



**Credit Card  
Revenues  
in the Crosshairs**



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# President's Letter



by  
**Karyn Polak**  
President, CEO & Treasurer  
Delaware Bankers Association

*"Join us  
in what we do  
every day:  
Educate.  
Advocate.  
Collaborate."*

## Where to Begin?

I love to write. And I refuse to use AI to kickstart my drafting, even when the inspiration and starting point seem elusive. You have to admit, though, that a first-of-the-year letter to members feels a bit more momentous than perhaps other forms of communication or forums requiring content. So I've been giving myself grace for the procrastination and brain block that has accompanied my efforts to offer you this opening for our early 2026 magazine issue.

In fact, it seems appropriate to spend extra time in self-reflection, in thoughtful consideration of what matters most in this moment and what would serve us best to lead off this new year with solid, action-oriented energy. After all, 2025 was a whirlwind especially (but not least) for financial services. Leadership and direction of our primary regulatory agencies have shifted significantly. Beyond shifting, the very future of the Consumer Financial Protection Bureau (CFPB) still remains uncertain. The independence and hold on monetary and fiscal policy that rests with the Federal Reserve also feels precarious. Not to mention the years-long review and negotiations over revamping the Community Reinvestment Act that came to an abrupt halt last year, as well as the defunding and then defending of the Community Development Financial Institutions (CDFI) Fund, both of which felt head-spinning and have often led to progress and projects being stalled or tabled altogether.

Furthermore, hitting at the heart of Delaware's preeminence as a predictable, supportive base for the industry are preemption challenges such as the Colorado opt-out from the interest exportation provisions of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA) and the Illinois Interchange Fee Prohibition Act (IFPA), which – as the Illinois Bankers Association, the American Bankers Association, and credit union joiners in the lawsuit against IFPA argued, "threatens

to upend the nationally integrated card payment system by imposing drastic restrictions and draconian penalties on its participants." And then we have had our very own local head-spinning, or at least head-turning, drama around Tesla's governance and the Delaware Supreme Court (and previously the Delaware Court of Chancery) rulings for and against CEO Elon Musk's pay package, with last year's SB21 bill becoming law in between.

So what's a banker or a trust officer to do? Join us in what we do every day: **Educate. Advocate. Collaborate.**

These are the pillars of our work at the Delaware Bankers Association and Delaware Financial Education Alliance, and we need your presence and your input to make it all happen. We help you *educate* yourselves and your colleagues – and you educate us as well – on the issues that matter most to the industry; the products, services, and initiatives that are most valuable to your clients; and ultimately on what's top of mind, or should be, for all of us and our neighbors in Delaware and beyond. In the last quarter of 2025 alone, we held

- ☆ our premier two-day Trust Conference, supporting almost 500 practitioners across functions, organizations, and practice areas
- ☆ a financial institution/FinTech panel and pitch event at the University of Delaware's Center for Accelerating Financial Equity
- ☆ a half-day cybersecurity forum to gain updates on the latest state of play (and villainy) in this complex area
- ☆ a housing roundtable on tax-related and other tools to unlock capital for real estate development that supports communities

and countless informal conversations and resource-sharing connections for our members and others.

We *advocate* for laws, policies, and practices that help our members help our neighbors, at the federal, state, and local levels. What's been top of mind for us in the last quarter are items that will remain top of mind in the new year as well, including (but certainly not limited to):

- ✓ fraud in all its forms, and ways that our legislators can help consumers help themselves and help our members to mitigate the ever-increasing activity by bad actors
- ✓ stablecoin, digital assets, and digital payments
- ✓ interchange and other efforts to restrict access to credit and consumer protections through caps or prohibitions on certain fees and interest charges
- ✓ common sense regulations, especially in areas in need of modernization, like deposit insurance and anti-money laundering safeguards
- ✓ artificial intelligence and its role internally in our member institutions and externally with respect to our customers.

What's on your mind that should be on ours?

As importantly, we *collaborate* across members, government and philanthropy, for-profit and non-profit players, legislators and regulators in order to best serve our Delaware neighbors and communities. We bring people together, we show up at your events and at those in which our members are present or needed, we make connections among people and issues in order to spark conversations and ultimately actions to advance our ultimate goal: financial access and opportunity for all. Our Women Connect events and network, our new CEO roundtable series, our contributions to dialogues on economic development in various forms, all serve to advance this concept that I led with in my first Delaware Bankers Magazine letter to you: that we are stronger together. I suppose, then, we begin where I started, at least in this forum. We are here for you, with you, to "build teams of diverse skills and perspectives to solve complex, interdependent problems one individual, one institution, one function alone can't solve." We need you – your input and feedback, your presence, your ideas and energy. Please reach out and let us know you're in!



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# View from the Chair



**Caroline Harty Dickerson**  
**Chief Executive Officer**  
**Commonwealth Trust Company**

**Chair**  
**Delaware Bankers Association**

*"The relationship between the Delaware Bankers Association and the Office of the State Bank Commissioner is not about agreement on every issue - it is about partnership in purpose."*

One of the most effective collaborations in banking doesn't happen during a crisis or in the pages of a regulation—it happens in conversation. It's the kind of moment when a regulator and a banker sit at the same table, talk through a challenge, ask hard questions, and leave with a clearer understanding of each other's perspectives. Those everyday exchanges, often unseen, are where trust is built and better outcomes begin.

A strong, constructive relationship between the Delaware Bankers Association (DBA) and the Office of the State Bank Commissioner (OSBC) is essential to the health of Delaware's banking system—and, by extension, to the consumers and businesses that rely on it. At its best, this relationship is grounded in mutual respect, open communication, and a shared commitment to safety, soundness, and responsible innovation. While the DBA and the OSBC serve distinct roles, their work is deeply interconnected, and collaboration strengthens the entire financial ecosystem.

That spirit of collaboration was on display on January 22, when the DBA welcomed Acting State Bank Commissioner Lisa Collison as part of its CEO Roundtable series, hosted at the offices of Young Conaway in Wilmington. The discussion provided an opportunity for candid, two-way dialogue between Delaware's banking leaders and the Commissioner—exactly the kind of engagement that strengthens understanding, builds trust, and supports effective supervision and policy development.

The OSBC plays a critical role as regulator and supervisor, ensuring that Delaware's banks and trust companies operate in a safe, compliant, and resilient manner. The DBA, in turn, serves as the collective voice of the industry, bringing forward the real-world experiences of member institutions of all sizes. When these perspectives come together constructively, policy discussions become more informed, guidance becomes

more workable, and supervision is more effective. Regular dialogue helps ensure regulatory expectations are well understood, emerging risks are identified early, and unintended consequences are addressed before they become challenges.

This relationship is especially important as the banking landscape continues to evolve. Rapid technological change, cybersecurity threats, new payment systems, and shifting federal requirements place new demands on both regulators and institutions. Through ongoing engagement, the DBA can highlight industry trends and operational realities, while the OSBC can provide clarity around supervisory priorities and expectations. That two-way exchange supports thoughtful regulation that protects consumers while allowing institutions to innovate and compete responsibly.

Ultimately, the relationship between the Delaware Bankers Association and the Office of the State Bank Commissioner is not about agreement on every issue - it is about partnership in purpose. Both are committed to a strong, stable, and forward-looking banking sector in Delaware. By maintaining open lines of communication and a spirit of collaboration, the DBA and OSBC help ensure Delaware remains a place where financial institutions can thrive responsibly and where consumers and communities are well served.

The DBA extends its sincere thanks to Acting State Bank Commissioner Lisa Collison for her engagement and openness, and to Young Conaway for graciously hosting the January 22 CEO Roundtable and providing a forum for meaningful dialogue.

