



CBIZ & MHM Executive Education Series™



2020 Not-For-Profit & Education Fall Webinar The Upcoming Election: Investment Outlooks and Tax Legislation Affecting Not-For-Profits

Presented by: Bill Smith, Anna Rathbun, and Gina Capizzani Miles
October 20, 2020

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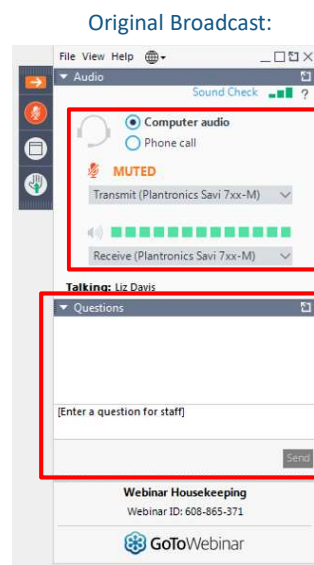


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Presenters



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Anna serves as the Chief Investment Officer for CBIZ IAS. She is responsible for overseeing the investment activities of CBIZ IAS through the Research Advisory Board. She has more than 20 years of industry experience. Her tenure with the firm has spanned economic and market research, portfolio construction, and creating insights in investment themes to share with the investment community.

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Presenters



William M. Smith, Esq.
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Bill Smith is a Managing Director in the CBIZ National Tax Office. Bill monitors federal tax legislation and consults nationally on a broad range of tax issues for businesses and individuals. He is frequently sought after by a myriad of media outlets to comment on the changing tax environment and its effects on companies and individuals. He has authored numerous tax articles, edits the CBIZ MHM tax newsletters and thought leadership articles, and lectures on a broad range of tax topics across the country.

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WASHINGTON TAX UPDATE

Presented by Bill Smith

Tax Agenda

- 01 The Presidential Candidates' Tax Plans
- 02 Next Round of Coronavirus Legislation
- 03 Recent Changes Affecting Charitable Giving
- 04 Administrative Updates
- 05 Judicial Updates

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THE PRESIDENTIAL CANDIDATES' TAX PLANS

Probability of Tax Legislation

- Trump Win
 - 435 voting members of the House – 218 for majority
 - Currently Democrats 232 and Republicans 198
 - Democrats retain majority unless they suffer a net loss of more than 15 seats
 - Republicans
 - Assuming they can win back Amash's seat in Michigan (he announced July 17 he is not running) and fill the other three vacancies, they get 202 seats
 - Still need an additional net gain of 16 seats to reach 218 to win the majority

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Probability of Tax Legislation (cont'd)

- Biden Win
 - 100 Senate seats total; 35 for 2020 election
 - 23 Republican seats and 12 Democrat seats
 - 50 seats plus Vice President for "majority"
 - Currently Republicans hold 53 seats and Democrats 47 (including 2 independents who caucus with Democrats)
 - For Republicans to hold onto the Senate majority, they need a net loss of no more than two seats
 - For Democrats to win control, they need a net gain of four seats for "normal" majority (without VP)
 - Without 60 votes, reconciliation required
 - A process established in the Congressional Budget Act of 1974 by which Congress changes existing laws to conform tax and spending levels to the levels set in a budget resolution. Changes recommended by committees pursuant to a reconciliation instruction are incorporated into a reconciliation measure.
 - Reconciliation provides a process to prevent the use of the filibuster and thereby allow the passage of a bill with simple majority support in the Senate

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Probability of Tax Legislation (cont'd)

- Biden Win
 - One Option: BLOCK THAT FILIBUSTER!
 - Key players in both parties say that the potential elimination of filibusters by means of a simple-majority procedural vote known as the nuclear option would open a pathway to bring a broad range of legislation, including tax bills, to the Senate floor.
 - Such a procedural change would mirror the [Republicans' use](#) of the nuclear option to end filibusters of Supreme Court nominees in 2017 and [Democrats' elimination](#) of the filibusters of nominees for other judicial and executive branch posts in 2013.
 - Senate Minority Whip Dick Durbin, D-Ill., said Democrats would weigh whether to end filibusters early in the new Congress, if they win control of the White House, the House and the Senate in the November elections.

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Candidates' Plans

- Trump Plan
 - Republicans got “their” tax act in 2017 – TCJA
 - Trump wants to make expiring provisions permanent
 - Most provisions other than the corporate tax rate expire after 2025
 - Result of reconciliation
 - Among other things, reconciliation requires that a bill not increase the deficit beyond the 10-year budget window
 - Tax Policy Center: If lawmakers decide to extend all the expiring provisions, however, that would add about \$480 billion to deficits through 2027 and a growing amount thereafter
 - Middle Class Tax Cut
 - Rate reductions – the benefit of rate reductions would accrue to top earners as lower earners face reduced (or zero) income taxes
 - Eliminate carried interest preference

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Candidates' Plans (cont'd)

- Trump Plan (cont'd)
 - Other ideas mentioned at the Convention or after – no formal plans
 - Reducing capital gains maximum rate from 20% to 15% (NIIT?)
 - Currently 15% until MFJ exceed \$496,600
 - Forgiveness of EO employee payroll taxes withheld
 - Unspecified “Made in America” tax credit
 - Expand Opportunity Zones
 - Credit for companies that bring back jobs from China
 - 100 percent expensing for certain industries (pharmaceuticals and robotics) that bring manufacturing back to the United States

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Candidates' Plans (cont'd)

- Biden Plan
 - Business
 - Increase corporate rate from 21% to 28%
 - Minimum tax on corps with book profits over \$100 million
 - Eliminate repatriation benefits for multi-nationals
 - Double the GILTI tax from 10.5% to 21%
 - Taxes earnings > 10% on invested foreign assets
 - Leave rest of TCJA intact
 - Phase out QBI (§ 199A 20% deduction) for income over \$400K
 - Eliminate carried interest preference
 - Energy
 - End fossil fuel credits
 - Restore electric car credit
 - Restore various credits for business and individuals for energy efficiency

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Candidates' Plans (cont'd)

• Biden Plan (cont'd)

• Individuals

- Increase maximum tax rate to 39.6% from 37% (pre-TCJA rates) on income over \$400K
- Increase capital gains rates to 39.6% on for TPs with income over \$1 million (not specified if only capital gains considered)
 - Effective rate 43.4% with NIIT
- Promise not to increase taxes on anyone with income less than \$400K
 - Trump campaign claims taxes will go up for over 80% of population
- Earned Income Tax Credit (EITC) and Dependent Care Credit expanded
 - Refundable child care tax credit up to \$8,000 for one child and \$16,000 for two or more (current limit \$2,000)
 - New \$8,000 credit for caregivers of individuals with physical or cognitive impairments
- "Pease" limit on itemized deductions for TPs with income over \$400K
- Limit benefit of itemized deductions to 28%

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Candidates' Plans (cont'd)

• Biden Plan (cont'd)

• Individuals

- Remove impediment for workers over 65 to claim EITC
- Expand ACA/Obamacare
 - Eliminate 400% income cap for eligibility for tax credit
 - Lower the limit on cost of coverage from 9.86% of income to 8.5%
- Eliminate step up in basis for capital assets held at death
 - The [Tax Foundation](#), a conservative think tank, projected Biden's plan to end the step-up in cost basis for inherited assets would raise \$116 billion in revenue over 10 years
- Wages over \$400K subject to social security tax
 - Current max is \$137,700
- Eliminate IRC Section 1031 like-kind exchange transactions for TPs with income over \$400K
- SALT Cap?
- Raise NIIT threshold from \$250K to \$400K?

