Summer 2019
Vol. 15 No. 3

Year Up

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The Quarterly Publication of the Delaware Bankers Association

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Delaware Banker welcomes news items from members of the Delaware Bankers Association. The Editors reserve the right to refuse any advertising or editorial copy deemed unsuitable for publication. The Editors reserve the right to set the publication date in accordance with the Association's needs. Direct submissions to Greg Koseluk at greg.koseluk@debankers.com

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View from the Chair

by
Elizabeth D. Albano
Executive Vice President
Artisans' Bank

Chair
Delaware Bankers Association

"Every banker can do his or her part to protect the industry by contributing to the DelBankPAC."

Ah, summer! I was riding around with the windows open, the top down, enjoying a beautiful Delaware day! Of course, I had the radio on, listening to some great summer tunes, when I heard a familiar oldie by The Shangri-La's…

That's when I fell for
the Leader of the Pack…

Most people probably hear that song and think of ill-fated love affairs, and tough guys in motorcycle gangs. I have to confess; another thought jumped into my banker's brain. Leader of the Pack? Pack… PAC... Bank PAC… DelBankPAC! The DelBankPAC is the political action committee that works to protect the banking industry in the First State.

Banks need protection? Yes, they do, and now more than ever. The banking industry is always under scrutiny by those who would paint the financial services industry and their employees in a negative light. The Delaware Bankers Association works to present an accurate picture of the state's banks. We're working hard, not just for our members, but also for the communities in which we live and work. Our annual community brochure coveys just that.

It is important to be good corporate citizens, and it's vital to be viewed positively in the Delaware State Legislature. The banking business depends heavily on the decisions made by elected officials. The DelBankPAC provides bankers with opportunities to support candidates running for state offices in the General Assembly, as well as the Governor and Lt. Governor who understand and appreciate the unique concerns of the banking industry.

The DelBankPAC doesn't participate directly in Federal or local elections but rather helps ensure that your voice is heard at Legislative Hall in Dover. A strong DelBankPAC is an essential component of an effective government relations effort. Getting involved in DelBankPAC ensures the strength and vitality of the industry that supports your livelihood. Every banker can do his or her part to protect the industry by contributing to the DelBankPAC.

Contributing to DelBankPAC is important because election laws prohibit the use of membership dues for contributions to political candidates. Any contributions to candidates must be raised separately from a bank's membership dues. 100% of your contribution goes to supporting candidates who express a positive commitment toward the banking industry.

We are all in this together! It does not matter if you are a senior officer, a director, or a part-time teller; your participation makes a difference. If you benefit from the banking industry, you have something to lose if bad laws are passed and much to gain when pro-banking laws are passed. It takes each one of us doing our part.

To contribute to DelBankPAC, or for more information, call Margaret Cregan at 302-678-8600 or email her at: margaret.cregan@debankers.com.

So when you're out enjoying the sunshine and the tunes this summer, please remember the leader of the PAC, the DelBankPAC. We may not have motorcycles or leather jackets, but we're leading the way as your voice, advocating for all of us in the Delaware financial services industry!

All the best!

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Photo (L to R) Daniel R. Stanek, Gregory J. Weinig, Charles J. Durante, Trisha W. Hall, Scott E. Swenson

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President's Report

by
Sarah A. Long
President, CEO & Treasurer
Delaware Bankers Association

"We congratulate the inaugural class of the Trust Management Minor and wish them the best for success."

Pomp and Circumstance. No other words immediately evoke all that is synonymous with graduation. "Within a single musical line, Edward Elgar, the composer, seems to blend emotions of triumph with feelings of melancholy, capturing the bittersweet sense of excitement for the future fused with sorrow of leaving the present and the past." - JJ Abernathy, Music Times.

I would imagine these emotions of 'triumph and excitement' were felt by the first class of students in the University of Delaware's Trust Management Minor during their graduation ceremony on June 1, 2019. Quite an accomplishment given that is was only a little over three years ago that the Delaware Financial Education Alliance (DFEA) and the Lerner College of Business and Economics at the University of Delaware announced the inauguration of the Trust Management Minor.

When first envisioned, the hope was that the Minor would provide a pipeline of experienced candidates for employment by trust companies in Delaware in well-paying jobs, which in turn would increase the state's tax base. By requiring every student enrolled in the program to work with a mentor in the trust field and complete an internship with a financial institution, all students would be job-ready upon graduation.

As the first accredited trust and wealth management minor in the nation, the opportunity seemed like a perfect fit for Delaware. Delaware has long been considered a premier state for trust planning due to the high quality of its trust companies, the attorneys who practice in the trusts and estates field, and its well-respected court system.

Over the past three years, significant milestones have been reached. From the early stages of having the Trust Management Minor at the University of Delaware officially approved by the UD Faculty Senate, hiring the Professor of Practice, and establishing an Advisory Board, to implementing the curricula, developing and implementing the mentor and intern programs, and enrolling the first student, every milestone reached was a win for all! We thank the multitude of industry subject matter experts who gave so freely of their time and talents to ensure the success of the Minor.

The first graduating class of the Trust Minor totals fifteen students. Of those, seven will be working in the Trust Industry, one student will be attending law school and two students will be working in the financial services industry. Fast on the heels of these graduates are twenty returning seniors, as well as a new group of students (seventeen now, but with expectations that the class will reach twenty by the fall) entering the trust minor. We congratulate the inaugural class of the Trust Management Minor and wish them the best for success.

The program was made possible thanks to the generous support of corporate sponsors and individual donors who represent some of the top trust companies and law firms in the First State.

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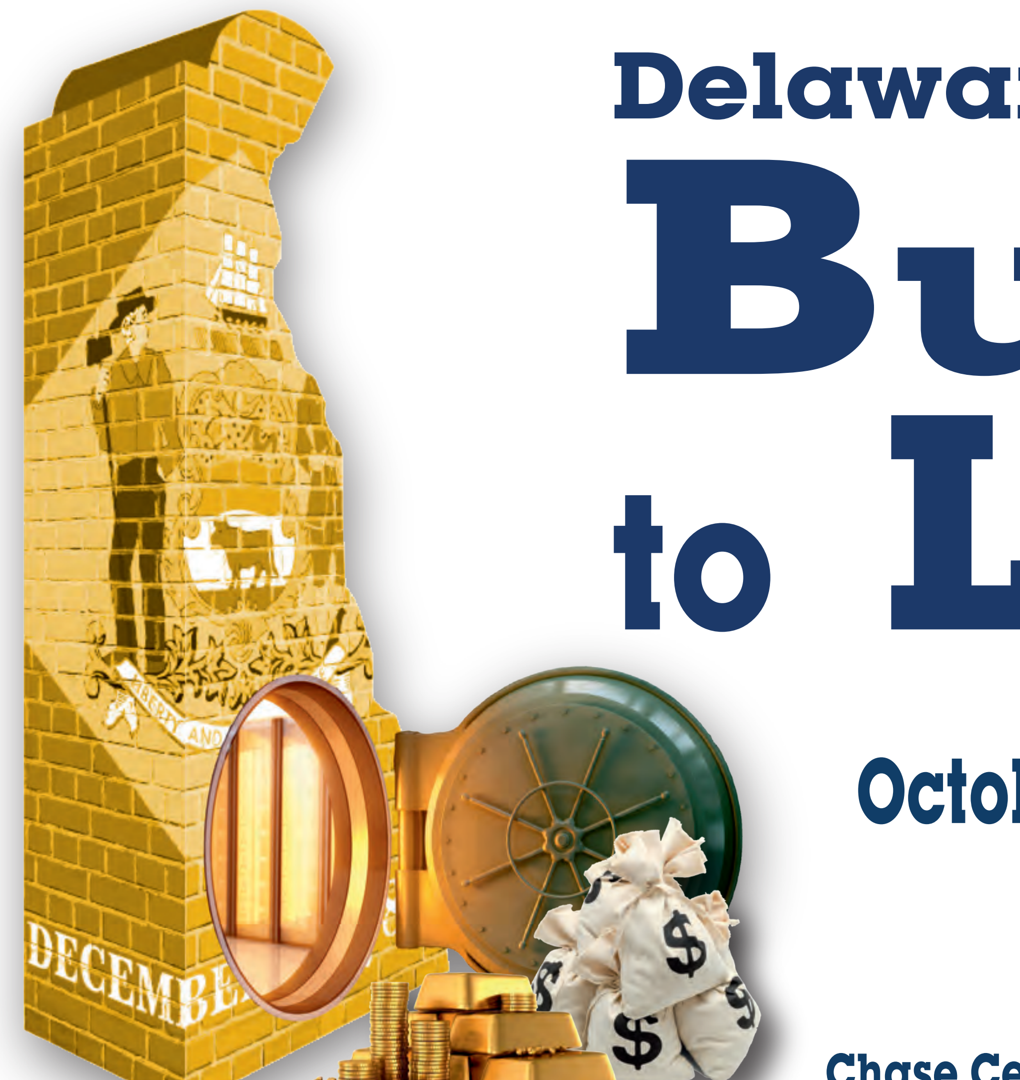

