

The webcast will start at 4 p.m. Eastern

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- Visit [capincrouse.com/covid19-legislation](https://capincrouse.com/covid19-legislation) to access these materials from today's webcast:
  - Handout and other resources
  - Recording
- To receive CPE credit you must respond to the polling questions, which are not available on mobile devices. To receive CPE credit you must log in on a computer.
- CPE certificates will be emailed to you within the next few weeks.



## Nonprofit Tax Update: COVID-19 Legislation

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4.1.20



## Today's Agenda

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- Families First Coronavirus Response Act
- Coronavirus Aid, Relief, and Economic Security Act (CARES Act)
- Questions

## Polling Question

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**Do you want CPE credit?**



The rush is on!



## Paycheck Protection Program (PPP) Loans

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- Applies to employers with 500 or fewer employees (unless otherwise specified by SBA industry standards), including nonprofits, sole proprietors, independent contractors, gig economy workers, and self-employed individuals
- For organizations that were in operation on February 15, 2020
- Employers can borrow the **lesser** of:
  1. 250% of their average monthly payroll expenses *plus* the outstanding balance on any Emergency Injury Disaster Loan (EIDL); **or**
  2. Up to \$10 million
- Intended to cover 8 weeks of payroll expenses and any additional amounts paid towards debt obligations
- 8-week period can be any time between the origination date of the loan through June 30, 2020

## Paycheck Protection Program (PPP) Loans Emergency Injury Disaster Loans (EIDL)

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- **Updates on March 31, 2020**
- Terms of loans: 0.5%, 2 year maturity date
- Can apply on April 3, 2020 (Friday)
- [SBA website](#)
- [SBA website](#) for PPP loans
- [SBA website](#) for EIDL loans
- Treasury has provided [guidance](#) for lenders and borrowers
- [Sample Application](#) for PPP loans

## Paycheck Protection Program (PPP) Loans

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- The maximum interest rate is 4%
- Payment of loan principal, interest, and fees is deferred during the deferment period (6 – 12 months), and loan amortization begins on the date of application for forgiveness
- The loan may be used for:
  - Payroll costs
  - Group health benefits
  - Employee salaries, commissions, or similar compensation
  - Mortgage interest payments (but **not** principal payments, including prepayment of principal)
  - Rent
  - Utilities
  - State taxes (SUTA)
  - Interest on any other obligation incurred before February 15, 2020

## Paycheck Protection Program (PPP) Loans

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- The loan may **not** be used for:
  - Compensation in excess of \$100,000 paid to any one individual
  - FICA tax, Medicare tax, RRTA tax, or federal unemployment tax
  - Compensation to an employee whose principal place of residence is outside the United States
  - Payments for qualified sick leave wages paid for with a credit allowed under the FFCRA
  - Payments for qualified family leave wages paid for with a credit allowed under the FFCRA

## Paycheck Protection Program (PPP) Loans

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- The borrower must certify that:
  - The loan is necessary to support the applicant's ongoing operations due to the uncertainty of the current economic conditions
  - The loan proceeds will be used to retain workers and maintain payroll or to make mortgage interest payments, lease payments, and utility payments
  - The applicant has no other Paycheck Protection Loan application pending
  - During the period beginning February 15, 2020 and ending December 31, 2020, the applicant has not received PPP loan proceeds for the same purpose and duplicative of amounts applied for and received under another PPP loan

## Paycheck Protection Program (PPP) Loans

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- Up to 100% of the loan is forgivable. The maximum forgivable amount is determined by:
  - Computing the amount of payments made for **payroll costs, mortgage interest payments, rent payments, and utility payments** for the 8-week period following the origination of the loan

## Paycheck Protection Program (PPP) Loans

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- That computation is then impacted by two factors:
  1. A headcount reduction factor; and
  2. A salary and wage reduction amount.