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HEROES Act

- House Democrats on May 12 unveiled a 1,815-page, \$3 trillion "CARES 2" phase four economic relief package
- Repeal SALT cap for two years
 - Schumer has said since at least July that he would push for elimination of SALT cap in any second phase coronavirus relief package
- Strengthened employee retention tax credit
- Housing
 - \$75 billion to help homeowners unable to make mortgage payments or pay property taxes and utilities, and \$100 billion in rental assistance for low-income tenants
- Postal Service
 - \$25 billion would be available to make up for lost U.S. Postal Service revenue from the pandemic
- Extends the \$600 per week federal unemployment insurance benefit through January (the provision approved in March expired at end of July)

HEALS Act

- Senate legislation introduced in July – a combination of 8 separate bills
 - Second round of stimulus checks at the same \$1,200 amount as in the CARES act
 - A "sequel" to the Paycheck Protection Program to mitigate layoffs
 - Fund supplemental unemployment benefits at \$200 per week, a reduction compared to the CARES Act's benefit of \$600 per week
 - Payroll tax credit to businesses equal to 50% of COVID expenses
 - Allow businesses to deduct 100% of the cost of business meals in 2020, compared to the current 50% tax deduction
 - Liability protections for employers, schools, and healthcare providers to discourage lawsuits related to COVID-19, including county employers
- "Skinny" HEALS on Aug. 18
 - \$10 billion for USPS
 - \$300 weekly enhanced unemployment benefits

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HEROES Act – Hobbs & Shaw

- On Sept. 28, the House released an updated version of The Heroes Act, with a \$2.2 trillion price tag
 - Said to address needs that have developed since the House passed the earlier iteration and reflecting negotiations between Democrats and Republicans
 - **Strong support for small businesses**, by improving the Paycheck Protection Program to serve the smallest businesses and struggling non-profits, providing hard-hit businesses with second loans, and delivering targeted assistance for the struggling restaurant industry and independent live venue operators.
 - **Additional assistance for airline industry workers**, extending the highly successful Payroll Support Program to keep airline industry workers paid.
 - **More funds to bolster education and child care**, with \$225 billion for education – including \$182 billion for K-12 schools and nearly \$39 billion for postsecondary education – and \$57 billion to support child care for families.
- *Source: House Committee on Appropriations Press Release*

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HEROES Act – Hobbs & Shaw (cont'd)

- From HEROES 1:
 - Enhance the new employee retention tax credit that encourages employers to keep employees on payroll
 - A second round of economic impact payments of \$1,200 per taxpayer and \$500 per dependent
 - Unemployed Americans automatically receive the maximum ACA subsidy on the exchanges, as well as a special enrollment period in the ACA exchanges for uninsured Americans
 - Restores unemployment benefits, ensuring weekly \$600 federal unemployment payments through next January and preventing unemployed workers from exhausting their eligibility
 - Tens of billions in new supports to assist renters and homeowners with monthly rent, mortgage, and utility payments and other housing-related costs (preventing homelessness)
- *Source: House Committee on Appropriations Press Release*

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HEROES Act – Hobbs & Shaw (cont'd)

- What Got the Axe from HEROES 1?
 - **State and Local Tax (SALT) Exemption:** The Heroes Act had included a clause temporarily lifting the \$10,000 cap on SALT deductions for two years. The updated Heroes Act reduced the temporary reprieve from two years to one year, saving \$135 billion.
 - **\$190 Billion Cut: Hazard pay** for frontline healthcare workers and others in risky jobs
 - **\$100 Billion Cut:** Scales back *aid to hospitals and frontline workers* as well as funding for *housing rental assistance*
 - **\$54 Billion Cut:** Cuts original \$75 billion *homeowner assistance* fund by \$54 billion, proposing a \$21 billion fund instead. This would have provided homeowners with funds to cover mortgage payments, property taxes, and utility payments to help individuals stay in their homes.
 - **\$10 Billion Cut:** Cuts USPS aid from \$25 billion in direct aid to \$15 billion

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What's Next?

- House passed the \$2.2 trillion HEROES 2 Act on October 1
- October 6 Trump tweeted:
 - Nancy Pelosi is asking for \$2.4 Trillion Dollars to bailout poorly run, high crime, Democrat States, money that is in no way related to COVID-19. We made a very generous offer of \$1.6 Trillion Dollars and, as usual, she is not negotiating in good faith. I am rejecting their request, and looking to the future of our Country. I have instructed my representatives to stop negotiating until after the election when, immediately after I win, we will pass a major Stimulus Bill that focuses on hardworking Americans and Small Business
- On October 9 the White House offered Democrats a \$1.8 trillion COVID-19 stimulus package as President Donald Trump reverses course on stimulus negotiations, saying he wants to "Go Big."
- As of October 19, Speaker Pelosi and Treasury Secretary Steven Mnuchin made some progress during their latest coronavirus stimulus talks, according to Pelosi's office
- They plan to speak again today (Pelosi imposed deadline) about a relief bill, ahead of a deadline Pelosi set to reach an agreement before the 2020 election
- Senate Republicans, who plan to vote on a \$500 Billion aid bill this week, could oppose a possible agreement Pelosi and Mnuchin reach
- Trump now insists that lawmakers should "go big" with a bill of up to \$2 trillion or more

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Glossary of Tax Legislation

- **TCJA** – Tax Cuts and Jobs Act of 2017
 - P.L. 115-97, HR 1, 115th Congress (Dec. 22, 2017)
 - An Act to provide for reconciliation pursuant to Titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, H.R. 1, 115th Cong. (2017)
- **SECURE Act** – Setting Every Community Up for Retirement Enhancement
 - H.R. 1994 — 116th Congress: Setting Every Community Up for Retirement Enhancement Act of 2019.
 - Setting Every Community Up for Retirement Enhancement Act of 2019, H.R. 1994, 116th Cong.
- **CARES Act** – Coronavirus Aid, Relief, and Economic Security Act (2020)
 - P.L. 116-136; H.R. 748 — 116th Congress: Coronavirus Aid, Relief, and Economic Security Act.
 - Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, H.R. 748, 116th Cong. (2020)

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Key Changes by Planning Area

Charitable Contributions	
• 60% AGI deductibility limit for cash to public charities (from 50%)	TCJA
• For 2020 only: <ul style="list-style-type: none"> ✓ 100% AGI deductibility for qualified charitable contributions (by election) ✓ Taxable income limit for C Corporations increased to 25% from 10% (by election) ✓ Food inventory limitation raised to 25% from 15% 	CARES Act
• For tax years beginning in 2020: <ul style="list-style-type: none"> ✓ For non-itemizers, above-the-line deduction of \$300 in addition to the standard deduction (sunset in 2020?) 	
Other Deductions	
• State and local taxes (SALT) capped at \$10,000 in aggregate	TCJA
• Standard deduction doubled to \$12,400 (single) and \$24,800 (married/joint)	TCJA
• Income phase-out on itemized deductions repealed	TCJA
Qualified Plans	
• Required Minimum Distributions (RMDs) required at age 72	SECURE Act
• RMDs suspended for 2020	CARES Act

TCJA – Tax Cuts & Jobs Act of 2017

CARES Act – Coronavirus Aid, Relief, and Economic Security Act (2020)

SECURE Act – Setting Every Community Up for Retirement Enhancement

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CARES Act: Key Definitions

"Qualified Charitable Contribution"

