Summer 2020
Vol. 16 No. 3

1895 - 2020

Delaware Bankers Association

Expanded Anniversary Issue

125th Anniversary Special Section • How the FCDA Transformed Delaware Banking
Reminiscences on 40 Years with the DBA • Congratulations from Delaware Delegation
Greetings from Past Chairs • Trust Management Minor
Tax Planning with COVID-19 • Relocating Trusts • STEAM Education
Special Community Brochure • Columns, and More!

Wilmington Trust understands that complex needs require sophisticated solutions from an experienced team. That's why we view every relationship as unique, developing customized strategies that seek to preserve wealth, execute transactions, and help achieve success.

To learn more about how we can put our expertise to work for you, call:

TONY LUNGER
Wealth Management
302.651.8743
alunger@wilmingtontrust.com

NICK ADAMS
Global Capital Markets
302.636.6103
nadams@wilmingtontrust.com

MEMBER OF THE M&T FAMILY

WEALTH & INVESTMENT MANAGEMENT | GLOBAL CAPITAL MARKETS | RETIREMENT PLAN SERVICES

wilmingtontrust.com

This material is for informational purposes only and is not intended as an offer or solicitation for the sale of any financial product or service. Investing involves risks and you may incur a profit or a loss. There is no assurance that any investment strategy will be successful.

Wilmington Trust is a registered service mark used in connection with services offered by certain subsidiaries of M&T Bank Corporation.

©2020 M&T Bank Corporation and its subsidiaries. All rights reserved. 46953C 200716 VF

The Delaware Bankers Association
P.O. Box 781
Dover, DE 19903-0781
Phone: (302) 678-8600 Fax: (302) 678-5511
www.debankers.com

BOARD OF DIRECTORS

CHAIR
Joe Westcott
Market President
Capital One

CHAIR-ELECT
Thomas M. Forrest
President & CEO
U.S. Trust Company of Delaware

PAST-CHAIR
Elizabeth D. Albano
President & Chief Executive Officer
Artisans' Bank

DIRECTORS-AT-LARGE

Dominic C. Canuso
EVP & Chief Financial Officer
WSFS Bank

Tarrie Miller
Executive Vice President
County Bank

DIRECTORS

Caroline Horty Dickerson
Chief Executive Officer
Commonwealth Trust Company

Lisa P. Kirkwood
SVP, Regional Vice President
TD Bank

James Hutchinson
SVP/Market Executive
PNC Bank, N.A.

Nicholas P. Lambrow
President, Delaware Region
M&T Bank

George Kern
Regional Director
Bessemer Trust Co. of Delaware

Matthew Parks
Director
Discover Bank

Bonnie Rumbold
Chief Human Resources Officer
Sallie Mae

President, CEO & Treasurer
Sarah A. Long

Delaware Banker
Editing & Design
Greg Koseluk

Editorial Disclaimer:
The opinions expressed in articles by authors other than the Association staff and officers are the responsibility of the authors only and not necessarily those of the Delaware Bankers Association. Questions and comments should be addressed to the Editors. No part of this publication may be reproduced without the written permission of the Editors. Copyright 2020 by the Delaware Bankers Association. All Rights Reserved.

Delaware Banker seeks to provide banking updates and other news of interest to the members of the Delaware Bankers Association. With the exception of official announcements, the Delaware Bankers Association disclaims responsibility for opinion and statements contained in Delaware Banker, and does not endorse any product or service. Delaware Banker is designed to provide accurate information on the subject matter covered. It is presented with the understanding the publisher is not engaged in rendering legal, accounting, or other professional services or advice.

Summer 2020
Vol. 16, No. 3

The Quarterly Publication of the Delaware Bankers Association

Contents

View from the Chair 4
President's Report 6
All Around the Hall 8
COVID-19 Makes 2020 Tax Planning Tricky 10
Relocating for Reimbursement 14
Data is Just Data with Insight, Creativity and Innovation 18
Here's to 125 Years of Service 22
Growth, Prosperity, and the Delaware Way! 24
The Heart and Smile of the DBA 30
Congratulations from Delaware's Delegation 34
The Chairs Speak 36
Trust Management Minor 42
Compliance Focus 48
For Your Benefit 50
Accounting for Success 52
Lending Law Update 54
2020 DBA Community Brochure 56

SUBMISSIONS
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

SUBSCRIPTIONS
Delaware Banker is available free of charge to all officers, executives, management, and key personnel of DBA members. Paid subscriptions to Delaware Banker are available to all others at a rate of $20 per year. To be placed on the subscriber list, please email Greg Koseluk at greg.koseluk@debankers.com.

ADVERTISING
Advertising inquiries should be directed to Greg Koseluk at (302) 382-6467 or greg.koseluk@debankers.com. Rates will be furnished upon request.

View from the Chair

by
Joe Westcott
Market President
Capital One

Chair
Delaware Bankers Association

"Delaware's banks have been united in meeting the COVID-19 pandemic crisis."

The most unique aspect of the Delaware Bankers Association is found at the end: Association. "Delaware" describes where we are. "Bankers" identifies the business in which we're engaged. But the real impact comes through our coming together as an organization with a cooperative purpose. In 1895 seventeen bankers gathered in Wilmington to form the DBA. It's founding mission declared:

> *In order to promote the general welfare and usefulness of financial institutions and to secure uniformity of action, together with the practical benefits derived from personal acquaintance and from discussion of subjects of importance to the banking and commercial interest of the State of Delaware.*

For the first twenty years of its existence, the DBA was mainly concerned with promoting the general welfare of the banking industry. That changed with the entry of the United States into World War I. In the first great challenge of the organization, the members of the DBA united for a greater cause. DBA members led the drive to sell Liberty Bonds to finance the war effort. Delaware was asked to subscribe for approximately $51.8 million in the Liberty Loan program. Thanks to the united effort of DBA member banks, $103.9 million was purchased. In addition, Delaware's banks helped raise over $5.2 million in various charitable causes to support the troops.

This effort by Delaware bankers was summed up in the Association's 1920 report:

> *"It is quite fitting to say, that the Delaware Bankers Association is exerting a great influence for good in the State. The devotion of the members to the cause of their country in all the great war measures, and especially the splendid service they performed in the Liberty and Victory Loans, constitute a very fine testimonial of their high character and loyal citizenship."*

A century later, Delaware's financial institutions are still responding to the unique challenges in the community in ways that only banks can. One hundred years ago, directly after the First World War, the country suffered through a flu pandemic that killed millions. Today, the world has been struck by another pandemic. Congress responded with the Paycheck Protection Program (PPP) that provides a direct incentive for small businesses to keep workers on the payroll through the COVID-19 emergency. As they had in previous challenges, Delaware's banks have been united in meeting the COVID-19 pandemic crisis.

In Delaware, through June 30th, over 12,000 PPP loans were generated for nearly $1.4 billion. Nationally, seven of the top ten PPP lenders were banks with a Delaware presence. While credit unions, small business lending companies, Fintechs, and other non-bank lenders participated in the Paycheck Protection Program, it was the banking industry, both nationally and in the First State, that processed the vast majority of the loans. 4,272 bank lenders processed over 4.4 million loans representing over 48 million working Americans. That's almost four times the amount of all other lenders combined. In Delaware, nearly 75% of the PPP loans over $150,000 were processed by seven banks, with those seven banks accounting for more than half of all the loans.

As anyone who has been involved in PPP lending will attest, the process was done under unprecedented conditions. Delaware bankers worked overtime, often from home offices and kitchen counters, processing loans for timely delivery to the Small Business Administration. Most institutions pulled employees from other areas of the bank to accomplish this herculean effort. These banks and their dedicated employees deserve the highest praise for their commitment to their fellow Delawareans. Thank you for a job well done!

I'll close by borrowing from that report of 100 years ago. The members of the Delaware Bankers Association are still serving the First State with devotion, high character, and loyal citizenship. May we continue to exert a great influence for good!

Joe

PROBLEM SOLVERS

No two problems are alike. Every situation is unique. That's why families choose you as their trustee. You know the rules. You remain current. You are resourceful. Most importantly, you know people.

So when you need help on a question, you've already given significant thought to the problem. You might just need the reassurance of a sound second opinion. Or you might be facing a matter of major risk management, or even the foreshadowing of litigation.

When professionals call on other professionals for advice, they call Connolly Gallagher – for planning, for strategy, for litigation. They draw on leaders in trusts, estates and taxation, who bring over 70 years of steeled experience. *Chambers High Net Worth 2020, U.S. News – Best Lawyers®*, and *Delaware Today –Top Lawyers* consistently rank Connolly Gallagher as one of the region's best law firms. And our firm has been named one of the region's Top Workplaces by Workplace Dynamics, LLC.

Connolly Gallagher. Trusted by trustees.

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

Charles J. Durante
302-888-6280
cdurante@connollygallagher.com

Trisha W. Hall
302-888-6421
thall@connollygallagher.com

Daniel R. Stanek
302-884-6591
dstanek@connollygallagher.com

Scott E. Swenson
302-252-4233
sswenson@connollygallagher.com

Gregory J. Weinig
302-888-6411
gweinig@connollygallagher.com

Wilmington
1201 North Market Street
20th Floor
Wilmington, DE 19801

Newark
267 East Main Street
Newark, DE 19711

CONNOLLY GALLAGHER LLP

www.connollygallagher.com

President's Report

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

"We honor all the members of the Association who have made the DBA what it is today..."

This year marks the Delaware Bankers Association quasquicentennial: the 125th anniversary of our founding in 1895. Historically speaking, 1895 was the year the Delaware General Assembly made the peach blossom the official state flower after farmers and schoolchildren petitioned them to do so. It was also the year that Howard Pyle, American illustrator, author, and fellow Delawarean, published The Garden Behind the Moon. A personal favorite. And, for months in early 1895, the Delaware legislature was deadlocked among three Republican candidates in its effort to elect a United States Senator to represent Delaware in Congress. That seat would remain vacant from March 4, 1895 – January 19, 1897. Before the ratification of the 17th amendment in 1913, senators were chosen by state legislatures.

Fast forward to 2020. We had anticipated celebrating this significant milestone together in person at our annual dinner in May. We even purchased 125th anniversary swag tags to affix to everyone's name badges! But as you know, these are truly unprecedented times. No one could have foreseen how the world would change almost overnight. That said, we are a resilient bunch. Our Association has weathered many challenging times over the past 125 years. Health crises: the Spanish Flu and now COVID-19. Financial crises: the stock market crash and subsequent Great Depression, and, most recently, the Great Recession.

Our Association has also been buoyed over the past 125 years by several groundbreaking firsts. Beginning with the enactment of the Delaware Corporation Law in 1899, which has proven over time that businesses choose to incorporate in Delaware more than in any other state. Momentous events – such as the passing of the Financial Center Development Act in 1981, encouraging out-of-state banks to move their headquarters to Delaware. And most recently, the implementation of the UD Trust Management Minor, the only accredited trust minor in the country jointly supported by DBA members, the University of Delaware, and the State of Delaware.

Delaware may be small, but the impact on Delaware's economy from the financial services industry is considerable. Delaware is a great place to live, to work, and to invest. At no other time has the need to support our communities been so great. We are thankful that our member banks choose to support hundreds of organizations throughout the State through grants and volunteer hours. We are grateful for the herculean effort that our member banks put forth in getting paycheck protection program loans to small businesses throughout the State that needed it the most. Surely the ne plus ultra of banks serving the people of Delaware.

We hope you enjoy learning about the Association's amazing past in this special anniversary edition. The achievements of the Association over the past 125 years demonstrate the positive influence we have had on the welfare of our industry and our State. We honor all the members of the Association who have made the DBA what it is today and celebrate those who continue their work for the future. As a member of Delaware's financial services industry, you have a lot of which to be proud.

Is it too soon to start planning the DBA sesquicentennial?

Sarah

RICHARDS LAYTON & FINGER

DELAWARE EXCELLENCE

"Top Tier and the best in the state."

-*Chambers USA*, 2020

54 LAWYERS
named in *The Best Lawyers in America* 2020

34 LAWYERS
named in *Chambers USA* 2020

24 PRACTICE AREAS
ranked in *U.S. News* "Best Law Firms" 2020

920 N. KING STREET | WILMINGTON | RLF.COM

All Around the Hall

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

"The virtual session worked to the advantage of the DBA."

150th Session of the Delaware General Assembly – *A Virtual Experience!*

2020 will forever be remembered as the year America, indeed the world, ground to a crawl in an effort to stave off or reduce the impact of the Coronavirus pandemic. Life as we knew it was virtually and indelibly altered. So too the General Assembly. From mid-March through June 30th when the General Assembly adjourned its session, nearly all of the second session's work was done virtually, and votes were taken under suspension of the rules.

Rules are in place to ensure an open and fair legislative process, one that provides an opportunity for the participation of the interested public. Suspending the rules eliminates the holding of committee meetings to hear the public's views on proposed legislation. It also reduces the likelihood of controversial bills being considered by either chamber, and it streamlines the consideration of a bill and the process of making laws. This can be an extremely efficient process to accomplish legislative goals.

The virtual session worked to the advantage of the DBA. It provided a roadblock for certain undesirable legislation and facilitated the passage of several beneficial and largely non-controversial bills. Using consent agendas containing bills to which neither caucus objects, many bills can be decided on in a single vote.

The financial services industry and the DBA were beneficiaries of several consent agendas. The annual trust bill (HB374) and the statutory trust bill (SB244) keep Delaware's personal and corporate trust laws, respectively, at the leading edge in the country. Backed by the DBA and the Delaware State Bar Association, the two bills passed both chambers unanimously. Even though these are long and complicated bills, their unanimous acceptance demonstrates the trust that exists between the Legislature, the DBA and the DSBA.

Several other bills supported by the DBA passed with ease. HB325 allows banks a protected way to facilitate the opening of safe deposit boxes by interested parties searching for a decedent's last will or declaration of last remains. SB 245 clarifies the definition of a purchase-money-mortgage and its priority versus mechanics' liens. The annual updates to Delaware's corporate, partnership, and alternative entity laws (HB341, 342, 343, and 344) once again easily passed the House and Senate. Several other bills not supported by the DBA were pulled from the agendas that provided for, until 60 days following the end of the Governor's emergency declaration, the extension of certain relief from mortgage foreclosures (SB254) and landlord summary possession actions against tenants (SB255).

One bill that we unsuccessfully fought to expand to include banks and trust companies dealt with remote notarization (SB247). During the COVID-19 pandemic, the bill retained changes to remote notarizations continuing the protections until June 30, 2021, and do not end immediately upon the lifting of the COVID-19 State of Emergency. The bill authorized remote notarization and witnessing by Delaware attorneys using audio-visual technology and subject to conditions under which they can be performed. The Legislature has the opportunity to review the issue again in the next session.

The primary obligation of the General Assembly is to pass the budget and related spending bills consisting of the bond bill and the grant-in-aid bill. After yeoman work by the Joint Finance Committee, the latter two were brought before the Senate during the Legislature's penultimate week. They failed to pass because, like almost everything else during this session, the process was truncated, and rules suspended. They did not pass because some legislators complained they did not have enough time to review these very extensive bills before voting on them.

The bills were refiled and passed the last day of the session, unchanged but for the bill number.