Note: these computations can be nuanced. Basically, if the employer keeps all of its employees, the entirety of the loan will be forgiven. If the employer lays off employees, the forgiveness will be reduced.
- **Important exceptions that operate independently of each other:**
  - Headcount reduced between February 15, 2020 and April 26, 2020, then reduction eliminated by June 30, 2020
  - Salary and wages reduced for one or more employees between February 15, 2020 and April 26, 2020 as compared to February 15, 2019, and reduction eliminated by June 30, 2020

## Paycheck Protection Program (PPP) Loans

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- Other features
  - For any portion not forgiven, there is a 10-year loan repayment schedule
  - 100% guaranteed by the federal government
  - No requirement of personal guarantees or collateral
  - No prepayment penalty
  - Made by and administered by banks, savings and loans, and credit unions
  - May receive both a bridge loan from the state and a PPP loan

## Paycheck Protection Program (PPP) Loans

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- Next Steps
  - Begin by talking with your bank about whether they process SBA 7(a) loans
  - Accumulate the payroll information necessary to determine the maximum loan amount
  - Prepare the required certification
  - Prepare a forecast of amounts you will spend on payroll costs, mortgage interest payments, and utility payments for the 8 weeks following the origination of the PPP loan
  - Think about other documents that lenders typically ask for (financial statements)
  - Examine various forms of relief in the CARES Act and FFCRA

## Polling Question

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**True or False: Loans from the Paycheck Protection Program (PPP) are not forgivable ever.**



## Economic Injury Disaster Loans (EIDL)

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- Available beginning January 31, 2020
- Provides for up to \$2 million per employer to help overcome temporary loss of revenue
- May be used to pay fixed debts, payroll, accounts payable, or other bills that organizations cannot pay due to COVID-19
- Available only to businesses without credit available elsewhere
- For nonprofits, the interest rate is 2.75% with a maximum term of 30 years
- If an employer received an Economic Injury Disaster Loan (EIDL) related to COVID-19, they can refinance into a PPP loan
- May not receive both an EIDL and PPP loan for same purposes
- See the [SBA's Fact Sheet](#)

## Economic Injury Disaster Loan Advances

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- An EIDL loan applicant may request an advance of up to \$10,000 to be paid within three days after submitting their loan application
- An advance is not required to be repaid even if the EIDL loan is subsequently denied

## Families First Coronavirus Response Act (FFCRA)

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- Effective date of April 1, 2020 and runs through December 31, 2020
  - There is no retroactive credit for leave paid through April 1
- Drafted and enacted in response to the public health crisis presented by COVID-19
- No exceptions for nonprofit organizations
- Two key sections:
  - Emergency Family and Medical Leave Expansion Act (FMLA)
  - Emergency Paid Sick Leave Act

## Families First Coronavirus Response Act (FFCRA)

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- Applies to employers with fewer than 500 employees
- There is an exception for those employers who have **fewer than 50 employees** and for whom providing paid leave due to school or place of care closures would **jeopardize the viability of the organization**

## Families First Coronavirus Response Act (FFCRA)

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- Viability is jeopardized when providing paid leave would:
  - Cause expenses and financial obligations to exceed revenues and force the organization to cease operating
  - Entail a substantial risk to the financial health or operational capabilities because of the employees' specialized skills, knowledge of the business, or responsibilities
  - Create a lack of sufficient able, willing, and qualified workers available at the time and place needed to replace employees so that the organization can operate at minimum capacity

## Families First Coronavirus Response Act (FFCRA)

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- What does it mean to be able to telework?
  - Your employer permits or allows you to perform work while at home or a location other than your normal workplace
  - Normal pay must be paid for telework hours
- What does it mean to be unable to telework?
  - You are unable to telework if you are unable to perform assigned teleworking tasks for one of the qualifying reasons for paid sick leave
  - If you are able to telework, even partially, while caring for children, then any hours of telework are not eligible for paid sick leave