- **Cash only to public charities:**
 - Only includes contributions of cash to a public charity during calendar year 2020
 - Impact on fiscal year taxpayers
 - Specifically excludes the following:
 - Contributions to donor advised funds and certain non-operating private foundations
 - Noncash property, such as securities
- **Election:**
 - The taxpayer has elected the application of the special rules with respect to such contribution (must elect to receive the benefit)
 - Applies to individuals and corporations

[2020, Cash, Public Charity, Election]

Public Charity Defined

- Churches, schools, hospitals, medical research organizations, and governmental units
- State college/university endowment organization
- Private operating foundations
- Private non-operating foundations that distribute all contributions received to public charities
- Publicly supported organizations that receive at least 1/3 support from government or the general public
- Organizations supported by revenues from exempt activities
- Supporting organizations organized and operated for the benefit of the publicly supported organization or public charity
- Organizations operated for public safety

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Other Potential Qualifying Public Charities

- Single issue DAFs
 - IRC section 4966(d)(2)
- Scholarship funds

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CARES Act: Provisions Impacting Individuals

Partial Above-the-Line Charitable Deduction

- For taxable years beginning in 2020, individuals who do not itemize will be able to claim up to \$300 of “qualified charitable contributions” as an above-the-line deduction.
 - Applies to the “tax-filing unit”, thus \$300 limit applies to all filers¹
 - No carryforward for amounts that exceed the \$300 limit
 - Does not include charitable contribution carryforwards from pre-2020 tax years
- Query: Applicable for 2020 only - ?
 - “Taxable years beginning in 2020” – IRC section 62(a)(22), as added by sec. 2204(a) of the CARES Act

¹ Joint Committee on Taxation, Description of the Tax Provisions of Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act (JCK-12R-20), April 23, 2020

Modification of Limitations on Charitable Contributions

- For taxable years ending after December 31, 2019, the deduction for “qualified charitable contributions” is allowed up to the amount by which the taxpayer’s contribution base (AGI computed without regard to any net operating loss carryback) exceeds the deduction for other charitable contributions.
 - Percentage limitations eliminated (e.g. up to 100% of AGI is deductible)
 - Amount in excess of the contribution base can be carried over five years
 - An individual must elect to have contributions treated as “qualified charitable contributions”

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CARES Act: Provisions Impacting Businesses

Modification of Limitations on Charitable Contributions: Cash

- For taxable years ending after December 31, 2019, this limitation for “qualified charitable contributions” is increased to 25% of the taxable income of such corporation
 - Under prior law, corporate deductions for cash contributions to qualified charities were limited to 10% of taxable income
 - Excess contributions can be carried forward and utilized over the following five years
- Partnerships and S Corporations:
 - In the case of charitable contributions by partnerships or S corporations, each partner or shareholder must make elections to treat separately stated contributions as “qualified charitable contributions”

Modification of Limitations on Charitable Contributions: Food Inventory

- In addition to the increase in the limitation for deductions of cash contributions, the taxable income limitation for deductions of contributions of food inventory by a corporation is also increased to 25% from 15%
- Partnerships and S Corporations:
 - In the case of contributions of food inventory by partnerships or S corporations, a charitable organization is allowed to claim a charitable deduction up to 25% of the partner’s or shareholder’s Adjusted Gross Income (for partnerships and S-corporations, the deduction is passed through to partners or shareholders)

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The “Qualified Charitable Contribution” Election

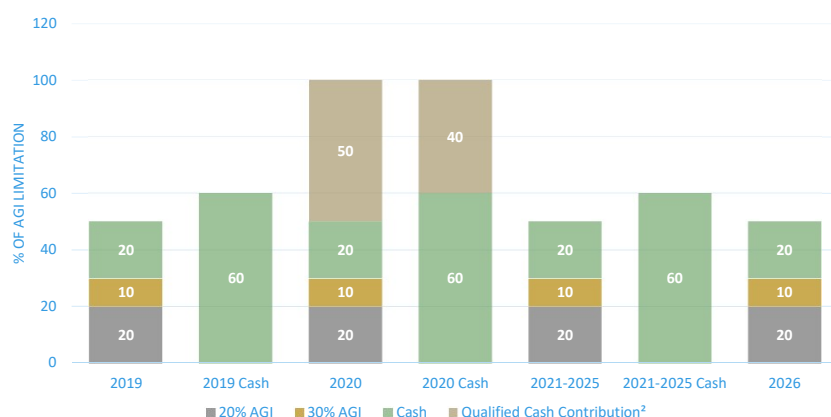
- The CARES Act does not specify the mechanism for making this election
- Presumably, a calendar year taxpayer will make the election on the taxpayer’s 2020 income tax return, and a fiscal year taxpayer will make the election on each income tax return that includes the date of the relevant contribution
- In the case of a qualified contribution made by a partnership or an S corporation, each partner or shareholder must make a separate election
- Selective?
 - What if single gift of \$1 million is made? Can the taxpayer make a partial election with respect to the single gift?
 - Not clear and awaiting guidance from IRS

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Summary of AGI Limitations

LIMITATIONS BY TYPE OF GIFT AND BY RECIPIENT¹



¹ Based on tax law and authorities subject to change.

² Cash contribution to public charities, excluding donor advised funds and 509(a)(3) supporting organizations.

20% AGI Limit – applicable to contributions of long-term capital gain property to semi-public or private charities (i.e., fraternal societies, certain private nonoperating foundations)

30% AGI Limit – applicable to contributions of capital gain property to public charities

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QOZ Extensions – Notice 2020-39

- 180-Day Investment Period
 - Automatically postponed to December 31, 2020
- 90-Percent Investment Standard (failure to hold 90 percent of assets in qualified opportunity zone property)
 - No penalties or QOF status impact if semi-annual testing date before December 31, 2020
- Working Capital
 - 31-month safe harbor extended by another 24 months
- Reinvestment of returns of capital and sale proceeds by QOF extended an additional 12 months

SOL for Superseded Returns – CCA 202026002

- Facts:
 - Calendar year taxpayer files extension for Form 1120 to Sept. 15, Year 1
 - Taxpayer files before Sept. 15
 - Taxpayer realizes she/he needed to include Form 3115 to change accounting method
 - Taxpayer files superseded return by Sept. 15
 - Taxpayer files Form 1120X, claiming refund on Sept. 15, Year 4
- Under **section 6511(a)**, a taxpayer must file a claim for refund of any tax within three years from the time "the return" was filed or two years from the time the tax was paid, whichever period expires later
- If both returns are filed before the original due date, this ambiguity has no effect on when the statute of limitations begins because a return filed before the last day prescribed for filing is deemed filed on the last day. See **I.R.C. §§ 6501(b)(1) and 6513(a)**
- The original return, not the superseding return, starts the period of limitations for claims for refund under **section 6511**

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SOL for Superseded Returns – CCA 202026002

- Facts:
 - Calendar year taxpayer files extension for Form 1120 to Oct. 15, Year 1
 - Taxpayer files before Oct. 15, requesting refund
 - Taxpayer realizes she/he has more losses
 - Taxpayer files superseded return by Oct. 15 requesting larger refund
- Under **section 6501(a)**, the Service must assess additional tax for a given tax year within three years after "the return" for that year was filed
- IRS concludes that *Zellerbach Paper Co. v. Helvering*, **293 U.S. 172** (1934) requires that the original return, not the superseding return, starts the limitations periods under both sections **6501** and **6511**

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Conservation Easements Settlement Offer