Voting by mail was vigorously debated during the final days. The bill (HB346) provided for voting by mail for the 2020 primary and general elections and special elections due to the emergency caused by COVID-19. Voting by mail is an alternative to, and not a replacement for, in-person voting, which remains an available option to those not voting by absentee or mail ballot. Furthermore, the bill made it clear that, like in absentee voting, no ballots can be counted until Election Day.

While this past legislative session was fruitful for the banking industry, the process was challenged by the coronavirus and the rather drastic changes to the legislative process, affecting its overall productivity. The use of virtual meetings and legislative sessions coupled with the suspension of the rules will hereafter mark this session and its legislative accomplishments.

Sit Back And Relax.

Young Conaway's Commercial Real Estate attorneys can handle all aspects of your complex commercial transactions. Whether you need advice regarding the acquisition, development, leasing, or financing of your project, or the preparation of project agreements, let Young Conaway's team put you at ease.

Commercial Real Estate, Banking and Land Use

Eugene A. DiPrinzio
Daniel P. Johnson
Brent C. Shaffer
John E. Tracey
John C. Kuffel

YOUNG CONAWAY

YoungConaway.com

COVID-19 Makes 2020 Tax Planning Tricky

by
Jordon N. Rosen, CPA, AEP®
Director
Tax & Small Business
Belfint Lyons & Shuman, P.A.

Let's cut right to the chase – your 2020 tax return will probably not look anything like last year's return. It may even look downright dismal. Job losses, wage reductions, self-employment income falling off the cliff, near-zero interest rates on savings, and a volatile stock market will all have an impact on your taxes this year. Understanding your situation, and how things might play out as the year progresses, will allow you to prepare for cash flow needs, eliminate surprises, and even create opportunity. Here is what you need to know now.

• Income from wages will drop if you have been laid off, furloughed, or have worked reduced hours. This will translate into a lower tax liability but at the same time, your withholdings will be lower and if you were counting on the withholdings to cover the tax on other sources of income such as dividends, you will need to find another way to get the taxes paid in, such as through estimated tax payments. Lower wages also mean lower FICA taxes paid in, which could impact your future Social Security benefit. This is especially important if you plan to retire in the next year or two.

• Self-employment income – if you are a consultant or part of the gig economy, this income source could take the same hit as income from wages. If you pay your own health insurance premiums as a self-employed person, you could see this deduction drastically reduced or eliminated since it is an above-the-line deduction and limited to your net income from self-employment.

• In both the case of salaried employees and contractors, lower income could also translate to lower contributions to retirement plans. If you can still afford to contribute to your employer's plan, you should do so, even if it is only enough to get the employer match (note that many companies have reduced or eliminated their match for 2020). Self-employed individuals may be hit the hardest since contributions to SEPs are generally based on net income from self-employment earnings. You may be able to make up for lower contributions to an employer qualified plan by making a Roth or traditional IRA contribution for the year, which can be made as late as April 15, 2021 for the 2020 tax year.

• With interest rates near zero on savings accounts, and not much higher on certificates of deposits (CDs), interest income will be lower in 2020.

• Large companies will probably continue to pay dividends, although some companies severely impacted by the pandemic have either reduced or eliminated upcoming dividend payouts. Overall, and depending on how you invested, you may not see a difference in this area.

• Capital gains – This is where many taxpayers get surprised at the end of the year when they read their year-end gain/loss report. Prior to mid-February, the stock market was on a roll, so even if a stock's value went down 10, 20 or even 30 percent, there could still be sufficient appreciation to trigger a capital gain when sold. The same could hold true for capital gain distributions from mutual funds. Now would be a good time to speak with your investment and tax advisors about a year-end strategy based on your projected income situation for 2020. If you end the year with a net capital loss, you can only claim up to $3,000 of the loss ($1,500 if married filing separately) in 2020. Any remaining loss can be carried forward indefinitely.

• Rentals – My guess is this will be a disaster for many landlords. However, if your adjusted gross income drops below $100,000, you may be able to claim up to $25,000 of those rental losses, including losses that were suspended in prior years due to the passive loss rules. (The deduction is phased out as income approaches $150,000.)

• Distributions from IRAs and Retirement Plans – If you were impacted by COVID-19 and need take a distribution from your retirement savings to pay bills (and this should always be the last resort), the CARES Act allows you to either report all of the income in 2020 (which may not be bad since your tax bracket may be really low) or report one-third of the distribution in each of 2020, 2021, and 2022. The Act also provides

(continued on p. 12)

MORRIS NICHOLS ARSHT & TUNNELL

125 YEARS

We congratulate the ***Delaware Bankers Association*** *on their 125th anniversary.*

UNMATCHED EXPERIENCE.

SOPHISTICATED LEGAL SOLUTIONS.

Morris Nichols
Trusts, Estates & Tax.

Delaware Trust Counsel • Estate Planning & Administration • Trusts & Estates Litigation

BAND 1 — Delaware Leading Firm for Private Wealth Law in ***Chambers High Net Worth*** (2016-2020)

RANKED — as one of the **2020 *U.S. News – Best Lawyers* "Best Law Firms"** for Delaware Trusts & Estates Law

THOMAS R. PULSIFER
PARTNER
(302) 351-9226 T
tpulsifer@mnat.com

TODD A. FLUBACHER
PARTNER
(302) 351-9374 T
tflubacher@mnat.com

J. ZACHARY HAUPT
ASSOCIATE
(302) 351-9424 T
zhaupt@mnat.com

mnat.com

(continued from p. 11)

that the funds can be redeposited into a retirement plan within three years and considered a rollover and therefore nontaxable.

• In addition, the CARES Act waives all 2020 required minimum distributions, with the ability to possibly roll some or all of the distributions you've already taken back into a qualified plan to avoid tax. There are some hoops to jump through to accomplish this, especially if you had taxes withheld from your distribution, so be sure to consult with a qualified tax advisor before implementing this strategy. In some cases, not rolling the distribution back may make sense if you are otherwise in a lower bracket this year. Also, if you are in a lower bracket in 2020, this may be a good time to think about a Roth conversion.

• If you received unemployment compensation in 2020, it is taxable for federal purposes and, depending on where you live, it may or may not be taxable for state tax purposes. You will therefore need to account for taxes on this income.

• Many individual taxpayers no longer itemize deductions since the standard deduction was doubled beginning in 2018. If you have been impacted by the downturn in the economy, you may end up (1) donating less to charity than you normally would, (2) receiving a deferral on your mortgage payments, resulting in a lower interest deduction, and (3) depending on your circumstances, you might have lower state and local income taxes as a deduction in 2020 (although they are still limited to $10,000). The result is that you might be claiming the standard deduction in 2020, rather than itemizing. If this is the case, you may want to postpone charitable contributions until January 2021 and double up next year when you can itemize again.

• If you are 70½ , you can still make a qualified charitable distribution directly from your IRA to charity (up to an aggregate of $100,000), which won't be considered as a taxable distribution, although you can't take a deduction (which does not matter anyway if you aren't itemizing).

• If your income is under $75,000 ($150,000 for married couples) and you aren't being claimed as a dependent on someone else's return, you probably qualify for a recovery rebate check (a.k.a. stimulus check) of either $1,200 for individuals or $2,400 for married couples. There is also an additional $500 for each dependent child under the age of 17. The advance payment is based on either your 2019 or 2018 tax return, but is really an advance payment for 2020, so you will need to do a reconciliation when you file your 2020 tax return. The good news is that the stimulus payment is not taxable. If you determine that you are due more than what you actually received as an advance, you can claim the difference as a credit on your 2020 tax return. And here is the good part – if you received more than you should have, you do not have to pay it back!

As of the time of the writing of this article, Congress is still debating the terms of a second round of legislation that could extend additional unemployment benefits, which expired August 31, as well as a second round of stimulus checks. For questions or further information, please be sure to check our COVID-19 Resource Page (www.belfint.com/resources/covid-19/) for up-to-date resources related to tax planning ideas or contact us at info@belfint.com.

Jordon Rosen is a Director and shareholder at BLS and heads the firm's estate and trust practice. Jordon also provides tax consulting and compliance services to the firm's higher net worth clients and business owners. He is the Past President of the National Association of Estate Planners and Councils (NAEPC) and has served as president of the Delaware Estate Planning Council and the Chester County, PA Estate Planning Council. Jordon is also a member of the AICPA Trust, Estate and Gift Technical Resource Panel and is a member of the editorial board of Thomson Reuters Focus publication.

Jordon is a licensed CPA in Delaware and Pennsylvania and is a member of the Pennsylvania Institute of CPAs, Delaware Society of CPAs, and the AICPA Tax Section. He also holds the designation of Accredited Estate Planner and has been recognized multiple years as a 5-Star Wealth Manager by Philadelphia Magazine and Delaware Today.

You play a vital role in the development of your communities.

We're here to help.

In addition to providing reliable liquidity, FHLBank Pittsburgh can help you address:

Business Growth • Affordable Housing • Economic Development

www.fhlb-pgh.com **@FHLBankPgh** **FHLBank Pittsburgh**

Relocating for Reimbursement

by
Robert V.A. Harra III, Esq.
Mark P. Gordon, Esq.
Gordon, Fournaris & Mammarella, P.A.

House Bill Number 334, which passed the 150th Delaware General Assembly on June 16, 2020, is currently pending approval by Governor John Carney. This legislation marks another milestone in the development of Delaware trust law and signifies the state's continued commitment to improving Title 12 of the Delaware Code (the "Delaware Trust Code"). While focus will soon shift to this new legislation and articles discussing its impact are almost sure to follow, it is important for those of us working in the trust, estate and wealth planning fields in Delaware to not lose sight of one of the key features of last year's legislation. Specifically, the addition of an income tax reimbursement statute to the Delaware Trust Code, which is modeled after the guidance set forth by the Internal Revenue Service ("IRS") in Rev. Rul. 2004-64.

Enacted in 2019, Section 3344 of the Delaware Trust Code (Delaware's "Income Tax Reimbursement Statute")[1], and a related update to Section 3536 of Title 12 of the Delaware Code[2], applies to trusts taxed as grantor trusts that are sitused in Delaware and administered in accordance with Delaware law.

Tax Planning for Grantor Trusts

A trust is taxed as either a grantor trust or a non-grantor trust for federal income tax purposes. In general, if a trust is taxed as a grantor trust under the Internal Revenue Code, the income tax consequences of the trust are attributed to the grantor, or another person, and are reported on the personal income tax return of the grantor or such other person.[3] In other words, the grantor is personally responsible for paying the income tax liability of a grantor trust. Conversely, a non-grantor trust is treated as a separate taxpayer and the trust has responsibility for payment of income tax at the trust level on any taxable income retained by the trust.

There are many factors that should be considered when determining the tax structure of a trust, which are far beyond the scope of this article; however, a grantor trust can serve as an extremely powerful tool in estate planning, especially for high net worth individuals. One of the primary advantages of establishing a grantor trust for those with a taxable estate, is that the grantor's payment of the income tax liability associated with the trust reduces the total size of the grantor's taxable estate without gift tax implications, as confirmed in Rev. Rul. 2004-64.[4] At the same time, the trust has the ability to grow at an accelerated rate, as it is not burdened with income tax payments. Another advantage, is that certain transactions between a grantor and a grantor trust, such as the sale of assets, are disregarded for tax purposes since the taxpayer is the same.

With advantages, there are, of course, disadvantages to structuring a trust as a grantor trust. One disadvantage is often the grantor's continued liability for the payment of state income tax, where, if the trust were a Delaware non-grantor trust, for example, there may not be any state income tax on the trust's income and capital gains that are accumulated and retained in trust for future distributions to non-Delaware resident beneficiaries.[5] Additionally, circumstances may change where the grantor's responsibility for the income tax is no longer practical or desirable. For example, Grantors in high income tax jurisdictions, particularly those who once planned on the ability to deduct state income tax from their federal income tax, are now limited to a total deduction for state and local income, sales and property taxes of $10,000 pursuant to the Tax Cuts and Jobs Act of 2017. The limitation on the state income tax deduction may make grantor trusts less attractive. Likewise, the grantor's assets may be reduced, or the trust's assets may become too great, to a point where it no longer makes economic sense for the grantor to continue to pay the income tax liabilities associated with the trust.

Some of the disadvantages to grantor trusts can be mitigated with flexible drafting. Practitioners often include provisions in a trust instrument whereby the power(s) causing the trust to be taxed as a grantor trust may be released so that the trust will "toggle" to a non-grantor trust. To further account for changes in circumstances and to add flexibility, it is also advisable to include express tax reimbursement language in grantor trusts, while being careful not to trigger unintended estate tax consequences, so that the grantor can, in the discretion of the trustee, be reimbursed for the tax liability associated with the trust.

In addition to clarifying the transfer tax consequences of a grantor paying the income tax liability of a grantor trust, Rev. Rul. 2004-64, provided guidance on income tax reimbursement provisions in connection with estate tax. Specifically, the IRS held that if the trust's governing instrument or applicable state law gives the trustee of a grantor trust the discretion to reimburse the grantor from the trust for the portion of the grantor's income tax liability that is attributable to the trust, then the existence of such discretion alone, regardless of whether or not it is exercised, will not cause the trust to be includible in the grantor's gross estate.[6] However, such discretion coupled with other facts could cause estate tax inclusion.[7] Other factors mentioned by the IRS

(continued on p. 16)

WilmU Dual-Credit Certificate® programs include:

- Artificial Intelligence
- Compliance
- Data Analytics
- Data Visualization
- Digital Evidence Discovery and Investigation
- Java Programming

Learn more at wilmu.edu/Certificates

WilmU and Dual-Credit Certificates are registered trademark of Wilmington University. All rights reserved. © Wilmington University 2020

(continued from p. 15)

that may cause estate tax inclusion include (i) an understanding or pre-existing arrangement between the grantor and the trustee regarding the trustee's exercise of its discretion regarding reimbursement, (ii) a power retained by the grantor to remove the trustee and name the grantor as the successor trustee, and (iii) a provision in applicable local law that subjects the assets of the trust to claims of creditors.[8]

Delaware's Income Tax Reimbursement Statute

Many trusts are silent as to the trustee's ability to reimburse the grantor from the trust for the portion of the grantor's income tax liability that is attributable to the trust. This issue is compounded by the fact that only a limited number of states have statutes addressing such reimbursement powers. Fortunately, this is where Delaware's Income Tax Reimbursement Statute may be a solution.