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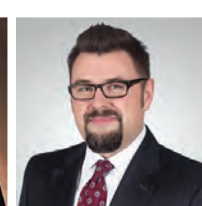
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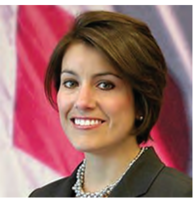
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for full agenda and registration information

Total Credits for 2019 Delaware Trust Conference = 15.0 CLE applied for (DE & PA) , CPE & ICB Credits Applied for. Participants can earn up to 18.0 CPE credits in Specialized Knowledge and Applications field of study.

All Around the Hall

by
Thomas P. Collins
Executive Vice President
Government Affairs
Delaware Bankers Association

"It was leadership, not the freshman, that surprised our industry early in January."

This session started with newly elected legislators occupying 15 of the 62 legislative seats. But it was leadership, not the freshman, that surprised our industry early in January.

HB 2
Furloughed Federal Employee Relief

During the federal government shutdown in January a proposal to assist the furloughed federal employees in Delaware – at the expense of the banks – resulted in this bill. The legislation provided that the affected employees could apply to a court for certain protections, including a stay or suspension of their obligations and an imposition of an interest rate cap of 6% - a near blasphemy in Delaware. In the haste to draft and pass the legislation, the drafters did not provide an end to the protective provisions when they were no longer needed. With no prior notice, on January 23 HB 2 was introduced in the House and passed (under suspension of rules) and met with similar success in the Senate and signed by the Governor the next day . Wow! Talk about legislative expediency.

What to do? Strategic meetings with senior administration officials to lay out the situation and our concerns for the operational and reputational impact such a bill would cause, a solution was reached to amend the law and sunset the provisions. All we needed was the right timing and right vehicle to do so. The opportunity finally came with HB 199, introduced on June 10th, in which the Bank Commissioner proposed to modernize certain practices and procedures in his office. After a question or two on the Commissioner's proposed procedures, the bill passed both chambers and was signed by the Governor June 27th, three days before the bill provided for the sun to set on the interest rate cap.

Fortunately, the rest of the session was less suspenseful.

HB 72
Trust Bill

Once again, the DBA's alliance with the Trust and Estates section of the Delaware Bar Association, ushered through the annual Trust bill (HB72). It was passed and signed after questions on certain sections resulted in a three-month delay in its progress, causing some angst for the bill's success. With the signature of the Governor on June 19th, Delaware remains at the forefront of American trust law. That preeminence however was threatened in the weeks following the adjournment of the Legislature. Read on.

HB 84

This bill proposed to assess up to a $250 annual fee on airplanes registered but not based in Delaware. On its face pretty innocuous, but it threatened Delaware's robust corporate trust business through which many commercial aircraft are owned and registered. After explaining this potential major disruption to the sponsors, the bill was stricken.

HS 1 for HB 128

We worked with the Division of Unemployment Insurance of the Department of Labor to craft a substitute bill that permitted the State to collect unpaid unemployment insurance taxes through garnishment of bank accounts. The substitute bill is applicable to collection from the employer only and the bank no longer faces liability if it errors in administering the garnishment. The original bill provided that the bank could be liable for the full amount of the unpaid taxes, even if it exceeded the garnishee's funds in the bank.

SS1 for SB 37

As part of the Administration's package of criminal justice reform bills, expungement of criminal records pitted the bank's federal regulatory responsibility to complete criminal background checks on employees and perspective employees against the state's interest in providing qualified individuals with a clean start, free of their criminal record. After several meetings with the drafters and conferring with the FDIC several times, we are confident that the process will not conflict with the banks' well-established compliance responsibilities.

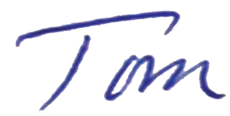
HB 110
Marijuana

Once again, this year there was an effort to legalize recreational use of marijuana. At the request of the Administration, we testified against the bill. We testified in the House committee that in addition to the public safety issues presented by an all cash business, until the conflict with federal law is resolved and marijuana is no longer an illegal substance under federal law thereby permitting banks to legally do business with marijuana related businesses, the DBA cannot support the legalization.

Bank Commissioner's Proposed Amended Regulation Regarding Applications for a Limited Purpose Trust Company Charter

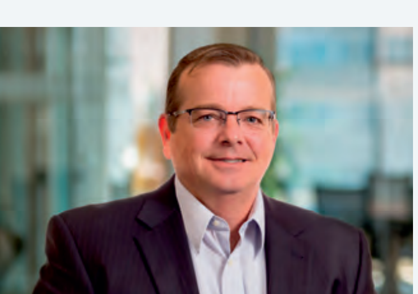
The 150th Session, part I, was a relatively calm session. So calm, that Legislative Hall lobbying veterans were concerned about the unseen surprise. But after both chambers adjourned shortly after 1 a.m. July 1st, there was a collective sigh of relief. For the bankers it did not last long. During the July 4th holiday week, a proposed amendment to the regulations governing the chartering of a Limited Purpose Trust Company was published in the Delaware Administrative Code. This proposed amendment requires that the applicant be affiliated with a federally regulated financial institution. The Commissioner believes this will resolve his concerns of not being able to conduct sufficient due diligence on the principals of the new trust company. We had no real warning of this development and with only a 30-day comment period – 30 days when many people are on vacation - the Commissioner agreed to extend the comment period through at least November 1. We emphasized that the mere publication of the proposed regulation damages Delaware's trust business by communicating to the world a change in our intentions to be a business-friendly state. We continue to communicate with the Commissioner to accept our request to withdraw the proposed regulation and meet with the stakeholders to help the Commissioner resolve his concerns – the Delaware Way.

Should you have any questions about these bills or other legislation, please contact me.



You May Call Your Best Witness

Bill Santora, CPA



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Evercore Trust Company, N.A. serves families, foundations and endowments across the United States, providing a modern alternative to traditional trust companies, along with access to the tax and regulatory advantages associated with Delaware trusts. Together with our affiliate, Evercore Wealth Management, we deliver top-tier investment management, strategic wealth planning, and flexible, timely trust and family office services, reflective of our experience and the Evercore culture of integrity.

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New Associate Members

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The New Castle County Chamber of Commerce
302-294-2065
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The New Castle County Chamber of Commerce help grow businesses through networking, business growth training, referral groups, marketing opportunities, and more. The Chamber advocates for members in the local and state government and works closely with elected officials to create economic prosperity and enhance the quality of life in the community.

