



ADAPT & RECOVER:
**MOVING FORWARD
TOGETHER**
WEBINAR SERIES

SESSION EIGHT

September 11, 2020 | 11:00 A.M. ET

➤ Housekeeping Items

- The webinar will be recorded and shared as soon as it is available via email
- Today's materials will be shared in the chat box and are available on RKL's Business Recovery Resource Center at rklcpa.com
- All lines are muted
- NASBA CPE requirements – in order to receive CPE for this webinar:
 - Participants must be connected to the session (both audio and presentation) for its entirety
 - Participants must answer three questions/elements of engagement
 - One (1) hour of CPE in the field of business law will be granted if you meet these requirements

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➤ Meet Your Team for Today's Presentation

Mergers & Acquisitions Market Update



RYAN HURST, ASA | *Partner, Business Consulting Services Group*

Ryan is a Partner in RKL's Business Consulting Services Group and an in-demand transaction consultant. Ryan's areas of expertise include advising clients on buying and selling businesses; succession planning; conducting valuations for a variety of transactions and structures; litigation support for shareholder disputes; and strategic alternatives analyses.

Wealth Transfer Opportunities



WILLIAM ONORATO | *Senior Wealth Strategist, RKL Wealth Management*

Bill is a Senior Wealth Strategist with RKL Wealth Management. With more than 25 years' experience in estate planning and wealth strategy, Bill specializes in helping high net worth families plan for long-term success. He specializes in multi-generational planning, legacy planning, business succession, estate planning and philanthropy.

Employee COVID-19 Relief Options



TRICIA RICHARDSON, CPP, SPHR, SHRM-SCP | *Senior Consultant, Human Capital Management*

Tricia is a Senior Consultant in RKL's Human Capital Management Practice. With expertise in payroll and human resources, she works with companies to align their HR policies with the final payroll product. Tricia also helps clients implement and adhere to payroll and human resource regulatory compliance and best practices.

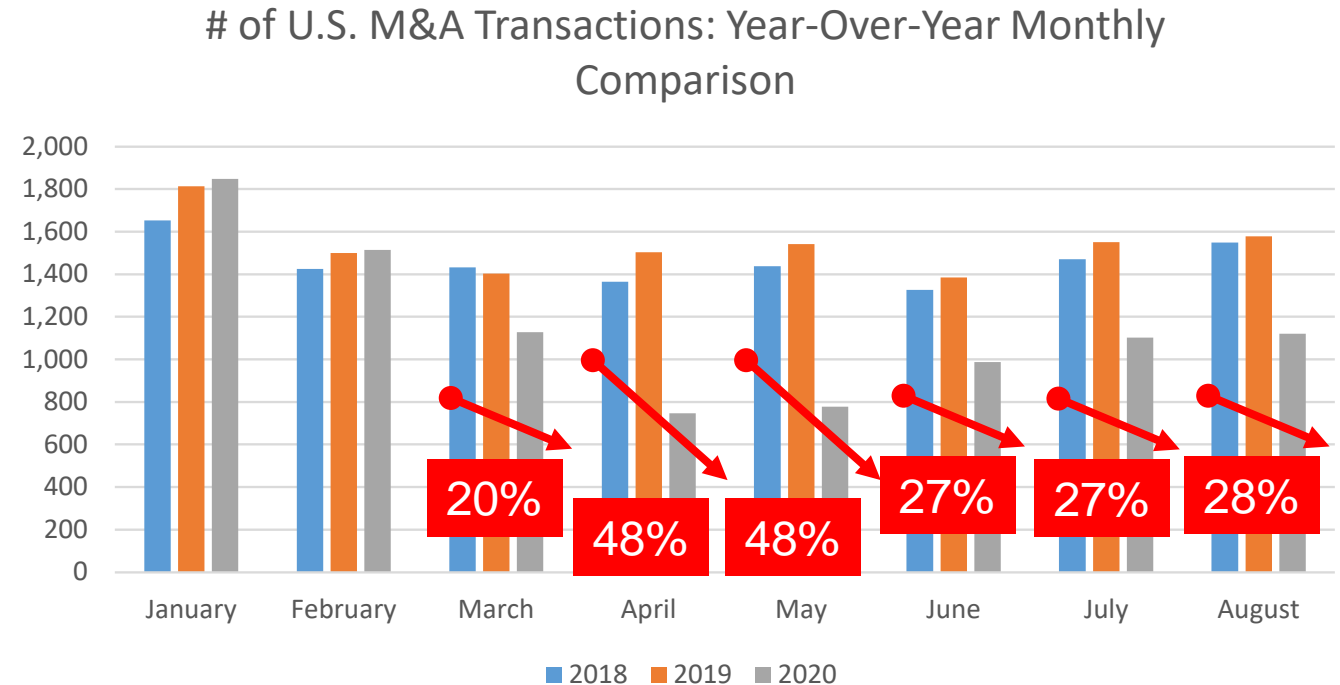
POLLING QUESTION

To be eligible for CPE, 3 polling questions must be answered.

M&A MARKET UPDATE

➤ M&A Transaction Decline

- Deal activity plummeted at the onset of COVID-19 in the U.S.
- Decrease of 20% in March 2020 vs. average of prior two years
- Decrease of ~50% in each of April and May 2020 vs. averages of prior two years
- Rebound in June – August but still off >25% vs. prior years
- Is this rebound sustainable?
- Since this is a lagging indicator, will there be more to come?