Modeled after the guidance set forth in Rev. Rul. 2004-64, Delaware's Income Tax Reimbursement Statue provides:

> "(a) Unless the terms of the governing instrument expressly provide otherwise, if the trustor of a trust is treated under 26 U.S.C. § 671 et seq. as the owner of all or part of the trust, the trustee (other than a trustee who is the trustor or a person who is a "related or subordinate party" with respect to the trustor within the meaning of 26 U.S.C. § 672(c)) may, in the trustee's sole discretion, or at the direction or with the consent of an adviser (who is not the trustor or a person who is a "related or subordinate party" with respect to the trustor within the meaning of 26 U.S.C. § 672(c)), reimburse the trustor for any amount of the trustor's personal federal or state income tax liability that is attributable to the inclusion of the trust's income, capital gains, deductions, and credits in the calculation of the trustor's taxable income. The trustee may pay such amount to the trustor directly or may pay such amount to an appropriate taxing authority on the trustor's behalf, as the trustee determines in the trustee's sole discretion. No policy of insurance on the trustor's life held in the trust nor the cash value of any such policy nor the proceeds of any loan secured by an interest in the policy may be used to reimburse the trustor or to pay an appropriate taxing authority on the trustor's behalf. Neither the trustee's power to make payments to, or for the benefit of, the trustor under this section, nor the trustee's decision to exercise such power in favor of the trustor, shall cause the trustor to be treated as a beneficiary of the trust for purposes of § 3536(c) of this title or for other purposes of Delaware law.
>
> (b) If the application of this section to a trust would reduce a charitable deduction otherwise available to any person for state or federal income, gift, or estate tax purposes, the provisions of this section shall not apply to the trust."[9]

Accordingly, unless a trust agreement expressly provides otherwise, the trustee of a grantor trust that is administered in Delaware in accordance with Delaware law now clearly has the discretionary power to reimburse a grantor for any amount of the grantor's federal or state income tax liability that is attributable to the trust's taxable income, even where the power is not stated in the trust agreement. In addition, the statute is careful to provide that a life insurance policy on the grantor's life that is held in a trust, the cash value of any such policy, and the proceeds of any loan secured by an interest in such policy, may not be used to reimburse a grantor, as doing so could cause the trust to be includible in the grantor's gross estate.

Of equal importance, Delaware's Income Reimbursement Statute explicitly incorporates one of the "other factors" mentioned in Rev. Rul. 2004-64 into the statute, significantly reducing the possibility of estate tax inclusion of the trust in the grantor's estate due to the trustee's reimbursement discretion. This is done by clarifying that neither the trustee's power to make payments to, or for the benefit of, the grantor for purposes of reimbursement, nor the trustee's decision to exercise its reimbursement power, shall subject the trust assets to the claims of the grantor's creditors under applicable local law, specifically referring to Section 3536 of Title 12 of the Delaware Code, which is commonly referred to as Delaware's "Spendthrift Statute".

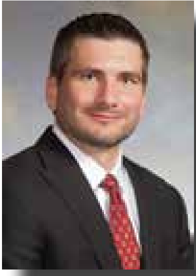
Delaware's Spendthrift Statute specifically addresses creditor rights in connection with beneficial interests in trusts. The Spendthrift Statute, which was modified to add a reference to Delaware's Income Reimbursement Statute, provides that a grantor is not considered a beneficiary of the trust, and a grantor's creditors may not satisfy their claims from the trust, simply because the trustee, under the terms of the trust's governing instrument or the Income Reimbursement Statute, may, in its discretion (or at the direction of an adviser other than the grantor), reimburse the grantor for any income tax liability attributable to the trust.[10]

Conclusion

So what does Delaware's Income Tax Reimbursement Statute mean to trust, estate and wealth planning practitioners in Delaware? It is yet another tool under Delaware law that can be used to solve a potential issue involving a grantor trust. By relocating a grantor trust that is silent as to income tax reimbursement, or is otherwise in a jurisdiction that does not expressly address income tax reimbursement, to Delaware, a grantor may be able to utilize Delaware's Income Tax Reimbursement Statute without incurring the legal costs associated with modifying the terms of the trust's governing instrument to add a reimbursement provision, and the trustee can avoid uncertainty as to its ability to reimburse the grantor for the grantor's income tax liability associated with the trust if the trust is otherwise silent. Further, this may alleviate the necessity to make a premature decision to "turn off" grantor trust status through the release of a grantor trust power solely due to, or resulting from, income tax consequences or changes to tax laws. Finally, it serves as an additional attractive selling point when speaking with clients about the advantages of Delaware trusts.

DB

Robert V.A. Harra III is a Director at the Wilmington law firm of Gordon, Fournaris and Mammarella, P.A., where his main areas of practice include trusts and estates, business planning, commercial transactions, and taxation. Rob is a graduate of Lynchburg College and Widener University School of Law. He also received his Master of Business Administration from the University of Delaware and his Master of Laws in Taxation from Villanova University School of Law.



Mark P. Gordon is an Associate at the Wilmington law firm of Gordon, Fournaris & Mammarella, P.A. Mark obtained his Bachelor of Science in Business Administration from the College of Charleston and graduated Magna Cum Laude from Widener School of Law. He received his Master of Laws in Taxation from Villanova University School of Law in 2019. Mark is admitted to practice in Delaware and Pennsylvania. Mark is a member of Wilmington Tax Group, the Estate Planning Council of Delaware and the Elder Law, Estates and Trusts and Taxation sections of the Delaware Bar Association.

Notes:

1- 12 Del. C. § 3344.
2- 12 Del. C. § 3536(c)(2).
3- See IRC § 671 et seq.
4- Rev. Rul. 2004-64, 2004-2 C.B. 7 (IRS RRU 2004).
5- 30 Del. C. § 1636(a).
6- Rev. Rul. 2004-64, 2004-2 C.B. 7 (IRS RRU 2004).
7- Id.
8- Id.
9-12 Del. C. § 3344.
10- 12 Del. C. § 3536.

We take pride in providing exceptional services with a personalized approach. Our experienced team offers advisory, audit, assurance, tax, estate and trust, litigation support, and investment holding company services to a diverse client base.

Visit our website » **belfint.com**

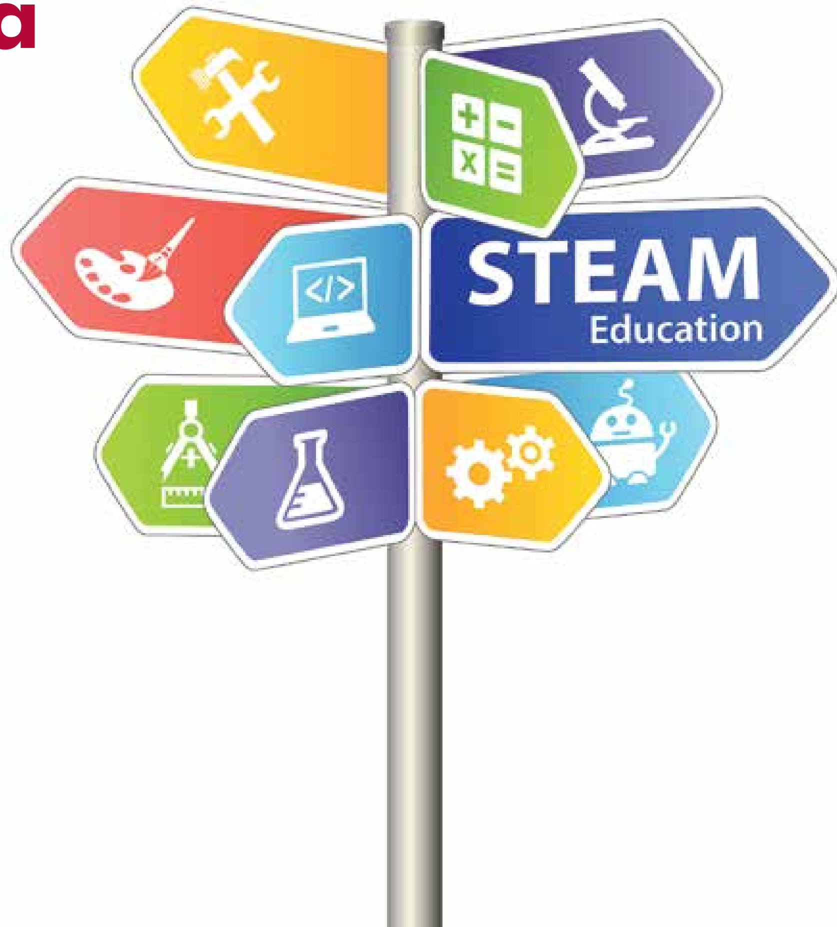
BLS

BELFINT • LYONS • SHUMAN
Certified Public Accountants

We are listening

DE 302.225.0600 » PA 610.537.5200 » info@belfint.com

Data is Just Data Without Insight, Creativity and Innovation



Why Bringing the Arts into the STEM Field is Causing Such a Stir

by
Janice Colvin,
Assistant Professor and
Chair of the Communications program
in the College of Arts and Sciences
Wilmington University

Creativity, innovation, curiosity, resilience. Important skills in today's world, especially if you're a scientist, analyst, or a mathematician. Because, while the last few years brought an emphasis on increased training in the STEM disciplines — Science, Technology, Engineering and Mathematics — something else has been moving forward: STEAM.

STEAM, which stands for Science, Technology, Engineering, Art and Mathematics, is STEM with the skills that the arts can offer: being able to take something tangible, like a set of data, or outcomes from an experiment, and moving beyond just that result into something new and innovative.

Employers have noted they need their employees to embody what is called the soft skills, the key skills of effective communication with work teams, clients, or the public, and to think critically, with innovation and creativity. A recent article in the London Evening Standard makes it clear that the skills for working in the business world in 2020 include soft skills like adaptability, proactivity, resilience, curiosity and empathy.

Walker notes that Sam Leed, senior vice president of WeWorks, said last year there is both "a science and an art in creativity." At Wilmington University, he continues, "fine arts courses, such as those offered in the Art and Drama departments, are aimed at helping students develop skills in conceptualizing and expressing creative designs across a range of subjects and situations."

A McKinsey Global Institute study in 2017 found that the need for developing higher cognitive skills, including creativity, will rise to almost 20 percent in the next decade. Reports from the World Economic Forum and LinkedIn note that creativity has risen in importance to one of the top sought-after skills employers are now seeking.

Walker says the change in emphasis with a focus on creativity can be attributed to increasing obsolescence of process-driven jobs, repeatable tasks that can be increasingly performed more efficiently by automation and artificial intelligence. “The skills associated with artistic, expressive, imaginative thinking that are developed in fine arts courses can help equip students with the creativity needed to produce innovative solutions for future challenges in our rapidly changing world,” he says. “Degree programs that add STEAM to their STEM will better equip students to benefit from these changes.”

Indeed, the rise of artificial intelligence (AI) is streamlining physical processes in business and industry, but it can also be used in the data automation. Dr. John Sparco, director and chair of WilmU’s Business Analytics program, is co-chairing an ad hoc faculty committee formulating curricular goals around AI, which he says is connected to STEAM.

Sparco defines AI as something more than simple automation, which a company such as Amazon, for example, is using to great effect in their warehouses to speed product fulfillment.

He says you should think about automation like this: “I can program the lights to come on at 9 every morning and go off at 5 p.m. But if there are sensors in the room that can collect your pattern of arrival and departure, which may be different from your neighbor next door, the room is learning about when the occupants are there without me having to tell it what to do when. That’s the differentiation between artificial intelligence and automation.” He adds, “artificial intelligence is more about computers sensing and iterating and figuring out things on their own.”

The part artificial intelligence does not do so well, at least right now, is critical thinking — creativity, being able to move beyond simple mechanics. Sparco mentions the defeat of a world champion chess player by a supercomputer in the late 1990s. In a first match against the computer in 1996, Garry Kasparov defeated the computer, but in 1997, the computer, called Deep Blue, beat the champion.

“Chess is a very structured game, the board is well defined, pieces can only do certain things,” says Sparco. “And it took forever for a computer to actually beat a chess champion. But what they really found is, if you take that computer that can process literally millions of moves in a second and pair it with a human who has creativity, the results are much better than a human alone or a computer alone.”

Referring to his field of analytics, Sparco says that artificial intelligence can use raw data, something that our world now has plenty of, to make all sorts of decisions for us. And this is not necessarily a bad thing. “That frees up time for those other things we need to develop,” using what the computer can’t provide, which is innovation.

“STEM and STEAM are tangentially related to the AI/analytics discussion,” he continues. “I think there’s an aspect of creativity. We’re talking about innovation and coming up with new things

Continued on p. 20

TRUST AND HIGH NET WORTH TEAM

Robert S. Smith, CPA

Theresa D. Jones, CPA

Robert Freed

Theresa L. Hughes, MBA, CTFA, AEP®

Jennifer M. Rybicki, CPA, MST

Visit www.santoracpagroup.com for more information or call our office at 302.737.6200 or 800.347.0116

(continued from p. 19)

out of experiences and intuition."

He mentions the accumulation of data in the retailing world, which is used most often today to predict the purchasing habits of the public as the foundation for marketing to them. These organizations are awash in data, he says. But without a thoughtful way to approach it, the results can and have backfired on companies.

"There was the incident with Target a few years ago where they could predict whether somebody was pregnant based on their purchases," he says. "The company got a lot of blowback on that, from using the data in that way."

In this case, The NYT reported in 2012 that data Target collected of purchases made by new parents had revealed something significant — buying habits changed markedly around the time a new baby was born. They also knew that with a new baby comes a public birth record, and other retailers barrage the parents with advertisements for their own products. Based on this habit change, the Times reported that Target would then market to pregnant women before other retailers even knew of a new baby: an interesting data-based strategy to capture and keep customers, but not very popular with women who didn't want their status known.

Sparco notes that soft skills, one being empathy, perhaps could have helped those making that marketing decision determine a better way to reach their goal.

"When you start to talk about the arts, you understand cultures, you understand aesthetic, you understand a lot of different things, and it brings a different dimension to the way a quantitative thinker views the world," Sparco says. The ability to think critically is key.

STEM programs have been around quite a few years now, thanks to some federal and state initiatives designed to strengthen the country's foundation of workers trained in technical skills. Wilmington University's new Biology and Environmental Science and Public Policy degrees, or Business Analytics, among many other programs throughout the University, are there to help build that workforce.

"Science programming is a relatively new endeavor at Wilmington University," says Science Chair Dr. Milton Muldrow. "As such, it's important early on to establish the style and substance of information that should be conveyed to the student. By taking a more thorough examination of the place of arts in STEM, WilmU is taking that step."

Dr. James Wilson, vice president of Academic Affairs, notes that for some time there seems to have been in general a deemphasis upon the liberal arts in higher education as budgets have become tighter. However, "the pendulum is starting to swing the other way," he says. "I hope the arts will continue to be more highly valued in educating the STEM workforce."

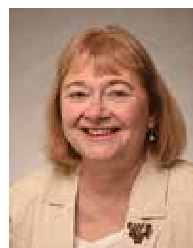
Also, AI and its relationship to STEM and STEAM has been a topic Wilson has discussed with WilmU's Faculty Senate.

"I've noticed more of a conversation going on about AI among the faculty, and people have commented from time to time about AI, just what they've read or seen, and getting a dialogue going," Wilson adds. After all, he says, part of WilmU's mission states that "The University's programs prepare students to begin or continue their career, improve their competitiveness in the job market, and engage in lifelong learning."

The future is something the University is always moving toward, and as society and industry change, so, too, must the programs adapt.

"What are we going to be?" Wilson asks. "We are clearly leaders in the region, in a number of fields, including criminal justice, education, computer science, and computer security. We certainly have the science, technology and math, and we have the arts down as well. So, it's all coming together. We're open to what's happening in the marketplace for our students."

You, too, can embrace the innovative nature of STEAM programs, while enjoying WilmU's flexibility and affordability. To explore programs such as Cybersecurity, MBA with Sustainability concentration, Artificial Intelligence, Data Analytics, and more, visit wilmu.edu.