## Emergency Family and Medical Leave Expansion Act

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- May permit an employee to take leave in which an employee is unable to work (or telework) due to a need for leave to care for a son or daughter under 18 years of age due to a public health emergency
  - This is the only reason for which leave is paid
- Public health emergency declared on January 31, 2020
- Available to employees who have been employed for at least 30 calendar days (as opposed to 12 months under regular FMLA rules)

## Emergency Family and Medical Leave Expansion Act

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- First 10 days of leave are unpaid, **or** the employee must use vacation, personal, medical, or sick leave
- After that initial period, employer **must** provide paid leave equal in amount to at least two-thirds of the employee's regular rate of pay for the number of hours the employee would normally work
  - However, amount cannot exceed \$200/day or \$10,000 in the aggregate
- For varying work schedules, compute average number of hours per day over the six-month period ending on the date on which the employee takes paid sick time **or** use employee's reasonable expectation upon hire

## Emergency Family and Medical Leave Expansion Act

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- Employers who pay qualified family leave wages are permitted a credit against their quarterly FICA and Medicare obligation
- The credit is refundable
- For self-employed individuals, there is a credit against their SECA tax obligation

## Emergency Paid Sick Leave Act

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- Eligible employees are unable to work or telework for one of the following six reasons:
  1. The **employee is subject to federal, state, or local quarantine or isolation order** related to COVID-19.
  2. The **employee has been advised by a health care provider to self-quarantine** due to concerns related to COVID-19.
  3. The **employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.**

## Emergency Paid Sick Leave Act

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4. The employee is **caring for an individual** who is subject to an order as described in item 1 above or has been advised as described in item 2.
5. The employee is **caring for a son or daughter because the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable,** due to COVID-19 concerns.
6. The employee **is experiencing any other substantially similar condition** specified by the Secretary of Health and Human Services.

## Emergency Paid Sick Leave Act

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- Amount of the benefit depends on the reason for leave
- Intended to provide up to two weeks of paid sick time
- **If in the first three categories:**
  - No more than \$511 per day or \$5,110 total
- **If in the last three categories:**
  - No more than \$200 per day or \$2,000 total

## Emergency Paid Sick Leave Act

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- For employees in the first three categories, the benefit listed **may not be less than the greater of:**
  - The employee's regular rate of pay;
  - The minimum wage rate in effect under the Fair Labor Standards Act; or
  - The minimum wage rate in effect in the state or locality (whichever is greater), in which the employee is employed.
- For employees in the last three categories, the benefit listed **must be two-thirds of the employee's regular rate of pay.**

## Emergency Paid Sick Leave Act: Example

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- Ernie is a salaried employee making \$60,000 per year. The daily rate for an 8 hour day is  $\$60,000/\text{year} \div 2,080 \text{ hours/year} * 8 \text{ hours/day} = \$230.77/\text{day}$
- If he is in one of the first three categories, his rate of pay **must** be \$230.77/day.
- If he is in the latter three categories, his rate of pay **is capped at** 2/3 of his rate of pay, or roughly \$153.84.
  - Remember: \$200/day **but** capped at 2/3 of rate of pay.

## Emergency Paid Sick Leave Act

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- A full-time employee is entitled to up to 80 hours of paid sick time
  - For full-time hourly workers this 80 hours may be split unevenly between two or more weeks
  - There is only one 80-hour allotment per employee, regardless of the number of applicable allowed reasons
- A part-time employee is entitled to a number of hours equal to the number of hours the employee works, on average, in a two-week period
- For those with varying schedules, compute average number of hours employee was scheduled to work per day over the six-month period ending on the date on which the employee takes paid sick time **or** use the employee's reasonable expectation upon hiring

## Emergency Paid Sick Leave Act

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- An employer **may not** require an employee to use other leave before taking the paid sick time, though the employee can choose to do so
- Must provide notice of this in a conspicuous location
- Employer cannot require that the employee find a replacement to cover their hours
- Employer cannot discipline, discharge, or discriminate in any manner against an employee who takes advantage of paid sick time