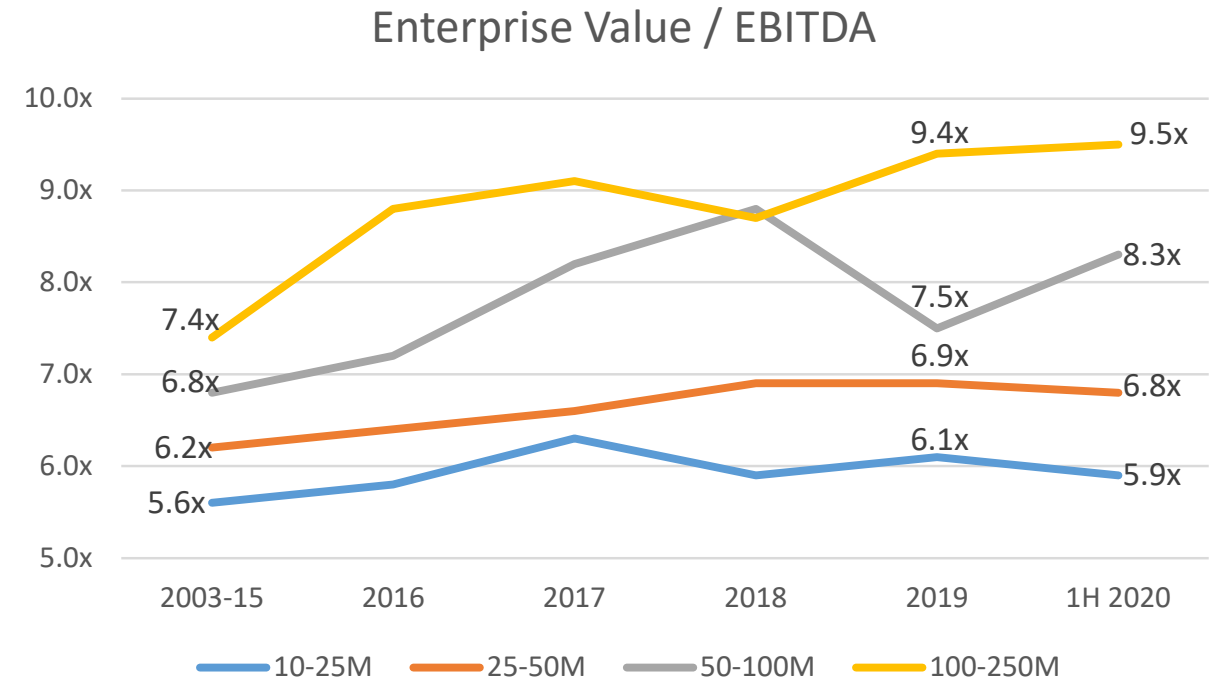
Source: S&P Capital IQ, data pulled as of September 10, 2020 (subsequent announcements may increase 2020 totals)
M&A transactions with target headquarters in U.S.; timing based on announcement date

➤ Anecdotal Evidence of a Resurgence?

- Lack of a distressed market (for now)
- After two months of silence, re-emergence of buy-side outreach (PEGs and brokers)
 - Initial focus of private equity was looking after portfolio companies
 - Some were opportunistic but most hunkered down
 - Strategics also focused on core operations
- Since mid-May, we've seen a resurgence in our transaction advisory practice
 - Two deals progressed (one closed)
 - One deal went on hold in March, re-emerged in May and closed in June
 - One emerged during COVID and closed
 - Several sellers looking to hit the market in the near term
 - None of these are distressed situations
 - Several other buy-side situations where we are completing due diligence or at the LOI phase

➤ Trend in Multiples by Size

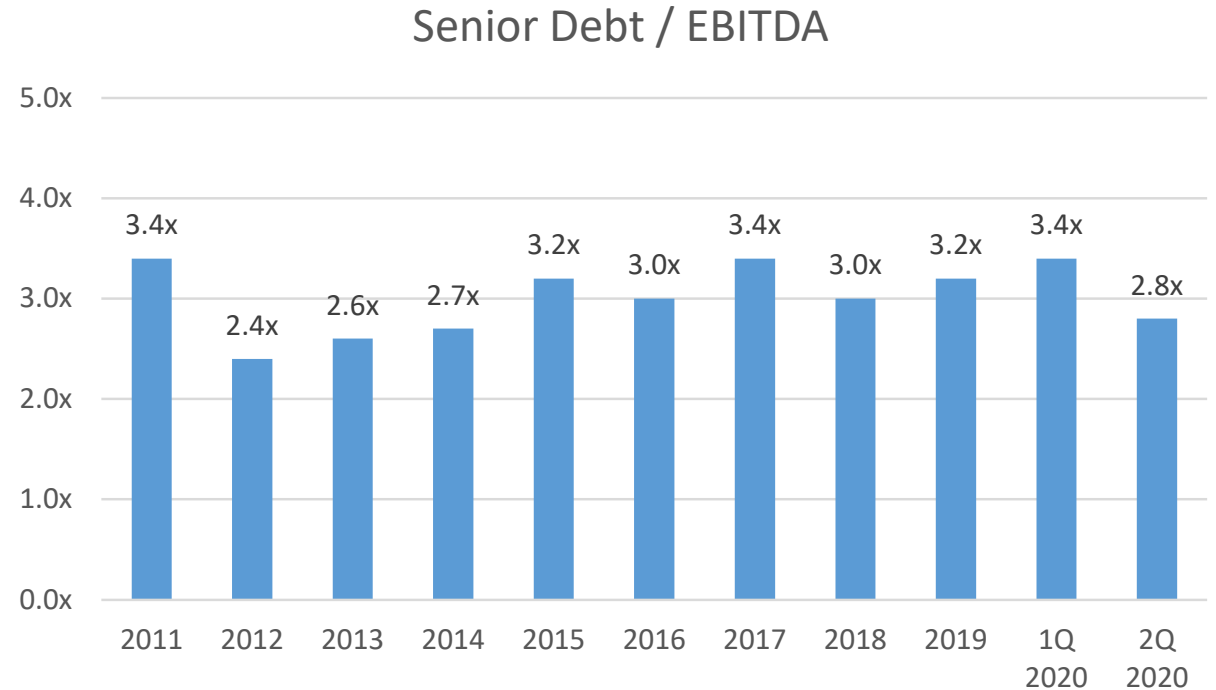
- Multiples in 1H 2020 are not far off from 2019 levels
 - Multiples on deals <\$50M are down slightly
 - Multiples on deals >\$50M are above 2019 levels and well above longer term historical averages
- What isn't revealed is how many deals that are not getting done because of a valuation gap
 - ~80 deals in 1Q 2020 vs. 31 in 2Q 2020