- For docketed Tax Court Cases
- In Notice 2017-10, the IRS identified certain syndicated conservation easement transactions as tax avoidance transactions and provided that such transactions (and substantially similar transactions) are listed transactions for purposes of Treasury Regulation §1.6011-4(b)(2) and §§6111 and 6112 of the Internal Revenue Code
 - Also, in 2019, the IRS added syndicated conservation easement transactions to its annual “Dirty Dozen” list of tax scams

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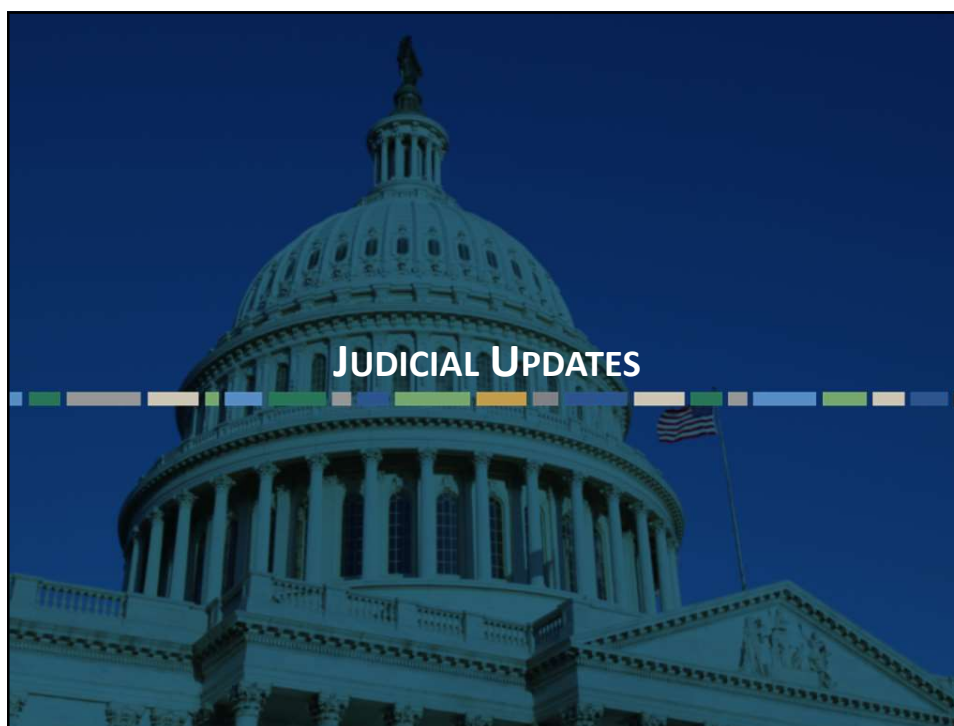
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Conservation Easements Settlement Offer (cont'd)

- Some key terms of the settlement offer:
 - The deduction for the contributed easement is disallowed in full
 - All partners must agree to settle, and the partnership must pay the full amount of tax, penalties, and interest before settlement
 - “Investor” partners can deduct their cost of acquiring their partnership interests and pay a reduced penalty of 10 to 20% depending on the ratio of the deduction claimed to partnership investment
 - Partners who provided services in connection with ANY Syndicated Conservation Easement transaction must pay the maximum penalty asserted by IRS (typically 40%) with NO deduction for costs
- IRS Chief Counsel Michael J. Desmond: “Those who choose not to accept the offer should keep in mind the Office of Chief Counsel will continue to vigorously litigate their cases to the fullest extent possible.”

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Trump Tax Returns

- SCOTUS held on July 9 a criminal grand jury subpoena from Manhattan District Attorney Cyrus Vance's office to Mazars USA LLP, President Trump's accounting firm, did not violate the U.S. Constitution
- The 2nd Circuit returned the matter to the Southern District of New York affirming an October order by U.S. District Judge Victor Marrero that denied a preliminary injunction to Trump
- Judge Marrero rejected Trump's latest salvos in a 103-page opinion on Aug. 20
- On Oct. 7, a three-judge 2nd Circuit panel unanimously granted a motion by Vance to dismiss Trump's challenge to the subpoenas, and . affirmed a district court finding that the subpoena isn't overbroad or was issued in bad faith.
- Trump attorneys filed an emergency application for a stay with the Supreme Court on Oct. 13 pending the filing and answer to a petition for the justices to consider the case, arguing that the district court failed to go through the proper process to allow the president to quash the subpoena.
- 42 • Trump's attorneys also claimed the 2nd Circuit in affirming the decision "ignored how the district court stacked the deck against the president."
- Vance's office filed opposition to the stay on Oct. 16

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SCOTUS Justice

- On Sept. 18, 2020, Justice Ruth Bader Ginsburg passed due to complications of metastatic pancreatic cancer
- President Trump nominated Amy Coney Barrett as her replacement. The confirmation hearings began on Monday, Oct. 12 and the confirmation vote in the Senate will likely be held on Oct. 26
- McConnell is expected to file a cloture motion limiting debate on the nomination on Oct. 23, the day after the Barrett nomination is expected to be approved by the Senate Judiciary Committee

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Conservation Easement Cases

- Champions Retreat Golf Founders LLC (11th Cir.)
 - The Eleventh Circuit focused primarily on one issue: Whether the contribution was made “exclusively for conservation purposes” when the land included a private golf course
 - The court reasoned that only two provisions of the Code section were applicable
 - “The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,” and
 - “The preservation of open space... for the scenic enjoyment of the general public [that] will yield a significant public benefit.”
 - Habitat
 - Needed to include habitat for “rare, endangered, or threatened species of animal, fish, or plants”
 - Necessary species are those that “reasonably warrant protection” as opposed to those “for which the loss of habitat is not a significant concern”
 - Relevant question is not whether the golf course chemicals may harm the species, but whether the easement improves the chance that the species will be preserved, which the golf course did.

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Conservation Easement Cases (cont'd)

- *Champions Retreat Golf Founders LLC* (11th Cir.)
 - Open Space
 - Preservation may meet the scenic enjoyment requirement if development of the property would impair the scenic character or would otherwise interfere
 - Importantly, the court added that the regulation provide that the general public need only have visual, not physical, access to or across the property, and that the 'entire property' need not be 'visible to the public.'

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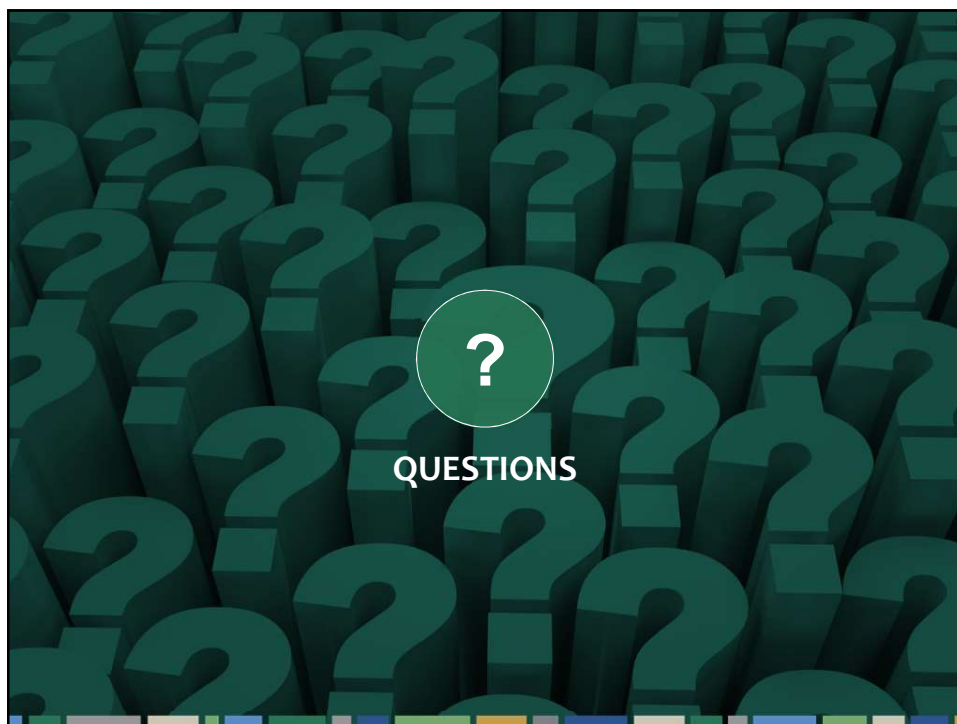
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Conservation Easement Cases (cont'd)