Janice Colvin is an assistant professor and chair of the bachelor's degree in communication program in the College of Arts and Sciences, Wilmington University. Her experience in the communication field spans more than 30 years, including positions as a community newspaper editor, feature writer, and columnist; a public relations specialist; and a technical writer in the aviation and computer software fields. She currently teaches Communication Ethics, Communication Theory, and News Writing courses. Dr. Colvin holds a doctorate in education from Wilmington University. She earned a master of arts in journalism and public affairs from the American University in Washington, D.C., a bachelor of science in journalism from University of Maryland, College Park, Maryland, and an associate degree in general studies from Prince George's Community College, Largo, Maryland.

1895 - 2020

125 years

Delaware Bankers Association

Special Anniversary Section

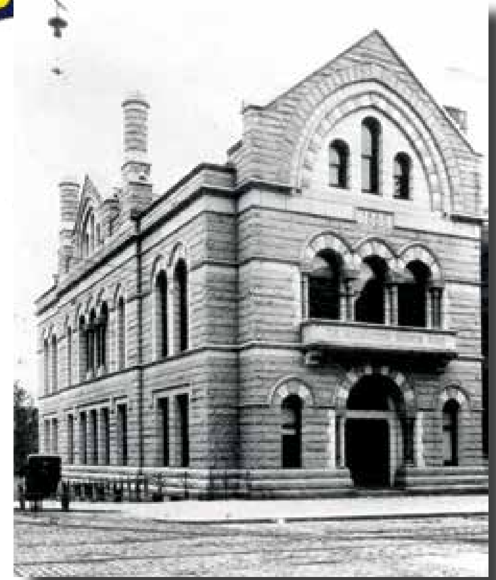
Here's to 125 Years of Service

On June 20, 1895 seventeen individuals converged on the Union National Bank, at 505 Market Street, Wilmington, Delaware. They didn't want to make deposits, or get loans. They weren't casing the bank for a heist. Rather they represented seventeen different financial institutions who had come together to form a new trade group: The Delaware Bankers Association. The meeting was called by the Wilmington Clearing House Association. At that first meeting a committee was appointed to prepare the rules of the association, nominate officers, and solicit members.

In October, the committee submitted its recommendations and reported that nineteen banks and trust companies expressed their willingness to join the new association. The first official meeting of the Delaware Bankers Association met on December 18, 1895 at The Clayton House in Wilmington, the principal hotel in the city at that time (now the cite of Word Café Live at the Queen).

The Association opening declaration stated the purpose of the DBA: "to promote the general welfare and usefulness of the financial institutions which constitute the membership or which shall hereafter become members." Since then the Delaware Bankers Association has worked to foster a postive environment for financial services in the First State, not just for the benefit of it's member institutions, but the community at large. As our annual community brochure illustrates, banks are good corporate citizens. In the past year, Delaware's banks have paid over $100 million in franchise taxes, employed over 47,000 individuals in good-paying jobs, and given millions in grants to non-profits and community organizations.

We hope you enjoy theses items from the DBA scrapbook. Thank you to all the members who have made the Delaware Bankers Association strong for the benefit of all Delawareans!



Chartered in 1832, WSFS moved into these new offices on Market Street in 1886.

Blue Hen Bucks? Before the establishment of a national currency in 1863, banks issued their own paper money. Above is a Bank of Delaware ten dollar bill signed by Joseph Tatnall, first president of the Bank of Delaware.

BANK of DELAWARE,

Auguſt 13, 1795.

At a meeting of the board of directors THIS DAY, it was ordered, that public notice be given, that the Vaults are now in readineſs to receive payments and depoſits, and that the BANK will be opened for that purpoſe on Monday the 17th Inſtant.—Notes and Bills for diſcount, may be lodged, on the Thurſday following.

JOHN HAYES, Caſhier.

Bankers sit down for lunch with Senator Joe Biden (seated 3rd from the left) in 1984.
DBA President Frank Morrison, is seated fourth from the left.

Back in the AIB Days...
Renee Rau, David Bakerian, and
Denise Waters guided thousands of
Delaware Bankers through the American
Institute of Banking courses.

Then-Board Members joined past Chairs of the DBA at the Wilmington Club in 2011.
Standing (l. to r.) Edward A. Reznick (2011-12); Mark A. Turner (2009-10); Calvert A. Morgan, Jr. (1985-86); David G. Jones (1979-80); Clinton W. Walker (2010-11); John F. Porter, III (1984-85); Fred Frear (1980-81); Robert V.A. Harra, Jr. (1992-93); Harold L. Slatcher (1996-97); Michael J. Barrett (1999-2000); David E. Gillan (2013-14); Paul H. Mylander (2000-02); Steven C. Nelson (2003-04); Keith W. Schuck (2007-08); George W. Forbes, III (1995-96); Hugh D. Leahy, Jr. (2002-03); Robert B. Rickards (1989-90). Seated: Susan Faulkner (board member); William M. Aukamp (1990-91); Kathleen M. Roberts (2005-06).

David Bakerian, DBA President, congratulates
Shirley Glanden on 35 years with the Association...
and she wasn't done yet!

The Passing of the Torch...
David Bakerian introduces
new DBA President, Sarah
Long in 2015.

Growth, Prosperity, and the Delaware Way!

How the Financial Center Development Act Turned a 98-Pound Weakling into a Banking Powerhouse

by
Richard P. Eckman
Senior Counsel
Troutman Pepper Hamilton Sanders LLP
and
Greg Koseluk
VP, Marketing & Public Relations
Delaware Bankers Association

A (Very) Brief History of Banking in Delaware

1795 – The Bank of Delaware, the first bank chartered in the First State is established at 4th and Market Streets in Wilmington. Capital stock: $100,000.

1895 – Seventeen bankers meet to form The Delaware Bankers Association.

1895 to 1980 – In the pre-interstate banking era, Delaware, like most other states, conducts the business of banking based on the needs of the local populations. Like the rest of Delaware, the First State's banking industry is small and modest. After 185 years, that reputation was about to quickly change, thanks to a Supreme Court decision. and very high interest rates.

From Nebraska with Love...

You've probably never thought of Nebraska and Delaware in the same sentence. What do Cornhuskers and Blue Hens have in common, apart from being States of the Union? The roots of Delaware's banking explosion in the 1980s can be traced to Nebraska, specifically, the First National Bank of Omaha. That bank mailed credit card offers to residents of nearby Minnesota. A Minnesota bank, Marquette National in Minneapolis, sued First National of Omaha for violating Minnesota's usury laws. The case went to the U.S. Supreme Court, which unanimously found in favor of the Nebraska bank holding that a national bank could "export" its home interest rate to customers residing in other states and charge them the maximum rate allowed in their home state. Before the Marquette decision, banks typically only dealt with local customers because of the uncertainty of whether they could export rates to out of state customers.. The banking laws also placed restrictions on interstate banking, which prohibited a bank from buying a bank in another state or operating branches outside its home state without permission from the new state.

The problem facing the credit card industry in the 1970s was, in addition to not being able to operate a national credit card market due to uncertainty regarding exportation, was hyperinflation. The fed tightened interest rate so much that the

30-year treasury bill yielded 16%. Banks like Chase Manhattan and Citibank were limited to a 12% interest rate in New York for credit cards. They were losing millions of dollars a month because their cost of funds was exceeding the interest rate they could charge their customers. As a result, both banks began to look for a state where they could set up a new bank and charge a market rate of interest on their credit cards.

…by Way of South Dakota

Delaware may be small, but it's quick, right? Not that quick. Actually, it was South Dakota that was first out of the gate but not by design. South Dakota was in the process of changing its usury laws, not to attract credit card banks, but to free up capital for South Dakotans. Enter Citibank, looking to revive its flagging fortunes after New York State refused to loosen its interest rate caps. South Dakota, also hurt by the recession, fashioned a bank-friendly solution to attract Citi.

Meanwhile, Back in the First State

Pete duPont became Governor of Delaware in 1977 committed to expanding the State's economic development, creating jobs, and generating tax revenue. A task force of business and government leaders was formed to strategize this resurgence beyond the State's two primary industries: chemical and auto manufacturing. Ironically, it was a chemical industry CEO who suggested banking as a possible windfall for Delaware.

"The first state to follow South Dakota was Delaware," Bill Janklow, South Dakota's Governor in the early 1980s, explained in a 2004 interview. "On Citibank's board of directors were all these corporate titans, and one of them was Irving Shapiro. Irving Shapiro was the CEO of the DuPont Company, headquartered in Delaware. And Shapiro, when we were doing our Citibank deal, went back to Delaware and said to Pete du Pont: 'Pete, this is crazy. Delaware has got this long history of being kind of the corporate locus for America. This financial services industry, it's all going to go to South Dakota. Let's get the law changed in Delaware.'"

At roughly the same time Irving Shapiro was making his suggestion, another large New York bank approached Governor du Pont seeking a friendlier business environment. Chase Manhattan Bank, seeing what Citibank had done in South Dakota, reached out to Delaware in early 1980. Chase had a connection with Delaware already since it had an Edge Act branch in the state. Henry Beckler, who used to work for Chase in New York, and was then a consultant to Bank of Delaware, was instrumental in working to overcome the mixed reactions of local bankers concerned about letting a large bank like Chase into Delaware. After a lot of discussion about ways to protect the local banks, a second meeting in June 1980, championed by Shapiro, yielded better results. Much like Citibank in South Dakota, Chase was looking to eliminate the interest rate ceiling, along with a revised banking code that would permit an out of state bank to establish a new limited purpose bank in the state.

In a 2017 Forbes article, Glenn C. Kenton, then Delaware's Secretary of State, gave Chase's motivation for approaching Delaware. "They said, 'We do not want to go to South Dakota for two reasons: A) Citibank is already there and B) It's South Dakota. Chase Manhattan asked whether Delaware would give it the same deal as South Dakota gave Citicorp. "The governor and I got together and said 'Yes.'"

Following the June meeting, Governor du Pont created a bank task force comprised of state and local officials, business executives, and approximately a half-dozen bank lawyers and bank officials. Secretary of State Kenton headed the group. O. Francis Biondi, a private Wilmington lawyer and member of the task force, took a lead role in crafting the legislation assisted by his colleague Walt Tuthill and Rick Eckman, then an inhouse banking lawyer at the Bank of Delaware, and others, started by reviewing South Dakota's statute and drafting a new banking code for Delaware, which would ultimately become the Financial Center Development Act.

The drafting took approximately six months with much of the work carried out in private by these Delaware lawyers and New York based lawyers for Chase Manhattan Bank and J.P. Morgan & Company. J.P. Morgan was interested in Delaware because the tax rate charged to banks by New York was too high in their opinion. While this may have resulted in a bill that was well suited to the banks' needs, the process was not without its critics by the time it was completed. Aside from the drafting group, there was limited input by other Delaware officials.

By January 1981, the bill was ready for its public unveiling. Governor du Pont briefed key legislators at a breakfast meeting on January 14th, with the public release of the bill the following day. In all, 41 representatives and 21 senators sponsored the landmark legislation. The following week, on January 21st, the FCDA's one hearing, lasting three hours, was held. Irving Shapiro and Francis Biondi testified in support of the bill, along with various state officials.

The claim was made that the public, the press, and some state officials, including Frances M. West, head of Delaware's division of consumer affairs, were deliberately kept out of the drafting process. Glenn Kenton defended the action to the New York Times in 1981

Continued on p. 26

(continued from p. 25)

soon after the bill's enactment. ''I didn't see any sense in running that fundamental principle [that banks should be free to set interest rates] by anybody who doesn't agree with it.'' Irving Shapiro, also to the Times, defended the drafting process. "The people who had an interest in the bill were involved.'' He added that care had to be taken in the process so as not to ''scare the banks away.''

According to the New York Times, when the 61-page act reached the Delaware General Assembly, many of the bill's sponsors admitted that they didn't understand some of its complicated nuances. Further detractors complained that the hearing for the bill was only three hours long, preventing concerted rebuttal. Supporters, including Governor du Pont, pointed out the deliberations were as extensive as any in the previous four years.

On February 3, 1981, the Delaware State Senate, passed the FCDA, by a vote of 14 to 7, without a hearing. Eighteen amendments were proposed, unsuccessfully. Once passed, the Financial Center Development Act was signed by Governor du Pont on February 18th.

You Are Cordially Invited to Delaware

While the FCDA was similar to legislation enacted by other states, it included certain conditions for a bank to come to Delaware to assuage the concerns of local banks and to insure that the economic development impact of the bill would be realized. The act contained four major provisions. The first provision allowed out-of-state bank holding companies or its subsidiary to acquire a single newly established bank in Delaware. The Bank Holding Company Act of 1956, specifically the Douglas Amendment, prohibited bank holding companies from acquiring more than five percent of the voting shares of a bank's stock in another state, unless the other state permitted it. The FCDA, like the South Dakota legislation before it, took advantage of this condition. Additional provisions limited the the out-of-state bank to a single office and the bank could not operate in a manner to the substantial detriment of existing local banks, a key concern of the local banks. Additionally, the new bank would have to have $10 million or more in capitalization, with at least $25 million in capitalization and 100 employees by the end of its first year of operation in Delaware. Applications would have to be approved by the Delaware Bank Commissioner, who also had the power to order divesture of the holding company's stock if the conditions were not met and federal law required approvals by the Federal Reserve Board and the Comptroller of the Currency in the case of Chase.

Why You Should Come to Our Party

As anyone who has received an invitation to a party or affair can tell you, the invitation alone isn't enough. One wants to know where it is being held, what's being served, who else is invited, and other incentives to entice acceptance. The FCDA deregulated the consumer lending provisions of Delaware law with the philosophy that the bank and the customer should be free to determine the terms and conditions under which they would receive a consumer credit card or loan without legislative or regulatory conditions. Banks were also allowed to impose various fees and charges for revolving credit as well as closed end credit, as long as they were disclosed in the contract (e.g:.the credit card agreement). Usury ceilings were also eliminated on most types of loans. Because the state was in effect eliminating any usury limits on loans generally, lifting of the limit applied not only to banks but finance companies, retailers, and other regulated lenders.

The FCDA presented a very appealing set of incentives, but perhaps the most attractive was the favorable tax rates the Act provided that were strongly supported by J.P. Morgan. Banks were taxed on a sliding regressive scale, meaning the tax rate fell as the bank's income rose. This was a boon for large out-of-state banks facing onerous state and local tax rates in their home states, particularly New York. The initial rate set by the FCDA was 8.7 percent on the first $20 of net income; 6.7 percent on net income of $20 to $25 million; 4.7 percent on income between $25 and $30 million; going down to 2.7 percent on net income above $30 million. At the time of the FCDA's enactment, no Delaware banks had net incomes over $20 million, so this provision was definitely aimed at drawing out-of-state banks to the First State.