Source: GF Data

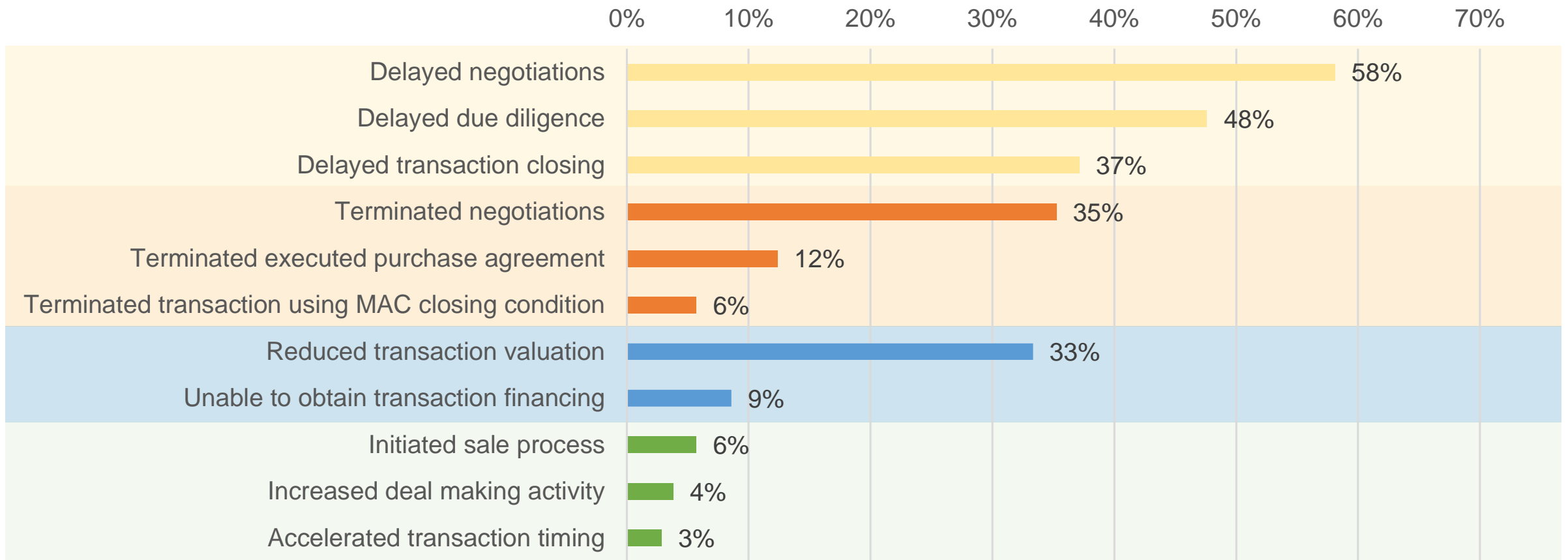
➤ Trend in Senior Leverage Multiples

- Financing remains available but not at pre-pandemic levels
- Senior debt multiples off by >0.5x vs. 1Q 2020
- At 2.8x, senior debt multiples are in the same area as in 2012-2014
- Average equity contribution up about 8% in 2Q 2020 to 56.5%