A handwritten signature in black ink that reads "Caroline".

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# What's New at the DBA

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Mechanics Bank has submitted a charter application for the formation of a state limited purpose trust company, offering trust administration and fiduciary management services to high net worth and ultra-high net worth clients while affording them access to the many advantages of Delaware as a trust situs. These services will include fully discretionary trust administration services and directed trust administration services to existing and future clients of Mechanics Bank, a California state chartered, FDIC insured bank.

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## DBA Events

### Vector Defense: Securing Banks Against Evolving Fraud Tactics



The Delaware Bankers Association hosted an engaging and timely webinar on Friday, January 30, bringing together bankers and trust professionals from across the state for an in-depth discussion on today's most pressing fraud threats. The 90-minute Zoom session focused on the common attack vectors fraudsters use to exploit banks and trust companies, including check and card fraud, spoofing techniques, and social engineering tactics. Participants gained valuable insight into current fraud trends impacting the financial services industry, reviewed real-world examples of recent attacks, and explored practical mitigation strategies designed to strengthen institutional safeguards.

The program was moderated by Yanina Sgroppo Emerick, Senior Vice President and Chief Compliance Officer at County Bank. She was joined by a distinguished panel of experts: Patrick Smith, SVP, Fraud Operations Management, American Bankers Association; Christopher Salone, CISA, Principal, FoxPointe Solutions; and, Russell Taylor, President, Finovifi.

## CEO Roundtable



**Then-Acting Bank Commissioner, Lisa Collison, and DBA President, Karyn Polak, at the CEO Roundtable**

Bank CEOs gathered on the morning of January 22 at the offices of Young Conaway Stargatt & Taylor, LLP, for a thoughtful roundtable discussion on the state of Delaware’s financial services industry and the role of the Office of the State Bank Commissioner (OSBC). Then-Acting State Bank Commissioner Collison shared insights into the current structure and responsibilities of the OSBC, including its administration and enforcement of Title 5 of the Delaware Code. She also outlined ongoing efforts, in partnership with the Governor’s office, to modernize and strengthen the agency to meet the growing complexity of today’s financial services environment and to prepare for the industry of the future. Discussion also addressed the evolving federal regulatory landscape and its impact on state oversight. Attendees appreciated the opportunity to hear about Commissioner Collison’s remarkable career progression within the OSBC—from Bank Examiner to Acting Commissioner—marking the first time a staff member has risen through the ranks to lead the agency. Governor Meyer has since nominated Ms. Collison to serve as State Bank Commissioner.

## Unlocking Capital for Housing



Housing finance leaders and practitioners convened online December 11th for a practical, solutions-focused roundtable examining the financing tools driving housing development across Delaware and the surrounding region. The program explored how major initiatives—including Low-Income Housing Tax Credits (LIHTC), Opportunity Zones, Historic and New Markets Tax Credits, the OPAL Tax Credit Fund, and the Wilmington First-Start Homebuyers Program—function in real-world projects and how layered financing strategies can be used to unlock critical capital for housing development.

Panelists included representatives from the Federal Home Loan Bank of Pittsburgh, Delaware State Housing Authority, NeighborGood Partners, Regional Housing Legal Services, Reimagine Development Partners, Allivate Impact Capital, and Opportunity Alabama. Speakers shared practical examples of how public, private, and philanthropic capital can be aligned to support housing initiatives such as affordable, mixed-income, mixed-use, and workforce housing development.

## DBA Cyber Forum



A Cyber Forum was held on December 10 at the Wilmington University New Castle Campus, bringing together compliance officers, IT leaders, and risk management executives for a timely and practical discussion on cybersecurity in the financial services industry.

The forum featured key regulatory updates, insights into common audit findings, and an overview of emerging cyber threats facing financial institutions. Attendees also gained actionable strategies for strengthening proactive defense measures in an increasingly complex threat environment.

Expert perspectives were shared by Christopher Salone of FoxPointe Solutions and James Carroll, co-founder of Hackett Cyber, who provided real-world examples and practical guidance to help institutions stay ahead of evolving risks. The DBA extends its appreciation to FoxPointe Solutions for sponsoring the event and supporting continued education and collaboration on critical cybersecurity issues impacting Delaware’s banking community.

# Credit Card Revenues in the Crosshairs

by  
Glen P. Trudel  
Partner  
Troutman Pepper Locke



**T**he U.S. credit card industry is staring down a two-pronged policy challenge.

On one front, the Credit Card Competition Act (CCCA) is intended to foster increased competition in credit card merchant transaction routing so as to engender downward pressure on network interchange fees. On the other, a push to cap credit card Annual Percentage Rates (APRs) at 10%, at least for a year — as embraced by President Trump and reflective of legislation led by Senator Bernie Sanders (I-VT) and others—targets the revenues of revolving credit itself.

For issuers, networks, processors and fintechs, these initiatives aim at the heart of card economics: merchant-paid fees and consumer-paid interest. Whether or not these proposals ultimately become law in their current or some other form, they signal an environment in which core elements of the credit card model are increasingly seen as fair game for direct regulation.

### The Political and Economic Backdrop

Several converging trends are setting the stage:

- **High current APRs.** Average credit card interest rates sit in the high teens to low 20s, with many subprime and near-prime customers paying significantly more than that.
- **Elevated card debt.** Revolving credit card balances reportedly exceed \$1.2 trillion, as delinquency rates have risen, making card debt a visible and familiar barometer of consumer financial stress.
- **Rising swipe fees.** Interchange and network fees (“swipe fees”) have grown into one of the largest operating expenses of many retailers and other businesses.
- **Concerns over “Affordability”.** There is growing recognition that economic affordability is a central political issue for Americans heading into the midterm elections.

These dynamics have energized an unusual mix of stakeholders, such as merchant-aligned lawmakers seeking to curb swipe fees and the perceived Visa/Mastercard duopoly through the CCCA, and populists and progressives each pushing for an aggressive ceiling on interest rates, ranging from President Trump to

Senator Sanders to members of both parties in Congress. For the industry, this means pressure is now coming simultaneously for both of the main revenue sources.

### The Credit Card Competition Act: Rewiring the Merchant Side Core Mechanics

The CCCA, championed by Senators Dick Durbin (D-IL), Roger Marshall (R-KS) and Peter Welch (D-VT) and reintroduced on January 13th, is fundamentally about routing and network competition, not periodic interest rates.<sup>1</sup>

As described in the bill’s reintroduction materials, the bill would:

- **Target large issuers.** Generally apply to banks with more than \$100 billion in assets.
- **Mandate at least two unaffiliated networks** on each credit card.
- **Essentially require that at least one network is not Visa or Mastercard**, opening space for smaller networks or alternatives.
- **Give merchants routing choice**, allowing them to decide which enabled network to use for a given transaction.

In effect, the CCCA seeks to loosen Visa/Mastercard’s perceived grip on routing and create price competition at the network layer, with the expectation that merchant costs will fall as a result.<sup>2</sup>

*(continued on p. 12)*



Thank you to our members and  
the Delaware Bankers Association  
for all you do to help  
communities thrive!



## Supporters' Case

Retailers, restaurants, and merchant coalitions argue that:

- Swipe fees operate as a “hidden tax” embedded in consumer prices.
- Visa and Mastercard operate essentially as a duopoly, with little pressure to limit or reduce such fees.
- Allowing routing over multiple networks will force competition on cost and spur innovation in fraud tools and transaction processing, and potentially lead to consumer savings via lower prices for purchases in general.