The Impact of the FCDA

The Financial Center Development Act succeeded beyond the most optimistic expectations of its supporters. In the first five years following its passage, banking jobs in Delaware increased by more than 20 percent annually, while deposits grew at a rate of 28 percent per year. And while 9,000 new banking jobs were created by 1985, the growth in Delaware's financial service industry created the need for 90 new retail establishments, resulting in an increase of $284.3 million in sales. According to a survey conducted by the Delaware State Chamber of Commerce, every 100 new banking jobs resulted in 10 new jobs in manufacturing, four in construction, 17 in wholesale and retail, 18 in services, and 11 in government. State revenue also saw a significant increase. In 1982, $2.2 million was paid in Bank Franchise Taxes. By 1985 that number had ballooned to $47.3 million, with another $9.5 million in taxes going to local governments. Today, the financial services industry employees over 47,000 individuals in the State of Delaware with many of the top credit card issuers having their home offices in the State. Total Bank Franchise tax revenues over the last 38 years total over $3.2 billion.

.

Without a doubt, the FCDA was the most successful economic initiative the state has ever undertaken. Its benefits continue to be felt with the many large financial services industries located here, and the benefits to the state in terms of its offshoots such as real estate, jobs, new fintech companies, and the reputation for innovation continue to pay rewards. The ability of businesses and the State to work together to create this innovation should be an example for others to emulate. The national credit card industry was created by those such as Chase Manhattan who had the foresight to see a problem and find a way to solve it, to the benefit of their shareholders and the millions of credit card customers who can now have access to a credit card. The day when a person moved out of an area and had their credit card cancelled are long gone. Credit cards are ubiquitous today because of the steps Delaware took almost 40 years ago. Those involved who had the foresight to see the possibilities of the FCDA had their dreams realized with the success of this landmark law.

Congratulations

Delaware Bankers Association on serving the Delaware Community for 125 years.

At BLS, we take pride in providing exceptional services with a personalized approach. Our experienced team offers advisory, audit, assurance, tax, estate and trust, litigation support, and investment holding company services to a diverse client base.

BLS

BELFINT • LYONS • SHUMAN

Certified Public Accountants

Visit our website » **belfint.com**

We are listening

DE 302.225.0600 » PA 610.537.5200 » info@belfint.com

FCDA

(continued from p. 26)

Richard P. Eckman is a Senior Counsel at Troutman Pepper Hamilton Sanders LLP. He represents financial institutions and non-regulated entities in a range of matters involving investment management, commercial and consumer financial services, public finance and trusts. Drawing upon many years of experience inside the banking industry and involvement in drafting key banking regulations, he is a trusted advisor on operational and regulatory issues.

Rick also has an active practice representing non-depository institutions, specialty finance companies, and service providers in compliance matters, payment system issues, strategic transactions, government investigation and enforcement actions. In addition, he advises marketplace lenders on matters such as merchant cash advance and co-branding relationships and represents a number of institutional trustees in Delaware business trust transactions.

Rick advises clients on payment issues including dealing with FinCEN and state money transmitter statutes. He also has helped non-bank lenders and their service providers to design and launch national online lending platforms and businesses.

An active speaker and writer on the activities of state and federal banking regulators, including the Consumer Financial Protection Bureau, Rick was one of the drafters of Delaware's landmark Financial Center Development Act that attracted over 25 financial institutions to the state.

Greg Koseluk is the VP of Marketing and Public Relations for the Delaware Bankers Association. In addition to writing various articles related to banking history for Delaware Banker, he is the author and illustrator of the eight financial literacy childrens book in the Great Investo series. He is also the author of Eddie Cantor, A Life in Show Business*; and* Great Brit-Coms: British Television Situation Comedy.

Congratulations to the Delaware Bankers Association on 125 years of serving the financial services industry and the First State.

Commonwealth Trust Company is an independent, boutique trust company located in Wilmington, Delaware partnering with your existing Advisors to provide sophisticated, professional trust administrative solutions.

For more information, call us at 302-658-7214.
Alan Quaintance | aquaintance@comtrst.com
Amy Brown | abrown@comtrst.com

29 Bancroft Mills Road, Wilmington, DE 19806 (302) 658-7214 www.comtrst.com

We raise roofs, funds and financial literacy.

We've raised roofs. Raised money. Fed families. Raised financial literacy in schools. And helped our neighbors buy and rent homes. Discover Bank is proud to serve your community and be your bank.

DISCOVER
BANK

Deposits | Checking | Loans

MyDiscoverBank.com or visit 502 E. Market St., Greenwood, DE 19950

The Heart and Smile of the DBA

Shirley Glanden Reminisces on 40-Plus Years with the Association

No celebration of the DBA's 125th Anniversary would be complete without Shirley Glanden. More than anyone else Shirley has been the pillar of the Delaware Bankers Association, serving in various roles for nearly a third of its history. David Bakerian once said: "The bankers tolerate me, but they really love Shirley. If I ever lost Shirley, I'd be in big trouble." We recently interrupted Shirley's peaceful retirement for her remembrances of the DBA.

Delaware Banker: Shirley, you joined the Delaware Bankers Association in 1976.

Shirley: October 25, 1976. There were only two people in the office; the Executive, Jimmy Jackson, and myself. All my bosses had April birthdays, and were left-handed.

Delaware Banker: Until you got to Sarah. Is that why you left; because she was born in October and is right-handed?

Shirley: (laughs) Sarah is amazing! I love her!

Delaware Banker: You started in a two-person office…

Shirley: With seventeen member banks. We had a rotary phone, and when you dialed out you had to dial 1-800… we tried to save money. We didn't have a computer, just a manual typewriter. We had to do all the meeting minutes on a typewriter. I got a computer at work when Frank Morris was still there. Renee and I took a course on WordPerfect. I also remember learning about using the Internet - we were all amazed.

For the events, like the annual dinner and the fall outing, we had committees of volunteers to come in and help run the programs. So, you'd have a chairman for the important golf outing, and one for the annual dinner. Steve Nelson was the one who would come down and help me do the seating chart for the annual dinner. That goes way back.

Delaware Banker: Were those the only two events the DBA had then?

Shirley: Yes, those two. Bankers Day at the Fair came later. David Jones helped to get that started. And we had the Washington Visit every other year.

Delaware Banker: How did the association operate when you had only 17 banks?

Shirley: We had a lot of volunteers. I'd have to go back and look, but when I started my pay might have only been a hundred dollars a week, and that was a lot back in the day. We had a very tightly run budget. And if you didn't have many programs the expenses were low. We didn't have a copier or a fax machine. All the books were done on hand-written ledgers that I had to balance every month. That was challenging.

Delaware Banker: Where were the offices?

Shirley: 306 South State Street, on the Green. Then we went to the Green, then to the Willard Building. We worked on July 4th moving. Verizon was on strike, we had to worry about the phones. That was a nightmare!

Delaware Banker: Did the DBA have a lobbyist at the time?

Shirley: Mr. Jackson was the lobbyist and the executive. Joe Moran would go down to Legislative Hall with Mr. Jackson. Mr. Jackson retired in 1983. Frank Morrison came in at that time and was the executive and the lobbyist. He stayed until 1993.

Delaware Banker: We have another article in the issue on the creation of the Financial Center Development Act. Was the DBA involved in the drafting of that legislation?

Shirley: Yes, major involvement with FCDA. They had to have our help with that. We went from 17 banks up to 42 banks in a relatively short time.

Delaware Banker: That must have been a major sea change when the FCDA came in. Delaware went from being a banking backwater to one of the biggest players overnight.

Shirley: The landscape changed so much. We had to add employees, add programs, the FEA became much more visible. Before that the FEA was a volunteer organization. Then after that David Bakerian came on board. There was a big difference then. Before that each county had its own chapter. When all the new employees came in as a result of the FCDA they all had to take "Principles of Banking." It was really booming then! We started more programs, more committees. The Washington Visit became an annual event. Before then the Washington Visit was very limited, only CEOs were invited. It became much better when more people were involved, that made that a much better program.

And the ABA (the American Bankers Association) certainly recognized what was happening in Delaware. David got to become the chair of the ABA State Alliance. That gave us a lot of recognition. ABA was just so impressed with how Delaware could get things done. We had respect before, but after FCDA we had even more respect. Other states just shook their head in disbelief at what Delaware accomplished. That was one of the reasons they wanted David as their chairman. That was a really big deal for Delaware to have an ABA State Alliance chairman.

Delaware Banker: What was the most challenging part of your duties?

Shirley: Minutes! They still give me nightmares! But you just took every day as it came. When a problem cropped up, you handled it. But I don't miss minutes! (laughs) And audits. Minutes comes first. I can deal with an audit because that's just getting things together, but minutes! Ugh! I would be doing them at two o'clock in the morning! Then take a nap, and get back to those minutes!

I think it remains the same for all DBA staff members then and now -- doing your utmost, while managing numerous projects/duties/deadlines, to ensure each member felt respected and valued. After the FCDA passed and DBA membership grew with many credit card banks locating here, I felt the community banks thought they would not receive the representation they deserved. We made sure the community banks were represented on the

Continued on p. 32

GF&M GORDON, FOURNARIS & MAMMARELLA, P.A.

Attorneys concentrating in Delaware Trust Law, Fiduciary Litigation, Taxation, Estate Planning, Estate Administration, Business Law and Counseling, Entity Formation, Succession Planning, Mergers and Acquisitions, Commercial Litigation, Real Estate, Zoning, Land Development and Alternative Dispute Resolution

Peter S. Gordon
Thomas Mammarella
Emmanuel G. Fournaris
Michael M. Gordon

William M. Kelleher
Neil R. Lapinski
Norris P. Wright
Daniel F. Hayward
Charles P. O'Brien
Robert V.A. Harra III
Kimberly Gill McKinnon
Shannon L. Post
Joseph Bosik IV

Phillip A. Giordano
Mark P. Gordon
Patrick J. Rohrbach
Danielle R. Dell
Christopher P. Clemson
Constantine E. Fournaris

Special Counsel

Grover C. Brown
E. Norman Veasey

1925 Lovering Avenue
Wilmington, DE 19806
(302) 652-2900 Phone
(302) 652-1142 Fax
www.gfmlaw.com
Follow us on Twitter: @GFandMLaw

Shirley Glanden

(continued from p. 31)

board, and that the dues schedule was computed fairly. The dues schedule was an on-going challenge - as with all associations, I'm sure. It was always one of the topics when I attended the ABA State Association Staff Meetings. If they held them today, I believe the same topics would still be discussed: Membership retention, dues, Associate members, how to increase attendance/ revitalize Washington Visits, effective and user-friendly websites, PAC fundraising, etc.

Delaware Banker: What did you like best about your job?

Shirley: The people I worked with: bankers and staff. That's the best part of it! That's what I miss most being retired. Activity with the bankers and the DBA family.

Delaware Banker: They teach this in customer service, and you just do it so naturally, you can always hear the smile in your voice on the phone.

Shirley: And it was genuine. I had the best job that anyone could ever have! I've gotten to work with Congressional delegations, Governors, all the bankers, it's just the best! There were times when you'd just say "oh, my, I just can't do this, and then someone would call who was one of your favorite bankers, and say 'oh, hi, how are you?' And then everything's better again! I just want to say to everyone how much I miss them!

I like what you and David composed on my 35th anniversary saying I was the heart and soul of the DBA. I had several bankers/colleagues write that to me on that anniversary and when I retired. When Sarah talked to me (end of May 2017) after the Personnel Committee did their reviews, she made me cry when she said that everyone loved me and just wished that I had a long and happy retirement. Those words meant a great deal. From my first day to my last with DBA, I always wanted to leave anyone who contacted me in person, by email or phone, with the impression that their inquiry was important, would be resolved quickly and that they were much appreciated. I strived to make them happy that they had contacted us. What can I say - think we all have that same objective as the DBA/DFEA staff is the very BEST!!!!

We've come a long way. DBA should be proud of all that's been accomplished.

Congratulations on 125 years of service!

Thank you for your continued support of Delaware's financial services industry. We are proud to have you as our partner.

ARTISANS' BANK

A History of Service - Since 1861

Member FDIC

DELAWARE BANKERS ASSOCIATION, CONGRATULATIONS ON YOUR 125TH ANNIVERSARY!

Your advocacy, education and service is unmatched. Thank you for all you do.

CONNOLLY GALLAGHER LLP

Wilmington Office
1201 North Market Street, 20th Floor
Wilmington, DE 19801
T 302-757-7300

Newark Office
267 East Main Street
Newark, DE 19711
T 302-757-7300

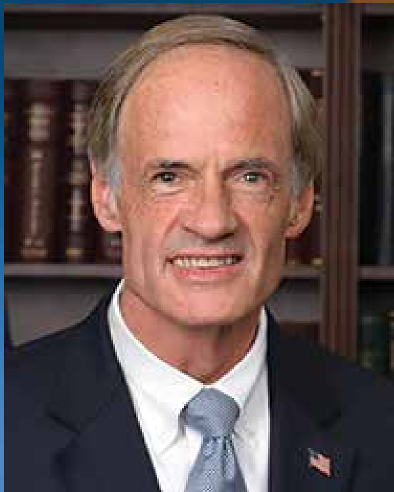
Connolly Gallagher. Trusted, Experienced, Respected.

connollygallagher.com

Anniversary Congratulations fr

Governor John Carney

"I would like to congratulate the DBA on your 125th Anniversary. I'm grateful for the work of the DBA to support Delaware banks and employees and being such an incredible resource for so many Delawareans. As we know, so many of the country's largest and best financial institutions operate in our state. Thanks to the DBA and its member institutions our state is a national leader in the banking industry."

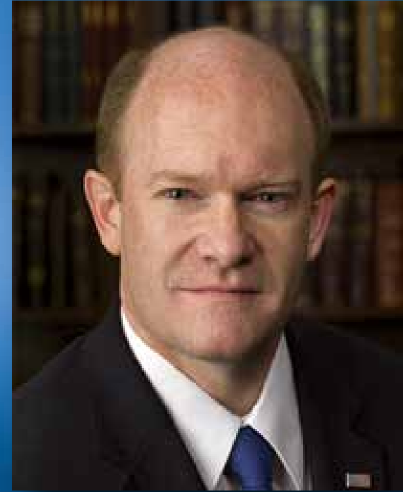


U.S. Senator Tom Carper

"I just want to say to our banker friends thank you for what you do for all of us. Thank you for being the lifeblood of our economic growth and opportunity in the state. One of the most important roles for government is to help provide a nurturing environment for job creation. That includes access to capital. You're the folks who provide access to capital to big businesses, little businesses, and to work with the Small Business Administration on a number of programs to help small businesses stay in business."

om Delaware's Delegation

U.S. Senator Chris Coons
"To the Delaware Bankers Association, I just wanted to convey my gratitude to the very hard work that's been put in by the thousands of folks in the financial services industry here in Delaware to get out the PPP loan applications that have required so much work. To everyone on the board, and the staff, I'm sorry we couldn't meet together this year for your dinner. It's always a good chance to be reminded of the many ways in which the banking community brings so much to Delaware."



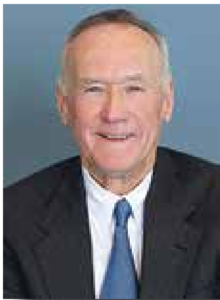
U.S. Representative Lisa Blunt Rochester
"When I last saw you, Senator Coons and I joined you for your annual roundtable here in Washington, D.C. We didn't know yet the extent or the impact of COVID-19 on our country, but we knew we needed to partner with you. Since that time, we have seen unprecedented economic challenges in our country. But in spite of those challenges, I've seen the DBA helping businesses and communities, large and small, across our state. But this is nothing new to the Delaware Bankers Association. You've been a part of the fabric of our Delaware family for over 100 years."