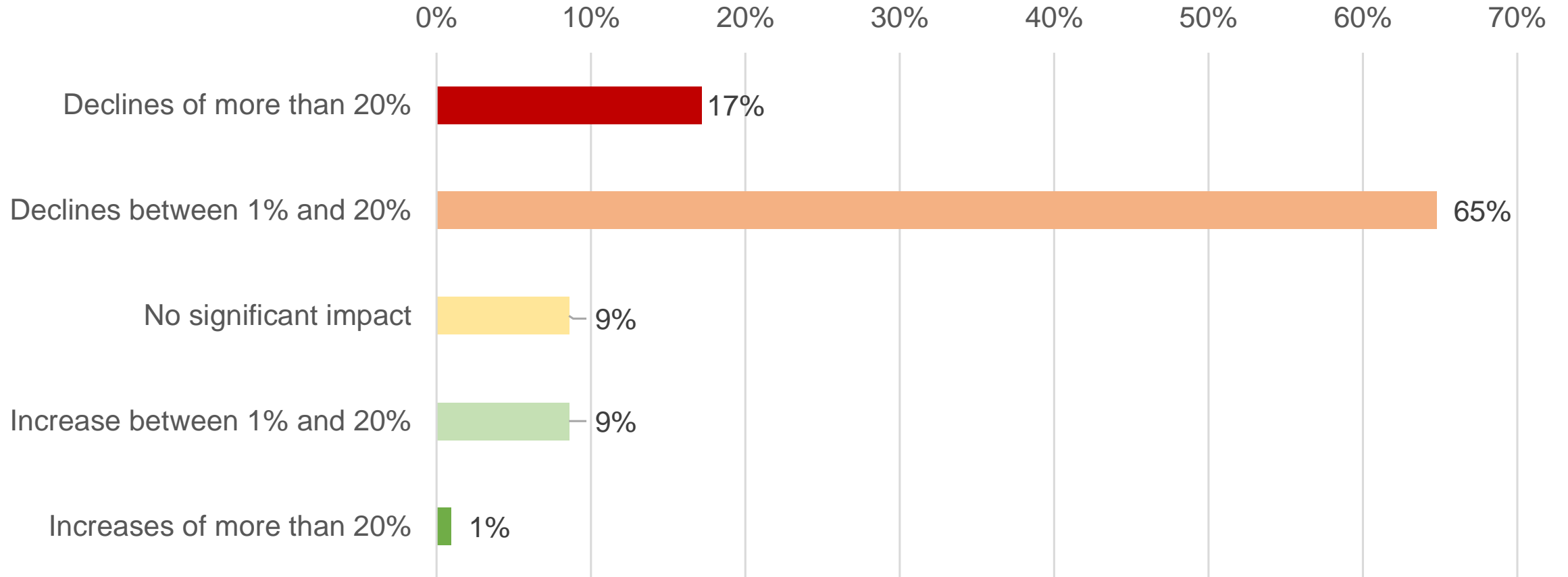


Source: GF Data

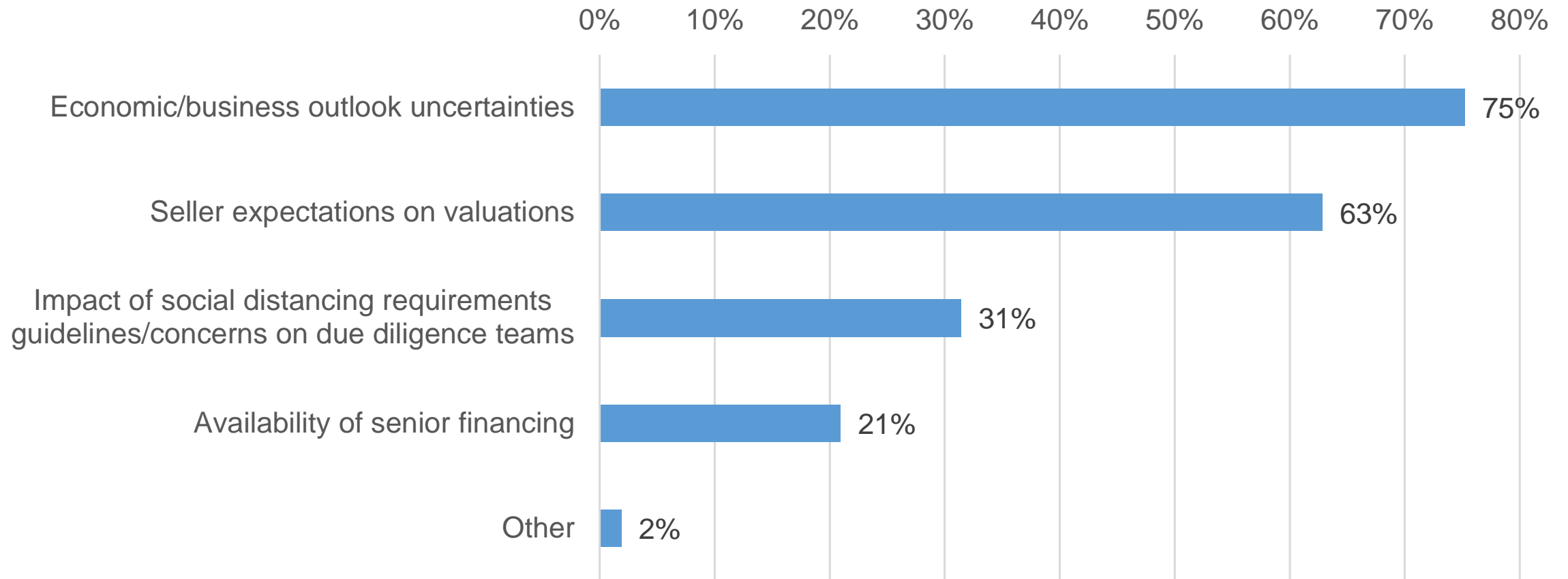
➤ Survey: How has the COVID-19 pandemic impacted your M&A activities?



➤ Survey: What impact do you believe the COVID-19 pandemic will have on M&A valuations over the next 12 months?



➤ Survey: Which of the following factor(s) are an impediment to your company or portfolio competing completing an M&A transaction?



➤ What to Expect?

- No longer a seller's market
- Disconnect in value between buyers and sellers
- Deal structuring – earnouts, milestone payments, special holdbacks
- Added due diligence, especially financial due diligence to assess resiliency or proof of recovery
- Special legal language
- Special deal terms regarding PPP loans and other stimulus
- More valuation requirements from banks
- Pandemic fatigue
- Distressed activity
- Virtual meetings and site tours (will PEGs do this?)
- A quick post-COVID-19 M&A market resurgence?
- First mover advantage for buyers?
- More targeted processes? Fewer auctions?