Payments industry coverage has highlighted strong lobbying by large retailers in favor of the bill.<sup>3</sup>

## Industry Concerns

Banks, card networks, and many trade groups see material risks:

- They view the CCCA as indirect price regulation, shrinking interchange revenues that support fraud prevention, card rewards programs enjoyed by consumers, and credit underwriting.
- Research cited by the Small Business & Entrepreneurship Council (SBE Council) and conducted at the University of Miami suggests that, contrary to the assertions of the retail industry, large retailers capture most of the savings, while small merchants see limited benefit.<sup>4</sup>
- Reduced interchange, particularly at smaller institutions, could lead to less credit availability, weaker rewards, and potentially accelerated consolidation among community banks and credit unions in the longer term.

## President Trump's Endorsement

President Trump's explicit endorsement of the CCCA, praising Senator Marshall and calling swipe fees a “ripoff,” has raised the profile of this legislation, and arguably lends the bill a more populist spin that extends beyond traditional retail vs. bank debates.

## The 10% APR Cap: From Soundbite to Statute?

### President Trump's Proposal

On a separate track, Trump has called for a 10% one-year cap on credit card APRs, framed as temporary relief for borrowers facing much higher interest rates. However, he has not clearly indicated as the date of this writing further details of the proposal or the methodology for how the cap mandate would specifically be imposed, regulated or implemented. Of the more typical avenues of executive action, agency rulemaking or legislative action, Congressional action would likely be required for this proposal to become a legal requirement on issuers.

Other key questions from the proposal have yet to be addressed, such as:

- **Coverage.** Would the cap apply to general-purpose cards only, or also private label/store cards, and potentially nonbank programs, such as other forms of non-credit card open-end consumer credit?
- **Definition of “interest”.** Would the cap include only

periodic interest, or also fees that qualify under TILA as finance charges, or function as interest substitutes?

- **Scope of Affected Account Balances.** Would the cap apply only to new balances, or is the proposal intended to be applied to existing balances on cardholders' accounts?

For the industry, an additional key takeaway is that APR caps are no longer a fringe idea. Their potential imposition are now currently part of the national conversation.

## Senator Sanders's 10 Percent Credit Card Interest Rate Cap Act

Senator Sanders has already sought to codify a 10% APR limit concept through the “10 Percent Credit Card Interest Rate Cap Act”, but the cap would last for a period of five years, rather than the one year more recently proposed by President Trump.<sup>5</sup> This legislation was introduced in 2025 and was framed as an attempt to effectuate Trump's earlier campaign promise to cap credit card rates.

Sanders and his allies urge that:

- APRs in the 20–30% range are “usurious” and trap borrowers in long-term debt.
- Card companies and networks have generated substantial profits—Sanders cites combined profits of more than \$145 billion over five years for Visa, Mastercard, and American Express—suggesting there is room to absorb lower yields.
- A firm cap offers simple, immediate relief for consumers.

## A Cross-Ideological Coalition

The 10% cap concept has attracted support from across the political spectrum. For example, last year Senator Josh Hawley (R-MO) has supported similar caps with Sanders as noted, and Representatives Alexandria Ocasio-Cortez (D-NY) and Anna Paulina Luna (R-FL) have introduced related 10% cap measures in the House. Such actions demonstrate that this issue is attracting and uniting populist legislators on both sides of the political aisle. For issuers and fintechs, this coalition may represent a signal that pressure and debate on APRs and card fee structures is likely to persist, even if a form of 10% cap never actually becomes law.

## Two Fronts, One P&L: How These Proposals Interact

### Interchange and Interest: The Two Revenue Pillars

Most card issuers depend on two primary sources of card revenue:

1. **Interchange and related merchant fees**, governed by network rules and borne by merchants.
2. **Finance charges**, including periodic interest and certain other fees (cash-advance, balance transfer, etc.).

The CCCA is designed to push interchange and network fees down by enabling routing competition. APR caps are designed to push interest yields down, at least for a period of time. For credit card issuers, the combination directly compresses both pillars of their traditional card economics model.

## Likely Industry Responses

If versions of both proposals advance, issuers and their partners are likely to explore several levers:

- Tighter underwriting. With a 10% ceiling, risk-based pricing becomes difficult for non-prime accounts. Issuers may approve fewer subprime and deep-subprime customers, or lower initial credit limits and slow line increases.
- Shift from periodic interest to fees. To maintain yield, issuers may be able to (i) introduce or increase annual fees on certain products; (ii) reconfigure balance transfer and cash-advance fees; or (iii) rely more on fixed fees that are not explicitly defined or governed as “interest”.<sup>6</sup>
- Rewards recalibration. Rewards programs are heavily funded by interchange. With lower interchange and capped APRs, some cash-back and travel rewards will almost certainly be reduced, tiered or in some cases discontinued, and/or sign-up bonuses and rich co-brand acquisition incentives may be scaled back.
- **Portfolio re-mixing.** Issuers and fintech partners may pivot toward (i) secured or partially secured cards to manage risk at capped yields; (ii) BNPL and installment products, where regulatory treatment might differ; and/or (iii) implementing closed-end or private-label constructs, depending on the coverage of any enacted law or regulation.

Each of these responses has material operational, competitive, and regulatory implications. A visible shift from interest to opaque fee structures, for example, may attract regulators’ scrutiny for UDAP/UDAAP issues.

## Impact on Smaller Institutions and Fintechs

Smaller banks, credit unions, and fintech-issuer partnerships may face disproportionate pressure and negative effects because:

- They may be comparatively more dependent on interchange as a share of overall card revenue.
- Their capacity to absorb credit margin compression is more limited than that of large national issuers.
- They may lack the scale to renegotiate network terms or rapidly redesign products.

## Strategic Implications for Issuers’ and Fintechs’ Product and Portfolio Strategy

For issuers and program managers, it will be important to stress-test portfolios and product designs across plausible policy scenarios:

- **If the CCCA moves forward, but APR caps stall:**
  - Interchange compression and implementation costs would likely impact large-issuer portfolios first.
  - Premium and co-brand rewards would face pressure.
  - Routing and network strategies would become more complex, with more emphasis on cost-efficient networks and merchant relationships.

*(continued on p. 14)*

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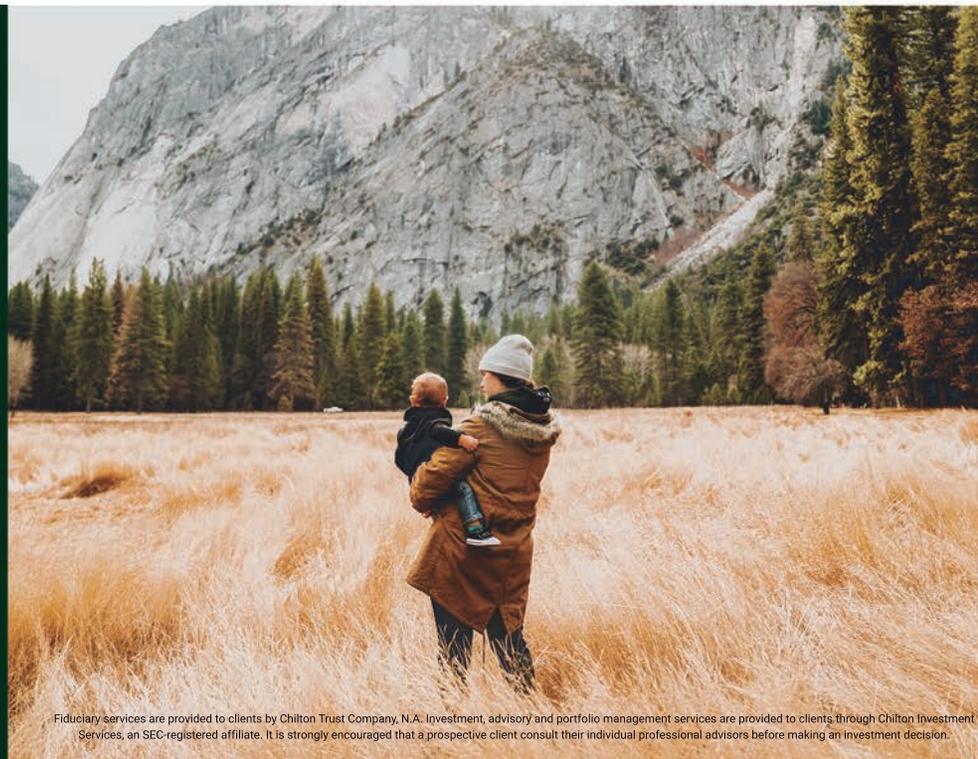
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- Smaller issuers/processors could face competitive pressure to charge lower interchange rates even if the CCCA does not apply to them.
- **If APR caps move, but the CCCA stalls:**
  - Non-prime and near-prime segments become challenging at scale.
  - Secured and hybrid products may gain greater prominence.
  - Non-“finance charge” revenue, including fees and ancillary services, will become more important as a revenue source—but also more scrutinized.
- **If both are enacted in some form:**
  - The traditional U.S. model—high rewards, widespread approvals, and high APRs for revolvers—would need material redesign.
  - Product suites may conceivably bifurcate into lower-yield, mass-market offerings and higher-fee, more premium products targeted at lower-risk segments.