- *Oakbrook Land Holdings, LLC* (Tax Court)
 - The easement deed had specified that upon judicial extinguishment, the proceeds to the easement recipient (donee) would be equivalent to the FMV of the property as determined at the creation of the easement, essentially excluding any subsequent appreciation of the property
 - Reg. provides that if there is a judicial extinguishment, deed must require that the donee use a proportionate share of the proceeds consistent with original conservation purpose
 - Court: Taxpayer violated the "protected in perpetuity" requirement because the deed would not guarantee that the extinguishment proceeds to the donee would be at least equal to the proportional value of the easement at the time it was created, because it disregarded the value of any improvement that the taxpayer could make to the property and the proportionate share of proceeds would diminish as the value of the improved property increased

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**THE FINANCIAL MARKETS AND RISK MANAGEMENT
FOR NOT-FOR PROFIT INSTITUTIONS**

Presented by Anna Rathbun and Gina Capizzani Miles

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CBIZ
Investment
Advisory Services

About CBIZ Investment Advisory Services (CBIZ IAS)

- Serving the investment needs of:
 - Individuals and trusts
 - Defined benefit and cash balance plans
 - Foundations and endowments
 - Corporations
 - Other Post-Employment Benefit Plans (OPEB)



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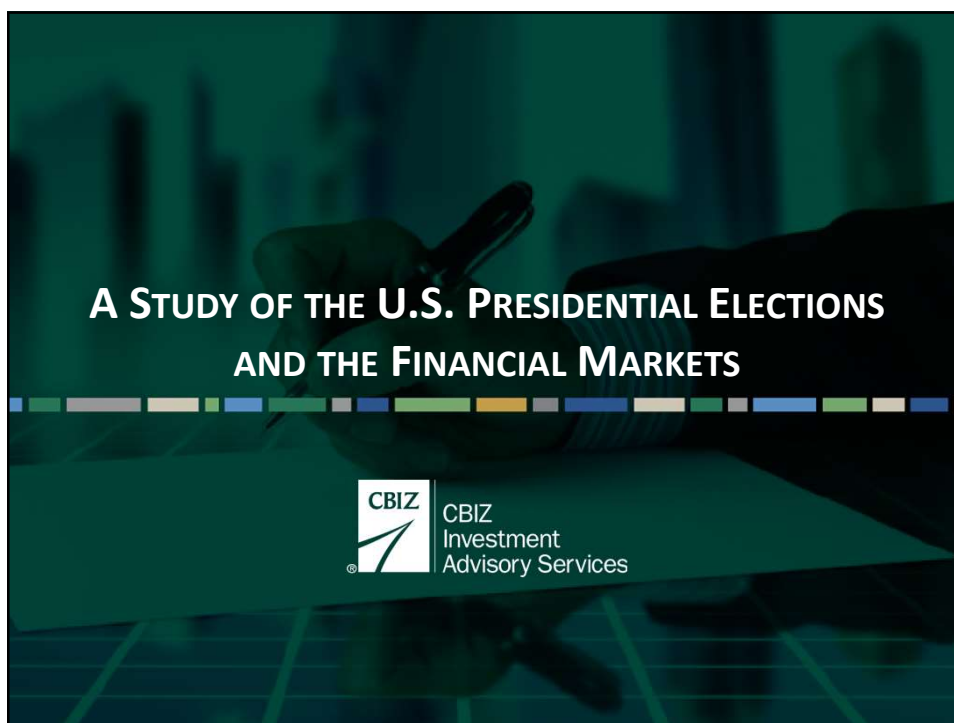
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Agenda

- 01 A Study of U.S. Presidential Elections and the Financial Markets
- 02 The Current Market Environment
- 03 Enterprise Risk Management for Not-for-Profit Institutions

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The Markets and Elections: The Perception

- People care about anything that has the potential to move the markets
- The U.S. President is a global figure
- Those in power can implement policies that affect earnings and profitability
- The same people can decide government revenue and expenditure

And often, those running for office have proposals that are different, and it could feel like you are given a red pill or a blue pill.

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Why the Short-Term Uncertainty Around Election?

- Probability
 - Makeup of Congress
 - List of Priorities
- Timing
 - Especially important during a recession!
- Proposal vs. Reality
 - Transformation through the negotiation process
- Short-Term Memory

Markets do not like uncertainty, so prudent to expect volatility

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Elections and Stock Market Returns

	President	Party	Incumbent Party?	Dow Jones Performance	S&P 500 Performance
1948	Truman	D	Yes	9.33	10.39
1952	Eisenhower	R	No	15.53	16.75
1956	Eisenhower	R	Yes	4.87	4.03
1960	Kennedy	D	No	10.75	12.28
1964	Johnson	D	Yes	2.19	5.06
1968	Nixon	R	No	0.08	1.92
1972	Nixon	R	Yes	0.25	-2.01
1976	Carter	D	No	-1.06	5.49
1980	Reagan	R	No	6.90	6.84
1984	Reagan	R	Yes	15.49	13.83
1988	H.W. Bush	R	Yes	10.7	10.68
1992	Clinton	D	No	16.9	13.9
1996	Clinton	D	Yes	16.13	19.3
2000	W. Bush	R	No	-2.22	-5.71
2004	W. Bush	R	Yes	-1.80	-3.77
2008	Obama	D	No	8.86	9.87
2012	Obama	D	Yes	8.48	10.76
2016	Trump	R	No	11.53	12.4

1980 to 2000

- The Cold War
- Global Trade
- The First Gulf War
- The Internet
- Falling Interest Rates

1968 to 1980

- Currency Regime
- High Inflation
- High Oil Prices
- Stagnation

2000 to 2008

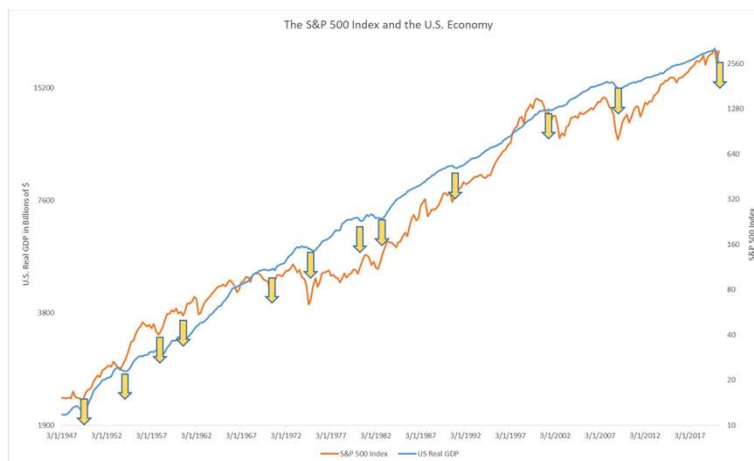
- Tech Bubble
- 9/11
- Middle East
- Stagnant Rates

Source: Bloomberg, Bureau of Economic Analysis, CBIZ IAS Research. The market performance is an annualized four-year price return from 10/31 of the election year in which the President was elected to the 10/31 of the following election year. Past performance does not guarantee future results.