MBER 7, 1787

The Chairs Speak

Recollections and Well-Wishes from Past DBA Chairs on the Association's 125th Anniversary

John Pilling
President, National Bank of Newark and first
Chair of the DBA, 1895-97



John (Jack) F. Porter, III - Chair: 1984 - 1985

"Fellow Delaware Bankers – I send heartiest congratulations to our Association on its 125th Anniversary, and to all members past and present who have served our constituencies so well. My relationship with the Association and its staff and members was the proverbial icing on the cake in my career, broadening my banking experience in the most positive and rewarding way. I especially note the Association Presidents who preceded Sarah Long, the late Frank Morris and David Bakerian, both of them serving with diligence, honor and distinction, and recognize also with great admiration Shirley Glanden who was the heart and soul of the organization for some forty years until her retirement. As for our member banks, I note with pride and admiration how well these competing organizations have at the same time worked together to create and maintain the most positive banking environment for our state."

Robert V.A. Harra, Jr. - Chair: 1992 - 1993

"Long ago, in 1992, I was honored and proud to serve Delaware's bankers as Chairman of the DBA Board of Directors. At that time, all of us on the DBA Board were still working through the issues of a banking association representing, and balancing, the (at times) widely differing needs and views of local Delaware banks and those of many new Delaware banks borne of Delaware's Financial Center Development Act. Through DBA, we were always able to unify those differences to achieve compromise and provide solutions representing all of us. I am proud, and lucky, to have been part of that era and to have worked with the women and men of the DBA Board, and the women and men of the professional staff of DBA who represent Delaware's banks - every day. Happy 125th Anniversary and thanks to Delaware Bankers Association and it's Board and staff. Go for another century and a quarter!"

Kathleen M. Roberts - Chair: 2005 - 2006

"I humbly offer my congratulations on the 125th Anniversary of the Delaware Bankers Association. It was my honor to serve as the first woman to lead the most prestigious Banking Association in the world. The incredible environment provided by the Association and the State of Delaware are unrivaled when it comes to innovation, audacity, strength, and fairness. My best wishes, as you continue to forge groundbreaking ways for Bankers to provide clients the very best in products and services."

Continued on p. 38

M&T Bank. Understanding what's important.

Congratulations to the Delaware Bankers Association on their 125th Anniversary from your friends at M&T Bank.

M&T Bank
Understanding what's important®

Equal Housing Lender. ©2020 M&T Bank. Member FDIC. 47126 200731 V2

(continued from p. 36)

Connie Bond Stuart - Chair: 2006 - 2007

"I have wonderful memories of both the value the DBA brings to our industry, including the high level of respect by the state legislators and banking regulators for this organization, as well as the fun we had together during our annual trips to Washington, D.C. The irrepressible and unforgettable David Bakerian was the DBA President during my tenure in Delaware. Everyone made time for him when he called, as I am certain is also the case today with Sarah. Delaware is a special state and the DBA is an important contributor to its success. Congratulations to the DBA for an impressive 125th year anniversary!" All my best to my Delaware friends!"

Clinton W. Walker - Chair: 2010 - 2011

"Congratulations to the DBA on its 125th Anniversary. The DBA has always done a fantastic job representing the banking industry in Delaware and in DC. More importantly it has done a great job representing Delaware across the country and in making Delaware a better place for everyone to live, work and play. Here is to another 125 years"

Geoffrey M. Rogers - Chair: 2012 - 2013

"Congratulations to the DBA for carrying on its collaborative and focused efforts on behalf of bankers across the state. The work that continues to happen between the legislature and the DBA reflects positively on our industry. The benefit we all receive is the ability to expand our relationships with friends and competitors alike with a parallel focus to increase the value of our work. We must also remember each and every staff member at the DBA that has helped keep us organized and prepared for every one of these 125 years.
Congratulations to all!"

Rodger Levenson - Chair: 2014 - 2016

"For 125 years, the Delaware Bankers Association has been working to strengthen financial institutions throughout our State, support our communities, enhance economic development, and create a world class financial services industry. Thank you and Congratulations to the Delaware Bankers Association!"

Mark A. Graham - Chair: 2016 - 2017

"I extend my congratulations to the Delaware Bankers Association on its 125th Anniversary. During my thirty-four year career in banking in the State, the Delaware Bankers Association was a tremendous constant-supporting our industry in so many ways, creating and implementing training and education programs and being our leading advocate. The organization has been blessed with strong leaders and staff that have moved us through various business cycles and issues, and I particularly enjoyed working directly with David Bakerian and Sarah Long during my Board and Chair tenure. The Association remains in strong hands and we all look forward to its industry leadership for years to come."

Continued on p. 40

First State
TRUST COMPANY
Service. Redefined.

CONGRATULATIONS TO DELAWARE BANKERS ASSOCIATION ON 125 YEARS

Jacqueline Jenkins, CTFA
Chief Fiduciary Officer / Managing Director
Director of Trust Services
561.515.6156
jjenkins@fs-trust.com

Keith Al-Chokhachy, CFP®, CTFA
Vice President / National Business Development Officer
302.510.6027
keith.al-chokhachy@fs-trust.com

First State
TRUST COMPANY
WOMEN & WEALTH

(continued from p. 38)

P. Randolph Taylor - Chair: 2017 - 2018

"Congratulations to the DBA on their 125th anniversary of leading our industry and representing the interests of now 40,000+ DE bankers in Dover and Washington DC. As I look back on my 35+ years as a banker, I have many fond memories of being a part of the DBA that include attending banking school courses, attending my first annual dinners as a Delaware Trust Company trainee, winning a pie at a DBA Harrington Fair Picnic, enjoying some fresh air and comradery with fellow bankers at the DBA golf events, and of course all the great trips to DC with so many DBA and banker friends. Being asked to serve on the Association's board was perhaps an undeserved but very proud period in my career. The passion in which the Board and DBA leadership/staff represents the interests of the Delaware's community and regional banks, large national bank's and even our banking startups, is so unique and I hope is appreciated by all of us in the banking community. A virtual toast to Sarah and her staff !"

Cynthia D.M. Brown - Chair: 2018 - 2019

"Congratulations to the DBA and DFEA for 125 years of serving the banking community! With your strong leadership, you continue to serve the communities that we live in every day making them stronger. No one would ever guess that a small group of professionals could accomplish so much, and I am proud to have been able to serve on your Board and as your Chairperson. You have proven over and over again your commitment and sincerity. The banking community has gained a lot over the years. In my short time on the Board I have seen the DBA start a nationally renowned trust conference, address the development of a talent pipeline for the trust industry through the creation of a minor in trust administration in partnership with the University of Delaware, and respond quickly with core educational programs for bankers in the areas of trust foundations, and cybersecurity. You are always a step ahead; small but mighty."

Congratulations ON YOUR 125th Anniversary

WE ARE A COMMUNITY BANK. LOCALLY OWNED. LOCALLY MANAGED.

COMMUNITY BANK Delaware

302-226-3333 | communitybankdelaware.com

EQUAL HOUSING LENDER

NMLS#421384 FDIC

sallie mae®

advocacy

Celebrating 125 years of leadership

Sallie Mae CEO Jonathan Witter and the 1,039 team members of our Delaware-based company congratulate the Delaware Bankers Association for 125 years of service to the banking industry and the First State.

Thank you for your leadership.

Together, we put people on the path to prosperity, in the Delaware community and beyond.

© 2020 Sallie Mae Bank. All rights reserved. SLM Corporation and its subsidiaries are not sponsored by or agencies of the United States of America. SMSM MKT15411 0720

salliemae.com

Trust Management Minor

by
Jennifer Zelvin McCloskey
and
Carolyn B. Levine
Lerner College of Business and Economics,
University of Delaware

The impending "great wealth transfer" is increasing the demand for strategies to minimize taxes and to sustain wealth across multiple generations. The boomers who will be passing down assets, as well as the millennials and beneficiaries that will be receiving them, will need to rely upon trust professionals more than ever. With notable success, the Alfred Lerner College of Business and Economics at the University of Delaware became the first AACSB-accredited business school to launch a minor in trust management providing a pipeline of individuals educated in this specialized area of the financial services industry.

Program Rationale

In 2019, in the United States alone, there were approximately 46.8 million living millionaires (see Figure 1). Approximately 41.1 million of these individuals are high net wealth (HNW) (defined as those with greater than $5,000,000 of investable assets, excluding their personal residence), more than double the number in 1997 (Credit Suisse Research Institute 2019, 2018). Almost 6 million of those adults are classified as ultra-high net worth (UHNW) with investable assets in excess of $30,000,000, excluding their personal residence.[1]

At the close of 2019, our society witnessed the last batch of baby boomers reach age 55. Most of these baby boomers will have fully retired within 5-10 years. By contrast, the millennial generation, ages 23 to 38, are prepared to surpass the baby boomers, ages 55 to 73, in both the workforce and as the largest living adult generation.[2]

These statistics indicate an inevitable transference of wealth and a demand for the mechanics necessary for an effective transfer. Hard-working and resourceful boomers will not be self-managing the majority of the wealth transference but will be relying on a workforce of millennials, at the direction of experienced and quickly aging Gen Xers.

Wealth management businesses are seeing an increase in the demand for qualified investment experts to manage the portfolios and strategies of these high-wealth individuals. Likewise, the increase in demand is also driving the need for a sophisticated classification of bankers, and more significantly, for trustees. HNW and UHNW individuals are likely transferring their assets into a trust, if they have not already done so, for protection, growth, and multi-generational transfers.

While undergraduate business school students often focus their education on becoming wealth managers, wealth advisors, investment bankers, bankers, financial planners and finance managers, there are a paucity of programs in the United States teaching people how to become trustees. Historically, this type of work has been on-the-job training or graduating law students who chose not to practice, with the support of specialized and expensive training programs geared toward positioning people to successfully complete the Certified Trust Financial Advisor ("CTFA") exam after completing the requisite number of years in the industry.

Trust industry professionals are unique. They are not bankers, some are lawyers, but they do not practice, they are not finance managers or investment bankers, and they are

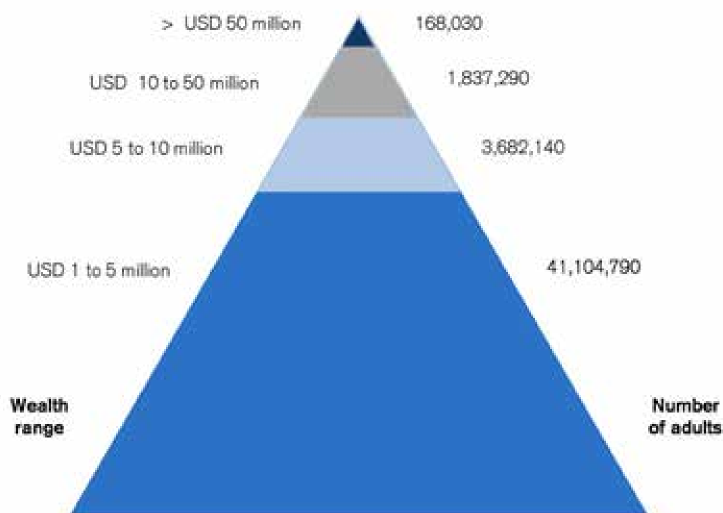


Figure 1: Breakdown of wealth levels in the United States

not accountants. Rather, they are well rounded, highly knowledgeable individuals with a broad base of experience and exposure to law, tax, finance, banking and accounting that historically "fall into" the field. With the scarcity of formalized higher education in this field, the pool of applicants for this type of work can be limited and, in many instances, the skill needed to be an effective and respected trustee may not be the same as those taught to young attorneys in school. Being able to obtain knowledge of the trust profession and the skills needed to serve as a fiduciary either in a corporate setting or as an individual trustee, as well as the opportunity to learn to legal principles of trust law, property law, and tax law that are the pillars of support for this type of work provides the undergraduate student opportunities far beyond the scope of one singular career path.

Delaware banks and trust companies help HNW and UHNW individuals legally structure, maximize and administer wealth plans. "Delaware has been the jurisdiction of choice for grantors of trusts" because "the state has built a trust-friendly body of legislation and has supported its laws with a knowledgeable and effective court system."[3] To accomplish the grantor's goals, trust management professionals must have a comprehensive set of skills, encompassing law, trust management, taxation, and estate planning.

Anticipating the needs of this industry and working in conjunction with professionals in trust management, the Lerner College set out to build a curriculum open to students in any major at the University, which provides students with the academic foundation in taxation, law, finance, planning, business and soft skills necessary for starting careers in trust administration immediately upon graduation. The trust minor is a synergistic program between the Lerner College of Business and Economics and the trust administration industry. Lerner is successfully providing trust companies with a pipeline of individuals educated in this specialized area of the financial services industry and in turn, the trust companies and banks in the region provide University of Delaware students with mentoring and experiential learning opportunities.

(continued. on p.44)

Congratulations to the Delaware Bankers Association!

From all of us at WSFS Bank, thank you for your leadership and support – 125 years and counting.

EQUAL HOUSING LENDER Member FDIC

WSFS bank
We Stand For Service®

(continued from p. 43)

Program Details

The Trust Management Minor at the University of Delaware consists of three co-equal components (specialized coursework, mentorship, and internship opportunities) designed to enrich a student's academic experience while maximizing their professional development toward entry-level employment (Figure 2).

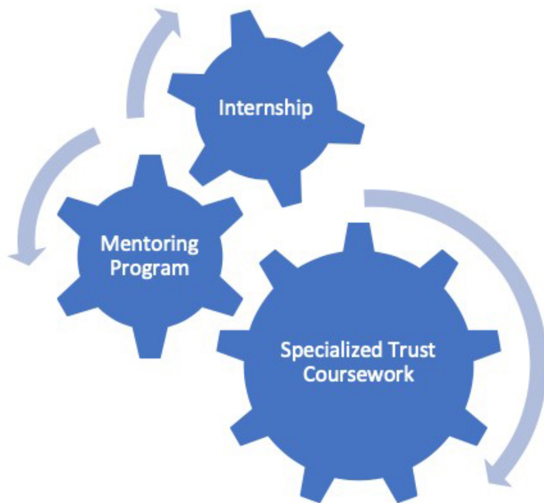


Figure 2: The three components of the Trust Management Minor

Students study strategies for efficient intergenerational transfer of wealth and achieving clients' personal estate planning, philanthropic and financial goals. To deliver this unique learning opportunity, after completing three pre-requisite courses[4] at the Alfred Lerner College of Business and Economics, students enroll in six courses to complete the minor in trust management. The Trust Management Minor students begin their specialized coursework in their junior (3rd) year and must complete classes on income taxation for individuals and business, trusts and estates, fiduciary income taxation, estate planning, finance in practice and a capstone course, the trust management symposium, in which the technical side of trust administration meets experiential learning through consistent interaction with the professionals currently working in the Delaware trust management field. Through the robust curriculum, Lerner College's students majoring in Financial Planning and Wealth Management or Finance, while minoring in Trust Management, meet the ABA academic eligibility criteria for sitting for the CTFA exam.