Fintechs that rely on interchange-sharing or revenue-share models with issuers should consider examining how much of their current economics rests on high interchange and uncapped APRs—and how quickly they could pivot to alternative models if those assumptions change.

## Network and Processor Strategy

For networks, processors and BaaS platforms, the CCCA raises additional questions:

- How to support dual-routing at scale without undermining fraud and risk controls.
- How to position alternative networks as credible, competitively priced, and operationally safe options.
- How to structure commercial agreements when merchants gain more leverage over routing and when regulatory pressure on fee levels increases.

Technical readiness—will be a differentiator if merchant routing choice becomes a legal requirement.

## What to Watch

While legislative timelines are uncertain, card industry stakeholders should keep a close eye on:

- **Congressional movement.** Hearings, mark-ups, or attempts to attach the CCCA or APR caps to must-pass bills. This strategy has been pursued for the CCCA, though without success so far. This legislation has met with strong industry pushback since its original enactment.
- **Executive branch signals.** Statements and rulemaking agendas from the CFPB, Federal Reserve, and banking regulators that echo the themes behind one or both of these proposals.
- **State-level initiatives.** State usury laws, rate caps, card-fee or merchant processing regulations that depending on subject matter and other circumstances, could create a

patchwork of requirements, even without comprehensive federal action.

- **Market experiments.** Issuer and fintech pilots of:
  - Lower-APR, higher-fee products with “fair pricing” positioning.<sup>7</sup>
  - New card-linked installment and BNPL products as alternatives to traditional revolving credit.
  - Defensive revisions of existing credit card rewards structures in response to these issues.

## Conclusion: Building Resilience Into the Next Card Model

For as long as such measures are being actively touted for implementation, the Credit Card Competition Act and a 10% APR cap each represents a significant challenge to business as usual. They signal a growing willingness by federal policymakers to aim directly at the core economics of credit cards. For issuers, networks, processors, and fintechs, the imperative for response and preparation is clear. In addition to political opposition, defensive measures might include:

- Diversifying card revenue streams to reduce overdependency on higher interchange rates or high APRs;
- Design flexible products that can operate under tighter pricing constraints; or
- Invest in data and risk management capabilities that allow sustainable lending at lower yields.

Bringing compliance and legal teams into product strategy early—rather than as an after-the-fact check—will be important in this environment.

The politics of credit cards is shifting. Whether either or both these initiatives will ultimately be enacted remains to be seen. That said, the players who prepare to adapt their models proactively—rather than waiting after statutes and rules are enacted to force their hand—will be best positioned in whatever version of the future emerges.



*This article is for informational purposes only and does not constitute legal advice. Parties should consult counsel about how specific legislative or regulatory developments may affect their products or programs.*



*Glen Trudel is a consumer financial services, banking, and business attorney who counsels financial institutions, marketplace lenders, fintech entities, and other companies on both regulatory and transactional matters. He has significant experience documenting and creating marketplace lender platforms and structures, as well as with the acquisition and divestiture of consumer and business credit card and other loan portfolios.*

*Glen also advises state and federal financial institutions and other entities on regulatory, operational and vendor outsourcing matters, debt sales and collection agreements, and other transactions. Additionally, he assists clients in the structuring and documentation of new credit products and on formation and licensing issues in Delaware. Before re-entering private practice, Glen was a senior vice president and counsel with MBNA America Bank, N.A.. During, and since, his 14 years with the bank, he has advised on a broad variety of general purpose and private label credit card/unsecured lending, deposit, and other bank regulatory issues. Glen has extensive experience representing card issuers and partners in the negotiation, structuring, creation, and administration of joint marketing, co-brand, affinity, miles/reward program, and enhancement agreements, as well as account portfolio acquisitions and divestitures.*

*Notes:*

- 1 - A companion bill was introduced the same day in the House of Representatives as H.R. 7035, co-sponsored as of the date of this writing by Representatives Lance Gooden (R-TX-5), Zoe Lofgren (D-CA18), Thomas Tiffany (R-WI7) and Jefferson Van Drew (R-NJ-2).
- 2- Sen. Durbin Press Release on the CCCA 1/13/2026
- 3- Payments Dive –Credit Card Competition Bill Wins Trump Support, 1/13/2026
- 4- SBE Council – “Credit Card Mandates and Caps Hurt Small Businesses, Startups and the Consumers They Serve” 1/15/2026
- 5- S.381 (119th Congress, 2025–2026); Congress.gov – S.381, 10 Percent Credit Card Interest Rate Cap Act (2/4/2025)
- 6- Note that Senator Sanders proposed legislation provides that, “Any fees that are not considered finance charges under Section 106 [of TILA] may not be used to evade the [10% cap], and the total sum of such fees may not exceed the total amount of finance charges assessed.”
- 7- There has already been at least one attempt to move in this direction in the marketplace. As of this writing, the fintech company Bilt has introduced a series of credit cards which feature an APR at 10% on new purchases for 12 billing cycles—essentially a promotional rate offer, but reflective to some degree of the President’s demand.



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# Springing the Delaware Tax OPPORTUNITY



Using IRC Section 2041(a)(3) in Delaware to Increase a Trust's Tax Cost Basis Using a Trust Beneficiary's Unused Exemption

by  
**Jeffrey C. Wolken**  
 National Director, Delaware Trust Planning  
 Wilmington Trust, N.A.

**The Opportunity** – The Delaware Tax ~~Trap~~ Opportunity (IRC Section 2041(a)(3)) is a preferred method for using a beneficiary's unused estate tax exemption to increase the tax cost basis of a trust's assets.

Following the increase of federal estate and gift tax exemptions to \$15 million per person in 2026, it will be common for trust beneficiaries to have more exemption than needed to shield their assets from federal estate and gift taxes ("unused exemption"). For a trust administered in Delaware, a trust beneficiary may utilize their unused exemption at death to include a tailored amount of trust assets in their taxable estate to obtain a step-up in the income tax cost basis of those trust assets under § 1014 of the Internal Revenue Code (IRC or the Code). This preferred method for obtaining a basis step-up by triggering the Tax Opportunity requires that the beneficiary possesses a special (limited) testamentary power of appointment and the trust must be administered in a state, like Delaware, that permits a special power to be exercised in a manner to trigger estate inclusion under IRC Section 2041(a)(3)<sup>1</sup>. Most trust-friendly states outside of Delaware do not

permit the Tax Opportunity to be sprung in this manner, so it is truly the Delaware Tax Opportunity.