## Emergency Paid Sick Leave Act

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- When employees take paid sick leave, the employer is allowed a credit against its FICA and Medicare payroll tax obligation equal in amount to the qualified paid sick leave paid in a calendar quarter
- The employer may also claim a credit for qualified health expenses related to providing a group health plan
- The credit is refundable, which means the employer will need to be able to pay the sick leave up front
- The credit is includable in gross income, with an offsetting tax deduction for the qualified paid sick leave and health plan costs, as well as the deduction for payroll taxes covered by the credit

## Polling Question

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**Could you or your organization make use of the provision of the Emergency Paid Sick Leave Act?**



## Families First Coronavirus Response Act

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- An employee may claim benefits under both the Emergency FMLA and Emergency Paid Sick Leave Acts, though not simultaneously

## Families First Coronavirus Response Act

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- Questions and Answers supplied by the U.S. Department of Labor at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

## Families First Coronavirus Response Act

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- An employee who is home because his or her children's school or day care is closed due COVID-19-related reasons may take Emergency Paid Sick Leave, Emergency FMLA Leave, or both
  - The maximum number of weeks allowed is 12
  - The period covered by the Emergency Paid Sick Leave can cover the initial 10-day unpaid period for the Emergency FLMA Leave

## Families First Coronavirus Response Act

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- Teleworking intermittently
  - If you are able to telework intermittently in an agreed-upon time increment (e.g., 90 minutes), then you can have a combination of paid sick leave and regular pay based in this intermittent schedule
  - This will inherently extend the period of time it will take to meet the 80-hour limit
  - The DOL encourages such arrangements
  - Working intermittently at your normal place of employment is not permitted except in the case of caring for children whose school or day care is closed

## Polling Question

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**True or False:  
Unexpected and uncontrollable distractions  
are a big obstacle to telework during the  
Coronavirus Pandemic.**



## Coronavirus Aid, Relief, and Economic Security (CARES) Act

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- Signed by President Trump on March 27, 2020
- Unanimous passage by the Senate, voice vote in the House
- Contains many provisions related to employment, payments to small business (including nonprofits), and other measures meant to bolster the economy during the COVID-19 crisis

## Pandemic Unemployment Assistance Provisions

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- Federal Pandemic Unemployment Compensation provision **increases** the amount of unemployment compensation by \$600/week over and above the normal unemployment compensation amount through July 31, 2020
- Pandemic Unemployment Assistance provision expands the definition of a “covered individual” **and** prolongs the amount of time the assistance is provided to 39 weeks through December 31, 2020
  - Provides for the normal unemployment and increased amount for the expanded list of covered individuals to cover **church employees** and others normally excluded
  - Does **not** apply to those who are **able to telework**
  - Is **not** available to those receiving assistance under the Expanded FMLA or Paid Sick Leave provisions of the FFCRA or other paid leave benefits
  - Secretary will create a process for making assistance available under the Act for the weeks beginning on or after January 27, 2020 through the passage of the Act

## Pandemic Unemployment Assistance

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- Covered individuals include gig economy workers, independent contractors, and church employees
- Covered individuals are those who certify that they are otherwise able to work but are unemployed, partially unemployed, or unable or unavailable to work because:
  1. They have been diagnosed with COVID-19 or are experiencing symptoms and seeking a medical diagnosis;
  2. A member of the individual's household has been diagnosed with COVID-19;
  3. The individual is providing care for a family member or a member of their household who has been diagnosed;

## Pandemic Unemployment Assistance

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4. **A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed** as a direct result of the COVID-19 public health emergency;
5. The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
6. The individual is unable to reach the place of employment because they have been advised by a health care provider to self-quarantine due to COVID-19 concerns;

## Pandemic Unemployment Assistance

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7. The individual was scheduled to commence employment and does not have a job as a direct result of the COVID-19 emergency;
8. The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
9. The individual has to quit his or her job as a direct result of COVID-19;
10. The individual's place of employment is closed as a direct result of COVID-19; **or**
11. The individual meets any additional criteria established by the Secretary.

