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Summer 2024
Vol. 20 No. 3

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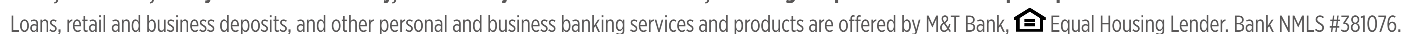
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View from the Chair

Matthew Parks
VP, Investments,
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Discover Bank

Chair
Delaware Bankers Association

"By supporting small businesses, banks can establish strong relationships within the local community, enhancing their reputation and relevance."

In an oft-quoted, but apocryphal story, a reporter asked Willie Sutton, the notorious bank robber why he robbed banks. "Because that's where the money is." Later, in his autobiography, Sutton admitted that if he'd ever been asked that he'd probably have said it since it was obvious. To turn that saying around, banks need to sharpen their focus on small and medium-sized enterprises (SMEs), because they are a significant driver of business growth.

There are over 30 million SMEs in the United States. In Delaware alone, small firms (those with fewer than 500 employees) account for 98.5 percent of all Delaware businesses, according to U.S. Small Business Administration's Office of Advocacy in 2022 (the most recent year with full statistics available). Delaware's small businesses employ over 195,000 individuals representing 47.4 percent of all employees in the First State. SMEs are crucial for the financial vitality of Delaware. Their presence and operations contribute to the overall economic health of the state by fostering innovation, creating jobs, and supporting local communities.

Small businesses represent a significant opportunity for the banking industry, and not merely from a profit standpoint; they are an important nexus between financial services and the community. How then can Delaware's bank contribute to a sector so pivotal to the financial vitality of Delaware? The most obvious answer is by providing access to capital and credit facilities, but beyond financial support, banks can provide other resources to empower SMEs. These include:

Financial Advice: Banks act as resources for financial advice, offering guidance on financial management, investment strategies, and other financial matters to help small businesses make informed decisions and improve their financial health.

Support Services: In addition to financial resources, banks offer support services to small businesses. These services may include business consulting, networking opportunities, educational workshops, and other resources aimed at helping small businesses grow and succeed.

Partnerships and Collaborations: Banks engage in partnerships and collaborations with small businesses to foster growth. By working closely with small business owners, banks can provide tailored solutions, access to expertise, and opportunities for expansion through strategic partnerships.

Empowerment through Financial Inclusion: Banks empower small businesses through financial inclusion and accessibility. By ensuring that small businesses have access to banking services, loans, and credit facilities, banks enable these businesses to thrive and contribute to the local economy.

Small business, especially start-ups are a tremendous engine for innovation. Many, especially in the technology sector, are looking to answer an emerging need, or provide a new method to address a problem. Banks can support these innovative ventures by providing them with the necessary financial resources and guidance to bring their ideas to fruition.

To sum it up, banks support small businesses beyond financial resources by offering valuable financial advice, a range of support services, partnerships, and collaborations, and by promoting financial inclusion and empowerment within the small business community. By supporting small businesses, banks can establish strong relationships within the local community, enhancing their reputation and relevance. By supporting small businesses, Delaware's banks will not only be where the money is, but more importantly where the support, empowerment, and opportunity are.

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President's Report

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

"Fairness in banking ensures that all stakeholders - customers, employees, and shareholders - are treated equitably."

My oldest grandson, Bennett, will be starting Kindergarten this week. Sigh. In preparation for this momentous event, my daughter read me the "rules of the classroom." I immediately thought of Robert Fulghum's book All I Need to Know I Learned in Kindergarten.

"Share everything. Play fair. Don't hit people. Put things back where you found them. Clean up your own mess. Don't take things that aren't yours. Say you're sorry when you hurt somebody. Wash your hands before you eat. Flush. Warm cookies and cold milk are good for you. Live a balanced life – learn some and think some and draw and paint and sing and dance and play and work every day some. Take a nap every afternoon. When you go out in the world, watch out for traffic, hold hands, and stick together. Be aware of wonder. Remember the little seed in the Styrofoam cup: the roots go down and the plant goes up and nobody really knows how or why, but we are all like that. Goldfish and hamsters and white mice and even the little seed in the Styrofoam cup – they all die. So do we. And then remember the Dick-and-Jane books and the first word you learned - the biggest word of all - LOOK."

These simple yet profound lessons also have broad applicability to the banking industry and can serve as guiding principles, emphasizing the importance of sharing, communicating, fairness, responsibility, and life balance.

Share Everything. In kindergarten, we are taught to share everything, Such as toys, crayons, or snacks. For bankers, this principle translates into transparency and ethical practices. Sharing information with clients, colleagues, and regulators transparently builds trust and fosters strong relationships. Just as children learn to share to create a harmonious environment, bankers who practice transparency and open communication create a trustworthy financial system.

Play Fair. Fairness is a critical lesson from Kindergarten that applies directly to banking. In school, playing fair means following the rules and treating others kindly. In the banking industry, fairness involves adhering to regulations and offering customer-centric solutions. Fairness in banking ensures that all stakeholders - customers, employees, and shareholders - are treated equitably.

Clean Up Your Own Mess. Taking responsibility for one's actions is a key lesson in Kindergarten. When children make a mess, they are taught to clean it up themselves. For bankers, this translates to accountability. Children learn the importance of cleaning up after themselves; banks focused on customer satisfaction solve issues quickly.

When you go out in the world, watch out for traffic, hold hands, and stick together. Children learn to balance work and play, rest and activity in Kindergarten. For bankers, this means balancing risk and reward, short-term gains with long-term sustainability, and professional commitments with personal well-being. A balanced approach ensures financial institutions can weather economic fluctuations. A strong work-life balance is made possible by providing a good work culture for employees.

Equally important is that bankers keep a sense of wonder, a thirst for innovation, and a desire to keep learning. "Remember the little seed in the Styrofoam cup: the roots go down and the plant goes up and nobody really knows how or why, but we are all like that." And although other reading texts have replaced Dick-and-Jane books, let us not forget the biggest word of all - LOOK. Here's to bringing out the kindergartener in each of us.

Sarah

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All Around the Hall

by
David Mench
Director, Government Affairs
Delaware Bankers Association

The second session of the 152nd General Assembly opened on Tuesday, January 9th, 2024. Speaker Rep. Valerie Longhurst (D) became the first woman at the helm of the House of Representatives and Rep. Melissa Minor-Brown (Mimi) (D) made history by opening the session as the first African American woman to be the House Majority Leader. There was one new member of the House, Rep. Valerie Jones Giltner (R) who replaced the retiring Rep. Ruth Briggs King.

The 2024 Legislative session was another critical year ensuring legislators understood the value of the business community and specifically the financial services industry. The health of the Delaware economy is dependent on a vibrant financial services industry. The second session opened with several hundred bills still in various stages of the legislative process which led to 2024 being a busy and eventful legislative year. Several legislative and banking issues of interest carried over from the first session of the 152nd General Assembly.

At the end of the session, Rep. Pete Schwartzkopf (D) announced his retirement after 22 years in the legislature. Rep. Mike Ramone (R) announced he was leaving the house to run for Governor and Rep. Sherry Dorsey Walker (D) vacated her seat to run for Lt. Governor.

Equity and Inclusion in Financial Literacy for all high school students (HB 203) was carried over from the first session. Rep. Hilovsky spent the summer and fall months following last year's session building a coalition of support and polling Delawareans on the topic of Financial Literacy. Those polls found that 91% of respondents felt a Financial Literacy requirement in high school was an urgent need. However, even with this clear public support, pockets of resistance remained citing schools didn't have the bandwidth to implement this requirement. Rep. Hilovsky continued to look for compromise and introduced House Substitute 1 for HB 203. 14 changes were made in this substitute bill to reflect feedback from many of those resistant to its passing. Unfortunately, HS1 for HB 203 did not make it to a floor vote, although it appeared Rep. Hilovsky had the votes in both the House and Senate to pass HB 203. More to come in the 153rd General Assembly.

Capping Interest Rates on Loans with Durations Under 60 days (HB 143) introduced in the first session of the 152nd General Assembly never made it to a committee hearing this session. The bill would not directly impact our members, but if passed could impact Delaware's reputation as a banking-friendly state.