The Trust Management Minor's mentoring program connects students and trust industry professionals. Through careful consideration regarding personality and career interests, the program pairs each student with a mentor actively working in industry for a minimum of 5 years. The mentors and the students work together for 18-24 months while the student is taking courses in the Trust Management Minor. Students and mentors alike complete an application for the mentorship, which allows the faculty and industry participants to create "sticky" mentorship pairs. The goal of the mentorship component is to provide an opportunity for substantial and meaningful contact between students and industry members to cultivate development of long-term relationships.

Finally, the third essential component of the Trust Management Minor, is that each student in the Trust Management Minor has an opportunity to complete a 10-week paid internship in the trust industry. Through the internship experience, students demonstrate the ability to apply the technical knowledge they have acquired in their Trust Management Minor courses. Our students quickly become "rising stars" in the pool of interns as a result of their professional development and broad knowledge base prior to entering the internship. Our students are ready to add value as soon as they arrive and add value to the company they are working for because the technical teaching for their role has already been tackled in the classroom.

Program Outcomes

Growth in the Trust Management Minor has been remarkable. Beginning the program with only six students, the Trust Management Minor currently has 83 students enrolled.[5] Our students are the beneficiaries of unwavering support by the Delaware trust industry. Through this support, the students in the Classes of 2019 and 2020 have had a 100% internship placement rate. Many of the first graduates from the Class of 2020 have are employed in the trust industry in Delaware and are excelling in their positions.

Beyond the statistics, Lerner students in the program and their employers in the trust industry attest to the value of the Trust Management Minor. Mike Neri, Managing Director, Delaware Trust Leader, U.S. Trust in Delaware has welcomed six Lerner Trust Management Minor interns and three full-time hires since the inception of the program. He remarks, "the UD trust management minor students stood apart from all the other interns because by the time they started they were prepared for a professional work setting and had basic trust knowledge. Our summer interns were given fiduciary projects requiring coordination with outside attorneys and with other team members within the bank, including investment, tax and sales associates and assisted our trust administration teams managing relationships...we were so impressed we made full time job offers to each of our UD trust management minor interns." Kyle Varley, UD Class of 2019, noted, "with the trust management minor being the only program of its kind across the nation, I was able to develop a unique skill set and knowledge base that increased my employability among top-tier firms."

Conclusion

As personal wealth continues to increase, the trust industry responds and adapts to client needs. Trust officers need an increased level of sophistication and knowledge base to service the many facets of client needs. The industry calls for knowledgeable, sophisticated, personable, and well-educated professionals. Moreover, a cadre of young professionals who share common experiences with those who will be the

(continued on p. 46)

An old friend with a new name.

Troutman Pepper brings a new name, a new look and greatly expanded service capabilities, but we remain what we've been for decades – trusted advisers who are proud to support the **Delaware Bankers Association**.

troutman.com

Troutman Pepper Hamilton Sanders LLP

(continued from p. 44)

beneficiaries of the "great wealth transfer" is considered to be highly desirable. Lerner College's pipeline of students, formally educated in trust management and professionally trained through their internships, is on track to fill the demands of the industry, regionally and nationally.

Jennifer Zelvin McCloskey, JD, LL.M, Attorney at Law, is an Instructor and the Director of the Trust Management Minor at Lerner College of Business, University of Delaware. With almost 20 years of experience as an attorney, licensed to practice in 4 states, she transitioned from trust administration to Lerner College in 2017 as the architect and principal instructor teaching courses offered in the Trust Management Minor. She has an LL.M. in Taxation from Villanova, Charles Widger School of Law and a Juris Doctorate from Delaware Law School, Widener University.

Carolyn Levine, Ph.D., is a professor and the Chair of the Accounting and MIS department at Lerner College of Business, University of Delaware. She examines and evaluates financial reporting regulation, with a focus on disclosure rules and enforcement. She has worked on projects related to the impact of: SOX on auditor independence; mandatory public disclosure of trades on insider trading profits and information dissimulation; the minimum distribution requirement on charitable giving; and capital gains tax policy on disclosure credibility. Dr. Levine has a Ph.D. from Carnegie Mellon University and has served on the editorial board of several accounting journals. She is currently an associate editor at the Journal of Accounting, Auditing, and Finance.

Notes:

1- Credit Suisse Research Institute - Global Wealth Report 2019.
2- Pew Research Center Tabulations of the U.S. Census Bureau population estimates as of April 2020 and population projections released December 2017. https://www.pewresearch.org/fact-tank/2020/04/28/millennials-overtake-baby-boomers-as-americas-largest-generation/ft_20-04-27_generationsize_1/
3- https://www.forbes.com/sites/catherineschnaubelt/2019/11/25/creating-a-trust-for-your-family-or-yourself/#65a624a12d26
4- The prerequisite courses which include, Principles of finance, Introduction to Financial Accounting and Business Law, enhance the broad knowledge base the trust management minor students bring to their internships.
5- The growth statistics include the inaugural graduating class through the currently seated classes of 2021 and 2022.

MCCOLLOM
D'EMILIO
SMITH
UEBLER LLC
ATTORNEYS AT LAW

McCollom D'Emilio Smith Uebler LLC is a Delaware law firm focusing on trusts, estates, and tax; business transactions; and litigation. We represent corporate and individual clients in a range of transactional and litigation matters with a commitment to strategic thinking, responsiveness, and efficiency.

mdsulaw.com

(302) 468-5960

Little Falls Centre Two
2751 Centerville Road, Suite 401
Wilmington, DE 19808

Sometimes we have to do more. This time, a lot more.

Sometimes the urgency of a better future compels you to act. We are in such a moment, when a global pandemic, a cry for racial justice and a feeling of hopelessness challenge each community.

In the face of this, Bank of America has committed to investing $1 billion over the next four years to build on our long-standing work to drive economic opportunity and equality in communities of color. It will power small businesses, help connect workers to new skills and job opportunities, improve medical response capacity and access to health care, and support affordable housing.

This bolsters our recent commitment of an additional $100 million to support nonprofit partners and $250 million to support Community Development Financial and Minority Depository Institutions, addressing impacts from the coronavirus that disproportionately affect black and brown communities.

My teammates and I here in Delaware commit to the important work that lies before all of us. We share the sense of urgency gripping the nation, and we welcome the promise of achieving great things together.

Chip

Chip Rossi
Delaware Market President

To learn more, please visit **bankofamerica.com/community.**

Bank of America, N.A. Member FDIC. © 2020 Bank of America Corporation. All rights reserved.

Compliance Focus

Steve F. Manitzas, J.D.
Principal Consultant
Capco RISC Consulting LLC

"FCRA furnisher requirements are a hot topic. If you have not already done so, it's time to review your program, policies, and procedures."

Furnisher Responsibilities under the FCRA

The Fair Credit Reporting Act (FCRA) imposes certain duties on furnishers of consumer report information such as financial institutions. These requirements include ensuring the accuracy of the data that is sent to consumer reporting companies (CRCs), as well as responding to disputes and reporting the results back to the consumer within a timely manner. Furnisher responsibilities under the FCRA was featured in the Consumer Financial Protection Bureau's publication, Supervisory Highlights, in both the Summer and Fall 2019 issues.

Reasonable Written Policies and Procedures

The FCRA requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that they provide to CRCs. Policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities. The CFBP reports that in reviews of mortgage loans, examiners found that the furnishers' policies and procedures were not appropriate to the nature, size, complexity, and scope of the furnisher's activities. While mortgage loan furnishers maintained general FCRA policies and procedures, they did not provide sufficient guidance for responding to disputes in a timely manner or reporting credit reporting changes in furnished accounts when the status of such accounts had changed.

The Bureau also found deficiencies with deposit account furnishers to specialty CRCs (i.e.: ChexSystems). Examiners found that furnishers failed to promptly correct and update deposit account information reported to nationwide specialty CRCs that the furnishers determined was not complete or accurate. Examiners cited banks for inaccuracies where consumers' charged-off balances had been discharged in bankruptcy, and when consumers paid their charged-off balances in full. Additionally, the furnishers generally did not have written policies and procedures that addressed specialty CRCs.

Prohibition of Reporting Information with Actual Knowledge of Errors

The FCRA prohibits furnishing any information relating to a consumer to any CRC if the furnisher "knows or has reasonable cause to believe that the information is inaccurate." The CFPB found that one or more furnishers reported thousands of accounts to one or more CRCs with inaccurate derogatory status codes. The inaccurate reporting was apparently due to coding errors. The Bureau also found that the furnishers had reasonable cause to believe the information was inaccurate as they had received multiple disputes related to the derogatory status codes but failed to conduct a root-cause analysis that would have identified the issue as a systemic source of inaccuracy. Examiners also cited furnishers for failure to specify to consumers an address at which consumers could send dispute notices.

Duty to Correct and Update Information

A furnisher is required to notify a CRC if it has determined that previously furnished information is not complete or accurate and to correct that information. In reviews of auto loan furnishers, examiners found that the furnishers failed to provide prompt notifications to CRCs of their determinations that information they had previously furnished was inaccurate because the furnishers had found that the loans had been opened as a result of identity theft.

Duty to Provide Notice of Delinquency of Accounts

The date of first delinquency is important because it determines when information on a consumer report becomes obsolete and may no longer be reported. The FCRA requires furnishers of information regarding delinquent accounts to report the date of delinquency to the CRC within 90 days. This provision applies to accounts being placed for collection, charged to profit or loss, or similar action. The CFPB identified instances where furnishers reported the incorrect date of first delinquency. For example, a furnisher of auto loans furnished the date of repossession, rather than the date of first delinquency.

Obligations Upon Notice of Dispute

Whether a dispute is filed directly with the furnisher or indirectly through a CRC, the furnisher must conduct a reasonable investigation of the dispute. Multiple violations were cited in this area by the Bureau.

- Failure to investigate disputes submitted directly by consumers.
- Failure to investigate indirect disputes provided by a CRC.
- Failure to notify consumer of determination that a dispute is frivolous or irrelevant.
- Failure to timely complete investigations. The FCRA establishes a general 30-day time period to complete an investigation, which may be extended up to 45 days in certain circumstances.

The Supervisory Highlights from the CFPB indicate that FCRA furnisher requirements are a hot topic. If you have not already done so, it's time to review your program, policies, and procedures.

WeinerBenefits GROUP

we work for your benefit

Since 1938

A Heritage of Trust and Experience Continuing into our Third Generation

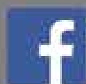
Louis D. Memmolo
AIF, GBA, CHRS

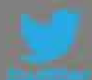
Michael D. Reckner
GBA, CHRS, GBDS, VBS

Debra S. Shears
CEBS, CHRS, GBDS

- Employee Benefits
- Strategic Planning
- Personalized Service
- HR Systems & Services
- Industry Compliance
- Alternative Healthcare Funding Options
- Certified Healthcare Reform Specialists
- Custom Benefit Storefront

2961 Centerville Road, Suite 300, Wilmington, DE 19808 | 302-658-0218 | www.weinerbenefitsgroup.com


Weiner Benefits Group


@Weiner Benefits

Weiner Benefits Group

For Your Benefit

Open Enrollment in the Age of COVID-19

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

"Many organizations are expected to hold entirely virtual open enrollment due to the coronavirus."

The Impact of COVID-19 on Open Enrollment Employers can expect major disruptions to open enrollment this year due to the coronavirus (COVID-19) pandemic. As such, employers should stay apprised of current trends and begin preparing sooner rather than later.

Trends to Watch

Many organizations are expected to hold entirely virtual open enrollment due to the coronavirus. Virtual enrollment has been trending for several years, and the COVID-19 pandemic is helping to solidify its prominence.

Technology

A virtual enrollment process typically includes an online enrollment platform for selecting benefits, hosting remote meetings between employees and HR, and downloading benefits resources. Your benefits advisor should provide these systems and services that integrate payroll, benefits, retirement plans, communication materials and administration. A good system will provide access through handheld devices. Connection through electronic data interfaces to simplify the administration is key. Full service assistance from your advisors take the stress and minutia away from the human resources team and provides the employee with confidence.

In addition to the technology platforms, the use of ZOOM and TEAMS provides a very productive meeting process that gives employees the opportunity to receive information in a unified fashion with the opportunity to interact and ask questions.

Communication

As part of a comprehensive benefit program, good communication is key. Using benefit guides and support materials that clearly and simply convey the programs you offer give the employee a full understanding of their benefits. These materials can be made available through your technology. Thoughtful distribution to provide timelines and expectations through these materials give the employees a sense that there is organization and purpose behind the benefits program.

Supplemental Benefits

Also, many employers are meeting current employee needs through supplemental health plans with an emphasis on overall well-being. Adding optional health benefits can be a way to limit additional employer spending and provide assistance to employees who need it.

Important considerations for additional benefits are employee assistance programs that provide access to counseling services that help relieve the stresses prevalent in this Covid environment.

Other benefits that can provide additional financial security are life insurance programs, supplemental disability, dependent care and health savings accounts.

Ways Employers Can Prepare

Open enrollment isn't always a clear-cut process. Employers can review the following strategies and consider how similar initiatives might improve their own open enrollment efforts:

- Reach out to employees to determine what kind of enrollment process will work best for them.
- Confer with management about any operational restrictions that may influence open enrollment.
- Meet with stakeholders to solidify what the enrollment process will look like.
- Inform all stakeholders about the enrollment process and where to find benefits resources.
- Communicate to employees about open enrollment using multiple channels.

Every employer group is different. The open enrollment process should be custom designed to fit the unique culture and personality of each group with the end goal of providing security and peace of mind. Your benefits advisor should provide all of the components for a successful open enrollment.

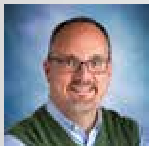
Wealth Management Professionals! Don't Social Distance from Your Career!

2020 Delaware Trust Conference

Attend Virtually on the Conference Platform
Live: October 19th & 20th
Available On-Demand: October 19th to November 30th

22 Hours Continuing Education Credits Applied For, Including 2.0 Hours Ethics Credits!

Hear these renowned wealth management experts, and many more!


Samuel Donaldson

Jere Doyle

Dana G. Fitzsimons, Jr.

Dr. Tony Allen

Margaret E.W. Sager

R. Hugh Magill

Lauren J. Wolven

Daniel S. Rubin

Edwin Morrow III

Chris Moorcroft

See the Full Agenda and Register at www.debankers.com

Accounting for Success

The Five W's of a 401(k) Plan Audit

by
Stacey I. Snyder, CPA, QKA, TGPC
Supervisor - Retirement Plan Audit Services
Belfint Lyons & Shuman, P.A.

"The purpose of a 401(k) plan audit is to verify the plan is operating in compliance with applicable rules and regulations, and in accordance with the provisions of the plan document."

If your client has been informed that their 401(k) plan needs an audit, they probably have many questions if they have never been through a 401(k) audit. Hopefully by answering the five W's (Who? What? When? Where? Why?), we'll cover most of their questions.

WHO? - Who Audits a 401(k) Plan?

The audit of a 401(k) plan must be performed by an independent qualified public accountant. While any independent CPA firm can perform the audit, it is important to evaluate a firm's qualifications. Audits of 401(k) plans differ from financial statement audits since they require specialized knowledge of the applicable rules and regulations related to 401(k) plans that tie into the required audit procedures. Hiring a firm that lacks the appropriate knowledge could result in a deficient audit and create unexpected costs and inconveniences if the Department of Labor (DOL) requires the plan be re-audited.