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Women Connect

Kathleen Jennings, Delaware Attorney General, and Mark Turner, Executive Chairman, WSFS, keynote at Women Connect in Newark

Over 140 financial service professionals gathered on May 9th at the Deerfield Country Club in Newark for the first Women Connect event of 2019. The group heard inspiring talks from keynote speakers Kathleen Jennings, Delaware Attorney General, and Mark Turner, Executive Chairman, WSFS. The agenda also included panels on Financial Empowerment Through Education; Leadership and Well-Being; as well as speed sessions on wealth management, yoga, and philanthropy.

DBA Annual Meeting

DBA President, Sarah Long, interviews Jelena McWilliams, the Chairman of the FDIC, at the 124th Annual Meeting.

Elizabeth D. Albano, Executive VP, Artisans' Bank, was elected the Chair of the Delaware Bankers Association at the DBA's 124th Annual Meeting, May 16th, in Wilmington. The DBA also elected and installed Joe Westcott, Market President, Delaware, Capital One, to the position of Chair-Elect. Other Members of the DBA Board of Directors are Directors at Large: Eric Hoerner, Chief Executive Officer, MidCoast Community Bank; Thomas M. Forrest, President & CEO, U.S. Trust Company of Delaware; Cynthia D.M.

Continued on p. 12

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What's New at the DBA

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Brown, President, Commonwealth Trust Company (Past Chair); and, Directors: Dominic Canuso, Executive Vice President and Chief Financial Officer, WSFS Bank; Bruce Colbourn, Market Executive, PNC Bank Delaware; Larry Drexler, General Counsel, Head of Legal & Chief Privacy Officer, Barclaycard US; Leslie Gillin, President, Co-Brand Card Services, Chase Bank USA, N.A.; George Kern, Regional Director, Bessemer Trust Company of Delaware; Lisa P. Kirkwood, SVP, Regional Vice President, TD Bank; Nicholas P. Lambrow, President, Delaware Region, M&T Bank; Tarrie Miller, SVP, Retail Banking and Marketing, County Bank; and, Matthew Parks, Director Community Reinvestment Act, Discover Bank.

The evening's keynote speaker was Jelena McWilliams, the 21st Chairman of the FDIC, who sat down for an interview with DBA President Sarah Long.

David G. Bakerian Scholarships

U.S. Senators Tom Carper and Chris Coons congratulate scholarship recipients Mackenzie Grier and Aaron Jackson

The DBA announced the winners of the 2019 David G. Bakerian Scholarship Award at the 124th Annual Dinner. The winners were Mackenzie Grier, a student at Concord High School, and Aaron Jackson, a student at Caesar Rodney High School. The scholarship, previously known as The Keys to Financial Success Scholarship, was renamed this year in honor of David G. Bakerian, the former president of the DBA and lifelong advocate for financial education. Both students participated in the Keys to Financial Success course. Each winner received a $2,500 scholarship.

Pam Bakerian, David's widow, announces the first David G. Bakerian Scholarships

Scholarship winners are enrolled in the Keys to Financial Success elective that is taught in 31 high schools throughout Delaware to over 4,000 students. The course was developed in partnership with the University of Delaware's Center for Economic Education and Entrepreneurship (CEEE), Delaware Bankers Association, Federal Reserve Bank of Philadelphia, and Consumer Credit Counseling Service of Maryland and Delaware. Keys to Financial Success introduces students to the fundamentals of sound money management skills and basic financial planning concepts including Goals and Decision Making, Career Research, Money Management, Consumer Skills, and Risk Protection.

Teach Children to Save Day Poster Contest

Each year as part of Teach Children to Save Day students are invited to participate in a poster contest to illustrate the importance of saving. This year's first place winner was Joe J. a student at St. Mary Magdalen Elementary School in Wilmington. Joe's poster, "America Runs on Saving" is seen on page 12. Joe received $100 for his winning entry. Two second place winners received $50 each. Nine entrants received honorable mention and were given copies of this year's book: "The Great Investo and Muscles O'Money."

Dr. Bonnie Meszaros, Center for Economic Education and Entrepreneurship and Greg Koseluk, DBA, congratulate First Place Winner, Joe J., 2nd Place Winner, Delaney G., and Honorable Mention Winner, Sophia K. at St. Mary Magdalen School.

Comenity Presents The Great Investo and Penny's Money Magic Show

The Great Investo and Penny performed their Money Magic show for an assembly at Eisenberg Elementary School in New Castle, Wednesday, May 29nd. Presented by Comenity, the show illustrated the magic of setting goals, budgeting, and saving for over 90 third grade students. Martha O'Malley, Senior Director and Managing Counsel, Alliance Data, introduced the magic duo. Students who assisted in the magic tricks received copies of The Great Investo books, and all the students received Great Investo Savers Club kits.

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What a Difference a Year Makes

The Year Up and Wilmington University Partnership benefits low-income students, higher education, and Delaware employers

by
Maria Hess, Ed.D.
Senior Director
Executive Communications and Publications
Wilmington University

When Maria Esther Mendez De La Cruz's father was deported to Mexico, she joined the ranks of thousands of U.S. citizen children of undocumented parents forced to adapt to a country they don't understand and a society that considers them outcasts. For Maria, just 11 at the time, losing her father was "horrible," she says. "It was out of nowhere that they took him. He always took care of us — anything school-related, he was there. He was the head of the household."

Maria's struggles increased after the strain of deportation caused her parents' divorce. However, school was Maria's salvation. She was good at math — her father had forced her to learn every multiplication table before she turned 7. But now, he wasn't around to help, to offer guidance, or to witness her moving-up ceremonies in middle school.

Maria was accepted to Howard High School in Wilmington, but missed her junior and senior years after giving birth to her son, Isaias. Maria's mother, Josefina, insisted that her daughter finish school, and took on the role of caregiver for Isaias while Maria transferred to nearby McKean High School and completed her studies. She took extra online classes, never missed a day of senior year, and graduated with honors.

Aside from Facetime, Maria hasn't seen her father in 10 years. And she can't go back to Mexico. As a DACA (Deferred Action for Young Childhood Arrivals) citizen, a designation granted to her in 2017, she had a two-year timeframe to get a Social Security number and a job, and did both. "And I couldn't leave the U.S.," she says. "I could work here, which was a plus—many others don't have that luxury—but DACA members

couldn't get financial aid or health care. If anything, all that had to come out of our pockets."
Maria hoped to enroll at Delaware Technical Community College, but without financial aid, she couldn't afford tuition. She got married, worked as a waitress, and worried that her dream of earning a degree and utilizing her considerable math skills for a potential banking career would never be realized.

Unwilling to throw in the towel, Maria discovered Wilmington Job Corps, a free education and job-training program for young adults, and earned Microsoft certifications. There, she learned about Year Up—and her new story began.

Bridging the Gap

Year Up, founded in 2000, is a national, one-year intensive program that provides low-income adults with hands-on skills, coursework eligible for college credit, an educational stipend, corporate internships, and wraparound support from mentors and coaches immersed in their journeys. Corporate sponsors cover the costs, so the program, which has helped nearly 20,000 participants, is free.

In August of 2017, a partnership between Wilmington University and Year Up was established, and the nonprofit now operates its statewide office at WilmU's New Castle location. Maria was part of the 30-member inaugural class.
Year Up serves a neglected population that can potentially handle the rigors of college and succeed in the global workforce. According to its records, nearly 5 million youth, ages 18 to 24, have not progressed beyond a high school diploma and are neither employed nor enrolled in postsecondary institutions. Additionally, more than 70 percent of low-income minority youth in America leave high school without a path to college or a decent job. Year Up addresses this crisis by empowering people who have slipped through the cracks. And Fortune 500 companies benefit as well—the nonprofit trains potential candidates for available jobs.

According to reports from marketwatch.com, postsecondary education is recommended for new jobs that require a combination of decision-making, communication, analysis and administration skills—the same skills Year Up emphasizes. Some 12 million jobs requiring postsecondary learning are expected to go unfilled in the next decade, which is one reason Year Up provides students with resources, inspires them to persevere, and trains them to compete on the global stage. It prepares them for well-paying employment opportunities, which, in turn, will fulfill the needs of a booming marketplace.