Student Loan Borrower Bill of Rights (SB132) was also introduced in the first session but not heard in committee until this year. This bill is similar to bills passed in 18 other states. It protects borrowers against unfair practices. The original bill contained language deferring authority to federal regulation but indirectly saddled federally regulated student lenders with additional state regulatory oversight. The DBA along with members and other partners worked with the bill's sponsor to gain agreement on a complete exemption for federally regulated lenders. The legislation had a fiscal note and was assigned to the Finance Committee but was not given a hearing. The bill will be something we need to keep a close watch over as we head into the 153rd General Assembly should a new version be introduced.

Exemptions in Bankruptcy and Debt Proceedings (HB 318) passed the House and Senate with limited opposition. This Act increases the exemption in bankruptcy and other debt proceedings for a debtor's residence from $125,000 to $200,000. The exemption had been limited to $125,000 since 2012 while home prices have increased dramatically in the last decade.

Marijuana continued to be a hot topic and the DBA collaborated with and provided input to the State Treasures Office as they introduced **(HB 355). This bill provides legal protections for financial institutions and other entities that provide financial or accounting services to cannabis-related businesses** that are licensed or

registered under Delaware law. The bill passed unanimously in the House and mostly along party lines in the Senate. It is awaiting the Governor's action.

Delaware Community Investment Venture Fund (SB83) was signed into law last summer. The bill called for the reconstitution of The Council on Banking. Seven DBA members were nominated for appointment by Governor Carney to the Council and were approved and commissioned to the Council. For those not familiar with (SB83), the fund's purpose is to create opportunities for banking organizations and credit unions doing business in Delaware to better serve the needs of low- to moderate-income tracts in Delaware. The Council on Banking held its initial meeting on Monday, January 22nd. The Council has been meeting monthly and making excellent progress in fulfilling its mission.

A special thanks to our members who provided feedback on **The Uniform Special Deposits Act (SB 308).** It passed the Senate and House unanimously. This was a very unique bill focused on special deposit accounts that do not specify a beneficial owner at the time they are established, rather the beneficial owner is designated based on the outcome of an event.

The diligence and hard work of the Delaware Bar Association is appreciated when it comes to Corporate and Trust bills. **The Decedents and Estates Bill (SB 268) and the Creation, Regulation, Operation, and Dissolution of Domestic Statutory Trusts (HB 338)** passed the Senate and the House unanimously. The same could not be said for the **Delaware General Corporate Law bill (SB 313).** This year brought some new challenges related to (SB 313). Last year the bill met some resistance from a House member who brought in parties from out of state to argue against some of its provisions. Objections were eventually overcome, and it was signed into law. However, these developments set up a new round of opposition this year to the Delaware General Corporate Law. We witnessed contentious hearings which unfortunately led to some negative publicity for Delaware's "Open for Business" reputation, including a front-page article in the Wall Street Journal. Eventually, (SB313) passed the Senate unanimously, and 34-7 in the House with the Progressive caucus voting against the bill. Thank you to our members and partners who work diligently to ensure Delaware continues to be a leader in Corporate Law.

As the second session of the 152nd General Assembly drew to a close on Sunday, June 30th, (Yes, a Sunday complete with a pig roast!) we were thankful to have successfully navigated another legislative year and proud of the work done to support Delaware's thriving financial services industry. The 153rd General Assembly is just around the corner with 51 of 62 Legislative seats on the ballot. Thank you to our members, the DBA Government Affairs Committee, and our Partners for supporting this important work.

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DBA 129th Annual Meeting

Matthew Parks, Director, Investments, CRA & Retail Banking, Discover Bank was elected the Chair of the Delaware Bankers Association (DBA) on May 9th at the DBA's 129th Annual Meeting in Wilmington. The DBA also elected and installed Caroline Dickerson, Chief Executive Officer & Treasurer, Commonwealth Trust Company, to the position of Chair-Elect.

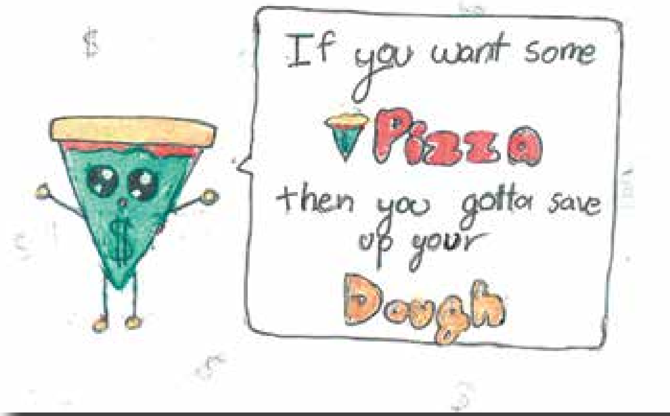
Outgoing Chair, Tarrie Miller, President and COO County Bank, passes the gavel to incoming Chair Matthew Parks, Director, Investments, CRA & Retail Banking, Discover Bank, at the 129th DBA Annual Meeting.

2024 David G. Bakerian Scholarship

Matthew Parks, Chair of the Delaware Bankers Association and Sarah Long, President of the DBA, congratulate (l. to r.) Maxine Banaag, and Sydney Hatch, the recipients of the 2024 David G. Bakerian Scholarship. Matthew Parks, Director, Investments, CRA & Retail Banking, Discover Bank, and incoming Chair of the Delaware Bankers Association and Sarah Long, President of the DBA, congratulate (l. to r.) Maxine Banaag, and Sydney Hatch, the recipients of the 2024 David G. Bakerian Scholarship.

The Delaware Bankers Association also announced the winners of the 2024 David G. Bakerian Award. The winners were Maxine Banaag, and Sydney Hatch, both students at Caesar Rodney High School. Each winner received a $2,500 scholarship. Both students participated in the Keys to Financial Success course, a full-semester elective taught in high schools throughout Delaware.

Teach Children to Save Poster Winner



Nitya Uppalapati, a fourth grader at Newark Charter School, was chosen as the winner of the 2024 Teach Children to Save Day Poster Contest. Students throughout the State were encouraged to create a poster on the importance of saving as part of the annual Teach Children to Save Day event. Over 100 entries were received. Nitya received $100 as the first-place winner. Two runners-up, Sylvia Gioioso, a fourth grader, also at Newark Charter School, and Cameron Cheseroni, from Immaculate Heart of Mary Elementary, both received $50 prizes. Congratulations to all the winners! See Nitya's poster above.

Delaware State Fair

There were comic books, games, and prizes galore at the Delaware Bankers Association's booth at Kids Day at the Delaware State Fair, July 23. DBA Director of Events, Corinne Stayton (above left) and Chief Administrative Officer, Margaret Cregan (r.) were joined by Amy Walls (c.), Senior Pricipal, Community Reinvestment at Discover Bank.

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by
Mike DiPaolo
Vice President for Philanthropy & Southern Delaware
Delaware Community Foundation

The charitable instinct is strong in us all. Some people donate time and effort while others donate funds. Many contribute all three.

In my role at the Delaware Community Foundation (DCF), I often see this drive to give back in high-net-worth individuals. As they retire after a successful career, sell assets such as a business or property, or find themselves in receipt of an unexpected financial windfall such as inheritance or even the lottery, this desire grows. They envision using their wealth to create meaningful impact for future generations, whether by supporting a specific organization, a broader area of interest - such as the arts or animal welfare - or the community at large.

When this happens, the conversation frequently turns to the topic of how to start a private foundation. It's a laudable impulse that can become a long-term challenge, especially for those unaware of, or not well versed in, the IRS requirements and filings needed to administer a private foundation.

This is where the DCF can help. A DCF donor advised fund (DAF) can ease many of those burdens. Employing a DAF, your client can build a solid structure to support charities in Delaware and across the country, while at the same time relieving the client of key responsibilities such as paying excise taxes and filing financial reports.

A DAF enables your client's philanthropic desires to live on, often in perpetuity, without the weight of responsibility on future generations.

This helps families avoid challenges that may arise should succeeding generations disagree about the direction of the foundation's philanthropy.

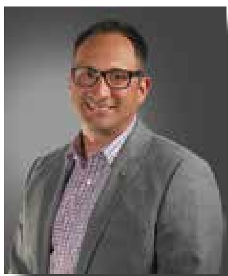
While it is "cleanest" to establish a DAF from the start, what if your client has already established a foundation?