## Federal Pandemic Unemployment Compensation

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- Pandemic Emergency Unemployment Compensation is available for those who:
  - Have exhausted all rights to regular compensation under federal or state law for the year;
  - Have no rights to regular compensation under other state unemployment compensation law or federal law;
  - Are not receiving compensation under the laws of Canada; and
  - Are able to work, available to work, and actively seeking work.
- Also applies to those who quit their jobs for coronavirus-related reasons

## Federal Funding for First Week of Regular Unemployment

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- States can waive any one-week waiting period for unemployment compensation
- Federal government will reimburse states for the extra cost
- Applicable until December 31, 2020

## Relief for Reimbursing Employers

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- For those agencies and organizations that are “reimbursing employers”
- Provides payments of 50% of the unemployment compensation to reimburse nonprofits, government agencies, and Indian tribes for half of the costs they incur from March 13, 2020 through December 31, 2020 in paying for unemployment compensation
- Reimbursing employers are not required to repay the funds supplied by the federal government

## Polling Question

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**In the CARES Act, unemployment compensation is:**

- A) Increased**
- B) Expanded to independent contractors**
- C) Both**



## Employee Retention Credit

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- Provides a refundable credit against FICA for 50% of qualifying wages paid to employees during the crisis
- Available to nonprofits
- **Cannot** receive both this credit and a Paycheck Protection Program loan
- Available to employers – including nonprofits – whose:
  - 1) Operations were fully or partially suspended; **or**
  - 2) Gross receipts declined by more than 50% when compared to the same quarter in the previous year.

## Employee Retention Credit

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- Credit is based on qualified wages to employees
- The size of the employer matters
  - >100 full-time employees: wages paid to employees when they are **not** providing services due to COVID-19 related circumstances
  - <100 full-time employees: **all** employee wages regardless of whether employer is open for business or shut down
  - Cannot “double-dip” with amounts paid under the Families First Coronavirus Response Act (FFCRA)

## Employee Retention Credit

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- Credit is against applicable employment tax for each quarter
- The credit is refundable
- Credit is available for the first \$10,000 of compensation, including health benefits, paid to **each** eligible employee
- Credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020

## Delay of Payment of Employer Payroll Taxes

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- Allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax (50% of the FICA tax)
  - For the 6.2% OASDI portion and **not** Medicare
- Must pay over the following two years
- Half of the amount to be paid by December 31, 2021 and the other half paid by December 31, 2022
- If employer benefited from loan forgiveness under the Paycheck Protection Program loan program, it may not utilize this provision

## Temporary Relaxation of the Net Operating Loss Rules

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- Allows for a net operating loss arising in a tax year beginning in 2018, 2019, or 2020 to be carried back five years from the loss year
- Also temporarily removes the taxable income limitation to allow an NOL to fully offset income
- Allows for an amendment to prior-year tax returns in an effort to provide critically needed cash flow right now

## 2020 Recovery Rebates

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- Provides for up to \$1,200 for each individual with gross income up to \$75,000 (\$150,000 for married filing jointly) and \$500 for each child
- Phase out begins at \$75,000/\$150,000, with reduction of \$5 for each \$100 that a taxpayer's income exceeds the phase-out threshold (\$99,000/\$198,000)
- Amount is based off of 2019 or 2018 tax returns
- Available to those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefits

## "Above-the-line" Charitable Contribution Deduction

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- Each taxpayer who does **not** itemize his or her deductions may claim a charitable contribution of up to \$300 for the taxable year for cash contributions made to a public charity
- Excludes 509(a)(3) supporting organizations and contributions to establish or maintain donor-advised funds
- Cannot utilize carryovers from past years for this

## Modification of Charitable Deduction Limit

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- For individuals who itemize:
  - Expands the limit on deductibility of cash contributions made by individuals to a public charity during 2020 from 50% of adjusted gross income to 100% of adjusted gross income
- Corporations that itemize have the limitation increased from 10% to 25%