Year Up students take six months of career-relevant courses at WilmU, then earn an internship at a local company for the next six months. While they're provided extraordinary coaching and mentors, they must embrace strict standards.

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"The students are young and are vetted," says Dr. Eileen Donnelly, WilmU's vice president of Enrollment Management. "That's because this isn't an easy gig. You have to be able to do the work, because for the WilmU portion, it's 9 to 5, five days a week. Lateness and absences have consequences or result in infractions."

In addition to parenting her son, Maria worked nights as a waitress from 5 to 11 — after a full day of school. Just like other working mothers, she was expected to show up on time despite personal challenges. "I learned that being on time is important. The discipline made me more professional and more accountable for my actions."

Accountability is key, as is managing rigorous professional and academic standards and accepting constructive feedback. Still, poignant relationships blossom, particularly between mentees and mentors. Maria credits her mentors with changing her life. She says of Donnelly, "I see it in her eyes that she cares for me and wants me to succeed. She listens. There are people you talk to who don't pay attention, but Dr. Donnelly cares. I can feel it."
For Maria's mentors, the feelings are mutual. "Maria is a wife, she's a mother, and she had a part-time job when she was a full-time student. But she was here every day and she did very well. I have great respect for her," says Donnelly.

That respect was earned. Maria landed an internship at JP Morgan Chase, where she is exploring the financial industry. She attributes her success to family, mentors, and WilmU professors. Maria also thanks her father. "I think of him every day. If he never brought us here, none of this would have happened."

Creating Polished Professionals

Hassan Charles, Year Up's executive director for the greater Philadelphia region, reflects on the changes he sees in students during their first six months at WilmU, noting that when they start the program, they lack confidence in their professional and technical skills, yet leave prepared to tackle a rigorous six-month internship at a Fortune 500 company. "Students are introduced to an array of content, ranging from finance to software development through classes taught by Wilmington University professors," Charles says, so they develop professional skills and "leave able to deliver an effective elevator pitch, to network with other professionals, deliver presentations and even tie a necktie. They are transformed into motivated young professionals."
At the beginning, Maria says, "I didn't see myself going through those six months at a university. It would be too much work and stress. But I learned so much, and Year Up gave us classes on networking, teamwork, communication and the professional skills."

She studied economics, banking, finance and Excel at WilmU. "It wasn't easy," she says, "but I chose those (courses) because we learned about bonds, financial statements, balance sheets and taxes, and all of that would have prepared me to intern at many Fortune 500 companies."

People who know Maria have little doubt that she will join the ranks of Year Up participants who go back to college to complete their degrees, or get an offer from the employer for whom they interned. Then there's the best scenario: to be awarded tuition assistance from their new employers to finish college.
More than 90 percent of Year Up graduates in this region are working or continuing their education, says Charles. "More than half our students gain employment through their internship experiences with a Year Up corporate partner. Those students who are working earn an average wage of $19.30 per hour or more than $40,000 annually."

They work for it. "It's through these WilmU and Year Up resources and pure effort on the part of our students that they are able to leverage the opportunities we can provide collectively to launch meaningful careers and become lifelong learners," Charles says.

He adds that his greatest joy is talking about the students. "It's telling potential partners that if they were to meet just one Year Up student, they would immediately understand the difference in their preparation and ability to contribute from day one on the job."

A Win-Win

The benefits of the WilmU-Year Up partnership are clear all around. For the University, it's a chance to serve more students and nurture or establish corporate partnerships. "Our missions are aligned," says Donnelly, adding that the Year Up students who choose to complete their degrees at WilmU will be welcomed with open arms. They already have long-term privileges to use University resources like the library, since a goal for both Year Up and WilmU is to inspire lifelong learning.

For Charles, Year Up provides him the opportunity to leave a legacy he thinks will far outlive him. "I'm passionate about closing the Opportunity Divide," he says, "and providing opportunities to young adults who may not have the support and resources to self-actualize or develop to their full potential."
For employers, Year Up is bringing well-trained workers to the table. "I have people coming to my company who have graduated directly out of Yale," says New Signature CEO Christopher Hertz. "And I will tell you, they could learn something from the Year Up interns in terms of professionalism."

Wilmington Mayor Mike Purzycki says the partnership can have a positive effect on job growth. "The job crisis is fueled

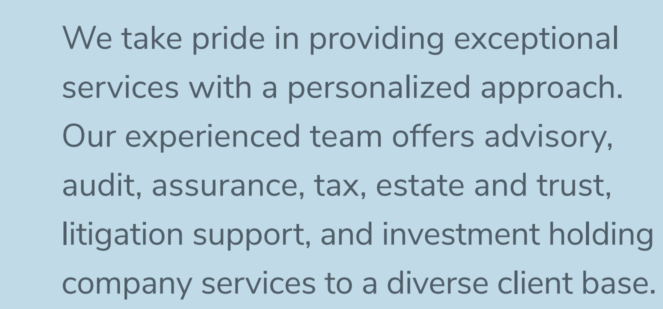
by a skills crisis," notes Purzycki. "The partnership between Year Up and Wilmington University combines relevant, career-driven academics with internships at large companies throughout Delaware. Those companies have well-paying jobs available, and this partnership is preparing dedicated students to fill them."

And the students—like Maria—find hope. "I want to get a full-time job in corporate America, make sure my son is happy at school, and maybe even buy a house," she says. "I want to be economically stable."

She plans to complete her degree at Wilmington University after her internship. When she does, she'll be the first in her family to graduate from college. "Dropping out of school will not be an option for my brothers or my son," she says. "They won't go through life like I did."

Through the partnership between Year Up and WilmU, Maria has learned the value of higher education. "My degree will be mine," she says. "No one can ever take that away from me."

Dr. Maria Hess is the senior director of Executive Communications and Publications at Wilmington University and editor-in-chief of WilmU Magazine. She holds a doctorate in Educational Leadership and Innovation. Prior, Dr. Hess led the editorial department for Today Media Inc., serving as editor-in-chief of four magazines — Delaware Today, Delaware Bride, The Ultimate Guide to Delaware, and 302 Health. She led a team of talented professionals who produced 17 hardcopy and digital issues per year, as well as regularly updated web exclusives. During her tenure, Dr. Hess established relationships with several media partners. Also media spokesperson for Today Media, she was a regular on-air guest on various television and radio programs. Dr. Hess had the privilege of working for WVPT, a PBS station in Virginia's Shenandoah Valley. She created, produced, scripted and hosted its flagship television series "Living in Virginia," which earned two Emmy Awards, the National PBS Communications Award, and other honors. Dr. Hess is a board member of and moderator for Great Dames Inc., and an advisory board member of the Fresh Start Scholarship Foundation. She provides communications support for several nonprofit organizations, including the Ministry of Caring, and has supported the United Way of Delaware's mentoring program. She had the opportunity to mentor young women entering the professional arena. In addition to earning multiple local and national awards for writing, editing and documentary production, Dr. Hess was named Communicator of Achievement (COA) by the Delaware Press Association. The highest honor the DPA bestows on its members, the COA Award is given for a lifetime of achievement in the communications profession and recognizes dedicated service to the community and humanity.



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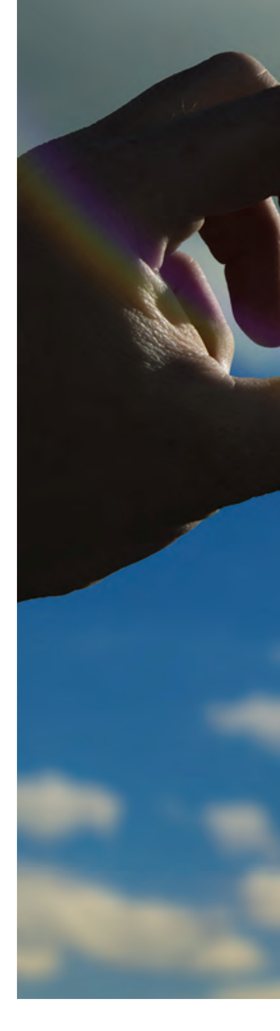
Trusts

Utilizing Delaware's Excluded Co-Trustee Statute, Section 3313A of Title 12 of the Delaware Code



by
Michael M. Gordon,
Kimberly Gill McKinnon,
Daniel F. Hayward,
and Patrick J. Rohrbach

Gordon, Fournaris & Mammarella, P.A.