We have partnered with professional advisors in several situations where the administrative burdens on a family foundation became too much to bear. In one case, for example, the family discovered after the original benefactor had passed away that they (the surviving family) had not continued to file the foundation's annual Form 990, which jeopardized the status of the foundation with the IRS.

The good news is that you can convert a private foundation to a DAF.

Sussex County estate attorney Bill Purnell sees the benefits of such a conversion. "It is easy to address the symptoms of a faltering private or family foundation, but often these are cyclical and will need to be addressed again in several years. Dissolving the foundation and transferring the assets to Donor Advised Fund at the DCF can be an effective alternative. It allows the family and/or trustees to continue supporting work in the community while placing administrative responsibilities on the community foundation."

As you work with your clients to chart a course for charitable giving that offers long-term benefits and helps achieve long-lasting impact, the philanthropy professionals at the DCF are ready to help. I encourage you to visit the Professional Advisors section of our website or reach out to me directly with questions.



Mike DiPaolo is DCF's Vice President for Philanthropy & Southern Delaware and is based in Sussex County. He brings more than 20 years' experience in development and is familiar with a wide range of giving tools as impactful philanthropic strategies. He can be reached at 302-856-4393 or at mdipaolo@delcf.org.

Four Key Benefits of a DCF DAF vs. a Private Foundation

As you consider a DAF for your client's plan, consider the following benefits to the client and to you:

1) A DAF provides greater privacy in terms of grantmaking. It protects the identities of the advisors and the asset value of the fund.

2) The DCF will provide support with actual grantmaking.

3) All administrative tasks including auditing and IRS filings, financial investments, and accounting are handled by the DCF.

4) There is no 5% distribution requirement as is required for a private foundation.

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The Intersection of Trusts and High Net Worth Divorces

by
Peter S. Gordon, Director
and
Joseph Bosik IV, Director
Gordon, Fournaris & Mammarella, P.A.

According to a recent Forbes Advisor article, there were 673,989 divorces and annulments in the United States in 2022, based on data from the 45 states that report this information. While this number may seem staggering, it is a significant decrease from the 944,000 divorces and annulments reported in 2000. Despite this, only about 20% of married couples currently have a prenuptial agreement in place. https://www.forbes.com/advisor/legal/divorce/divorce-statistics/

It should come as no surprise then that more and more high net worth divorces are being reported, many of which involve trusts. These trusts are funded with one of the spouse's assets that were acquired during the marring, giving rise to the claim by the other spouse that the trust assets are truly marital assets subject to division by the court. These trusts are commonly structured as a domestic asset protection trust ("DAPT") or beneficiary defective income trust ("BDIT").

With respect to DAPTs, there are currently 19 states that allow the use of DAPTs, including Delaware. A DAPT is a trust under which the settlor is beneficiary. There are several restrictions on the rights and powers that the settlor can retain, but if structured properly, the settlor's creditors cannot reach the assets of the DAPT. However, in Delaware, and in most, but not all, jurisdictions that allow DAPTs, a spouse seeking alimony and property division and/or a child seeking child support are exception creditors, meaning that they may reach the assets of the DAPT, assuming the spouses were married at the time of the transfer(s) to the trust. But in Nevada, Wyoming, Utah, Oklahoma, Virginia and West Virginia, a divorcing spouse is not an exception creditor, even when the DAPT was created during the marriage and funded with marital property.

Although spouses are, by default, exception creditors under Delaware law, Delaware recently enacted legislation by which a spouse can waive his or her rights to a DAPT upon divorce. Section 3573(c) of Title 12 of the Delaware Code sets forth a list of requirements in order for there to be a valid waiver, including a statement, in capital letters, that provides:

> YOUR SPOUSE IS CREATING OR HAS CREATED AN IRREVOCABLE TRUST INTO WHICH PROPERTY IS BEING TRANSFERRED. A COPY OF THE TRUST INSTRUMENT THAT WILL GOVERN OR GOVERNS SUCH IRREVOCABLE TRUST IS ANNEXED HERETO AS AN EXHIBIT. THE PROPERTY THAT IS TO BE TRANSFERRED TO THE IRREVOCABLE TRUST, WHICH IS THE SUBJECT OF A PROPOSED DISPOSITION UNDER DELAWARE'S QUALIFIED DISPOSITIONS IN TRUST ACT (12 Del. C. §§ 3570 et seq.), IS AS FOLLOWS: ______________. THE ESTIMATED VALUE OF SUCH PROPERTY IS ______________. YOUR CONSENT TO YOUR SPOUSE'S TRANSFER TO THE TRUST DESCRIBED HEREIN IS IRREVOCABLE AND YOUR RIGHTS TO THIS PROPERTY AS A SPOUSE OF THE TRANSFEROR WILL BE AFFECTED DURING YOUR MARRIAGE, UPON DIVORCE (INCLUDING THE PAYMENT OF ALIMONY OR A DIVISION OR DISTRIBUTION OF PROPERTY IN A DIVORCE), OR AT THE DEATH OF YOUR SPOUSE.

DAPTs are sometimes structured as an incomplete gift non-grantor trust ("ING") in states that do not tax trust income or allow a deduction for income accumulated for non-residents, like Delaware. This allows unlimited transfers to the trust, without gift tax, and allows the settlor to avoid state income tax in the settlor's home state, though recent statutory amendments in certain states have sought to put an end to INGs, see, e.g., Cal. Rev. & Tax. Code § 17082 and N.Y. Tax Law § 612(b)(41), adopting laws treating INGs as grantor trusts for state income tax purposes.

BDITs are most often created by a parent of a spouse and are funded with a nominal amount, e.g., $5,000. The spouse who is the child of the settlor is named as a beneficiary and is given a "Crummey" withdrawal right over the contribution, which lapses after a period of time. Under IRC § 678(a), the beneficiary spouse is treated as the owner of the trust for income tax purposes. This allows the beneficiary spouse to sell assets to the BDIT, often times marital assets that are likely to appreciate in value during the marriage, without paying a capital gains tax on the sale. The goal is to exclude the future appreciation of the asset sold from inclusion in the beneficiary spouse's estate. The plan may also attempt to exclude the asset sold and/or the appreciation from the couple's marital assets.

Regardless of the trust structure, there is almost always a limited liability company ("LLC") that holds most, if not all, of the trust assets. The settlor spouse, or beneficiary spouse in the case of a BDIT, serves as the manager of any LLC held by the trust. This

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allows the LLC to make loans to the settlor/beneficiary spouse at a favorable interest rate (the applicable federal rate as opposed to a commercial rate) and upon favorable terms (interest only with a balloon payment at the expiration of the term as opposed to amortized). In addition, this effectively gives the settlor/beneficiary spouse direct access to trust assets through the LLC without the oversight of a trustee.

Trusts involved in high net worth divorces are most often created in a state other than the state where the married couple resides and where the divorce proceedings are pending. This sets the different states and their respective courts on a collision course and raises conflict of laws and jurisdictional issues.

The most notable case involving a Delaware trust caught in the middle of a divorce proceeding is IMO Daniel Kloiber Dynasty Tr., 98 A.3d 924 (Del. Ch. 2014). In Kloiber, the husband's father established and nominally funded a Delaware dynasty trust that was structured as a BDIT, making the husband the owner of the trust for income tax purposes. Shortly after the creation of the trust, the husband sold shares of a closely held company to the trust. These shares were eventually sold for approximately $300 million, with most of the assets held inside of LLCs owned by the trust. Unfortunately, only a few years thereafter, divorce proceedings were brought in Kentucky, where husband and wife resided.

During the Kentucky divorce proceeding, the husband took the position that the wife had no right in the trust and that the wife stopped qualifying as a beneficiary when the couple separated because the wife was no longer the "wife of the Grantor's son" as defined in the trust instrument. The wife, however, took the position that the assets of the trust were marital property subject to equitable division in the Kentucky divorce proceeding.

In an effort to prevent the dissipation of trust assets, the Kentucky Family Court granted a series of status quo orders to restrict the husband's ability to deal with trust assets pending the outcome of the Kentucky divorce proceeding. The husband resigned in all fiduciary capacities he held with respect to the trust and as manager of the LLCs in an effort to avoid giving the Kentucky Family Court jurisdiction over the Delaware trust.