WHAT? - What is Audited?

The purpose of a 401(k) plan audit is to verify the plan is operating in compliance with applicable rules and regulations, and in accordance with the provisions of the plan document. Therefore, the auditor will need a copy of the plan document and any related amendments to determine which provisions have been adopted by the plan, and the applicable testing procedures to apply to each provision. Generally, the following plan provisions are tested:

- Investments - Unless a limited scope audit is requested, testing of the fair market values as of the last day of the plan year and earnings and transactions during the year will be performed.
- Loans - Testing is performed to verify loans were issued in accordance with plan provisions and applicable regulatory limits.
- Employee Contributions - Testing is performed to verify timeliness of deposits, that participant elections are followed, and that amounts withheld from participants' pay are deposited completely into the plan.
- Employer Contributions - Testing is performed to verify contributions are allocated in accordance with the formula defined by the plan and do not exceed regulatory limits.
- Distributions - Testing is performed to verify eligibility of the distributions, that the amounts distributed are not in excess of plan provisions, that forfeited amounts are determined in accordance with plan provisions, and that distributions were made in accordance with participant elections.
- Rollover Contributions - Testing is performed to ensure the contribution was received from an eligible source and in accordance with the plan document, and that the amount received was deposited into the participant's account completely and in accordance with participant elections.

To complete all the required testing, the auditor will need a variety of reports and supporting documents. The plan's recordkeeper provides an audit package containing a majority of the necessary reports. Payroll reports, personnel file information, and any requests not submitted to the recordkeeper will have to be provided by the plan sponsor.

In addition, if the plan was previously a small plan not subject to the audit requirement, beginning balance testing will also be required. To complete beginning balance testing, the auditor will need historical data for as many years as possible, possibly from inception of the plan.

WHEN? - When is the Audit Due?

Since the audit is required to be attached to the plan's Form 5500, the audit is due by the filing deadline of the Form 5500. The Form 5500 is due the last day of the seventh month following the plan's year end, with an optional two-and-a-half-month extension. For a plan with a December 31 year end, the deadline is July 31 of the following year, or October 15 if an extension is filed.

WHERE? - Where is the Audit Performed?

Audits of 401(k) plans can often be performed remotely. Since reports from the recordkeeper and third-party administrator are already in electronic format, they are provided to the auditor electronically. Any information needed from the plan sponsor may be sent electronically or collected in person.

WHY? - Why Does the Plan Need an Audit?

Plans that have 100 or more eligible participants at the beginning of the plan year are required to undergo audits annually. However, an exception to the requirement is the 80-120 rule. In short, if the plan was previously a small plan (fewer than 100 participants at the beginning of a prior plan year), an audit is not required until the plan reaches 120 participants on the first day of a plan year.

DCF Delaware Community Foundation™
Engaging Communities, Empowering Giving™

DELCF.ORG

Experts in philanthropy.
Helping **professional advisors**
serve charitably minded clients.

I realized I wanted to do something so I can see the impact in my community. The DCF addresses a lot of things in the state, and I love how it's evolved in the last 10 years.

Donald W. Nicholson, Jr. and family
Senior Financial Advisor,
Donald W. Nicholson & Associates, Ltd.

TO LEARN MORE, PLEASE CONTACT:

Joan Hoge-North
jhoge-north@delcf.org · 302.504.5224

Lending Law Update

Reservation of Rights/Pre-Negotiation Letters in the Age of COVID-19

by
Eugene A. DiPrinzio, Esq.
Young Conaway Stargatt & Taylor, LLP

"Lenders may be undertaking a risky course of conduct that could lead to lender liability exposure."

Do so-called "reservation of rights" letters or "pre-negotiation agreements" bear dusting off in the age of COVID-19 and have utilitarian effect in the current environment? Last used frequently during the Great Recession from 2008-2012, these letter agreements provided a road map for parties in a distressed loan situation to determine whether negotiations or renegotiations of existing terms or conditions might be beneficial; and laid out the ground rules for such negotiations. Today's market stress caused by COVID-19 may, in fact, necessitate the revival of the use of these letters, especially in large credit facilities stressed in the current context. If financial institutions are faced with a wave of loan defaults, then the letters become very important because they highlight a number of legal rights and remedies that the loan parties should consider before entering into serious negotiations about restructuring, refinancing, or changing terms or conditions that apply to their loans and other credit facilities. It is the view of this author that these letters should now be used at the forefront of discussions between borrowers and lenders.

The typical reservation of rights letter indicates that there will be no final agreement, unless it is in writing and mutually agreed upon by all parties. In addition, the following basic concepts should be considered when preparing the letter, though space does not permit including complete specific language here:

1. No obligation to negotiate. This generally means that the parties are under no binding obligation or compulsion to do so but are merely cooperating with one another in creating and having the discussion.

2. Reservation of rights. All rights and remedies of the parties under the existing documents shall continue in full force and effect, notwithstanding that there will be negotiations conducted.

3. No lender default. Estoppel language that acknowledges the lender is not in default under its obligations but rather the borrower and/or guarantors are seeking accommodations that are different than those to which they are currently bound.

4. Independent agreement. The typical letter highlights that any negotiations and/or final agreements are outside the context of the current loan agreement (contract) and the terms or conditions that are contained in it.

5. Confidentiality. It is key to require that whatever specific deal or resolution that may be negotiated or finalized will not be publicly disseminated to either other borrowers or to third parties outside the negotiated settlement.

6. Alternative opportunities. The letter should encourage the parties to look at all alternative opportunities during the negotiation process, which might include, but not be limited to, refinancing, sale, lease, or the admission of additional equity investors that could cure or otherwise pay off the existing loan/credit facility.

7. Authorization/binding effect. It must be clear that the parties have designated exclusive representatives that have the power and authority to negotiate and bind the parties to a final deal, if one is concluded.

8. Advice from independent counsel. The letter should specify that each party is entering into legal discussions that could result in a legally binding agreement and, therefore, they should retain and engage independent legal counsel to render legal advice during the negotiations.

9. No prejudice. Explicit language should permit judicial interpretation and construction that if there is no deal concluded, no party would be prejudiced over another by virtue of engaging in the negotiations.

10. Expenses. Clearly articulate which party will bear the fees and expenses of the professionals engaged to enter into the negotiations.

11. Borrower relief. There could be an affirmative obligation imposed on the borrower to pursue federal loan program grants or subsidiaries. In the age of COVID-19, a lender may insist that a borrower apply for federal loans such as the Paycheck Protection Program ("PPP") or other loan platform to obtain needed funds to increase its economic stability.

12. Actions to cure defaults. Provide that the lender can take immediate action to utilize any collateral security and/or escrow deposits to cure defaults in the current loan facilities while the negotiations are in process.

If lenders are going to enter into extensive negotiations with borrowers to consider changing their current loan terms and these concepts are not addressed, then lenders may be undertaking a risky course of conduct that could lead to lender liability exposure. History has demonstrated that it is time to once again utilize pre-negotiation/reservation of rights letters because of the adverse economic impacts that have been brought upon various borrowers by COVID-19.

THE PERCEPTION OF WORKING REMOTELY HAS CHANGED SINCE COVID-19

PRIOR TO COVID-19	SINCE COVID-19
EMPLOYEES PITCHING THE CASE FOR REMOTE WORK	**EMPLOYEES STRUGGLE TO FIND BALANCE**
80% OF EMPLOYEES SAY THEY WOULD **TURN DOWN A JOB** THAT DID NOT OFFER REMOTE WORKING	**1 IN 4** **NEWLY REMOTE** WORKERS REPORT FEELING **LESS SATISFACTION** WHEN WORKING REMOTELY
85% OF BUSINESSES CONFIRM **PRODUCTIVITY** HAS INCREASED DUE TO GREATER FLEXIBILITY	**31%** OF **NEWLY REMOTE** WORKERS REPORT BEING **LESS PRODUCTIVE** WORKING REMOTELY, COMPARED TO JUST **13%** OF EXPERIENCED REMOTE WORKERS
86% OF EMPLOYEES THINK LOCATION FLEXIBILITY WOULD **REDUCE THEIR STRESS** AND **IMPROVE SELF-CARE**	**80%** OF SURVEYED AMERICAN ADULTS REPORTED **FEELING HELPLESS** AND THAT THINGS ARE **OUT OF CONTROL**
56% OF THE US NON-SELF-EMPLOYED WORKFORCE HAD A ROLE THAT ALLOWED FOR REMOTE WORK	**48%** OF CFOS **PLAN TO TRANSITION AT LEAST 10%** OF FORMERLY ONSITE EMPLOYEES TO A REMOTE DELIVERY MODEL

"The current environment presents both immediate imperatives, as well as the opportunity to strategically transform the workforce. Financial institutions need to consider how to manage a **remote-workforce** that may be working from remote locations in the long run. There is a need to successfully manage the adoption of these working styles with the opportunity to **increase productivity, adaptability,** and **profits** while also attracting **diverse talent** and **work-life balance**."

– **Paul Mokdessi,** Partner, Capco

SOURCES:

FlexJobs and Global Workplace Analytics (February 13, 2020)
Slack, Remote Work in the Age of COVID-19 (April 21, 2020)
Thrive Global (March 2020)
Gartner, CFO Survey (April 4, 2020)

YOUNG
CONAWAY

Congratulations
Delaware Bankers Association
on 125 Years of Service
to the
Financial Services Industry
and to
Delaware's Schools
Teaching Financial Literacy

Rodney Square | 1000 North King Street | Wilmington, DE 19801 | 302.571.6600
YoungConaway.com

Delaware Bankers Association

Delaware is a great place to live and work. Delaware's financial services industry is an important part of what makes that possible. The First State's financial services industry provides good paying jobs and provides much-needed revenue. Delaware's banks support small businesses with loans, provide mortgages to low- and moderate-income families, and invest in the community. In addition, Delaware's banks are good corporate citizens supplying vital grants and volunteer hours to non-profit organizations statewide.

For 125 years the Delaware Bankers Association has proudly served Delaware's banks and the First State. This brochure highlights some of the ways Delaware's banks make a positive impact.

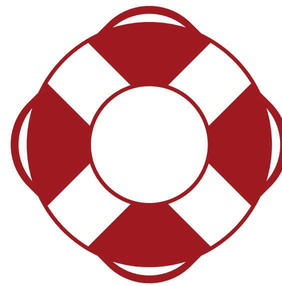
Delaware's banks support the community through times of prosperity and times of challenge. In 2020, during the COVID-19 pandemic, Delaware's banks processed loans through the Paycheck Protection Program that helped provide vital relief to businesses and helped keep employees on payrolls. Delaware's bankers worked tirelessly, often from home offices and kitchen tables to deliver timely relief to businesses large and small.

Employment

Delaware's financial services industry employs 47,600 individuals.[1] The industry also indirectly generates other jobs in such sectors as construction, manufacturing, retail, service, and other areas.

47,600 Jobs

Delaware Financial Activities



Paycheck Protection Program

In Delaware, through July 31st, over 13,000 Paycheck Protection Program loans were generated for more than $1.5 billion. Nationally, seven of the top ten PPP lenders were banks with a Delaware presence. 4,272 bank lenders processed over 4.4 million loans representing over 48 million working Americans. In Delaware, national, regional and community banks processed the vast majority of PPP loans, with over 75% of the loans over $150,000 processed by seven banks.[3]

Revenue

In fiscal year 2019, Delaware's banks paid $100.8 million in bank franchise taxes.[2] That's an increase of over 13 percent from the previous year, and more than 45 times greater than the amount paid in 1982 when the Financial Center Development Act was enacted.

$100.8 Million

Bank Franchise Taxes

1- State of Delaware, Department of Labor as of 12/31/19, Financial Activities category. 2 - State of Delaware, Office of the State Bank Commissioner FY 2019. 3- U.S. Small Business Administration. 4 - Data provided by 2019 Participating Banks.

Member Banks

ADP Trust Company
Applied Bank/Applied Card Services
Artisans' Bank
Bank of America, N.A.
Bank of Ocean City
Barclays Bank Delaware
Bessemer Trust Company of Delaware, N.A.
BNY Mellon Trust of Delaware
BNY Mellon Investment Servicing Trust Co. of Delaware
BNY Mellon Wealth Management
Brandywine Trust Company, LLC
Brown Brothers Harriman Trust Co. of Delaware, N.A.
The Bryn Mawr Trust Company
The Bryn Mawr Trust Company of Delaware
Calvin B. Taylor Bank
Capital One, N.A.
Charles Schwab Trust Company of Delaware
Citicorp Trust Delaware, N.A.
Commonwealth Trust Company
Community Bank Delaware
County Bank
Deutsche Bank Trust Co. Delaware
Discover Bank
Evercore Trust Company, N.A.
First Citizens Community Bank
Fulton Bank, N.A.
Glenmede
HSBC Bank USA, N.A./HSBC Trust Co. (DE) N.A.
JPMorgan Chase & Company
J.P.Morgan Trust Company of Delaware
Key National Trust Company of Delaware
M&T Bank
Merrill Lynch
New York Private Trust Company
The Northern Trust Company of Delaware
PNC Bank, N.A.
PNC Delaware Trust Company
RBC Trust Company (DE) Ltd./Royal Bank of Canada
Sallie Mae
SEI Private Trust Company
Shore United Bank
Stifel Trust Company of Delaware, N.A.
TD Bank, N.A.
U.S. Bank Trust N.A.
U.S. Trust Company of Delaware
Wells Fargo Bank, N.A./Wells Fargo DE Trust Co., N.A.
Wilmington Trust Company
WSFS Bank
WSFS Institutional Services

Delaware Bankers Association

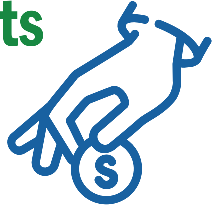
8 W. Loockerman Street, Suite 200, P.O. Box 781
Dover, DE 19903
302-678-8600 / www.debankers.com

The Delaware Bankers Association is a not-for-profit trade association that represents financial institutions chartered to do banking business in Delaware.

In the Community

Grants

In the past year, Delaware's banks donated over $17 million in grants and contributions to local charities and non-profit organizations.[4] These include community development organizations, hospitals, services for the disabled, food banks, homeless shelters, women's charities, youth groups, schools, fire companies, libraries, community centers, and many more!



$17.3 Million
Grants & Contributions

Volunteerism

In 2019 Delaware bank employees volunteered over 218,000 hours of service to hundreds of non-profit organizations throughout the First State.[4] That's more than 24 years of service!

218,155
Volunteer Hours

Education

The Delaware Financial Education Alliance (DFEA) provides financial literacy education in the State of Delaware through programs designed to promote economic development and stability. These include...

David G. Bakerian Scholarship

Since 2002 the Delaware Bankers Association has awarded two annual scholarships to Delaware high school students who participate in the Keys to Financial Success elective course.

Teach Children to Save Day

Now in its 22nd year, volunteer bankers visit schools throughout Delaware each April to teach a lesson on the importance of saving.

The Great Investo Book Series

A series of original storybooks on a variety of personal financial topics, perfect for Teach Children to Save Day or individual enjoyment. Available on Amazon.com

Visit: www.dfea.org