Enacted in 2017, Section 3313A of Title 12 of the Delaware Code (Delaware's "Excluded Co-Trustee Statute") addresses the duties and liabilities of co-trustees wherein the trust instrument confers on a co-trustee or co-trustees the exclusive power to take, or direct another trustee to take, specified actions with respect to the trust. In this article, the trustee who is granted an exclusive power over a trust is known as the "non-excluded trustee" with respect to that power, and each other trustee is known as an "excluded trustee". The Excluded Co-Trustee Statute codifies the concept of reducing or completely eliminating the liability of a co-trustee for matters entirely outside of the scope of its authority pursuant to the provisions of a trust instrument. This article examines the terms of the Excluded Co-Trustee Statute, some of its practical uses, and some of the issues that practitioners should be aware of when trustee powers are bifurcated among co-trustees.

The Excluded Co-Trustee Statute is modeled after Section 3313 of Title 12 (Delaware's "Directed Trust Statute"), but goes further to address the complete bifurcation of the trustees' powers and responsibilities among co-trustees. In a traditional directed trust, the trustee retains its powers, but the trust instrument vests the discretion for decisions regarding one or more of the trustee's powers in other individuals or entities referred to as "advisers" under the Directed Trust Statute. The discretion vested in an adviser can relate to a variety of different types of decisions, including investment decisions, distribution decisions, and administrative decisions related to the trust, and the trustee is required to carry out such decisions upon the direction of the appropriate adviser.

An excluded trustee arrangement bifurcates the trustees' powers and responsibilities between the trustees themselves. The trust instrument can expressly confer upon the non-excluded trustee either the power to direct the excluded trustee to take or refrain from taking certain actions, or the exclusive authority to exercise certain trustee powers without the involvement of the excluded trustee. Pursuant to Section (a)(1) of the Excluded Co-Trustee Statute, if the terms of the trust instrument confer the power to direct certain actions of the excluded trustee on the non-excluded trustee, the excluded trustee has no duty to act in the absence of such direction and is not liable, individually or as a fiduciary, for any loss resulting from compliance with the direction absent wilful misconduct on the part of the excluded trustee. This is the same standard of liability applied to a directed trustee acting in compliance with a direction given by an adviser under the Directed Trust Statute. In contrast, an excluded trustee is not liable, even for wilful misconduct, for any loss resulting from an action taken by the non-excluded trustee in the exercise of a power exclusively granted to a non-excluded trustee under the trust instrument.

Section (a)(2) of the Excluded Co-Trustee Statute provides that, if the terms of the trust instrument confer on a non-excluded trustee exclusive authority to exercise any power, the excluded trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the action taken by the non-excluded trustee in the exercise of the power. In 2018, Section (a)(2) was amended to expressly clarify that the excluded trustee is not even considered a fiduciary with respect to any power conferred exclusively upon the non-excluded trustee, but is a fiduciary with respect to any power not exclusively conferred upon the non-excluded trustee. In this regard, Section (a)(2) is a significant expansion of the limited liability concept applicable to directed trustees, embodied by the Directed Trust Statute. Not only is the excluded trustee expressly shielded from liability for any loss resulting from the exercise of powers solely conferred on a non-excluded trustee, the excluded trustee is not even a fiduciary with respect to those powers. Section (b) of the Excluded Co-Trustee Statute further provides that the non-excluded trustee holding an exclusive power shall be liable to the beneficiaries with respect to the exercise of that power, as if the excluded trustee were not in office, and only the non-excluded trustee has the obligation to account to the beneficiaries and defend any action brought by the beneficiaries with respect to the exercise of the exclusive power. In short, under Delaware law, an excluded trustee has no duties, and also no liability, with respect to any power conferred exclusively on a non-excluded trustee.

Similar to a directed trust arrangement, an excluded trustee has no duty to monitor the conduct of, provide advice to, consult with, or request directions from the non-excluded trustee, pursuant to Section (a)(3) of the Excluded Co-Trustee Statute. Furthermore, an excluded trustee is not required to give notice to any beneficiary of any action taken by a non-excluded trustee, whether or not the excluded trustee agrees with the result.

In practice, the close similarities between a directed trustee arrangement under the Directed Trust Statute and an excluded

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co-trustee arrangement under the Excluded Co-Trustee Statute often raises the following question: When should one design be used over the other? Having two years to contemplate that question since the enactment of the Excluded Co-Trustee statute has led to some interesting answers.

For example, consider a scenario in which an adviser directs a trustee of a directed trust to execute a federal income tax return that is prepared by an accountant unfamiliar to the trustee, or on which an aggressive filing position is taken over the trustee's objection. Under the Directed Trust Statute, the directed trustee will only be liable for wilful misconduct when complying with the direction. However, the directed trustee executes the return under penalties of perjury, and under federal law a trustee can be subject to personal liability for the trust's unpaid income taxes and tax-related penalties. The interaction between state and federal law in this context raises some questions and concerns for directed trustees who are directed to sign tax returns. However, if the trust instrument vests all trustee powers relating to tax matters exclusively in a "tax matters trustee", the excluded trustee would not even be a trustee under applicable state law with respect to those tax matters and would not need to be a signatory on the return.

Similarly, a trustee of a directed trust with respect to investment matters may be directed to execute agreements in which certain representations and warranties are made by the directed trustee on behalf of the trust for an investment transaction. Could making those representations and warrantees without personal knowledge of their accuracy subject the directed trustee to any risk of personal liability under federal law, such as securities laws or environmental laws? If trustee powers related to that type of investment are vested exclusively in the trustees that have intimate knowledge of the transaction, the excluded trustee would not even be a trustee under applicable state law with respect to that investment transaction and would not need to be a signatory on the document that makes the representations and warranties.

Although the excluded co-trustee arrangement can be an excellent alternative to the directed trustee arrangement under the right circumstances, an excluded co-trustee arrangement can raise its own set of unique issues.

Historically, the execution of a document on behalf of a trust has required that each trustee of the trust sign it, or that signatory authority be "delegated" by the non-signing trustees to the one executing the document. Under the Excluded Co-Trustee Statute, the trust instrument creating a trust with multiple trustees may vest one trustee with power for certain matters, to the exclusion of the other trustees, such that the non-excluded trustee, in its sole capacity, can bind the trust. A complete bifurcation of trustee power is not the equivalent of a delegation between co-trustees. However, the excluded co-trustee arrangement can and has led to confusion for third parties involved in trust transactions. An out-of-state financial institution who is undertaking a new account opening for the trust, or the manager of a fund that the trust is investing in, might insist that all trustees sign transactional documents due to a lack of understanding of the impact of the Excluded Co-Trustee Statute.