In Delaware, the Court of Chancery ruled that it had jurisdiction over the trust and its fiduciaries, and could therefore assist the Kentucky Family Court without creating a jurisdictional conflict. The Delaware Court of Chancery also entered a status quo order restricting the activities of the trust to those that occur within the ordinary course of business. Ultimately, the Delaware Court of Chancery found that the Kentucky divorce proceeding must be completed first, and: (i) if that proceeding resulted in a final, non-appealable judgment against the trust; and (ii) if the judgment holder sought to enforce the judgment, only then would issues of Delaware law have to be decided.

In rendering its decision, the Delaware Court of Chancery noted that Delaware cannot unilaterally preclude a sister state from hearing claims under Delaware law. Specifically, the Delaware Court of Chancery found that where a Delaware statute assigns exclusive jurisdiction to a particular court, the statute merely allocates jurisdiction among the Delaware courts, and does not preclude courts outside of Delaware from exercising jurisdiction over that type of case, i.e., a trust case. Ultimately, the Kloiber case settled before further conflict between the courts arose and before the Delaware Court of Chancery was asked to uphold a Kentucky Family Court order.

The Kloiber case is not unique with respect to reaching a settlement, as most divorce proceedings settle before going to trial. Settlement in typical divorce proceedings involves the equitable division of marital property where each spouse walks away with that spouse's share of the marital estate. Divorce proceedings involving trusts are far more complicated, as it is not just the interests of the spouses that need to be resolved; there are other trust beneficiaries whose interests could be impacted. For example, in Kloiber, the trust was severed, with wife becoming a beneficiary of the severed trust and husband being removed as a beneficiary of the severed trust, but with the other beneficiaries retaining their same beneficial interests in both trusts.

An oftentimes overlooked consideration in divorce matters is ethics rules, particularly for the attorney who represented both spouses in the development of their estate plan. Pursuant to Rule 1.7(a)(1) of the Model Rules of Professional Conduct ("MRPC"), such representation is permissible if the representation of one client will not be directly adverse to the other. Pursuant to Rule 1.7(b) of the MPRC, an attorney may represent both clients, even if a concurrent conflict of interest may exist, so long as the attorney reasonably believes that he or she will be able to provide competent and diligent representation to each client and each client gives informed consent, confirmed in writing.

While a violation of the MRPC does not necessarily give rise to a malpractice claim, the MRPC may establish the standard of care by which a lawyer's conduct will be judged in a malpractice proceeding. Although it is not a Delaware case, an example would be the recent complaint filed by Laura B. Overdeck in October of 2023 against the law firm of Seward & Kissel LLP. The crux of the case involves the creation and funding of Wyoming trusts with a substantial amount of marital assets. The trusts include a provision that Mrs. Overdeck is to be removed as a beneficiary upon either spouse filing a legal proceeding for divorce. Based on the value of the assets of the trusts, reportedly several billion dollars, Mrs. Overdeck is presumably seeking a considerable amount in damages. This will be a case worth watching, as it may decide whether a violation of the MRPC is also a violation of the standard of care giving rise to attorney malpractice
https://www.forbes.com/sites/hanktucker/2023/11/01/hedge-fund-billionaire-john-overdecks-estranged-wife-sues-over-movement-of-trust-assets-to-wyoming-before-her-divorce-filing/

The proliferation of high net worth divorce litigation involving irrevocable trusts funded with marital assets is likely to continue. Both divorce counsel and trust and estate counsel are encouraged to work together to resolve the complicated issues involved when trusts, especially out-of-state trusts, play a significant role in the divorce proceeding.

Trust and estate counsel are encouraged to be mindful of the MRPC when representing both spouses in estate planning matters, keeping in mind that a future divorce is always possible. Divorce counsel are encouraged to join out-of-state trusts and LLCs in the divorce proceeding early on, especially where the settlor/beneficiary spouse is a manager of an LLC held by the trust or otherwise serves in a fiduciary capacity with respect to the trust. Ultimately, the goal is to avoid litigation in two jurisdictions with a family court order entered in one state, which then must be enforced in a separate state where the trust is located. Litigation in more than one jurisdiction only complicates what are already very complex matters.

Peter S. Gordon is a founding Director of the Wilmington, Delaware law firm Gordon, Fournaris & Mammarella, P.A. His practice areas include Estate Planning, Estate and Trust Administration, Business Succession Planning, Asset Protection Planning and Fiduciary Litigation. He regularly represents individual and corporate fiduciaries in trust and estate matters. He represents families with moderate estates as well as those with substantial wealth and family owned businesses.

Peter routinely creates estate plans that include Wills, Trusts, Durable Powers of Attorney, Health Care Directives, Sales to Intentionally Defective Income Trusts, Grantor Retained Annuity Trusts, Qualified Personal Residence Trusts, Charitable Trusts, Private Foundation and Complex Life Insurance Strategies. Peter is a graduate of Georgetown University and Fordham University Law School. He received his Masters of Laws in Taxation from Georgetown University Law School and is a member for the Pennsylvania and Delaware Bar Associations.

Joseph Bosik IV is a Director at the Wilmington law firm of Gordon, Fournaris and Mammarella, P.A. Joe received his Bachelor of Arts in Business & Economics from Ursinus College and earned his Juris Doctor, cum laude, from Chapman University, Fowler School of Law, with an emphasis in tax law. He also served as an articles editor for the Chapman Law Review. Joe earned his LL.M. in Taxation at Villanova University School of Law. Prior to joining GF&M, Joe externed for the Tax Division of the United States Attorney's Office, where he was exposed to a variety of complex tax issues. Joe is a member of the Estates and Trusts, Taxation, and Elder Sections of the Delaware State Bar Association, as well as the Delaware Estate Planning Council and the Wilmington Tax Group.

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How Updates to the State's SSBCI Programs Can Help Lenders Support More Small Businesses in Delaware

by
Andrew Harton
Business Finance Director
Delaware Division of Small Business

We all know that access to capital is one of the biggest challenges for small businesses, particularly those in underserved areas, and those with credit or collateral issues.

The Delaware Division of Small Business (DSB) is helping to increase access to capital through federal funding from the U.S Treasury's State Small Business Credit Initiative (SSBCI). At the federal level, funds consist of a main capital allocation, with additional allocations to be devoted to businesses owned by socially and economically disadvantaged individuals (SEDI Businesses), and very small businesses (VSBs). At the state level, DSB provides funding to participating lenders for eligible loans to small businesses and loan risk mitigation.

In 2023, Delaware was awarded $60.9 million for four programs; two of which support loans for small businesses: the Delaware Loan Participation Program (DELPP), and the Delaware Capital Access Program (DCAP).

Banks, credit unions and Community Development Financial Institutions (CDFIs) are all eligible to become participating lenders for these programs.

"SSBCI is an important component of our suite of financial programs and incentives," said DSB Director Regina Mitchell. "Through it, we are able to address the important need of funding for small businesses, by creating a network of partnerships with financial lending institutions and helping the banking industry reduce their overall risk while broadening their community reach."

How It Works

A small business owner approaches a lender for a loan, which the lender is not comfortable approving, typically due to a collateral shortfall or a limited time in business. The lender thinks the request may qualify for state assistance under either

the DELPP, or DCAP programs, and asks DSB to participate in the loan. DSB will work on the back end to provide the approved amount of funding to the lender. The lender will remain the primary contact for the loan, and the small business owner only has to deal with one entity and one set of paperwork. For both programs, loans of 5 years or less, with a maximum term of 10-years, are preferred.

The Programs

Delaware Loan Participation Program (DELPP)

The DELPP is most appropriate when a lending institution may not cover the full amount of the requested loan. DSB can purchase a participation in the loan as a supporting lender, of up to 50% of the loan amount. In July 2024, DSB lowered its lending rate to 5%, with additional rate reductions of 1% each for SEDI-owned and very small businesses. The lender's rate is then blended with the DSB rate, resulting in an overall lower interest rate for the business owner.

As an example: Two experienced fitness instructors want to open a fitness franchise location. They visit a participating lender but find out that due to not having enough collateral, the lender is not willing to lend them the full $350,000 required for start-up and working capital. The lender decides to enroll the loan in the DELPP, and DSB agrees to purchase 40% of the loan so the borrower can receive the full $350,000 they need.

DSB's maximum allowed contribution is $2.5M per loan, thus it is not able to participate in any loan greater than $5M. Any loan request that would make DSB's contribution greater than $500K, requires additional approval by an external review committee.