➤ What Can I Do?

Buyers

- Stay in close contact with acquisition targets
- Demonstrate the strategic value you bring to the table through helping, not hawking
- Maintain a strong cash position (dry powder)
- Keep your lender relationships strong
- Reassess standard due diligence processes – what's imperative to do in-person and where can you be creative? Where are the biggest risks?
- When seeking out distressed opportunities, be prepared to act quickly and be fair (bargains not exploitation)

Sellers

- Reset valuation and process expectations
- Track COVID-19 expenses (EBITDAC)
- Prepare forecasts: 13-week, 18-month, 5-year
- Maintain the critical assets and resources that make the business valuable
- Track pent-up demand
- Use this time for cleanup
- Be prepared for increased due diligence
- Videos of operations
- Consider estate planning and wealth transfers

Engage your professional advisors, now more than ever

POLLING QUESTION

To be eligible for CPE, 3 polling questions must be answered.

WEALTH TRANSFER OPPORTUNITIES

➤ Agenda

- Current Planning Environment
- Estate Tax Policy Outlook
- Wealth Transfer Strategies

CURRENT PLANNING ENVIRONMENT

➤ Current Planning Environment

There are three factors working to make this an ideal time to consider transitioning business interests to future generations:

1. High estate tax exemptions
2. Low interest rates
3. Potentially low business valuations

The combination of these factors greatly enhance many tried and true wealth strategies.

➤ High Estate Tax Exemptions

Estate tax exemptions are at all-time highs.

- These high exemptions are **NOT** permanent.
 - If Congress does nothing, exemptions will revert back to 2017 levels effective January 1, 2026.
- Further conspiring against the permanency of the high exemptions:
 - Outcome of the upcoming election
 - Possible need to raise revenue in light of the various stimulus packages

	2000	2017	2020	2026*
Single	\$675,000	\$5,490,000	\$11,580,000	\$5,000,000*
Married	\$1,350,000	\$10,980,000	\$23,160,000	\$10,000,000*

*Exemption will be adjusted for inflation and is estimated to be around \$6 million.

➤ Low Interest Rates

Interest rates used in various wealth transfer strategies are at all-time lows.

- These rates essentially act as “hurdle” rates for the success of many strategies.
- Lower rates equal lower hurdles to overcome.

AFR Rates				
	1990	2000	2010	Sept. 2020
Short term	8.82%	6.53%	0.74%	0.14%
Mid term	9.10%	6.51%	2.70%	0.35%
Long term	9.09%	6.39%	4.30%	1.00%

7520 Rate			
1990	2000	2010	Sept. 2020
11.0%	8.0%	3.2%	0.4%

¹See Rev. Rul. 2020-16; Rev. Rul. 2010-18; Rev. Rul. 2000-32 and Rev. Rul. 90-52.

ESTATE TAX POLICY OUTLOOK

➤ Factors Influencing Tax Policy

1. Outcome of the November elections – Democrat sweep, Republican sweep or something in between?
2. Fiscal policy – How to pay for stimulus (approx. \$3 trillion) on top of regular spending (approx. \$4 trillion)? Congressional Budget Office estimates national debt to be around \$26 trillion.
3. Economic conditions – Is it wise to raise taxes in a down economy?
4. The 2017 Tax Cuts and Jobs Act sunsets at the end of 2025 in any event if Congress does nothing.

➤ President Donald Trump's Estate Tax Policy

THEME: Make permanent the key provisions of the 2017 Tax Cuts and Jobs Act (TCJA).

- \$11.58 million estate tax exemption (as of 2020)
- 40% estate tax rate
- Retain the “step-up” in basis at death

NOTE: Republicans generally support the repeal of estate tax and have legislation “on the shelf” already introduced to accomplish that objective.

➤ Former Vice President Joe Biden's Estate Tax Policy

THEME: Repeal the TCJA and increase taxes on the wealthy.

A repeal of the TCJA would reduce estate tax exemption to \$5 million (adjusted for inflation) but would retain the current 40% estate tax rate.

Specifically, Joe Biden proposed in 2019 the elimination of the “step-up” in basis at death.

- The “step-up” increases the basis of capital assets to their fair market value at death – eliminating any capital gains.
- No details were offered as to how this proposal would work.

➤ Biden-Sanders Unity Task Force

“We will work to reform the tax code to be more progressive and equitable, and reduce barriers for families who qualify to benefit from targeted tax breaks. Our tax system has been rigged against the American people by big corporations and their lobbyists, and by Republican politicians who dole out breaks to their biggest donors while leaving families to struggle. **A guiding principle across our tax agenda is that the wealthiest Americans can shoulder more of the tax burden**, including in particular by making investors pay the same tax rates as workers and bringing an end to expensive and unproductive tax loopholes. Corporate tax rates, which were cut sharply by the 2017 Republican tax cut, must be raised, and “supply-side” or “trickle down” tax cuts must be rejected. **Estate taxes should also be raised back to the historical norm.**”

Biden-Sanders Unity Task Force Recommendations – Press release dated July 8, 2020, page 15

NOTE: What is the “historical norm”? Recent norms or older norms? In 1976, the estate tax exemption was \$175,625 and the highest rate was 70 percent.