## How Did We Get Here? - Delaware Pioneers "Perpetual" Trusts Despite the Rule Against Perpetuities

In 1933, every state in the country had a rule against perpetuities ("RAP") that limited the duration of a trust. The common law RAP and, later, the Uniform Statutory Rule Against Perpetuities ("USRAP") provide that the validity of an interest in trust created by the exercise of a Special Power of Appointment (SPA<sup>2</sup>) is measured from the date of creation of the original trust that granted the SPA. Essentially, the exercise of an SPA must "relates back" to the date when the original SPA was created.<sup>3</sup> Due to this relation-back doctrine, the common law RAP and the USRAP require that the time period to exercise a second SPA, created through the exercise of the original SPA, is calculated starting on the date of the creation of the original SPA.<sup>4</sup> The original date of creation of the interest in trust remains the relevant starting point for measuring the perpetuities period so the perpetuities clock may not be re-set through the exercise of successive powers of appointment.

To limit application of federal estate tax upon expiration of the applicable RAP, Delaware sought to allow trust assets to remain in trust perpetually. To achieve this goal, Delaware enacted legislation in 1933<sup>5</sup> that allowed the option, through the exercise of SPAs in successive generations, for assets to remain in trust without being required to vest in possession within the original RAP period. As noted above, the common law RAP required that the validity of an exercise of a Second Power granted by the exercise of a First Power relates back to the creation of the First Power. The new Delaware law provided that the date of exercise of the First Power, not the date of creation of the First Power, was the applicable starting point for measuring the perpetuities period applied to the valid exercise of the Second Power. Essentially, the new Delaware legislation was a clever method to void the relation-back theory for testing the validity of a Second Power. Untethered from application of the relation-back doctrine, assets could remain in trust through the exercise of successive powers without imposition of an estate tax.<sup>6</sup>

As an example, G creates a trust in 2026 and grants his daughter, D, a testamentary SPA (First Power). D exercises her SPA upon her death in 2035 to appoint the property for the benefit of her son, S, and grants to S a testamentary SPA (Second Power). The RAP applicable to S's Second Power is calculated from 2035, not from 2026. The perpetuities "clock" is re-set upon the exercise by D of her SPA (First Power) to create S's SPA (Second Power).

#### **Enter the Delaware Tax Trap (the "Tax Trap")**

IRC Section 2041(a)(3), enacted in 1951, was Congress's response to the new "perpetual" Delaware trusts that would avoid estate tax forever. The new Code Section, dubbed the "Delaware Tax Trap", attacked the Delaware statute by imposing

the relation-back doctrine through the tax code. If the exercise of a Second Power could violate the relation-back doctrine, the assets appointed through the exercise of the First Power were includible in the gross estate of the beneficiary who exercised the First Power in this manner. The Delaware Tax Trap imposed the relation-back doctrine to the successive exercises of SPAs with the penalty for violation of the doctrine being inclusion in the gross estate of the beneficiary exercising the First Power. The beneficiary was "trapped" for estate tax purposes if they attempted to create a perpetual trust in Delaware to circumvent the estate tax.

#### **SPRINGING THE DELAWARE OPPORTUNITY: Exercising a SPA in Delaware to Cause Inclusion in a Beneficiary's Taxable Estate under IRC Section 2041(a)(3)**

Historically, inclusion under Section 2041(a)(3) was seen as a potential trap for the unwary. However, historically high federal estate and gift tax exemptions have made it an opportunity for a trust beneficiary to control the use of their unused exemption amount, customizing its use to the precise amount of their remaining exemption, while targeting the lowest-basis assets held in trust to maximize the basis step-up upon their death. The Delaware Tax Opportunity does not expose trust assets to the beneficiary's creditors<sup>7</sup> and avoids the potential misuse of trust assets by the beneficiary prior to their death.

#### **Tax Cost Basis Step-Up Under IRC Section 1014**

For assets "trapped" in a trust beneficiary's estate due to application of IRC Section 2041(a)(3), those assets receive a step-up in cost basis under IRC Section 1014. Even though the trust assets were never possessed by the trust beneficiary, the  
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deemed inclusion in their estate is sufficient to allow application of the basis step up rules in IRC Section 1014 because the property is “acquired from the decedent” under IRC Section 1014(b)(9). This deemed estate inclusion permitting income tax cost basis step-up is what creates the Tax Opportunity. Unused federal estate tax exemption may now be strategically deployed to increase the tax cost basis for assets that remain in trust.

## Reasons the Delaware Tax Opportunity is a Preferred Tool to Increase the Tax Cost Basis for Trust Assets

1. The Delaware Tax Opportunity is a precise tool that can ensure the beneficiary is not exposed to an increased estate tax liability while at the same time targeting for increase the trust assets with the lowest relative cost basis thereby maximizing the basis step-up offered using the beneficiary’s exemption. A properly crafted formula contained in the instrument exercising the beneficiary’s SPA allows for this customization.
2. Although the “Delaware” tax opportunity (IRC Section 2041(a)(3)) applies to trusts administered in any state, only Delaware and a handful of other states provide a trust beneficiary with the opportunity to exercise a limited power of appointment in a manner that both maintains the assets in an ongoing discretionary trust while also including the assets in the beneficiary’s estate for basis step-up purposes. The remaining states, including all of the other trust-friendly states (e.g., NV, SD, AK, NH, WY), have either (i) prevented by statute the springing of the Delaware Tax Opportunity or (iii) allow the Opportunity to be sprung using only presently exercisable general (PEG) powers of appointment (which carry significant disadvantages), or both.<sup>8</sup>

## Administration of Trust in Delaware Permits Springing the Tax Opportunity Even if the Beneficiary Holding the First Power Does not Reside in Delaware.

A common question is which state’s law applies to determine the effect of a beneficiary’s exercise of an SPA. If the beneficiary holding the First Power resides in a state that does not allow for springing the Tax Opportunity, does that limit the cost basis management opportunities for that beneficiary? Fortunately, the law governing the administration of the trust determines how powers of appointment may be exercised and the ramifications of such exercise.<sup>9</sup> Consequently, increasing the cost basis of trust assets through the exercise of a First Power to create a Second Power should be possible by having the trust administered in Delaware with a Delaware trustee, regardless of where the beneficiary exercising the SPA resides.

## Why the Tax Opportunity Does not Exist in Other Trust-Friendly States - Anti-Tax Trap Laws

In response to the perceived threat of inadvertently springing the Tax “Trap” to cause unnecessary estate tax, many states enacted laws which prevented the exercise of an SPA to reset the RAP, other than by granting a presently exercisable general (PEG) power of appointment. These laws had the unintended consequence of taking away the flexibility to trigger the Tax

Opportunity using successive SPAs when doing so would be advantageous. Because federal exemptions were extremely low and marginal tax rates confiscatory<sup>10</sup>, legislatures did not contemplate that trust beneficiaries may someday want to take advantage of unused exemptions. Since general powers of appointment carry significant drawbacks as a mechanism for gaining basis step-up for trust assets<sup>11</sup>, the anti-tax trap laws remove this Tax Opportunity for trusts administered in these states. Consequently, administering a trust in a state that enforces an anti-Tax Trap law should be avoided to retain the flexibility of springing the Tax Opportunity.

## Some Trust-Friendly States with Anti-Tax Trap Statutes

South Dakota<sup>12</sup> – “If a future interest or trust is created by exercise of a power of appointment, the permissible period is computed **from the time the power . . . is created** if the power is not a general power.”[Emphasis added]

Alaska<sup>13</sup> – Alaska Stat. §34.27.051(c).