Delaware Capital Access Program (DCAP)

The DCAP program provides supportive financing to businesses that cannot access it via the traditional banking model due to minor collateral or credit issues. It is designed to assist businesses owned by those who are socially or economically disadvantaged (also known as SEDI), or very small businesses (VSBs).

The DCAP model is a risk-pooling concept where multiple borrowers within the same lending institution contribute premium payments to one reserve fund that the lender can use as collateral to support a loan. The lender and borrower both make a one-time premium payment of 2% of the loan amount, and DSB uses SSBCI dollars to contribute 4% of the loan to the account. SEDI-Owned businesses and VSBs get an additional DSB contribution of 10% of the loan amount deposited into the reserve fund. DCAP essentially offers pooled loan insurance to lenders. Each participating lender has its own reserve account with DSB, but say the lender has four DCAP loans, then it will use the same account for all four and any others that may occur in the future.

An example: An SEDI-owned international foods store has been in business for 20 years, but due to recent major store repairs, requires a $40,000 5-year loan for working capital. The company is expected to generate sufficient cash flow to cover the loan, and the store owner has extensive experience. However, the borrower

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Small Business Lending

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has a lower than desirable credit score and lacks collateral. The lender enrolls this loan in the DCAP program to help mitigate its risk of lending to the borrower.

Participating Lenders

We are excited to announce that we now have three participating lenders, one from each type of eligible institution. In September 2023, Del-One Federal Credit Union was the first financial institution to sign on as a participating lender. Del-One was excited to join the program and moved quickly to secure the partnership. By January of 2024, Tru Access Capital (CDFI) signed on as well. In July 2024, Community Bank Delaware, with branches in Sussex County, became the latest to join our lending team. DSB continues to actively recruit for additional lenders to participate, to get available funding in the hands of small business owners who need it.

“The SSBCI program is key in helping Del-One to engage in small business ventures that were previously outside of our reach,” according to Rachel Oberholzer, Commercial Portfolio Manager for Del-One. “We have been able to watch our members grow and make their vision a reality by participating in this program.”
“True Access Capital has been an active participant of the SSBCI programs for years and has been able to leverage these programs to help business owners successfully obtain access to capital.” – Lorenzo Merino, SVP Director of Lending

"Community Bank Delaware chose to become a Participating Lender in the SSBCI program to reinforce our commitment to supporting small businesses in Sussex County. This initiative provides us with additional tools to help local entrepreneurs achieve their goals and drive community growth.” – Tyler Stetz, Community Reinvestment Act Officer

Pre-Loan Assistance

There are a couple of pathways that a business owner may take to get to you, the lender. They may come directly to you. Or they may come to DSB, where one of our Regional Business Managers (one in Kent, one in Sussex and two in New Castle County) will ensure they meet minimum qualifications before providing them with a list of participating lending partners.

But sometimes, whether they come to you or to us first, the business owner isn’t quite “bank ready”. They may not have their finances or information available or presented in such a way that you can best evaluate their request. This is one of our other recent updates. In April 2024, DSB announced the award of a Technical Assistance contract to the Delaware Small Business Development Center (SBDC). When a small business owner needs additional help to put them in the best position possible for eventual loan approval, we refer them to our partners at the SBDC to work one-on-one with them and address the needs of their individual situation. This increases the chance of loan approval and reduces back-and-forth and disappointment on the borrower’s end. It also makes processing the request easier for the bank when they know the borrower has already had this technical assistance support.

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Eligible Uses of Funds

One of the most common questions DSB gets regarding SSBCI Funded programs, is how the funding can be used. SSBCI funds are really intended to target those businesses that need access to capital, but fall behind on one or more credit metrics, such as lacking collateral, or having a short credit history. SSBCI funds can be used for any business purpose, including: Start-up costs and working capital, franchise fees, equipment, inventory, purchase or improvements of an eligible place of business.

There are also some prohibited uses of SSBCI funds:

- Acquiring or holding passive investments in real estate (with some exceptions)
- Purchasing securities
- Lobbying activities
- Repayment of income taxes, or the payment of payroll or sales tax
- Reimbursement of funds owed to any owner
- Purchase any portion of the ownership interest of any owner of the business
- Used in combination with SBA-guaranteed loan or unguaranteed portion of any other federal loan (with some exceptions)

Most Delaware small businesses, including corporations, partnerships, sole-proprietors, independent contractors, nonprofits, and cooperatives are eligible for these programs. They must have less than 500 employees for DCAP, and less than 750 employees for the DELPP. Additionally, they cannot: be a business engaged in speculative activities like stock trading or property flipping, engaged in pyramid sales, or make, sell, service, or distribute products or services used in connection with federally prohibited activities (ex. direct or indirect marijuana business).

Information about all of the SSBCI programs, fact sheets and enrollment forms can be found at de.gov/ssbci. Lenders are encouraged to visit the website and then reach out to *business_finance@delaware.gov* with additional questions or to sign up.

Andrew was born and raised in Delaware and attended the University of Delaware for both his undergraduate degree and MBA. Prior to joining the Division of Small Business in 2022, Andrew spent 12 years in the craft beer industry, where he learned first-hand how important small businesses are for the local economy. When he's not helping small businesses access capital, he enjoys relaxing on Delaware's beaches with his wife and dog.

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Best Practices for a Self-Audit of Retirement Plans

by
Maria T. Hurd, CPA, RPA
Belfint Lyons & Shuman, P.A.

Some banks hold retirement plan assets as a trust company or custodian and in some cases, as a bundled service provider that also acts as a third party administrator tasked with assisting the plan sponsor in following the plan document and its rules.

The House with No Rules - Once upon a long time ago, I fell asleep on the couch, as I often do. My astute baby girl speed-dialed my husband to report that she was in a house with no rules, because I had fallen asleep. Also, she said there was no need for him to hurry home, because he should bring pizza with crust, cheese, sauce, and nothing else. She had it under control. She knew the rules and knew how to follow them. Oversight was not necessary.

The Honor System - After the change in the participant counting rules, roughly 20,000 plans no longer need an audit of their financial statements. However, with the increasing prevalence of automatic enrollment, and the new long-term, part-time employee rules, many small plans are scheduled to grow quickly, and become large plans that will need audits. New small plans, growing small plans, merging small plans, all the small plans live in the house with no rules. The rules still apply, but there is no independent auditor in charge of verification: the honor system!

Self-Audits or Agreed-Upon Procedures - The honor system comes with an important responsibility. For small plans that have no audit oversight, it behooves plan sponsors to trust, but verify that their plan officials are operating the plan in accordance with its terms. In addition to maintaining sound internal control policies and procedures, plan sponsors can add a layer of verification through a self-audit or an agreed-upon-procedures engagement performed by an independent accountant or specialized professional.

Don't Just Trust, Verify - Generally, tax-exempt retirement plan trusts set up under sections 401(a) of the Internal Revenue Code are not subject to income tax on their earnings as long as they comply with the specific rules for qualification. Plan

sponsors and their service providers, such as the third-party administrator are responsible for operating the plan in accordance with its terms to preserve the plan's qualified status. Banks often act as the custody agent, trust company, and in bundled arrangements, banks can also be the third-party administrator for retirement plans. Operating the plan in accordance with its terms is no small task. Large plans are subject to an independent audit requirement, but small plans can benefit from additional oversight either from an internal audit process or agreed-upon procedures performed by a third-party specialist, to ensure that internal controls related to the plan are properly designed and that they are working. Despite their exemption from an audit requirement, small plans can collaborate with their service providers to verify their compliance.

Following is a menu of contribution-related procedures that plan sponsors could consider when designing a self-audit program and/or requesting an agreed-upon procedures engagement.

Contribution Testing - Timeliness and Completeness of Contributions: Verify that accurate contributions to the plan are remitted timely to comply with DOL rules and regulations

- **To Test Completeness:** Obtain a complete list of paycheck dates and a complete list of deferral deposits to the plan by date. The total deferral deposits should agree to the total deferrals reported on the Form W-3. Any discrepancies represent funds withheld from a participant's pay that were not deposited or amounts allocated to a participant that were not withheld from payroll. Discrepancies for each person should be identified and resolved in accordance with the Internal Revenue Service's correction program, the Employee Plan Employee Compliance Resolution System.
- **To Test Timeliness:** Compute the number of days between each paycheck date and the date in which related deferral withholdings were deposited. After establishing a pattern that shows how soon the deferral withholdings can be segregated, identify and report as delinquent contributions any deferral withholdings that were not deposited as soon as they could be segregated from the employer's assets.