➤ Sanders/Warren Estate Tax Policy

THEME: Dramatic expansion of the federal estate tax on the wealthiest .2 percent

Proposed changes include:

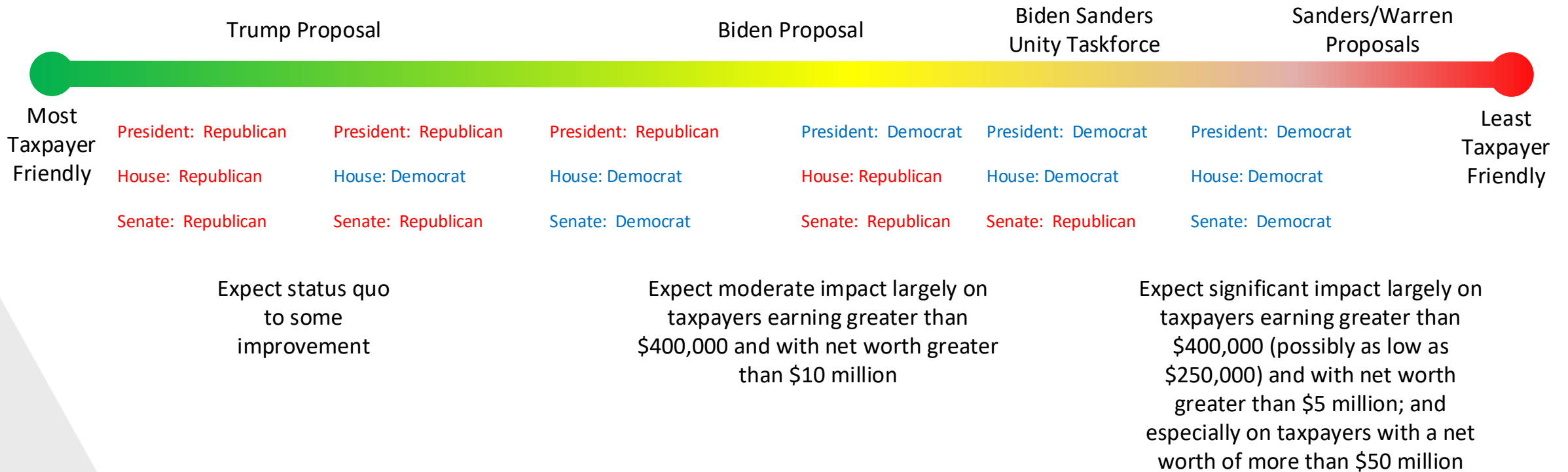
- ***Reduce estate tax exemption to \$3.5 million***
- Increase estate tax rates to as high as 77% on estates > \$1 billion
- ***Limit term of GST Exempt trusts to 50 years***
- ***Limitations on GRATs***
- ***Limitations on valuation discounts***
- ***End the use of grantor trusts***
- ***Limit the use of annual exclusion gifting***
- Impose an annual wealth tax of 1% (assets > \$32 million) to as much as 8% (assets > \$10 billion)

See: 1. S.309 — 116th Congress (2019-2020) “For the 99.8% Act” introduced by Senator Bernie Sanders January 31, 2019.

2. Bernie Sanders, “Tax on Extreme Wealth,” <https://berniesanders.com/issues/tax-extreme-wealth/>.

3. Elizabeth Warren, “Ending the Stranglehold of Health Care Costs on American Families,” Medium.com, Nov. 1, 2019, <https://medium.com/@teamwarren/ending-the-stranglehold-of-health-care-costs-on-american-families-bf8286b13086>.

> Outlook



➤ Timing and Effective Date of Tax Legislation

1. If passed in 2021, tax legislation could be effective:
 - (i) January 1, 2022
 - (ii) prospectively as of date of enactment; or
 - (iii) retroactive to January 1, 2021.
2. For perspective, the TCJA was not signed into law until December 22, 2017 and went into effect on January 1, 2018. Prior estate tax changes have generally been prospective but those changes have largely been favorable to taxpayers.
3. The timing of any tax legislation conceivably could be delayed into 2022 if economic recovery has slowed or stalled due to COVID. For example, tax reform under the Obama administration was delayed during the 2008/2009 financial crisis.

WEALTH TRANSFER STRATEGIES

➤ Wealth Transfer Strategies

1. Gift of unused exemption amount to a multi-generational trust
2. Sale of assets to a multi-generational trust
3. Intra-family loans
4. GRATs & CLATs

➤ Wealth Transfer Strategies: Caveat

It is critical that any wealth transfer strategy be reviewed in the context of your overall plan.

Never start with the solution. Always start with discovery.



Financial Planning	Investment Planning	Income Tax Planning	Estate Planning	Business Planning	Philanthropic Planning	Legacy Planning
<ul style="list-style-type: none">•Cash flow analysis•Budgeting•Retirement planning•Scenario planning•Cash management•Life insurance review	<ul style="list-style-type: none">•Asset allocation•Asset location•Risk policy•Investment selection•Performance measurement•Monitoring•Reporting	<ul style="list-style-type: none">•Personal income tax•Business income tax•Trust income tax	<ul style="list-style-type: none">•Wills and Revocable Trusts•Irrevocable Trusts•Asset protection•Family entities	<ul style="list-style-type: none">•Business valuation•Business succession•Family Governance•Pre-sale planning•Acquisition/merger planning•Strategic planning•Retirement plan admin	<ul style="list-style-type: none">•Individual philanthropy•Family philanthropy•Defining a mission and purpose•Tax efficient giving	<ul style="list-style-type: none">•Defining shared family values, culture, and principles•Family history•Family education

➤ Gift of Unused Exemption Amount to a Multi-Generational Trust

Least complicated strategy to implement but requires a lot of thought particularly with estates in the \$15 million to \$30 million range.