In addition to the confusion with respect to the application of the Excluded Co-Trustee Statute, practitioners should carefully consider whether a particular excluded trustee arrangement creates a sufficient nexus to the State of Delaware. More specifically, in the event that the majority of trustee powers are executed exclusively by trustees located outside of the State of Delaware, could a court outside of the State of Delaware find that it has jurisdiction over the trust, that the trust is sitused in another jurisdiction, or that a different jurisdiction's laws govern a particular matter? These issues may be of greater concern if the trust was originally created in another state and then later moved its situs to the State of Delaware. To minimize these concerns, the trust instrument could expressly provide (or be modified to provide) that Delaware law exclusively governs all or certain trust matters, even in the event that excluded trustee powers are exercised in jurisdictions outside of the State of Delaware. It is also helpful if the trust instrument grants exclusive administrative powers and duties to a trustee located in the State of Delaware, who is required to carry them out in the State of Delaware. Such administrative powers and duties may include some or all of the following: (i) to maintain an account to custody trust assets, receive trust income and make disbursements; (ii) to maintain storage of tangible personalty and evidence of intangible trust property; (iii) to maintain trust records and to originate, facilitate and review trust accountings, reports and other communications; (iv) to maintain an office for trustee meetings and other trust business; (v) to respond to inquiries concerning the trust from beneficiaries, trust fiduciaries and unrelated third parties; (vi) to execute documents in connection with performance of its duties; (vii) to retain accountants, attorneys, agents, and other advisers in connection with the performance of its duties; (viii) to prepare and file (or arrange for the preparation and filing of) income tax returns for the trust; and (ix) to allocate receipts, expenses, and distributions to income or principal in its discretion.

The Excluded Co-Trustee Statute governs the duties and liabilities of an excluded trustee when a trust instrument bifurcates trustee duties and responsibilities among co-trustees. As a relatively new statute, trust professionals are still exploring and developing the best ways in which the Excluded Co-Trustee Statute can be effectively utilized. The Excluded Co-Trustee Statute has tremendous potential to achieve flexibility in trust management in many desirable ways. This article is only a brief summary of some of its exciting uses and potential concerns.

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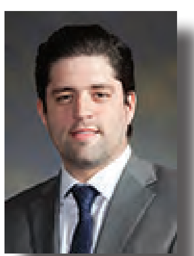

Patrick J. Rohrbach is an Associate in the Trusts and Estates Department. Patrick obtained a Bachelor of Arts in Philosophy from the Pennsylvania State University. He earned his Juris Doctor from Villanova University School of Law, where he served as Managing Editor of Outside Articles for the Jeffrey S. Moorad Sports Law Journal.

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What Does High-Level Teaming Look Like in Client Advisory Services?

by
Jordon Rosen, CPA, MST, AEP®
Belfint Lyons & Shuman, P.A.

Multi-disciplinary teaming, also known as collaboration, occurs whenever two or more advisors work together in a process that is "client-centric" to design, recommend and implement specific strategies to the client. The issue at hand could be as simple as recommending a Roth conversion strategy, but also includes planning for retirement, education, portfolio management, risk management, selling a business, as well as a full-blown estate plan involving lifetime gifting strategies, chartable bequests and dynasty trusts. Regardless of the complexity of the task, a successful high-level team approach should ultimately result in a benefit to both the client and the advisors. This article will look at the advantages of high-level teaming, what a high-level team of advisors looks like, how they operate and the challenges it can present to the group.

Benefits of Collaboration

For the client, a collaborative team approach will result in (1) better advice since more than one set of eyes is looking at their situation with less likelihood that something will be overlooked, (2) arguably less expense since there will be less back and forth meetings with the client and other advisors and (3) more confidence to act upon the recommendations since the advice is coming from the team and not just one advisor. For the advisor(s), the potential benefits of collaboration include (1) being able to provide better advice and in doing so, avoiding potentially embarrassing mistakes and (2) creating a better network of referral sources for new business. As further described later in this article, a major ingredient to the success and satisfaction for both the client and advisors will be the makeup of the team.

Why Some Advisors Hesitate to Collaborate

Not all advisors embrace the team approach to providing advisory services. For some, it just seems natural to hear the client's question or situation and then simply plow forward to research the issue and provide an answer. The answer, however, may not be complete and in some cases, lead to a disastrous result. Take the simple case of the client that calls their investment advisor about converting a traditional IRA to a Roth IRA. The mechanics are simple, but the investment advisor will want to collaborate with the client's accountant regarding the tax implications and possibly the timing of the conversion as well as with the client's financial planner to see how the conversion might impact the client's cash drawdown strategy. The failure to collaborate could result in the client converting to a Roth IRA when income is high rather when they are in a lower tax bracket due to losses or large deductions. The takeaway here is that an astute advisor will bring together a team to produce the best result for the client.

Another reason why some advisors shy away from collaborating is the fear of losing control over the client during the planning process or being seen by the client as not being very knowledgeable in the area as they should be. In actuality, teaming up with others can provide the advisor with new knowledge and insights that he or she otherwise would miss out on that can be useful in other client situations.

Traits of a High-Level Team

High-level collaboration is more than mere communication and coordination between advisors. It's true that there needs to be clear and concise communications and the sharing of documents and information between advisors; but for the team to operate at the highest level in the best interest of the client, the key ingredient is for each member to understand his or her role and responsibilities and execute them with the utmost diligence, while respecting and being open to the contributions of the other advisors. Thus, trust becomes a

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critical factor if the team is to be effective. This trust will allow all team members to openly share their perspectives and insights while at the same time be willing to listen and be influenced by another member of the team.

Each member of the team of advisors should also-

- Demonstrate sensitivity and show respect for the other advisors' way of doing business, especially with regard to differences in how they generate revenue (hourly or flat rate or commission based). Each member must see a benefit in being a part of the process.
- Speak honestly and frankly, but with discretion and respect, especially in the case where you find an error or faulty assumption made by another advisor. A team member should also be open to feedback.
- Be proactive in their communication.
- Give and share credit with others – remember, this is a team effort.
- Be aware of their own and other advisors' professional and ethical requirements and limitations.

Having the Right People on the Bus

We've discussed the traits of the team members and how the team should act. But who makes up the team? Although the answer is simple, not having the right people in the right seats on the bus can be a recipe for disaster. First and foremost, as with any team, there needs to be a captain. This is the client. He or she must approve who else will be on the team as well as the role they will play and how they will be compensated. The other members can include the client's attorney, banker, CPA, investment advisor, life insurance professional, financial planner, trust officer, family or business coach and philanthropic advisor/development specialist if a charitable gift is involved, among others. It is assumed that each professional is competent in their respective area of expertise and will work enthusiastically in the client's best interest and will share the same vision. It is not advisable to ask a family member to be a part of the advisory team. Having a family member present could be uncomfortable for the other independent advisory team members and prevent an uninhibited and open environment for conversation.

The most common scenario is where the client already has a long-standing relationship with his or her attorney, banker, CPA, financial planner and other advisors. This creates a natural planning team. In some cases, the client may not have a trusted advisor in an area that will be addressed as part of the planning (e.g. charitable planning or long-term care issues). In this situation, the existing team should discuss the matter and make a collective recommendation to the client.

Another scenario would be where the client simply doesn't already have a team, but just a single trusted advisor. In this case, the advisor will make recommendations to the client as to the other advisors that will be needed in the process, usually those whom the advisor has previously worked with, has knowledge of the subject matter and would be a good team player. The advisor should then introduce the client to each potential advisor to allow them to be interviewed and become comfortable with them, at which time the client would invite them to be part of the planning team.

In many cases, the advisor that brought the client to the table will stand out as the leader among the advisory team (remember, the client is still the captain). This does not always need to be the case, but whoever takes on the role as leader must be responsible for the coordination and timing of events to keep the process on track. They must also ensure that all team members have been heard and that all ideas presented have been duly considered.

It's important that the planning team should not be overwhelming for the client. If the client's situation is overly complex, consider prioritizing the process with the client and take the process in steps, utilizing the appropriate planning team for each phase of the engagement. Having too large of a planning team could also create hesitation on the part of the client due to the potential or perceived high cost of the engagement. It is therefore important to explain the value that each member of the team brings to the table and the benefits of collaboration so the client can decide on how they want to move forward with the engagement.