Why it matters:The DOL considers delays in the remittance of deferral deposits as a prohibited short-term loan from the participant to the plan sponsor. Prohibited transactions are subject to reporting and disclosure rules and to an excise tax.

Demographic Data - Verify the accuracy of employee SSN, date of birth, and date of hire using source documents.

- Obtain and review source documents, such as a Form I-9 or other personnel records to verify that the demographic information on the census used for plan administration is accurate.

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Why it matters: Date of hire affects eligibility to participate in the plan and the vesting computation. Date of birth affects eligibility to participate in the plan, to obtain an in-service distribution, and to obtain a required minimum distribution.

Eligibility: Entry Date - Determine whether all newly participating employees contributing to the plan during the year are eligible to participate based on plan provisions. For plans with automatic enrollment provision, also determine whether contributions began in a timely manner.

• First, identify the population of participants with pre-tax, Roth, or after-tax contributions who have an eligibility or entry date during the plan year under audit.
• Second, determine whether each participant was eligible to contribute on the first contribution date based on the plan provisions. For auto-enrollment plans, compute the number of days between the calculated entry date and the date of the first deferral withholding on the pay-by-pay payroll report to determine whether each participant was auto-enrolled in a timely manner.

Why it matters: Failure to follow the plan document is a disqualification error. Excess contributions or improper exclusions must be corrected in accordance with the Internal Revenue Service's correction program, the Employee Plan Compliance Resolution System (EPCRS).

Eligibility: Opt-out Verification - For a sample of employees that became eligible to participate during the year but did not participate, verify the employee was given the opportunity to participate.

• Opt-out forms are the best practice for eligible employees who are not participating. Alternatively, obtain sign-up sheets for enrollment meetings or evidence that enrollment packages were mailed.

Why it matters: Failure to follow the plan document is a qualification error. Improper exclusion of an eligible employee must be corrected, most often with an employer-funded Qualified Nonelective Contribution (QNEC) for the missed deferral opportunity plus the missed employer match.

Eligible Compensation for Deferrals - Participant 401(k) or 403(b) Deferral Elections Were Followed: Verify that payroll deferrals are calculated based on the plan's definition of compensation. On a sample basis, determine whether employee deferrals are properly withheld and remitted to the plan in accordance with the employee's election.

• Request a pay-by-pay report by participant, including gross earnings and every type of pay that comprises gross earnings, as well as 401(k) withholdings for each pay period.
• Verify the completeness of the pay-by-pay report by comparing control totals to payroll tax filings, or the Form W-3.
• Review the plan document to obtain the definition of eligible compensation for the plan being audited.
• Obtain a schedule of participant deferral elections in place for the whole year and deferral election changes.
• Apply the participant's deferral election to eligible compensation for that participant based on the relevant plan provisions and the deferral election date. Compare the computation to the amount withheld and allocated to the participant's account.
• Obtain deferral elections for a sample of participants and recompute the deferrals that should have been withheld from eligible pay during the audit year. Compare the recomputed amount to the amount withheld from the participant's pay.

Why it matters:Use of the incorrect definition of compensation is the most common finding in both IRS audits and Independent Qualified Public Accountants' (IQPA) financial statement audits.

If the test uncovers an error, the plan sponsor must identify all the participants affected by the error and complete a correction that is compliant with the Internal Revenue Service's correction program, the Employee Plan Compliance Resolution System (EPCRS).

Employer Match and True-up Contributions - On a sample basis, determine whether employer match contributions and true-up contributions, if applicable, are properly calculated and remitted to the plan in accordance with plan provisions.

• Using YTD eligible compensation from the pay-by-pay report for selected participants and the match formula stipulated in the plan provisions, calculate expected employer match and compare the computation to actual employer contribution amounts remitted to the plan.
• Determine whether the plan provisions include a true-up provision and verify that the match true-up was deposited for a sample of participants who did not contribute deferrals evenly throughout the year.

Why it matters:Failure to follow the plan document is a qualification error. If the test uncovers an error, the plan sponsor must identify all the participants affected by the error and complete a correction that is compliant with the Internal Revenue Service's correction program, the Employee Plan Compliance Resolution System (EPCRS).

Profit Sharing and Nonelective Employer Contributions - On a sample basis, determine whether profit sharing and nonelective employer contributions are calculated in accordance with plan provisions, and using accurate eligible compensation.

• Allocation of Assets and Contributions to Participant Accounts Obtain a schedule of participant account balances.
• Reconcile the beginning and ending balances to the Schedule of Net Assets on the Form 5500.
• Reconcile the 401(k) or 403(b) contribution amount to the Form W-3 or the master payroll report.
• Reconcile the match contributions to the payroll report or

match computation tested above.

- Once the completeness of contributions allocated to participants in total has been established, on a sample basis, trace the deferral allocation to a participant's account to the respective Forms W-2.
- After adjusting for timing differences related to receivables and other accruals, identify and resolve any discrepancies between the participant account balance report and the plan's financial statements, including beginning assets, contributions, distributions, and ending assets.

Distribution Procedures - Perform the following procedures related to benefit payments:

Completeness of Distributions

- Obtain a Form 1099-R report listing all distributions and withdrawals by participant.
- Reconcile its totals to the trial balance, financial statements, and/or Form 5500, as applicable.

Accuracy of Distribution Processing

For selected participants on the schedule previously obtained, test the benefit payment as follows:

a. Determine that income taxes have been withheld if the distribution was not rolled over.

b. Trace the distribution amount to the individual participant's account.

c. Verify that payroll stopped for participants who took a terminating distribution.

d. If in-service distributions are allowed at a specified age, such as 59 1/2, verify the relevant participants' ages.

e. Verify that the benefit payment was determined in accordance with the plan's provisions. For example, based on the participant data tested (such as evidence of age, years or hours of service, earnings, vested percentage and related forfeiture amount, or other relevant bases), test or recompute the benefit amount and check the recipients' eligibility to receive the benefits.

f. Determine that payments to participants or their beneficiaries do not exceed the balance in their participant's account, net of any participant loans. In addition, if the participant is withdrawing from the plan, verify that the participant's account is zero at the end of the year, and that a termination date is entered on the census.

Hardship Withdrawals - For hardship withdrawals:

a. Review the financial need indicated in the withdrawal request and any related supporting documents, as applicable, and consider whether it meets the plan provisions and tax requirements for a hardship withdrawal.

b. Determine that the amount withdrawn does not exceed the amount available in the contribution sources as defined by the plan.

c. Determine, based on the plan document and Reg. 1.401(k)-1(d)(3)(iii), that all requirements were met to take the hardship withdrawal.

(continued on p. 26)

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Audits

(continued from p. 25)

Rollover Distributions - If the payment is a rollover distribution, that is, a transfer to another qualified plan or to an individual retirement account, verify that the plan allows rollover distributions, that the rollover was made according to the provisions of the plan and that no tax was withheld.

Mandatory Cashouts - Determine that mandatory cash-out provisions have been observed.

Corrective Distributions - Verify that corrective distributions were processed pursuant to the discrimination testing results, as applicable.

Required Minimum Distributions - Verify that Required Minimum Distribution rules are being processed in accordance with plan provisions and SECURE 2.0 rules.

Forfeitures - For each participant forfeiture recalculated for the distributions tested, trace the participant's forfeited amount to the record of total forfeitures for the period. Trace the total to documents supporting either the reallocation to remaining participants or to offset administrative expenses or employer contributions in accordance with plan provisions. Ensure that forfeitures are being used timely, as noted in the plan provisions.

Participant Loan Procedures - Perform the following procedures for participant loans:

Completeness of Loan Balances - Obtain or prepare a schedule of participant loans, including the beginning balances, transactions during the year, ending balances, and income earned during the year.

a. Trace or reconcile beginning loan balances to the prior year Form 5500 ending balance and the current year Form 5500 beginning balance

b. Trace or reconcile beginning and ending loan balances, transactions during the year, and income earned during the year to the working trial balance or the custodian statement, as applicable, and the Form 5500.

c. Determine that any amounts reported by the custodian agree with the payroll records.