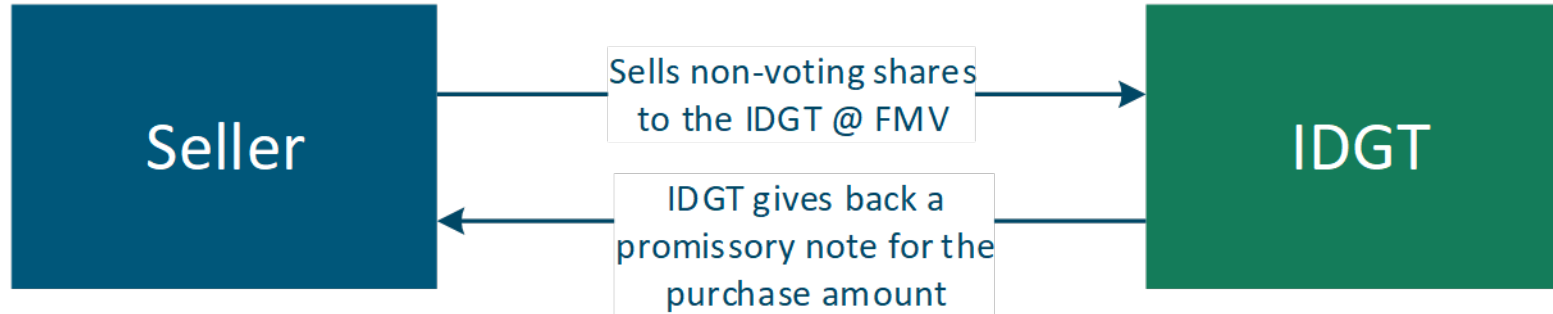
Some considerations:

- How much can I gift without impacting my lifestyle?
- Should I gift outright or in trust? (***Preference is to gift to a well-designed multi-generational trust***)
- What do I do if I am not subject to estate tax under today's exemptions but could be if the exemptions are lowered (i.e. my estate is in the \$10 million to \$23 million range)?
- What asset is the best to gift? (Key factors are growth potential and cost basis)
- How can I gift business interests but still maintain control?
- Who are the appropriate recipients of business interests?
- How do I treat siblings who are in the business vs. those who are not in the business? (Equal vs. fair)

➤ Multi-Generational Trust: Key Features

- Exempt from estate tax for as long as state law will allow the trust to remain in effect.
- ***COMMON APPROACH: Spouse can be a beneficiary to provide a safety valve in the event assets are needed (a spousal limited access trust or SLAT).***
- The trust can be designed as a grantor trust to shift its income tax liability to the grantor thereby allowing the trust assets to grow income tax free while reducing the grantor's estate by the amount of the income tax liability. Often referred to as an IDGT. Note that an IDGT can also be a SLAT at the same time.
- The trust will provide asset protection benefits to the beneficiary in the event of bankruptcy, divorce or litigation, as well as a layer of protection from themselves.
- The trust should contain provisions to allow the trust terms to be amended as circumstances change.
 - Common provisions for flexibility include but are not limited to powers of appointment, decanting powers and naming a trust protector.

➤ Sale to Multi-Generational Trust



- This type of transaction is typically used where the value of a business exceeds the estate exemption amounts.
- There are two main benefits of this transaction:
 - All future growth in the asset sold is removed from the grantor's estate.
 - The grantor pays all income tax owed by the trust thereby reducing the grantor's estate without incurring gift tax.
- The value of the promissory note is frozen in the seller's estate and receives interest in the amount of applicable federal rate (AFR) noted previously.
- Because the trust is a grantor trust, the sale transaction is generally a non-recognition event for income tax purposes except for PA residents who will in most cases recognize state level capital gains at 3.07%.

➤ Intra-Family Loans

- An intra-family loan can be an effective tool where a gift is not desired or is not an option.
- Cash can be loaned by a parent to a child or grandchild to purchase a house, start a business or any other significant life event.
- Further, cash can be loaned to a child or grandchild to purchase an asset with high growth potential effectively shifting that growth down a generation.
- The amount of interest that must be charged on the loan must be at least the current AFR or higher. Currently, those rates are much lower than commercially available rates from a bank.
- In addition to creating new loans, now is also a good time to refinance existing intra-family loans to lower rates.

➤ GRATs and CLATs

A grantor retained annuity trust (GRAT) is a special type of trust that effectively transfers the growth of an asset to the next generation free of estate and gift tax.

- With a GRAT transaction, the grantor contributes an asset to the GRAT and in return receives an annuity from the GRAT for a period of years plus interest at the 7520 rate discussed earlier.
- If the asset contributed to the GRAT grows at a rate greater than the 7520 rate, all of the growth will be shifted to the next generation free of estate and gift tax.
- There are many variations of GRATs allowing the strategy to be tailored to best fit your specific situation.

A charitable lead annuity trust (CLAT) is similar to a GRAT except that instead of paying the annuity to the grantor, the annuity is paid to a charity thereby allowing for a charitable deduction.