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Over the Long Term, Markets Follow the Fundamentals



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Examples: Potential Biden Policy Proposals

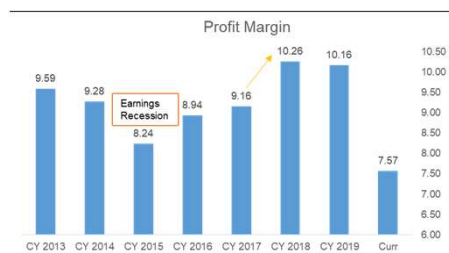
- **Healthcare**
 - ACA Medicaid expansion and premium tax credits (managed care, hospitals): Positive
 - Affordable generics and biosimilars (pharma, biotech): Negative
 - Medicare dental/vision/hearing
 - (Managed Care): Negative
 - (Medical devices): Positive
- **Tech**
 - Competition on Internet Platforms (internet): Negative
 - Data Privacy Legislation (internet): Negative
 - Expensing of R&D (technology): Positive
- **Energy**
 - Carbon tax (oil & gas): Negative
 - Fracking ban (oil & gas): Negative
 - Public EV charging stations (refining & retail): Negative
 - Renewables tax credits (renewables): Positive
- **Construction**
 - Energy efficient home tax credit (real estate): Positive
 - Mortgage interest / property tax deduction (real estate): Positive
 - Build America bond interest exemption (real estate): Positive

Source: Bloomberg Intelligence. As of 10/5/2020.

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Taxes vs. Profit Margins



Statutory Corporate Rate Change 21% to 28% (peak in 2017 was 35%)

- Timing
- Other Details:
 - Higher rates on non-domestic income/imports (Tech and Healthcare focus)
 - Tax incentives for domestic production
 - Capital gains tax changes
 - GILTI

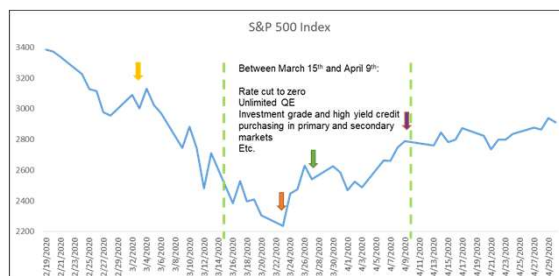
Source: Bloomberg, S&P 500 Index Financial Analysis, Bloomberg Intelligence, CBIZ IAS Research. Data as of 9/30/2020.

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Effects of Government Stimulus on Market Sentiment

- The Federal Reserve
 - “The risks of overdoing it seem, for now, to be smaller”
— Chairman Powell
- European Central Bank
 - Should the central bank add monetary support pre-emptively, just in case there is any economic slowdown in the future?



Source: Bloomberg, S&P 500 Index, CBIZ IAS Research. Data from 2/19/2020 to 4/30/2020. Past performance does not guarantee future returns.

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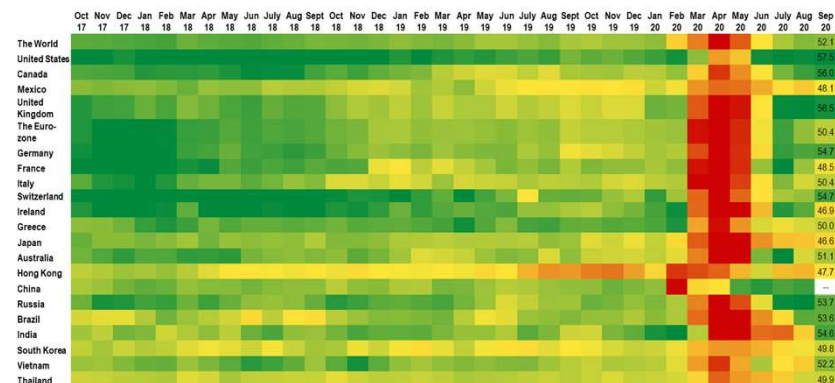
What Matters Today?

- Economic Recovery is Plateauing
 - Shutdown and partial reopening created extreme economic data
 - As long as we are partially shut down, the recovery will also be partial
 - A viable vaccine will go a long way in providing confidence
- COVID-19
 - Short-term management while waiting for a vaccine
 - The length of its shadow for the intermediate term
 - Inflection point from a long-term perspective
- Responses by Governmental Bodies
 - The Federal Reserve's current policies
 - European response to the pandemic
 - Fiscal responses by the governmental bodies around the world

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Global Economic Landscape

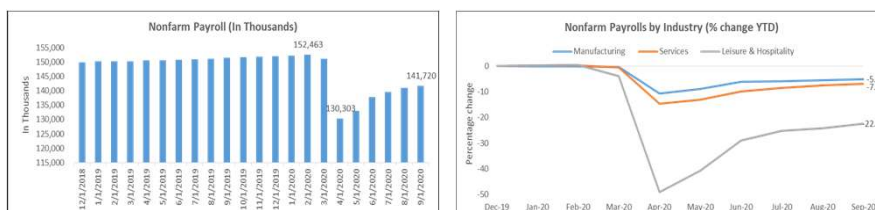


Source: Bloomberg, CBIZ IAS Research, The figures represent Purchasing Managers' Index for the corresponding countries, where numbers above 50 represent expansion and numbers below 50 represent contraction. The heat map uses surveys compiled by Markit for Canada (manufacturing only), United Kingdom, the Euro-zone, Germany, France, Italy, Switzerland (economy-weighted by CBIZ IAS), Ireland, Greece (manufacturing only), Japan, Australia, Hong Kong, China, Russia, Brazil, India, South Korea (manufacturing only), Vietnam (manufacturing only), and Thailand (manufacturing only). Other sources include: The World - JPMorgan, United States - Institute for Supply Management, Mexico - Instituto Mexicano de Ejecutivos en Finanzas (economy-weighted by CBIZ IAS). All data as of 9/30/2020.

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On Main Street



Source: Bloomberg, Bureau of Labor Statistics. Data as of 9/30/2020.

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Stock Market Recovery



Equity markets are waiting for the global economy open fully

Much of the ascent is due to technology-related companies, and size has been favored by investors; Many cyclical companies and small companies are still struggling
Infection numbers create volatility for fear of wider shutdowns
Seem willing to be in waiting until vaccines allow us to open fully
In the meantime, corporations are expected to manage costs and focus on liquidity

Accommodative monetary policy from the Federal Reserve

Keeps income / yields at record lows for fixed income securities
Is designed to make sure to keep the markets flush with liquidity

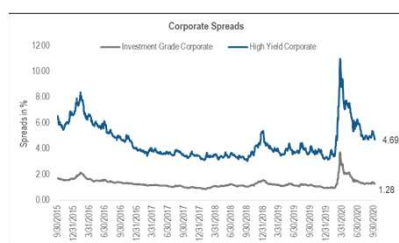
Fiscal aid expected to fill the gaps

Source: Bloomberg, Standard & Poor's. S&P 500 Index data from 3/23/2020 to 10/09/2020. Past performance does not guarantee future returns.

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Fixed Income Markets



Credit markets are less sensitive to COVID-19-related developments

The powerful backing of the Federal Reserve has given the credit markets more resilience.