Compliance with Plan Loan Provisions and IRS Rules - Consider whether participant loans comply with ERISA, tax, and plan requirements by assessing whether the following requirements are met:

a. The plan document must authorize loans to participants on a reasonably equivalent basis that does not discriminate in favor of highly compensated employees.

b. The loans must bear a reasonable rate of interest.

c. The loans must be adequately secured.

d. The term of the loans must comply with the plan's loan policy and must not exceed five years (unless for the purchase of a principal residence).

e. Spousal consent was obtained, if required by the plan document.

f. The loans are properly segregated from other investments within individual participant accounts.

Examine the agreement supporting the loan and compare descriptions and terms to the information on the schedule of participant loans.

Notice Distributions - Verify that notices were distributed: As applicable, ensure that all required notices, including but not limited to the Safe Harbor, Qualified Default Investment Alternative (QDIA), and Plan Expense notices were timely provided to participants.

IRS Audits and DOL Investigations - Under the honor system created through the audit waiver for small plans, the IRS and the DOL choose to trust, but also when to verify. Failure to follow the plan provisions is a qualification error, and nobody wants to get disqualified. Plan officials should always play by the rules, even in the house with no rules, by having processes and procedures designed to operate the plan in accordance with its terms. However, in the absence of an audit requirement, it behooves every small plan sponsor to trust, but verify, to stay qualified.

Maria leads a team of specialized retirement plan auditors and the retirement plan audit practice group at BLS. She spearheads the firm's employee benefit audit blog – The Art of the Qualified Plan Audit and speaks at local and national educational conferences, including the AICPA/DOL National Employee Benefit Plan conference and the American Society of Pension Professionals and Actuaries conferences.

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Community Banks Hit Hardest in Q2 2024 Deposit Decline

by
Rica Dela Cruz and Gaby Villaluz
S&P Global Market Intelligence

Most of the US banks reporting the largest percentage declines in total deposits in the second quarter were community banks. Among publicly traded US banks that reported earnings by July 22, total deposits fell 1.4% quarter over quarter to $10.349 trillion, according to S&P Global Market Intelligence data. Of the 20 banks with the largest sequential declines on a percentage basis, only M&T Bank Corp. had deposits over $6 billion.

Solera National Bancorp Inc. posted the biggest drop, with its deposits diving 10.9% to $942.4 million, followed by Union Bankshares Inc., where deposits fell 10.4% to $1.05 billion.

Among the other banks with the largest declines, Bank7 Corp.'s deposits fell 6.3% to $1.48 billion, mainly due to "one very large deposit."

At Parke Bancorp Inc., where deposits dropped 4.3% to $1.50 billion in the second quarter, President and CEO Vito Pantilione said the higher-for-longer interest rate environment "puts continued pressure on banks in the battle for deposits and the cost of funding."

M&T Bank Corp.'s total deposits fell 4.4% to $159.91 billion, with broker deposits declining $1.2 billion as the company shrinks its noncustomer funding sources. The company's deposit cost was flat in the quarter, CFO Daryl Bible said.

"As far as the betas go and rates, we continue to just see more rational pricing in the marketplace, and we're able to maybe offer specials, but the specials that we're offering just aren't as high as what they were before," Bible said on an earnings call.

Largest banks

Banks usually log deposit outflows in the second quarter due to seasonal factors, but many institutions, including some of the largest US banks, also said increased competition weighed on their deposits.

First Horizon Corp., which lowered its net interest income (NII) guidance, noted the heightened competition. The company posted $64.79 billion in total deposits, down 1.4% quarter over quarter.

"As I look back at the last couple of months, there has been a significant uptick in the competitive landscape, especially promotional deposit offers, as banks compete for growth against the backdrop of a higher-for-longer interest rate environment and a shrinking deposit base," Chairman, President and CEO D. Bryan Jordan said in an earnings call.

First Horizon had to match the competitive offers that some customers received, a dynamic played out with roughly $1 billion to $1.5 billion in deposits during the last month of the second quarter, Jordan said.

FB Financial Corp. also saw competition, with three of its large customers moving their deposits for rates "at 75 basis points plus more than we were willing to offer," President and CEO Christopher Holmes said. In the second quarter, the company logged $10.47 billion in deposits, a 0.4% decline from the prior quarter.

Several large banks faced continued pressure on noninterest-bearing deposits, including JPMorgan Chase & Co., which logged a 1.3% decline in total deposits to $2.397 trillion. The company expects continued migration of noninterest-bearing deposits to interest-bearing, which "will be a source of headwinds," CFO Jeremy Barnum said in an earnings call.

A "rotation of deposits seeking higher yield alternatives" was among the drivers of Bank of America Corp.'s sequential decline in NII during the second quarter. The bank's deposits ticked down 1.8% to $1.910 trillion.

Wells Fargo & Co. attributed its year-over-year NII drop to higher funding costs, including the impact of lower deposit balances and customers migrating to higher-yielding deposit products in its consumer businesses, among other factors. Its deposits fell 1.2% to $1.366 trillion.

Citizens Financial Group Inc. booked a 0.04% decline in deposits to $176.35 billion. It anticipates that Federal Reserve interest rate cuts will be helpful in ending the mix shifts that are common across the industry, CFO John Woods said on an earnings call.
KeyCorp reported higher deposits quarter over quarter, ending the period with $145.72 billion in deposits, up 1.0%. The company was able to add deposits despite not seeing "as much opportunity to reduce deposit rates," CFO Clark Khayat said.

"We've continued to attract client deposits without having to lead the market on rates, nor have we been paying the cash premiums that many of our competitors are offering to attract new operating accounts," Khayat said on an earnings call.

https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/community-banks-hit-hardest-in-q2-2024-deposit-decline-82523195

Rica Dela Cruz is a senior newswriter at S&P Global Market Intelligence. She reports on the US financial industry, covering banks and other financial institutions.

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Accounting for Success

By Rebecca Huegel
BLS CPA Summer 2024 Intern
Student at Goldey Beacom College

Alex Gioffre
BLS CPA Summer 2024 Intern
Student at University of Tennessee
& Notre Dame

Belfint Lyons & Shuman, P.A.

"Internships offer invaluable learning opportunities for young professionals to gain exposure to real-world challenges..."

The Value of an Internship Program: An Intern's Perspective

In our evolving world of recruiting and talent management, the role of an intern has emerged as a necessity for identifying talent, remaining competitive, and embracing innovation. As current interns with a cumulative four internships of experience, we have had the pleasure of seeing firsthand how interns can make a significant contribution to the overall firm and the future success of the organization. Interns provide critical support to a variety of teams, enabling them to focus on more complex tasks and initiatives. By handling the more routine tasks such as data entry, preliminary analysis, and generating reports, interns help improve the efficiency of operations. In our experience, managing these tasks allowed supervisors to concentrate on high-impact activities, helping the overall productivity of the firm.

As accounting majors, having an internship at a public accounting firm has been beneficial. In one's studies, the courses give background knowledge about their major, but an internship gives experience in the industry in which they are studying. The education is beneficial, but the experience is eye-opening as one gets to apply what they are studying to real-life work and clientele.

Internships offer invaluable learning opportunities for young professionals to gain exposure to real-world challenges, equipping them with practical skills and knowledge of various industries that cannot be gained through traditional education. These real-world experiences enhance the understanding and ability for future growth in a way that interns will never have a chance to experience again. Gaining these skills in a lower stress role where there is encouragement to ask questions and make mistakes is not something those going directly into full-time roles ever have a chance to discover. This environment of helpfulness gives interns the chance to have a proactive and enthusiastic outlook on their work, which can translate to a fervent desire to continue down a career path and excel in it, leading to a stronger talent pool and long-term firm success.

At Belfint, Lyons & Shuman, PA, our intern class learned about the different services they offer to their clients through hands-on exercises. We prepared tax information for individuals, businesses, and estates/trusts. We also conducted an employee benefit plan audit from start to finish. Finally, we worked with the nonprofit and government audit practice groups. We feel that employers should incorporate internship programs within their companies, as it helps interns to gain knowledge and hands-on experience in their specific field of study.

This test-like environment that exists within internships allows employers to evaluate the skills interns start with and what they can develop over their program. By evaluating this performance, recruiters will analyze which members of the intern group align with their talent expectations and how they fit into the firm's culture.

In our experience, this internship and those in the past have cultivated technical skills and the necessary communication and networking skills to build a successful career. It is also an opportunity for one to see how they fit into various roles, as well as the overall firm culture.

