption Loans

- 500 or fewer employees (however NFPs that are Medicaid funded are eligible even if they have more than 500 employees)
- Loan Amount: 4x the average total monthly payments for payroll, mortgage, rent, and payments on debt incurred in the year prior to the loan; capped at \$10 million.
- Loan proceeds can be used for payroll, mortgages, rent, utilities, and other debt obligations incurred before the covered period.
- Loan guarantees by government, but funded through private lenders.

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- ~\$300 billion allocation
- Underwriting Criteria:
 - Treasury to make rules
 - But, only real factors are: (i) the business was in operation on 3/1/2020 and (ii) had employees
 - Business that received SBA disaster assistance loans for COVID-19 to support payroll cannot also get a CARES loan for the same purpose [this will need clarification]
 - Businesses that apply for loans are presumed to qualify
- Payment Deferral
 - No payments due for at least 1 year
 - The SBA to write rules

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- Loan Forgiveness
 - Covered businesses who receive CARES loans may seek forgiveness of the portion of the loan that relates to payroll expense.
 - If employees are not retained in sufficient number the, the forgiven amount is reduced.
 - Forgiveness for tipped workers too
 - SBA to establish additional rules and forms for loan forgiveness, but requires that the reason for loan forgiveness is to support retention of workers.
 - Debt forgiveness is excluded from gross income [no COD income]

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- Entrepreneurial and Minority Business
 - SBA can provide grants for certain organizations that assist small businesses, including:
 - small business development centers
 - women's business centers
 - minority business centers
 - No matching grants from states or other organizations required

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Cash Disbursements to Individuals

- Recovery checks of up to \$1,200 to provide cash immediately to individuals and families
- Married couples who file a joint return are eligible for up to \$2,400.
- Those amounts increase by \$500 for every child.
- Phase out over \$75,000 of income (\$150,000 for joint filers)
- Reduction of by \$5 for each \$100 a taxpayer's income exceeds the phase-out threshold. No check for those making over \$99,000 (\$198,000 for joint filers).

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- The IRS will base these amounts on the taxpayer's 2018 tax return.
- Taxpayers with little or no income tax liability, but at least \$2,500 of qualifying income, would be eligible for a minimum rebate check of \$600 (\$1,200 married).
- Qualifying income includes earned income, as well as Social Security retirement benefits and certain compensation and pension benefits paid to veterans.

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Delay of Certain Deadlines

- Filing deadline extended from April 15th to July 15th. [The AICPA has indicated its support for this provision]
- The filing date would be aligned with the extended payment filing date already announced by the IRS.
- Individuals may postpone payment of estimated taxes due from the date of enactment until October 15, 2020.
- There is no cap on the amount of tax payments postponed, and any individual required to make estimated tax payments can take advantage of the postponement.

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Special Rules for Retirement Funds

- Waives the 10-percent early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts for coronavirus-related purposes.
- Income attributable to such distributions would be subject to tax over three years,
- Taxpayer may recontribute the funds to an eligible retirement plan within three years without regard to that year's cap on contributions.
- Provides flexibility for loans from certain retirement plans for coronavirus-related relief.

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Special Rules for Charitable Deductions

- Taxpayers may deduct up to \$300 of cash contributions, whether they itemize their deductions or not.
- Increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations.

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- For individuals, the 50-percent of adjusted gross income limitation is suspended for 2020.
- For corporations, the 10-percent limitation is increased to 25 percent of taxable income.
- This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.

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Business Provisions

Delay of estimated tax payments for corporations

- The provision allows corporations to postpone estimated tax payments due after the date of enactment until October 15, 2020.
- There is no cap on the amount of tax payments postponed.

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Delay of payment of employer payroll taxes

- Employers and self-employed individuals may defer payment of the employer share of the Social Security tax (6.2%).
- Deferred taxes must be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.
- The Social Security Trust Funds will be held harmless under this provision.

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Modifications for net operating losses

- NOLs are currently subject to a taxable income limitation, and they cannot be carried back to reduce income in a prior tax year.
- Losses from 2018, 2019, or 2020 can be carried back five years. The provision also temporarily removes the taxable income limitation to allow an NOL to fully offset income.
- Modification of rules concerning use of NOL carrybacks for pass-throughs.

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Additional Provisions

- Modification of limitation on business interest
- Technical amendment regarding qualified improvement property
- Modification of credit for prior year minimum tax liability of corporations
- Modification of limitation on business interest
- Installments not to prevent credit or refund of overpayments or increase estimated
- Restoration of limitation on downward attribution of stock ownership in applying constructive ownership rules

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Corporate Bailout Provisions

- \$208 billion of secured loan guarantees
- Administered by Treasury
- The total funding is to be allocated between air carriers and all other business as follows:
 - \$50 billion for loans and loan guarantees to passenger air carriers;
 - \$ 8 billion for loans and loan guarantees to cargo air carriers; and
 - \$150 billion for loans and loan guarantees to all other eligible business.