But bankruptcy risk has not disappeared

The shadow of COVID-19 may mean more bankruptcies in our future

For the moment, the Fed is providing a bridge to a post-COVID world

Low rates across the U.S. Treasury curve
Historically low borrowing rates for corporations
High demand for credit instruments due to even lower yields in safe haven assets, especially when the Fed is supporting them

Source: Bloomberg. "Investment Grade Corporate" is represented by the option adjusted spreads (OAS) of the Bloomberg Barclays US Corporate Bond Index, and "High Yield Corporate" is represented by the OAS of the Bloomberg Barclays High Yield Corporate Index. Past performance does not guarantee future returns.

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Thoughts on 2021

- Throughout the pandemic, we have seen an **earnings recession**
 - The market is expecting the earnings recession to continue into the second quarter of 2021, followed by a sharp rebound in earnings for the second half of next year
- A **vaccine**, which can be the confidence restoring agent for the markets, carries a binary risk
 - A viable vaccine would serve as a catalyst for many beaten down cyclical stocks and small cap names
 - But the timing and effectiveness of this ultimate solution is unknown
- **Washington** in 2021
 - Even if there is a “blue wave,” it will be politically difficult to raise taxes in the middle of a pandemic
 - More generous fiscal gestures are probable with a “blue wave,” which would be supportive for risk assets
- Behavioral expectations
 - Most likely, we will still be the **cleanest** we have ever been

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Equities Have Historically Been Leading Indicators to Recovery

	Onset of Recessions	Market Bottom	End of Recession	Unemployment Peak
2020 Recession	2/1/2020	3/23/2020	4/30/2020?	April 2020
2007-2009 Recession	12/1/2007	3/9/2009	6/30/2009	October 2009
2001 Recession	3/1/2001	10/9/2002	11/30/2001	June 2003
1990-1991 Recession	7/1/1990	10/11/1990	3/31/1991	June 1992
1981-1982 Recession	7/1/1981	8/12/1982	11/30/1982	November 1982
1980 Recession	1/1/1980	3/27/1980	7/31/1980	--
1973-1975 Recession	11/1/1973	10/3/1974	3/31/1975	May 1975
1969-1970 Recession	12/1/1969	5/26/1970	11/30/1970	December 1970
1960-1961 Recession	4/1/1960	10/25/1960	2/28/1961	May 1961
1957-1958 Recession	8/1/1957	10/22/1957	4/30/1958	July 1958
1953-1954 Recession	7/1/1953	9/14/1953	5/31/1954	September 1954

Source: Bloomberg, Standard & Poor's, Bureau of Labor Statistics, National Bureau of Economic Research (NBER), CBIZ IAS Research. Recessions are determined by NBER.

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What's "Old" is New Again

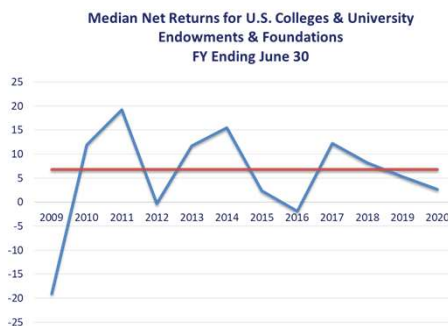
"The primary goal of any endowment is survival – survival not only of the corpus (principal), but of the spending power of the Fund. To accomplish this task requires coupling the benefits of asset allocation with an acceptable spending policy, thus ensuring the same or greater benefits to future generations of recipients as is received by the endowment's current beneficiaries."

Endowments: An Introduction To Spending Policies and Asset Allocation (1993)
– Brian L. Jones

Volatility Matters

...“to the extent that [it] contributes to this all-encompassing risk – failing to achieve one’s policy objectives.”

*Endowment Management:
A Practical Guide
-- Jay A. Yoder*

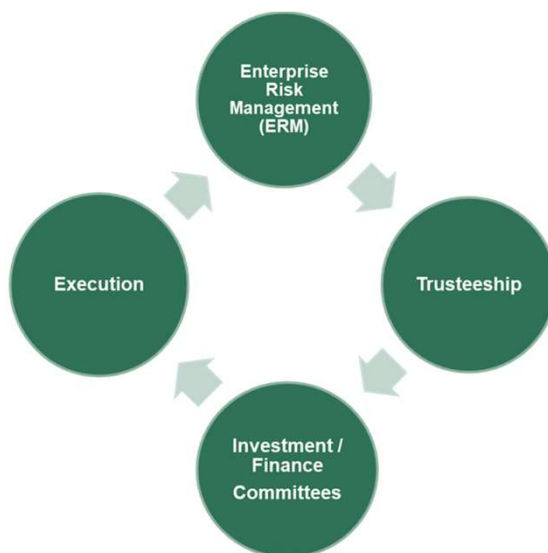


Source: 2019 NACUBO-TIAA Study of Endowments (with 2020 estimate)

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Today's Discussion



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Enterprise Risk Management (ERM)

- Migrating from corporate world to higher education and not-for-profit organizations
- ERM combines “strategic planning, traditional risk management, and internal controls”
- ERM categories include strategic, operations, finance, and compliance
- ERM as a “business process” includes:
 - Identifying risks across the entire enterprise;
 - Assessing the impact of risks to operations and mission
 - Developing and practicing response or mitigation plans; and
 - Monitoring identified risks, accountability, and scanning for emerging risks

Risk Management:
An Accountability Guide for
University and College Boards
-- Janice M. Abraham

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What's “Old” is New Again... and Again...

“[Just as] Enron and Worldcom were wakeup calls to corporate boards, the 2008 global financial crisis was a wakeup call to higher education and non-profit boards.”

-- Vicky Gregg, Board of Trustees
University of Tennessee
2014 AGB Trusteeship Workshop
Belmont University, Nashville, TN

“The pandemic dramatically illustrates the features of other major crises. Like other crises, this one is highly disruptive of the status quo.”

-- *Crisis Leadership for Boards and Presidents*
(forthcoming book from AGB Publications)
Dr. Terrence MacTaggart, AGB Senior Fellow
AGB Blogpost May 2020

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Disruption is Not New

“The new landscape of higher education is marked by potentially disruptive developments surfacing almost daily: escalating college costs, unacceptably low degree-completion rates, and the advent of new technologies and competitive new providers, among others.”

“Competency-Based Education:
What the Board Needs to Know”
Trusteeship, January/February 2014
-- R. Klein-Collins, S. Ikenberry, G. Kuh

“Crises accelerate change. Transitions to online learning, online engagement and philanthropy, and online transactions have leapt forward. What is the impact on your systems and staffing?”

“Foundations of Consequence:
University Foundations and Crisis Events”
Trusteeship, July/August 2020
-- Tom Heck, CIO
Ball State University Foundation

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You Might be At Risk if...

- You are not a top-ranked institution
 - Your admissions yield has fallen and it is costing you more to attract students
 - Median salaries for your graduates have been flat over a number of years
 - Your endowment is in the millions and not billions, and a large percentage is restricted
- Your financial statements don't look as good as they used to
 - Your debt expense has been increasing far more rapidly than your instruction expense
 - Your property, plant, and equipment asset is increasing faster than your revenue
 - You have seen a decline in net tuition revenue
 - Your bond rating has gone down
 - You are having trouble accessing the same level of government funding
- You have had to take drastic measures
 - You are consistently hiking tuition to the top end of the range
 - You have had to lower admissions standards
 - You have had to cut back on financial aid
 - You have reduced your faculty head count

2012 - *The Financially Sustainable University*
-- Jeff Denneen & Tom Dretler

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Advancing Trusteeship

“A new standard of board engagement—reflected through broader awareness, curiosity, imagination, and input—will enable boards to meet the realities of reduced state support for public institutions, tuition and other revenue challenges at all institutions, and new and disruptive approaches to delivering an academic program.”