The Process

A simple transactional issue such as a Roth conversion may not involve a large team of advisors, compared to a complex estate plan or business continuation strategy, but they both should have one thing in common – a defined process. Once the planning team has been established and approved by the client, a good process will include-

- Meeting with the client to fully understand their personal and financial goals, motivations, concerns and possible strategies for the issue(s) at hand. At the end of this meeting (and it may take several meetings depending on the complexity), the team should have a good picture of the situation and the task to be accomplished and the team leader should begin to delegate specific tasks among the planning team members.
- Creating a comprehensive plan of action for the client. This is where collaboration is critical. Several possible strategies may have been discussed at the initial client meeting. The team will need to narrow down the possibilities to be able to effectively begin their research and analysis. This part of the process will require the planning team to regularly interact and meet on one or more occasions (depending on the complexity of the issue) to discuss and share their findings and recommendations. Ultimately, a comprehensive plan should be established to present to the client.

• Presenting the plan to the client and then, if needed, refining/revising the plan for new concerns that the client might raise or new issues that come to light.
• Assisting the client in the execution of the plan. Each member of the team will have a part in assisting the client based on their field of expertise.
• As appropriate, monitor and amend the plan due to changes in the client's situation or outside influences such as changes in business or tax laws.

Bringing It All Together

For many professionals, the idea of collaboration is nothing new and comes natural to them in their advisory practice. For others, the concept may seem awkward at first, but with experience, it will allow the advisor to provide better advice, higher client satisfaction and a stronger working network. For the client, utilizing a high-level collaborative approach will provide them with the confidence that they are getting the best advice, making them more willing to implement a plan of action.

Jordon Rosen is a shareholder and Director of estate and trust services at the Wilmington CPA firm of Belfint, Lyons & Shuman and a regular contributor to this publication.

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For Your Benefit

by
Louis D. Memmolo, AIF, GBA, CHRS
Weiner Benefits Group, LLC

"A good retirement plan involves specific responsibilities and must meet certain standards."

Meeting Your Fiduciary Responsibilities

Offering a retirement plan can be one of the most challenging employee benefit decisions an employer can make. It is also one of the most sought-after and rewarding core benefits when you want to attract and retain the kind of talent you need to maintain and grow your business. The participants in the plan, their beneficiaries, and the employer all benefit when a retirement plan is well designed, properly implemented, and effectively administered.

As with any thoughtful and comprehensive employee benefit program, a good retirement plan involves specific responsibilities and must meet certain standards. ERISA sets forth the basic rules and standards of conduct for those who manage an employee benefit plan and its assets. These and many of the actions involved in operating a plan make the person or entity performing them a fiduciary. Fiduciary status is based on the functions performed for the plan, not a person's title or position.

An employer or plan sponsor should have a good understanding of their fiduciary responsibilities. It is important for the security of a retirement plan and compliance with the law.

However, many businesses rely on other professionals to advise them and assist them with their employee benefit plan duties. For this reason, selecting competent service providers is one of the most important responsibilities of a plan sponsor.

The following tips may be a helpful starting point in meeting your fiduciary responsibilities:

- Have you identified your plan fiduciaries, and are they clear about the extent of their fiduciary responsibilities?

- If participants make their own investment decisions, have you provided the plan and investment related information participants need to make informed decisions about the management of their individual accounts? Have you provided sufficient information for them to exercise control in making investment decisions?

- Are you aware of the schedule to deposit participants' contributions in the plan, and have you made sure it complies with the law?

- If you are hiring third-party service providers, have you looked at a number of providers, given each potential provider the same information, and considered whether the fees are reasonable for the services provided?

- Have you documented the hiring process?

- Are you prepared to monitor your plan's service providers, set up appropriate files and oversite committees?

• Have you identified parties in interest to the plan and taken steps to monitor transactions with them?

• Are you aware of the major exemptions under ERISA that permit transactions with parties in interest, especially those key for plan operations (such as hiring service providers and making plan loans to participants)?

• Have you reviewed your plan document in light of current plan operations and made necessary updates? After amending the plan, have you provided participants with an updated SPD or SMM?

• Do those individuals handling plan funds or other plan property have a fidelity bond?

The U.S. Department of Labor, Employee Benefits Security Administration (EBSA), its publications and website provide tremendous resources including the information and tips listed in this article.

Louis D. Memmolo, AIF, has earned his Accredited Investment Fiduciary (AIF) designation from the Centers for Fiduciary Studies and is an Investment Adviser Representative. Securities and investment advisory services offered through Royal Alliance Associates, Inc. (RAA), member FINRA/SIPC. RAA is separately owned and other entities and/or marketing names, products or services referenced here are independent of RAA. Insurance services offered through Weiner Benefits Group, LLC, which is not affiliated with Royal Alliance Associates Inc. Weiner Benefits Group, 2961 Centerville Rd., Ste. 300, Wilmington, DE, 19808. Telephone: 302-658-0218.

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Compliance Focus

by
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Managing Principal
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"The Bureau's supervisory and enforcement activity in 2018 focused on mortgage lending, small business lending and student loan servicing."

Key Takeaways from the CFPB's Latest Fair Lending Report

In June, the Consumer Financial Protection Bureau (Bureau) released its annual Fair Lending Report describing the activities undertaken in 2018 to expand fair, equitable and nondiscriminatory access to credit and to ensure that consumers are protected from discrimination. This was the first fair lending report issued under the Bureau's new director, Kathleen Kraninger. In her cover message, Director Kraninger highlighted the tools the Bureau uses to carry out its mission: education, regulation, supervision and enforcement.

The Bureau's supervisory and enforcement activity in 2018 focused on mortgage lending, small business lending and student loan servicing. Redlining continues to be a key Bureau concern in connection with mortgage and small business lending.

Symposium and Report on Credit Visibility

In line with its mission to promote access to credit, the Bureau convened its first fair lending symposium in September 2018 entitled Building a Bridge to Credit Visibility. The symposium added to the growing body of knowledge about the credit invisible population (i.e., the unbanked and underbanked).

Office of Innovation, No Action Letter and Models

The Bureau created the Office of Innovation to further promote fair, equitable and nondiscriminatory access to credit, particularly to underserved populations. The Office of Innovation is revising the Bureau's No Action Letter (NAL) and establishing a Product Sandbox to encourage organizations to advance new products and services.

In 2018, the Office of Fair Lending recommended supervisory reviews of third-party credit scoring models to assess fair lending risks to consumers as well as their likelihood of increasing access to credit.

HMDA Exemptions under EGRRCPA

On August 31, 2018, the Bureau issued an interpretive and procedural rule to implement and clarify certain provisions of the vastly expanded Home Mortgage Disclosure Act (HMDA) data collection and reporting requirements.

On December 21, 2018, the Bureau issued final policy guidance about the modifications it intends to apply to the HMDA data financial institutions report before loan-level data is made available publicly. In addition, the Bureau's rulemaking agenda includes a new notice-and-comment rulemaking to govern HMDA data disclosure in future years.

ECOA and Regulation B

On May 21, 2018, following the repeal under the Congressional Review Act of the Bureau's 2013 indirect auto lending guidance, then-Acting Director Mick Mulvaney issued a statement expressing the Bureau's intent to reexamine the requirements of the Equal Credit Opportunity Act (ECOA) in connection with the disparate impact theory of discrimination in light of the recent Supreme Court case addressing the availability of disparate impact analysis under the Fair Housing Act.

Small Business Data Collection

Section 1071 of the Dodd-Frank Act amends ECOA to require financial institutions to collect, report and make public information concerning credit applications made by women-owned, minority-owned and small businesses, generally known as government monitoring information. Given the Bureau's need to focus additional resources on various HMDA initiatives, it has adjusted its timeline for implementing Section 1071 to later this year. The rulemaking process will recommence with a symposium on small business loan data collection, and the Bureau will announce details about the symposium on its website at a later time.

Fair Lending Supervisory and Enforcement Priorities

Continuing its risk-based prioritization process, the Bureau identified two new focus areas for fair lending examinations and investigations: student loan origination and model use for debt collection. Specifically,

the Bureau is concerned about possible discrimination in policies and practices governing underwriting and pricing of student loans, and predictive modeling for recovery outcomes in connection with auto loan servicing and credit card collections.