Nevada<sup>14</sup> – Nev. Rev. Stat. §111.1033(3).

## Conclusion:

The Delaware Tax Opportunity (IRC Section 2041(a)(3)) is a powerful tool used to increase the tax cost basis of trust assets by including those assets in the gross estate of a trust beneficiary without exposing those assets to the beneficiary’s creditors or increasing the beneficiary’s estate tax burden. Moreover, the Tax Opportunity is customizable to soak up only a beneficiary’s unused estate tax exemption while stepping up the cost basis for the lowest basis assets held in trust. The Tax Opportunity tool should be available to beneficiaries residing in any state if the trust granting the First Power is being administered in Delaware with a Delaware trustee. With the increased federal estate tax exemption and the likelihood that many trust beneficiaries may die with unused federal estate tax exemption, administering a trust in Delaware retains the flexibility for the beneficiary to spring the Tax Opportunity using SPAs when appropriate.<sup>15</sup>



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*Estate Counsel and a recipient of the Wilmington Trust Chairman’s Club award. He is a member of the Estates and Trusts Section of the Delaware State Bar Association and the Real Property, Trust & Estate Section of the American Bar Association.*

Notes:

- 1- Trust assets subject to a limited power of appointment are not generally included in the beneficiary's gross estate unless deemed to be included due to application of the Delaware Tax Opportunity (IRC Section 2041(a)(3)).
- 2- A special power of appointment (SPA) is a power of appointment that is not a general power of appointment (GPA). A GPA is defined under IRC Sections 2041(b)(1) and 2514 (c). The definition under Section 2041 states that a GPA is "a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate...". The definition is similar for gift tax purposes under Section 2514.
- 3- Restatement, Second, Property (Donative Transfers) §1.2 h.
- 4- See, e.g., USRAP at §2.
- 5- 38 Del. Laws 198, Section 1 (1933).
- 6- Barton Leach, "Perpetuities in a Nutshell," 51 Harv. L. Rev. 638, 653.
- 7- See Title 12 Del. Code §§3536(d)(1), 3536(d)(2).
- 8- Raatz, USRAP Surprise Trigger of Delaware Tax Trap, Estate Planning Journal, May 2016.
- 9- Wilmington Trust Co. v. Wilmington Trust Co., 24 A.2d 309 (Del. 1942). See also, Wilmington Trust Co. v. Sloane, 54 A.2d 544 (Del. Ch. 1947).
- 10- In 1933, the federal estate tax exemption was \$50,000 with the highest marginal tax rate of 45%. The exemption climbed to \$60,000 by 1942 and remained there until 1976, with the highest marginal tax rate climbing to 77%.

- 11- A general power of appointment is a blunt instrument – the beneficiary cannot customize to their situation causing unnecessary tax – and a GPA may expose the assets to creditors.
- 12- S.D. Codified Laws §43-5-5.
- 13- Alaska Stat. §34.27.051(c).
- 14- Nev. Rev. Stat. §111.1033(3).
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# SBA Lending in a Changing Risk Environment

## What Compliance Officers Should Be Watching Now

by  
Alison Stokes, CRCM



Small Business Administration (SBA) lending remains one of the most meaningful ways banks can support local communities while building a strong portfolio. At the same time, the risk environment surrounding SBA lending has evolved. Banks are navigating faster origination expectations, more sophisticated fraud schemes, complex third-party relationships, and heightened documentation and governance standards.

For compliance officers, the goal is not to slow down SBA lending. Instead, the objective is to support efficient lending by strengthening controls that protect the bank, the borrower, and the SBA guaranty. By establishing clear oversight and well-defined processes, compliance helps the business lend with confidence. The following are key areas warranting attention at this time.

## Fraud Controls Should Be Part of Daily Operations

Fraud attempts tied to small business lending have become more persistent and harder to detect. While some of the most visible cases surfaced during emergency-era lending programs, many of the same patterns continue today. Common indicators include inconsistent borrower information, questionable or altered supporting documentation, and business activity that does not align with the stated purpose or operational profile.

Compliance can support SBA lending teams by reinforcing clearly defined fraud-validation steps and escalation protocols. Strong intake controls and consistent handling of red flags reduce reliance on individual judgment and promote timely, well-supported decision-making when activity does not align or raises concern.

## Documentation Should Support the Decision

SBA lending has always required strong documentation, but expectations have shifted toward ensuring the loan file clearly supports each decision made. Many banks can explain underwriting decisions in conversation, but the loan file itself may not always reflect the same

rationale in a way that a second-line reviewer, auditor, or examiner can easily validate.

A practical approach is defining what “complete documentation” means and reinforcing those expectations through checklists and procedure standards. At a minimum, the file should support borrower eligibility, the credit decision, and required approvals. Strong file quality is more than a best practice; it also reduces servicing challenges and helps protect the SBA guaranty.

## Third-Party Oversight Matters More Than Ever

Banks increasingly rely on third parties such as referral sources, loan agents, technology platforms, and document support services. These relationships can improve speed and capacity, but they also introduce risk when responsibilities are unclear or oversight is informal.

Compliance should help ensure the bank has clarity around who performs which activities across the SBA lifecycle, from borrower intake through closing and servicing. Monitoring should confirm that third parties operate within the bank’s expectations, issues are escalated in a timely manner, and the bank retains access to critical records. If a loan file cannot be retrieved quickly without third-party

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involvement, the relationship may be creating more risk than the business realizes.

### Change Management Must Be Consistent

SBA programs are governed by procedural guidance, operational rules, and internal bank requirements. When updates occur, many institutions implement changes operationally but do not consistently document how the change was assessed, approved, communicated, and validated.

Compliance can strengthen SBA programs by introducing lightweight change-management practices that are consistent and repeatable. A sound approach includes defining the change and its impact, identifying affected procedures and training, confirming approvals, documenting implementation timing, and validating execution. Banks may reference SBA procedural guidance, such as SBA SOP 50 10 <https://www.sba.gov/document/sop-50-10-lender-development-company-loan-programs>

### Exception Tracking Helps Control Risk

Although SBA lending differs from consumer lending, regulators still expect disciplined and consistent processes. Risk increases when credit decisions rely heavily on discretion without clear documentation standards and structured controls around exceptions.

Compliance officers should pay close attention to how exceptions are defined, approved, and tracked. A high volume of exceptions, unclear rationale, or inconsistent approvals can create both compliance exposure and operational instability. Strong exception governance is one of the most effective ways to reduce avoidable risk while supporting responsible growth.

### Servicing Cannot Be an Afterthought

Many institutions place their strongest controls in origination, but issues often surface during post-close servicing. Missing documentation, incomplete follow-up, or weak monitoring can turn a well-underwritten SBA loan into a higher-risk asset over time.

Compliance can support servicing teams by confirming they have the procedures and tools needed to maintain file integrity, track key borrower requirements, and escalate issues that could affect performance or documentation quality. Strong servicing controls reinforce the bank's ability to support its decisions long after closing.

### Build Exam Readiness into the Process

A strong SBA program should not require a scramble when an examination begins. Exam readiness is built through repeatable file standards, clear governance, and routine self-review.

Compliance can support this effort by implementing a risk-based review cadence that includes periodic file sampling or targeted quality-control testing. The objective is to identify and correct issues early, before they become systemic. This approach also helps the business view compliance as a partner in long-term success rather than a final checkpoint.

### Final thoughts

SBA lending remains a key growth strategy for many banks. The strongest SBA programs are not the most complex. They are built on clear expectations, strong file integrity, disciplined execution, and proactive readiness.