“The 10 Habits of Highly Effective Boards”
Trusteeship, March/April 2014
 -- Richard D. Legon, AGB President (ret.)

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Advancing Trusteeship: More Work to Do

“The challenges of investing are both technical and human. Stories abound of institutions with brilliant technical investment processes but poor governance practices that undermine the work of their investment teams. Unfortunately, markets continue to teach painful lessons for all types of investors...”

Endowment Management for Higher Education
 AGB Publications
Modified introduction, AGB Blogpost
August 2020
 -- Nikki Kraus

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Risks to Financial Sustainability

“Risks to Fiscal Sustainability:
The majority of both public and independent institutions face long-term risk to sustainability that cannot be addressed in one or two budget cycles but require a strategic realignment carried out over many years.”

Finance Committee:
Budgeting & Planning, Debt Management, Financial Viability, and Insurance

Investment Committee:
Policies, Investments, Liquidity

-- Report of the National Commission on College and University Board Governance

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What's "Old" is New Again... and Again... and Again

“... risk management is at the core of every investment portfolio and integral in achieving the goals of an investment policy statement. Investing is a continual trade-off of risk and reward. Long before enterprise risk management...investment committees understood volatility, beta, standard deviation...”

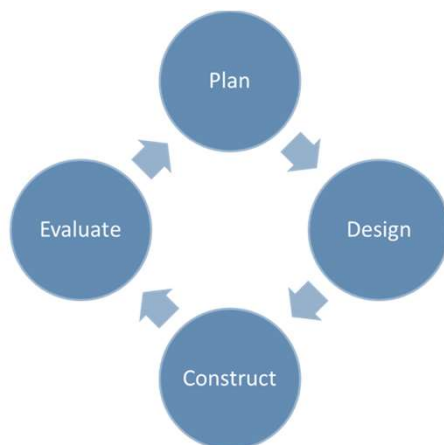
*Risk Management:
An Accountability Guide for
University and College Boards*
-- Janice M. Abraham

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CBIZ Investment Advisory Services

We have a seat at the table...



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Plan

Plan

Understand purpose of asset pool(s)

- Review past & projected financial obligations | spending policy
- Review liquidity patterns
- Review legal constraints

Assess portfolio characteristics

- Determine risk tolerance level
- Determine risk buckets within asset classes

Construct document that defines:

- All parties' responsibilities
- Fund(s)'s investment objectives
- Liquidity Profile | Risk Constraints
- Permissible asset classes
- Strategic asset allocation ranges
- Tactical allocation policy
- Investment manager requirements
- Reporting and communication requirements
- Investment Guidelines review | amendment process

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Design

Design

Construct Capital Markets Assumptions

- Quarterly market research meetings
- Analysis of return components
- Preparation of Trend Statement (Bullish, Bearish, Neutral)

Determine Portfolio Inputs

- Constraints
- Liquidity assessment
- Flow activity | needs

Modeling

- Return, volatility, correlation assumptions
- Inflation impact
- Cash flow impact
- Wealth accumulation projection

Practical Application

- Comparison of Current v. Hypothetical portfolios
- Realistic implementation

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Construct

Construct

Level I – Manager Sourcing | Initial Screening

Level I is comprised of a series of quantitative screens designed to generate a list of managers that meet the minimum criteria required for further consideration

Level II – Initial Review

Those with the most attractive Level I profile are prioritized for further detailed evaluation on the firm and strategy. Results of this Level II report are presented and discussed by the RAB

Level III – On-site | In-depth Evaluation

Level III typically includes an on-site visit by an employee(s) to the manager's office for an in-depth due diligence review. A report is created and reviewed by the CBIZ IAS Research Advisory Board (RAB) and a decision is made to hold or move to Level IV


Level IV – Final Approval Process

Level IV is a meeting in which the key investment professionals of the strategy under consideration discuss their firm, investment process and philosophy with the consultants, research analysts and members of the RAB. A private determination is then made regarding approval.

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Evaluate



I. Monitor | Evaluate | Report

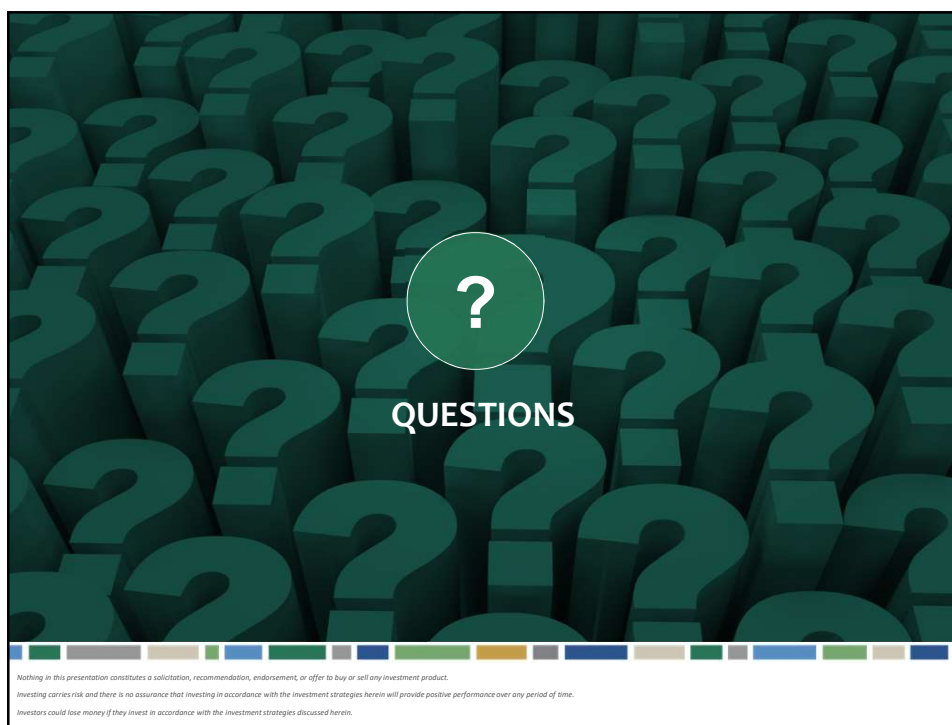
- Monitor compliance with policies
- Evaluate effectiveness of strategy v. goals
- On-going investment manager due diligence
- Performance evaluation reporting

II. Tactical Changes | Rebalancing

- Identify over/underweight positions relative to policy targets at both the manager and asset class levels
- Incorporate net cash available for investment
- Identify source of funds when capital withdrawals are needed

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QUESTIONS

Nothing in this presentation constitutes a solicitation, recommendation, endorsement, or offer to buy or sell any investment product.
Investing carries risk and there is no assurance that investing in accordance with the investment strategies herein will provide positive performance over any period of time.
Investors could lose money if they invest in accordance with the investment strategies discussed herein.

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- [11/10/20: Key International Tax Considerations Q4 2020](#)



Recent Publications:

- [Where's My Data, and Who's Protecting It?](#)
- [How Cybersecurity Staffing May Be Impacted During COVID-19 Recovery?](#)
- [Colorado State & Local Tax Updates from 2020](#)
- [A Deeper Look into the Impact of the Carried Interest Proposed Regulations](#)

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