The Bureau summarized various fair lending supervision developments that were initially published in the Summer 2018 edition of Supervisory Highlights. These developments include HMDA implementation and the new data submission platform, and small business lending review procedures.

In addition to supervision, the Bureau protects consumers by bringing enforcement actions or, when there is reason to believe a creditor has engaged in a pattern or practice of discrimination, by referring ECOA violations to the Department of Justice. While the Bureau opened and continued to pursue several fair lending investigations, it did not bring any fair-lending-related enforcement actions in 2018.

The Best Offense is Still a Strong Defense

Financial institutions, whether subject to the supervisory authority of the CFPB or of other prudential regulators, are advised to fine-tune their fair and responsible banking programs to assess the areas of heightened risk discussed in the Fair Lending Report. Unwavering allegiance to the three lines of defense is still the best offense when it comes to an institution's compliance management system. It is critical to prioritize monitoring and testing for ECOA and HMDA compliance to assess redlining risk; conduct regression analysis of models used for underwriting, pricing and collections; and expand fair lending transaction testing of applicable product lines, especially auto, mortgage and student loans. These steps will go a long way toward ensuring fair access to credit and equal treatment of all consumers and customers who engage with your institution and may also mean smooth sailing during your next fair lending or CRA exam.

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Accounting for Success

Using 529 Plans to Ease Back-To-School Jitters

by
Karly A. Laughlin, CPA
Belfint Lyons & Shuman, P.A.

"There is no income limit on who is eligible to contribute to a 529 plan, however, each state typically has its own maximum account balance."

Prior to the Tax Cuts and Jobs Act (TCJA), distributions from 529 plans could only be used for post-secondary qualified higher educational expenses (tuition, books, room, board, etc.). TCJA expanded the use of 529 plan distributions to include tuition (only) for elementary and secondary education at public, private and religious schools, but limits those distributions to $10,000 per year, per beneficiary.

Contributions to a 529 plan are not deductible for federal tax purposes, although some states allow a state tax deduction. There is no income limit on who is eligible to contribute to a 529 plan, however, each state typically has its own maximum account balance ($350,000 in Delaware). It is not required that you use your own state's plan.

Distributions used for qualified education purposes are not taxable for federal purposes. Some states, however, have not adopted the TCJA changes, which could subject distributions used for other than higher education purposes to be taxed by the state.

Taxpayers receive the best benefit from 529 plans when the funds have had adequate time to appreciate, taking advantage of the tax-free growth inside the plan and not waiting for a beneficiary to open an account. Individuals can set up a plan for their own benefit and later change the beneficiary. Growing families can request 529 plan contributions in lieu of baby shower or birthday gifts since anyone can contribute to the account.

Contributions to a 529 plan are considered gifts and could require the donor to file a gift tax return if the contribution exceeds $15,000 per beneficiary, per year. A special election can be made, whereby an individual can contribute up to five times the annual gifting limit for a beneficiary (currently up to $75,000) and elect to have the gifts spread over a five-year period.

Commonly overlooked qualified expenses include off-campus housing, required equipment such as computers and software, as well as internet access used primarily for educational purposes. For special needs individuals, expenses for special-need services also qualify.

If tuition is refunded (dropped class, changing schedules), the reimbursed amount must be contributed back to the 529 plan within 60 days of receipt to avoid taxation and penalties. Nonqualified distributions would subject the earnings portion of the distribution to both income tax and a 10% penalty.

Taxpayers who qualify for the American Opportunity or Lifetime Learning credits will want to consider paying a portion of tuition with non-529 plan funds in order to claim the credit.

A note of caution: plans set up by those other than the student or his/her parents (i.e., grandparents) are not considered assets in the student's financial aid calculation, however, 50% of any distribution from those plans is considered a student resource and could reduce or eliminate the student's aid eligibility. Therefore, grandparents and others should consider contributing to the parent's or student's plan or using funds from plans that they have personally established only in years where future financial aid will not be impacted.

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DBA Calendar of Events

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September 27th - FDIC Director's College -
8:15 a.m. - 1:30 p.m. - University of Delaware Virden Retreat Center, 700 Pilottown Road, Lewes, DE 19958 - The FDIC Director's College is an interactive program that provides ongoing education on current topics of bank supervision to bank directors, senior officers, corporate secretaries, and board advisors. The course is designed to help directors and trustees, both new and experienced, stay abreast of the ever-changing regulatory environment. This year's agenda includes: Conversation with Regulators; Liquidity Managment; CRE Stress Scenario Analysis; Assessing Fintech Strategies; and, more.

October 22nd & 23rd - 2019 Delaware Trust Conference - ***Delaware Trusts: Built to Last***
Chase Center on the Riverfront, Wilmington. The 2019 Delaware Trust Conference provides attendees with the information and strategies to take advantage of the unique Delaware trusts atmosphere. Sponsorships and Exhibitor space available!

November 7th & 8th - DBA Women Connect - Lewes Public Library, Lewes, DE. Join us Thursday evening, 6:30 to 9:30 p.m., for the Delaware premiere of *Beyond Sixty Project*™, the award winning film that celebrates women beyond the age of 60. Q&A and light hors d'oeuvres with filmmaker Melissa Davey will follow. Then the following day, enjoy an engaging, powering professional forum featuring keynote speaker Susan Rocco, founder and host of the *Women to Watch*™ weekly radio show.

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Lending Law Update

by
Brent C. Shaffer
Young Conaway Stargatt & Taylor, LLP

"Banks have long been queasy about lending to a series, as opposed to the entire LLC of which the series is a part, for several reasons."

Delaware Act Changes Make Loans to Series Limited Liability Companies More Palatable

For many years, Delaware's Limited Liability Company Act (the "Act") has permitted operating agreements of Delaware LLCs to provide for the establishment of one or more designated series of members, managers, limited liability company interests or, most importantly, assets, within the LLC itself. The primary reason for establishing a series is to create a "protected series" for which the debts, obligations, and other liabilities of that series are enforceable only against the assets of the series and not against the assets of the LLC generally, or any other series of such LLC.

Banks have long been queasy about lending to a series, as opposed to the entire LLC of which the series is a part, for several reasons. One of those reasons has been the lack of assurance that the lender's security interest in assets of only a particular series has been properly perfected pursuant to the secured transactions provisions of the Uniform Commercial Code ("UCC"). In taking a security interest in the assets of the entire LLC, because the LLC itself is a registered organization under the UCC, the bank can clearly perfect its security interest in most of those assets by filing a financing statement in the jurisdiction where the LLC's certificate of formation is filed, establishing its priority against other creditors. But because a series itself was not a registered organization, it was unclear where to file financing statements to perfect a security interest in series assets, and even whether a series falls within the scope of the UCC.

Under the Act's amendments effective August 1, 2019, a series may now be established as a registered organization under the UCC by filing a "certificate of registered series" with the Delaware Secretary of State that sets forth the name of the LLC and the name of the registered series.

Since a registered series is formed "by the filing of a public organic record" with the state, it will be a registered organization under the UCC, and banks will be able to perfect security interests in most types of assets owned by a registered series by filing a financing statement with the Delaware Secretary of State. Note that the Delaware Secretary of State will now issue a certificate of good standing for a registered series.

A registered series will not necessarily have the asset-shielding characteristics of a protected series. For a registered series to be shielded, the records maintained for the series must account for the assets associated with such series separately from the other assets of the LLC, or any other series of the LLC, plus the LLC's certificate of formation must provide notice of the limitation on liabilities of the series, and the LLC agreement must permit the formation of series.

Bank lenders still need to understand the series' asset structure, but a major obstacle to lending to a series is now history.

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TO LEARN MORE, PLEASE CONTACT: Joan Hoge-North • jhoge-north@delcf.org or **302.504.5224**

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