## Suspension of Early Withdrawal Penalties from Retirement Plans

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- Waives the 10% early withdrawal penalty for coronavirus-related withdrawals of up to \$100,000 from retirement plans
- Applies to withdrawals made during calendar 2020
- 3-year ratable gross income inclusion (1/3, 1/3, 1/3)
- Applies to distributions:
  - Made to an individual who is diagnosed with COVID-19
  - Whose spouse or dependent is diagnosed with COVID-19
  - Who experiences financial consequences as a result of being quarantined, furloughed, laid off, and/or being unable to work (closure, child care)
- Applies to 401(k) plans, 403(b) plans, governmental 457(b) plans, and IRAs

## Waiver of Required Minimum Distribution

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- For 2020, waives required minimum distributions from certain retirement plans
- Applies to 401(k) plans, 403(b) plans, governmental 457(b) plans, and IRAs

## New Exclusion for Student Loan Payments Made by an Employer

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- Available from March 27, 2020 through January 1, 2021
- Expands the definition of educational assistance to include payments by an employer to an employee or lender for the purpose of paying the principal and interest on a qualified student loan
- Allows employers to make tax-free student loan repayment assistance
- Up to \$5,250 excludable from employee's income
  - This amount includes both student loan repayments and other educational assistance (e.g. tuition, fees, books)

## Polling Question

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**Could you or your organization make use of any of the provisions under the CARES Act?**



## Additional COVID-19 Resources

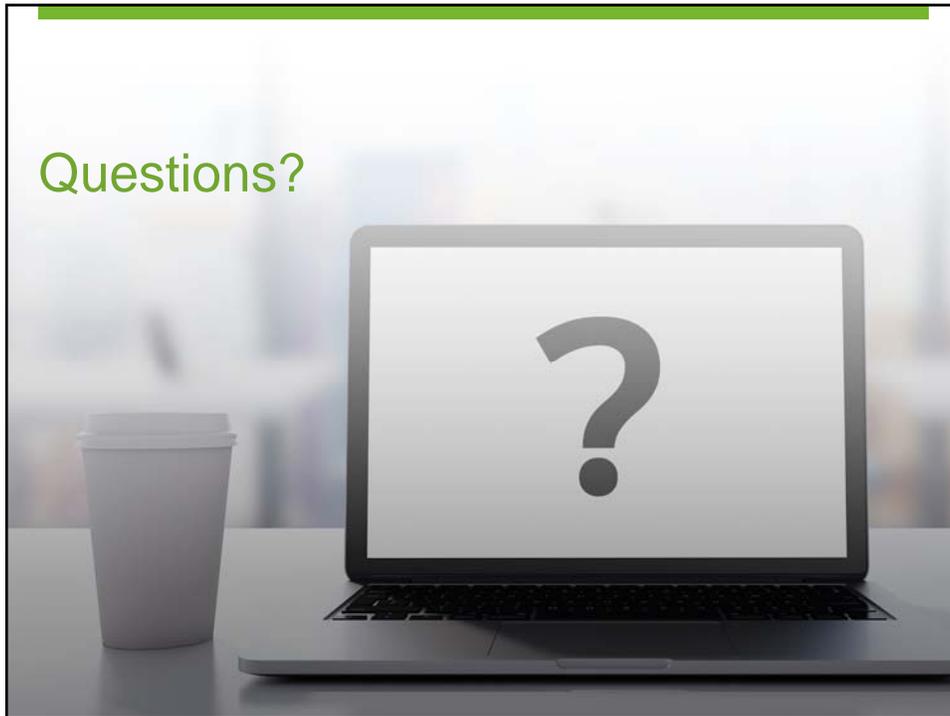
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Things are changing fast! Visit [capincrouse.com](https://www.capincrouse.com) and go to the Nonprofit Resources section for the latest updates.



**COVID-19 Resources**

Questions?



Thank you!

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