It can be hard to apply the knowledge in college, so when one gets experience in the workplace as an intern before graduation, they know what is expected of them and are ahead of their peers. Having an internship helps grow a professional network within the business industry. Throughout our internship, we met many people working in roles similar to our future aspirations. Creating a network with these people is a wonderful way to make lasting connections that can help in the future.

Interns are far more than just temporary aid for the more mundane workloads; they are an integral aspect to the success and, more importantly, the future of any firm. They can bring fresh perspectives, a desire to learn and get better, and most importantly, can be potential future employees that could become valuable assets to the overall business. As current interns with a variety of experiences, we can attest to the significant contributions interns make and their importance in driving innovation and growth for the future.

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Delaware Paid Family and Medical Leave Program

Louis D. Memmolo, AIF, GBA, NQPA
Weiner Benefits Group, LLC

"Employers with 10 – 24 employees must offer PPL benefits only. Employers with 25+ employees must offer PFL, PML, and PPL benefits."

In one of our previous articles, we mentioned the passage of legislation in Delaware that the Department of Labor describes as a win-win for both employees and employers. The Healthy Delaware Families Act, enacted on May 10, 2022, created the Paid Family and Medical Leave program going into full effect January 1, 2026.

Many employers in Delaware have been preparing for this new law over the last several months. However, many are now faced with deadlines on how to address this legislation. Whether it is a win-win remains to be seen and depends on your perspective.

The DE PFML program requires Delaware employers with at least 10 workers to provide paid, job-protected family and medical leave starting Jan. 1,2026. Employer and employee contributions that begin Jan. 1, 2025, fund the leave. Employers can participate in the state-run program, or they can use a fully insured or self-insured private plan, upon approval by the state. Employers can also extend coverage to workers outside of DE.

Employees are eligible for leave if they have been employed for 12 months by their current employer, worked 1,250 hours during that time and report primarily to a worksite in Delaware.

The compensation or benefit the employees receive may be 80% of their average weekly wage up to a maximum of $900 in 2026 and 2027, with increases thereafter linked to the consumer price index.

The benefits can be used for Paid Medical Leave (PML), Paid Parental Leave (PPL), or Paid Family Leave (PFL).

PML is for the employee's own serious health conditions or injury for up to 6 weeks in a 24-month period. Many employers already have short term disability insurance, in which case the PFML will coordinate benefits. If they do not, the state plan will be a new expense and a new benefit.

PPL is for child bonding through birth, adoption, or foster care for up to 12 weeks during the first year.

PFL is for the care of a family member with serious health conditions or Military exigency for up to 6 weeks in a 24-month period.

Total combined leave is capped at 12 weeks per year per employee, and except for leave for child bonding, leave can be taken only once per 24-month period. If two parents are employed by the same employer, their combined leave for new-child bonding, caring for a family member or a qualifying exigency may be limited to 12 weeks during any 12-month period.

Employers with 10 – 24 employees must offer PPL benefits only. Employers with 25+ employees must offer PFL, PML, and PPL benefits.

Small businesses with 9 or fewer employees are exempt and can opt in. Employers must participate for 3 years, and employee notice rules apply.

Program funding is shared equally between employers and employees via payroll contributions that the employer remits to the state. The 2025 and 2026 contribution rate is 0.4% of wages for medical leave, 0.08% for family caregiving leave and 0.32% for parental leave. Employers may, at their election, cover all or any portion of the employee portion of the contribution as long as the employee's portion does not exceed .4%.

Employers may apply to the Department for approval to meet their obligations under the law through a private plan. Employers must certify that their plan provides all the leave benefits of the law under the same conditions as the law provides. Employers who choose this option don't have to start contributions until January 1, 2026.

The deadline for opting out of PFML with a private fully insured plan is December 1, 2024.

Many of our clients are exploring this option as it can reduce the funding expense for employees and employers.

The WBG Team is currently providing webinars, one on one meetings with DOL (Department of Labor) professionals and discovery appointments with the large insurance companies providing the private plan options. We then guide them through the placement and implementation of the option that is the best fit.

It is not possible to provide all the details that impact employers in Delaware in a single article. Please contact us for more information and an individual consultation.This article is not intended to be exhaustive. The summarized information comes directly from our legislative resources and the DOL website. Please contact us for all sources and/or complete articles. If you would like to be added to our email list, get more information, or schedule attendance for our upcoming webinars, please contact the WBG Team.

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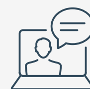

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Trust & Estates Law Update

Sixteen Years in the Making: Final Regulations Concerning Relief to Make Timely GST Allocations and Elections

Travis Mauer
Young Conaway Stargatt & Taylor, LLP

“The final regulations set forth two alternative paths for obtaining relief."

When it comes to the allocation of a taxpayer’s generation-skipping transfer (GST) tax exemption, it may be no surprise that mistakes occasionally happen. The combination of different classifications of transfers (direct skips, indirect skips, and other transfers to trusts), the default rules providing for the automatic allocation of GST tax exemption during the taxpayer’s lifetime and upon death and the myriad of elections that can be made under various circumstances creates plenty of opportunity for missteps.

Fortunately, pursuant to section 2642(g)(1) of the Internal Revenue Code (the “Code”), regulations shall set forth the details and procedures under which extensions of time will be granted to make an affirmative allocation of GST tax exemption or make an election to opt in or out of the automatic allocation rules under sections 2632(b)(3) and 2632(c)(5) of the Code, including the election to treat a trust as a GST trust thereby making it subject to the automatic allocation rules. Although proposed regulations addressing allocation misfires have existed since 2008, the final regulations were recently adopted on May 6, 2024 in Treasury Decision 9996. While relief for a failure to affirmatively allocate GST tax exemption or a failure to affirmatively make an election could previously be obtained by requesting a private letter ruling in accordance with 26 C.F.R. Section 301.9100-3, the primary guidance on obtaining relief is now found in the newly finalized regulations in 26 C.F.R. Section 26.2642-7.

The final regulations set forth two alternative paths for obtaining relief. First, if less than six months have passed since the due date (excluding extensions) of the applicable gift tax return or the estate tax return and such return was timely filed, an automatic extension is granted during such six-month period. A supplemental return must be filed during the extension period complying with all of the statutory requirements to make the desired allocations and/or elections. Such return should be filed in the same manner as the original return and state on the first page of the return: “FILED PURSUANT TO § 26.2642-7(i)(1).” When relying on the automatic six-month extension, there is no need to file a request for a private letter ruling and pay the corresponding user fee (which is currently $38,000 in most cases pursuant to Revenue Procedure 2024-1). If the taxpayer cannot comply with the requirements for the automatic extension period, a request for relief must be filed in the form of a request for a private letter ruling.

If relief must be requested in the form of a private letter ruling, the regulations provide that relief will be granted only if the transferor or the transferor’s estate “acted reasonably in good faith, and that the grant of relief will not prejudice the interests of the government.” The regulations also set forth a nonexclusive list of factors to be considered when determining the existence of reasonableness and good faith (including the intent of the transferor to make a timely allocation or election, any intervening events beyond the control of the transferor or the executor, a lack of awareness by the transferor or executor, consistency with prior allocations or elections, and reasonable reliance on a tax professional) and the existence of prejudice to the government (including intervening events, such as a taxable termination or taxable distribution from the trust, or an attempt to cherry-pick transfers to which GST tax exemption should be allocated based on appreciation in values and the benefit of hindsight). It should be noted that no one factor is determinative, and all facts and circumstances are considered when evaluating the request for relief. Special attention should be paid to the exact requirements under the regulations including additional documentation (such as affidavits) required to be filed with the request.

Practitioners should be aware that relief results in a “timely” allocation or election. This means that relief is considered effective as of the date of the transfer and only the amount of GST tax exemption that was then available to the taxpayer may be allocated. Although the IRS had previously disallowed the revocation of a GST election made on an original return, the commentary to the final regulations (which may be found in Internal Revenue Bulletin 2024-22) confirms that elections made under sections 2632(b)(3) and 2632(c)(5) of the Code are not irrevocable and can therefore be changed provided that the other requirements of the regulations are met. Although the final regulations provide additional flexibility to address certain GST allocation issues, affirmative allocations of GST tax exemption remain irrevocable.

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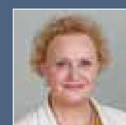

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