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- Secretary has discretion on the interest rates to be charged, but must take into account current average yield on outstanding U.S. Obligations.
- Three general criteria to be met for each loan:
 - Borrower is an eligible business for which credit is not reasonably available at the time of the transaction.
 - The obligation is "prudently" incurred; and
 - The loan is sufficiently secured.

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Taxpayer Protections

- 2-year limitation on compensation paid to officers and highly compensated employees.
- Those officers and employees that earned more than \$425k during 2019 may not earn more in any year during the two year period than they earned in 2019 (or, with respect to severance or termination comp, cannot earn more than 2x what they earned in 2019).
- U.S. is may seek equity participation
- Secretary may require air carriers to maintain scheduled air transport service

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Labor Provisions

- **Paid FMLA Leave:** Employers will be required to pay no more than \$200 per day and \$10k in aggregate for each employee paid leave under FMLA
- **Paid Emergency Sick Leave:** Employers not required to pay more than either: (A) \$511/day and \$5,110 in aggregate for each employee taking leave or (B) \$200/day and \$2,000 in aggregate for each employee taking leave to care for an afflicted family member.

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Senate Democrats Proposals

- Chuck Schumer (D-NY) news conference:
<https://www.democrats.senate.gov/newsroom/press-releases/transcript-on-cnn-sen-schumer-calls-for-a-marshall-plan-for-hospitals-health-care-system-to-test-and-treat-all-who-need-it-due-to-coronavirus-outbreak>
 - Marshall Plan for Hospitals: Ramp up production of ventilators and other critical medical supplies.
 - Employment Insurance: "anyone who loses his or her job because of this crisis will get paid fully by the federal government."
 - \$750 billion proposal, but quite vague
- Brown-Booker-Bennett Letter
 - \$4500 cash payments between April and October

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House Democrats Proposals

- None released yet.
- Pelosi has delegated to certain committee chairs the job of writing the legislation.

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State of Connecticut Proposals

- The Connecticut DECD is suspending loan repayments of business express loans for 90 days
- DECD intends to roll out a "small business bridge loan program" next week
 - Likely will provide up to 3 months of working capital
- CT Innovations has bridge loans available for portfolio companies
- No utility shutoffs for businesses and individuals until May 1st

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Industry Recommendations

- US Chamber of Commerce Open Letter: <https://www.uschamber.com/letters-congress/letter-us-government-leaders-coronavirus-response>
- First, enact legislation cancelling the payment of all payroll taxes typically paid by employers for the months of March, April, and May.
- Second, enact legislation expanding and streamlining loan programs for small businesses with fewer than 500 employees experiencing revenue loss as a result of the Coronavirus.
- Third, enact legislation enabling the creation of credit facilities to provide loans and loan guarantees to employers with more than 500 employees experiencing significant revenue loss as a result of the Coronavirus.

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Restaurants

- National Restaurant Association (<https://www.nra.com/news/national-restaurant-association-sends-restaurant-industry-recovery-and-relief-proposal-white>)
- Direct Relief
 - Authorize the Department of Treasury to create a \$145 billion Restaurant and Foodservice Industry Recovery Fund
 - \$35 billion for Community Development Block Grants for Disaster Relief (CDBG- DR) assistance
 - Assistance in allowing businesses to defer mortgage, lease and loan obligations.

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Loans/Insurance Options for Impacted Small Businesses

- \$100 billion in Federally-Backed Business Interruption Insurance.
- Federal Loan Program Equal to Lost Revenue
- \$45 billion in expanded access to effective, efficient and affordable federal and conventional loans.
- \$130 Million in Disaster Unemployment Assistance (DUA)

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• **Tax Measures**

- Fix the Qualified Improvement Property (QIP) technical correction.
- Assistance in allowing businesses to delay, defer, or forgo tax obligations.
- Tax credits for businesses that are retaining employees.
- A Temporary Payroll Tax Cut that increases economic activity. Specifically, reduce the employee shares of Social Security payroll taxes by two percentage points from 6.2% to 4.2%

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Hospitality

- World Travel & Tourism Council – open letter: <https://www.hospitalitynet.org/news/4097637.html>
 - Financial help must be granted to protect the incomes of the millions of workers in the sector facing severe economic difficulties.
 - Governments must extend vital, unlimited interest-free loans to global Travel & Tourism companies as well as the millions of small and medium sized businesses as a stimulus to prevent them from collapse.
 - All government taxes, dues and financial demands on the travel sector need to be waived with immediate effect at least for the next 12 months.

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Wrap Up

- Look for the link for the cpe/ce credit
- Thank you for joining us
- Look for an email, as we plan on doing another webinar next week when this is finalized
- Stay safe!

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Questions



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