➤ Key Takeaways

1. We are in a golden age for wealth transfer that may be coming to an end.
2. While it is impossible to predict future estate tax policy, we can lay out a range of potential outcomes and plan for those potential outcomes.
“Move to where the puck is going.” – Wayne Gretzky
3. The current environment has greatly enhanced the effectiveness of a number of tried and true wealth transfer strategies.
4. Always do a thorough review of your overall wealth plan with your team of advisors before implementing any solutions. Do NOT jump into a solution you may regret later.
5. **Reach out to your advisor ASAP to review your plan!**

POLLING QUESTION

To be eligible for CPE, 3 polling questions must be answered.

EMPLOYEE COVID-19 RELIEF OPTIONS

➤ Employee Social Security Deferral Summary

August 8, 2020

[President Trump Memorandum](#) – deferral of employee Social Security from September 1, 2020 to December 31, 2020 (lots of unanswered questions)

August 28, 2020

US Treasury released some additional guidance via [Notice 2020-65](#)

➤ Additional Guidance Provided

- Deferral based on bi-weekly taxable Social Security wages of less than \$4,000 (weekly less than \$2,000). An employee could be eligible one pay and not eligible the next, since each pay is looked at separately.

Note: The maximum deduction for 2020 is \$8,537.40.

- Any tax deferred must be deposited by employers no later than April 30, 2021 (penalties and interest begin to accrue on May 1).
- “If necessary, the Affected Taxpayer (**employer**) may make arrangements to otherwise collect the total Applicable Taxes from the employee.”
- This liability will remain the employer’s regardless of if, when or how the money is collected from the employee.

Note: no additional guidance has been provided regarding the self-employed.

➤ Q: Is this deferral mandatory?

The deferral is not mandatory for the employer or employee.

- If the employer opts-out of allowing the deferral – it is not available for any employee (**business as usual**).
- If the employer opts-in to allow the deferral – each employee can decide individually if they want to opt-in.

Q: Will this deferral impact my PPP Loan? No.

Q: What happens if the deferral is forgiven?

Per Treasury – this is a deferral only and will not be forgiven.

➤ Additional Considerations

- Confirm with your payroll provider – how will they be handling this deferral?
- A new Form 941, Social Security tax code and W-2 format will likely be created to report the deferrals.
- If an employer must pay the employee's deferred tax for them in 2021, this tax payment then becomes taxable wages to the employee (with additional tax requirements paid by the employer) – *are these eligible for 401k deferral and match?*

For example:

Employer pays the employee's deferred tax of \$1,000

Employee taxable wages to cover the tax = \$1,082.84

Social Security tax for employer and employee = \$134.27

Medicare tax for employer and employee = \$31.40

Total employer liability = \$1,165.67

➤ Q: What are my next steps?

1. Prepare a communication to employees – are you as the employer opting in or out?
2. If opting in, prepare a form for the employee to sign (if they choose to opt-in) outlining:
 - This is a deferral not a waiver.
 - The deferred tax limitations (the \$4,000 per bi-weekly pay).
 - The money must be collected from them, to be deposited by you, no later than April 30, 2021 and provide the details of the repayment (for example, collected back over the first four pays in 2021).
 - They will be required to sign a document agreeing to the payback terms.
 - They will be responsible for paying the balance (provide due date) of any unpaid taxes if their employment terminates before April 30, 2021.

➤ Q: When is FFCRA intermittent leave available?

- If the employer agrees to it.
- For telecommuters - are unable to telework normal schedule hours due to one of the qualifying reasons.
- For childcare reasons (school closed or not open to students, day care closed or unavailable) due to COVID.

➤ Q: When is FFCRA intermittent leave NOT available?

Employee is:

- subject to a Federal, State or local quarantine or isolation order related to COVID-19;
- has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

➤ Q: What intermittent leave increments can we use?

- For telecommuters and for childcare reasons – any increment agreed upon.
- For non-telecommuters – daily increments only.

NOTE: If you no longer have a qualifying reason for taking paid sick leave before you exhaust your paid sick leave, you may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.

➤ **Q:** How do the new school operations impact FFCRA employee eligibility?

August 27 – [3 new FAQs](#) (#98 - #100)

Hybrid schedules:

Employees are eligible for FFCRA on the days when:

- The child is **not permitted** to attend school.
- No other “suitable” person is available to assist with remote learning on those days.

Optional scheduling:

Employees are not eligible for FFCRA if they choose any remote learning opportunities but the school is open full-time for all students.

➤ Q: How do the new school operations impact FFCRA employee eligibility?

Remote learning only while school evaluates in-person attendance:

Employees are eligible for FFCRA on the days when:

- The child is **not permitted** to attend school.
- No other “suitable” person is available to assist with remote learning on those days.

Make sure you take advantage of the credits (to include health insurance allocation).

Document the interaction with employees or use a form to track requests for FFCRA leave.

➤ **Q: Is there anything new with the additional \$300 PA unemployment? Lost Wages Assistance (LWA)**

- Must be fully or partially unemployed due to COVID-19 and have a weekly benefit rate + dependent allowance totaling \$100 or more
- Beginning September 6, individuals should fill out their LWA certification (log in using UC PIN where bi-weekly claims are filed - select Complete LWA Certification)
- Certify one time for LWA
- Funds are limited and not guaranteed
- Pandemic Unemployment Assistance (PUA) claimants do not need to apply - already certified unemployed due to COVID-19
- Paid in one lump sum for claim weeks ending: August 1, August 8, August 15, August 22, August 29

THANK YOU FOR PARTICIPATING

Questions?

- Contact your RKL advisor
- Visit RKL's [Business Recovery Resource Center](#) for more updates and guidance

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