For compliance officers, focusing on fraud resilience, documentation quality, third-party oversight, structured change management, exception discipline, and servicing consistency protects the institution while enabling SBA lending to scale responsibly.



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# Banking on Delaware's Future

## A Q&A with Delaware Bankers Association President, CEO, and Treasurer Karyn Polak

Originally Appeared in Delaware Business Magazine, a publication of the Delaware State Chamber of Commerce, January/February 2026 issue, and reprinted with permission.



**A**s Delaware's financial sector continues to evolve, banking leaders are reevaluating how policy decisions, regulatory shifts, and broader economic forces will shape the industry's future. In a year marked by consolidation, technological change, and heightened focus on consumer protection, the banking community plays a central role in Delaware's economic outlook. To better understand these dynamics — and what they mean for the state's long-term competitiveness — we spoke with Karyn Polak, the president, CEO, and treasurer of the Delaware Bankers Association, for her perspective on where Delaware's banking landscape is headed.

*Now that you've stepped into this new role, what's one goal you're especially excited to focus on — either for the association or the broader banking community?*

The Delaware Bankers Association and our sister entity, the Delaware Financial Education Alliance, exist to advance financial access, education, and opportunity for all. In this truly unique moment of myriad, multilayered uncertainty, we are positioned to help all our members and partners navigate toward a stronger, more stable future. I'm most excited for us to work with the whole financial industry to help shape what that future needs to look like so we can accomplish that goal of deep, broad economic development for all our neighbors across the state and beyond.

*Delaware's financial services industry helps power the state's economy — employing one in ten workers and having paid over \$3.7 billion in bank franchise taxes to the State since the enactment of the Financial Center Development Act. What makes Delaware such a strong home for the banking industry?*

Delaware's almost half-century of business-friendly laws, regulations, and judicial decisions make it an efficient, predictable place for companies to locate and operate. For tax-paying banks and trust companies, which are highly regulated and therefore incredibly complex institutions, predictability and confidence in the guardrails for doing business are even more important and valuable.

Some might misread "business-friendliness" to mean being unfriendly to consumers. I'd say quite the opposite. Our regulated financial institutions are proud to support our clients — individuals, businesses, and communities — with the confidence and security that common-sense guardrails provide. When you save with, borrow from, or work for a bank or trust company, you benefit from the protections we're required to have in place, and your money can go farther as a consequence.

*With recent changes like the Discover–Capital One merger, Delaware's banking landscape continues to evolve. How do*

*you see that shaping the future for community banks and local customers?*

Continued industry consolidation presents challenges for Delawareans not only in the sheer numbers — potential loss of jobs, franchise taxes, and locally chartered institutions — but also in the local focus and support that institutions provide. Large and mid-sized banks move dollars at scale, funding valuable public-private partnerships, sizable economic development projects, and major institutions, all of which are critical to the state’s economy and growth potential.

At the same time, community banks operate on a hyperlocal scale: They know the local merchants, public spaces, and community needs, and they mobilize their time, talent, and treasure to support individuals and families in ways other institutions cannot.

We need banks and trust companies of all sizes supporting the spectrum of needs from industrial to individual. This is where the state’s ability to innovate and think creatively and expansively about different types of institutions and different ways of operating is critical. We need state and local government, our legislators, and our regulators to support new tools and new ideas for the financial industry. We need to work together, openly and collaboratively, to craft the promising future I referenced earlier.

That’s where the Delaware Bankers Association is uniquely positioned: We have strong and continually deepening relationships across all these players, and we spark conversations that move us forward together.

*Delaware banks gave back more than \$15 million in grants and nearly 200,000 volunteer hours last year. Why is community involvement such an important part of the industry’s identity here?*

Banks and trust companies are essential players in the work to advance financial education, stability, and growth, and yet without a doubt we cannot do that alone. We work closely with our associate member law firms, accounting and tax professionals, community development financial institutions (CDFIs), community foundations, and chambers of commerce such as the DSCC. Importantly, we also work with players outside our membership community: regulators, legislators, government, for-profit and nonprofit organizations, anchor institutions like schools and healthcare entities, community groups, and individuals to help all our neighbors in all of our spaces across the state thrive.

*What’s most important to you as a leader and in particular as the leader of this 130-year-old organization?*

To me, leadership is about grace, humility, courage, and service — being able to bring out the best in those around you so we can work together toward a common purpose. As a leader, I’m hyper-focused on advocacy through open dialogue and collaboration across sectors, functions, and geographies. As the leader of this 130-year-old organization, I want us to always remember whom we’re here to serve: our neighbors. We serve our members so they can serve their employees, clients, and communities — their and our neighbors.



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## The Delaware Community Foundation: Celebrating 40 Years of Turning Tax-Efficient Generosity into Community Transformation



**Mike DiPaolo**  
Delaware Community Foundation

*"Today, donors, professional advisors and nonprofits turn to the DCF for guidance on charitable strategy."*

The community foundation movement began in 1914 when banker Fred Goff pooled the charitable resources of his community's philanthropists to create a permanent endowment for the betterment of Cleveland, Ohio. As word of this 'new kind of philanthropy' spread, trust bankers around the country set out to replicate the concept in their own communities.

The movement was ignited in 1913 when Congress ratified the 16th amendment which enabled the federal government to levy income taxes. Previously, Congress had collected taxes based on the population of the states, with the majority of funds coming from tariffs on domestic and international goods. With the new Income Tax, charitable contributions became tax-deductible through the War Revenue Act of 1917 – incentivizing donors to continue philanthropic giving while paying the high taxes needed to fund the fight in World War I. Community foundations emerged as a practical and easily understandable charitable vehicle.

### **DCF's Roots Stretch Deep and Wide**

The DCF's roots stretch back to 1920, when a group of businesspeople created its forerunner, the Delaware Foundation, which was focused on awarding scholarships. When the Depression hit, the efforts fell to the wayside, and the organization never reached its promise.

In the 1980s, a visionary group of people, led by the late Pierre S. Dupont III, picked up the standard and created the Delaware Community Foundation.

Their goal: to meet the needs of Delawareans and serve as a catalyst for long-term community transformation.

On July 23, 1986, the DCF was incorporated under Delaware law. Gannett Publishing contributed start-up funds. Bank of Delaware, DuPont, Hercules, ICI and Wilmington Trust all made three-year commitments to provide operating money. The Charles Stewart Mott Foundation provided challenge funds, a goal met by contributions from the first DCF board.

John J. 'Jack' Quindlen, Chief Financial Officer of the DuPont Company was named Chair of the Board, and a year later, Collis O. Townsend joined as the DCF's first full-time executive director.

DCF Board Member Jeremiah Shea, then head of Bank of Delaware, embarked on a program to transfer and consolidate existing charitable funds and trusts from financial institutions, giving the DCF its first true investment funds. In 1989, the State of Delaware appropriated \$2 million to be granted to nonprofits to fund capital improvements. Two million more was raised in matching funds by the Funding Donors Campaign, led by a \$1 million gift from the DuPont Company. This was followed in 1991 by grants from the John D. and Catherine T. MacArthur Foundation and the Ford Foundation.

### **DCF, the One Big Beautiful Bill, and the Future of Community Foundations**

Forty years later, the founders' vision has become a pillar institution in Delaware. The DCF is a more than \$400 million foundation – one of the

largest charitable organizations in the state and a top 100 community foundation nationwide.

Today, donors, professional advisors and nonprofits turn to the DCF for guidance on charitable strategy. For instance, the recently signed One Big Beautiful Bill (OBBB) introduced several significant changes to the tax treatment of charitable contributions. By understanding the new rules and adopting strategic approaches, the DCF is helping donors continue to make a meaningful impact through the DCF while taking advantage of significant tax and legacy giving benefits. And, as tax laws evolve, community foundations including the DCF remain prepared to support donors and charitable organizations within their communities.

This year the DCF celebrates its 40th anniversary. As a public charity that manages funds, advises donors, grants to nonprofits, and provides community leadership with the intention of strengthening communities, businesses and governmental entities across the state, we stand ready as always to assure charitable dollars support our state – now and forever.

*Mike DiPaolo serves as Vice President for Philanthropy & Southern Delaware at the Delaware Community Foundation. To learn how the DCF supports advisors in helping their clients reach charitable goals, contact him at 302-889-1884 or at [mdipaolo@delcf.org](mailto:mdipaolo@delcf.org) or visit [www.delcf.org/advisors-partnerwith-us/](http://www.delcf.org/advisors-partnerwith-us/)*



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# Accounting for Success

## Fraud Trends CPAs Are Seeing and What They Mean for Bank Controls



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*“Account reconciliations continue to be one of the most effective tools for detecting fraud, yet they are also one of the most common failure points.”*

**F**raud rarely begins with a single large transaction. More often, it starts quietly, in small amounts, with infrequent activity, or minor internal control overrides that escape notice. By the time fraud affects financial statements or regulatory reporting, it has typically been occurring for months or even years. Across audits, internal control reviews, and investigations, several trends continue to emerge, each carrying important lessons for banks and trust companies. Let’s review some of these trends below.

### **Fraud Losses Are Large and They Persist**

Industry data confirms what many practitioners observe firsthand: fraud remains both widespread and costly. The Association of Certified Fraud Examiners (ACFE) *Occupational Fraud 2024: A Report to the Nations* documents that occupational fraud is a multi-billion-dollar problem. The study reviewed more than 1,900 actual fraud cases investigated between January 2022 and September 2023, with estimated total losses of \$3.1 billion, or approximately \$1.7 million per case.

### **Control Breakdowns, Not Sophisticated Schemes, Drive Most Fraud**

Despite increasing attention on cybercrime and external threats, the majority of fraud CPAs encounter results from basic internal control failures. Common issues include lack of segregation of duties, insufficient review of reconciliations, and weak informal processes that gradually become permanent.

In smaller institutions, staffing limitations may lead to individuals performing multiple incompatible functions. In larger organizations, automation can create blind spots when exceptions are not reviewed by human eyes. In both cases, fraud risk increases when control gaps create opportunities for improper activity.

Controls do not need to be complex, but they must be consistently applied, clearly documented, and periodically tested.

### **Trusted Employees Are Often Involved**

ACFE research highlights that occupational fraud frequently involves individuals with no prior fraud charges or convictions, often employees who are well-regarded and deeply embedded in the organization. Familiarity and trust can unintentionally reduce scrutiny, especially when an individual is viewed as indispensable.

Fraud can emerge gradually as a trusted person assumes additional responsibilities over time, eventually holding multiple incompatible functions. While this may increase efficiency, it reduces accountability and elevates risk. Strong internal controls protect employees as much as institutions. Role rotation, mandatory vacations, and independent review are not signs of distrust, but are sound risk management practices.

### **Reconciliations Remain a Critical Defense**

Account reconciliations continue to be one of the most effective tools for detecting fraud, yet they are also one of

the most common failure points. Reconciliations may be prepared but not reviewed, reviewed but not questioned, or completed weeks or months late. Reconciling items that roll forward indefinitely provide an ideal cover for improper activity.

Timely reconciliations with meaningful review by someone who understands the underlying activity remain a foundational control.

### **Automation Reduces Errors but Can Mask Fraud**

Automation has improved efficiency and reduced manual errors across banking operations, but it has not eliminated fraud risk. Fraud can leverage automated processes, such as unauthorized changes to standing instructions, vendor information, or system access that go undetected because transactions flow through systems as designed.

When controls rely solely on system logic without complementary monitoring, improper activity can persist longer and grow larger. Automation should reduce workload, not oversight.

### **Documentation Matters More Than Ever**

In today's regulatory environment, undocumented controls tend to be treated as nonexistent by CPAs and regulators.

Even when management believes a control is operating effectively, the absence of evidence undermines that management's assertion.

From a CPA's perspective, weak documentation often correlates with weak execution. Clear policies, defined responsibilities, and retained evidence of review are essential, not only for audits and examinations, but for effective governance and accountability.

### **Looking Ahead**

Fraud risk evolves as banking operations, technology, and staffing models change. For banks, the implication is clear. Even isolated control weaknesses can allow losses to accumulate over time. Fraud is not a theoretical risk or a rare event; it is an ongoing operational reality that must be actively managed. The most effective institutions are those that regularly reassess controls and reinforce a culture of accountability.

Strong internal controls are not merely a compliance exercise, they are a strategic asset that protects the institution, its employees, and the communities it serves.



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**Gina Schoenberg  
and  
Jennifer Reefer**  
Young Conaway Stargatt & Taylor, LLP

*"While OBBBA enacts sweeping tax legislation affecting many areas of tax law, this article focuses on changes affecting the charitable deduction."*

## Changes to the Charitable Deduction Under the OBBBA

**P**ublic Law 119-21, better known as the One, Big, Beautiful Bill Act ("OBBBA") is now in full effect. While OBBBA enacts sweeping tax legislation affecting many areas of tax law, this article focuses on changes affecting the charitable deduction.

A new above-the-line deduction allows individual non-itemizers to claim up to a \$1,000 charitable deduction (\$2,000 for taxpayers filing jointly) for cash contributions to qualified charities during the taxable year, in addition to the standard deduction. Contributions to 509(a)(3) supporting organizations and donor advised funds, however, are explicitly excluded.

For itemizers, OBBBA permanently sets the ceiling on deductions for cash charitable contributions at the excess of (a) 60% of the taxpayer's "contribution base" over (b) the aggregate amount of contributions taken into account under § 170(b)(1)(A) of the Internal Revenue Code for the year. The "contribution base" is equivalent to the taxpayer's adjusted gross income without regard to any net operating loss carryback.

Individual itemizers may deduct charitable contributions only to the extent total contributions exceed a floor of 0.5% of their contribution base, with statutory ordering rules determining which contributions are treated as nondeductible for purposes of applying the floor.

For itemizers in the 37% rate bracket, itemized deductions are reduced by 2/37ths of the lesser of (a) the amount of allowable itemized deductions or (b) the amount of the taxpayer's taxable

income (determined without regard to itemized deductions) to which the 37% bracket applies. Thus, high-income taxpayers may be subject to a larger limitation on itemized deductions than lower-income taxpayers.

For corporate taxpayers, in addition to extending the pre-existing 10% ceiling on corporate charitable deductions, such deductions are newly subject to a 1% floor. Thus, charitable contributions are only deductible to the extent they exceed 1% and do not exceed 10% of the corporation's modified taxable income.

For both individuals and corporations, if charitable contributions exceed the applicable ceiling, all disallowed contributions, including those subject to the applicable floor, may be carried forward for up to five years on a first in, first out basis (reduced to the extent they reduce taxable income and increase net operating loss carryovers). However, if charitable contributions do not exceed the ceiling, none of the contributions disallowed by the floor may be carried forward.

Takeaways for maximizing a charitable deduction under OBBBA's framework include:

- Individual non-itemizers should track their charitable contributions to claim their \$1,000 (single)/\$2,000 (joint) charitable deduction.
- Individual itemizers and corporate taxpayers may benefit from bunching their contributions into a single year to reduce the amount disallowed by the applicable floor and maximize the amount that can be carried forward.

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