delaware banker

Winter 2025
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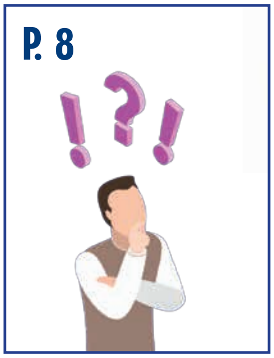

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SUBMISSIONS

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

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View from the Chair

Matthew Parks
VP, Investments,
CRA & Retail Banking
Discover Bank

Chair
Delaware Bankers Association

"Beyond providing basic financial services, banks need to be strong community partners."

Banking is about growth. Not just growing our deposits, our loan porfolios, and our balance sheets. Banking is about growing the community. If you want a successful bank, work to grow a successful community. Which brings me to the Japanese carp, or what most of us know as the koi. You can learn a lot about growth from that fish.

The interesting thing about the koi is that it grows in relationship to its environment. If you keep a koi in a small fish bowl it will limit its size to that container. A koi in a small bowl will only grow to two or three inches in length. Put a koi in a larger aquarium and it can grow to between six and ten inches depending on the size of the tank. You may have seen koi in an ornamental pond. There the fish will grow as large as 18 inches. Place koi in a lake and they can reach up to three feet in length.

Banks and their communities are similar to the koi. Our communities, and our individual institutions, will only grow as much as the opportunities allow them to expand. Banks can foster these opportunities in a variety of ways.

The most basic way a bank supports the community is by providing traditional financial services to the individual. From the simple deposit account to more complex savings products and services. Through personal loans, auto loans, home mortgages, and other credit vehicles, banks help individuals and families to build an economically viable life and generational stability.

Small businesses, which are often the backbone of the economy, also need the support of banks to reach their full potential. These enterprises create jobs, drive innovation, and contribute to local vitality. Recognizing this, banks must play an active role in fostering small business growth. This includes offering personalized financial services designed to accommodate the unique needs of entrepreneurs, from startup loans in the initial phases of business development to lines of credit that can provide operational flexibility. Additionally, banks can provide direction, helping local business owners navigate the complexities of financial management and growth strategies.

Beyond providing basic financial services, banks need to be strong community partners. Banks foster growth through community development grants, volunteerism, supporting local non-profits, and engaging in initiatives that enhance the community's quality of life. Furthermore, supporting local non-profit organizations that address pressing social issues—such as education, housing, and healthcare—demonstrate a bank's commitment to the well-being of the community. Delaware's bankers possess decades of financial expertise and community knowledge, which can be leveraged to foster impactful collaborations and initiatives. This experience equips them to identify community needs and implement solutions that promote economic stability.

Just as koi thrive when given the opportunity to grow, the banks of Delaware can inspire greater development by strengthening their commitment to our communities. With the leadership and expertise of Delaware's bankers at the forefront, we can cultivate vibrant, resilient communities that are more economically robust and secure for all its residents.

President's Report

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

"Spanning his entire career, Tom Carper has always been an ally to the financial services industry in Delaware."

A Thank You to the Honorable Tom Carper

In 1975, Governor Sherman W. Tribbitt formed the "Delaware Tomorrow Commission" by executive order. He believed it was essential that the State of Delaware devise a statewide development policy on growth by considering the interests of not just government but business, industry, labor, environmentalists, and most importantly, the people of Delaware. One key recommendation from the Commission was to attract desirable companies to Delaware; banks should be encouraged to give greater lending support to businesses and industries. In 1975, just over $1 million was collected in bank franchise taxes.

That same year, Tom Carper began his service to Delawareans in Delaware's Economic Development Office, from which he would be elected Treasurer two years later. Then onward to the U.S. House of Representatives, the Governor of Delaware, and lastly, the U.S. Senate. Over the past 50 years, the Honorable Tom Carper has been a strong advocate of the financial services industry in Delaware.

From 1983 to 1992, Senator Carper served on the House Banking Committee. In October 1987, the House debated a bill written by then-Rep. Chuck Schumer that would disclose more information to prospective credit card customers. The legislation would ultimately create the "Schumer box" — the part of a credit card agreement that lists interest rates, terms, and fees in large type. An amendment was introduced to limit the allowable interest rate on all U.S. credit cards to 15%. The House Banking Committee struck down this amendment almost unanimously after hearing from a young Democrat from Delaware. His name was Tom Carper. He said, "The bill without this amendment is good. We can do a lot of good with this legislation. Let's let competition work." With an alliance of Banking Committee Democrats and pro-business Republicans, the interest rate cap amendment failed.

Senator Carper served on the Senate Banking Committee from 2001 to 2008. In 2009, Sen. Carper voted for the CARD Act, a bipartisan bill that balanced consumer needs with maintaining the availability of credit.

In 2010, during the drafting of Dodd-Frank, Senator Carper worked across the aisle to craft an amendment preserving the right of the OCC to pre-empt state laws on nationally chartered banks. At the time, he said, "There are times when it's not always wise to have 50 different states weighing in on what's best." He argued that the CFPB should police the market with uniform standards. Carper reached a compromise with bill authors that maintained pre-emption authority. "I think there are plenty of places where regulations are appropriate, and I also think we need to deploy those regulations using some common sense," he said.

In 2018, Senator Carper supported the Economic Growth, Regulatory Relief, and Consumer Protection Act, a product of a thorough, robust process and honest, bipartisan negotiation years in the making. This legislation modernized financial regulations in a way that made sense for small financial institutions, benefited consumers, and encouraged economic growth. It also included important, significant consumer protections for veterans, senior citizens, victims of fraud, and people who fall on tough financial times. It made it easier for small financial institutions to lend to and support low-income families.

Throughout his many years of service to the people of Delaware, amongst many other things, he has listened. He met with our bankers every March in DC and listened to what they shared about issues impacting their Customers. He listened to the Customers themselves when he visited their branches. He listened to me when I had an issue or concern about something that could negatively affect Delaware's Financial Services industry.

Throughout his career, Tom Carper has always been an ally of the financial services industry in Delaware. He has supported the industry in virtually every policy debate over that period. Today, half of the nation's credit cards originate in Delaware, and over 50,000 people are employed in the financial services industry, roughly one-tenth of the entire workforce. Need further proof? In 2024, bank franchise taxes eclipsed $105 Million.

Tom Carper is, and always has been, driven solely by a motivation to serve the people of Delaware and their interests, and his track record proves it. Thank you for everything you have done during your long and extraordinary career to support Delaware's financial services industry.

Who Are You? And Why Are You on My Money?

A Primer on The Faces on U.S. Currency and How They Got There

By: Greg Kosleuk
Delaware Bankers Association

Quick quiz...without looking can you name who is on the bills in your wallet? The ones, and fives should be easy, and since "Benjamins" entered into regular slang, the $100 should be familiar, too. What about the others? Did you know there were denominations over $100. Who are all those guys on U.S. currency and why are they there? In an effort to inform Delaware's bankers on the trivial as well as the weighty, we now offer you a primer on the subject.

One Dollar Bill: George Washington

This is an easy one. Everyone knows George Washington, our first president. He led the Continental Army to victory in the American Revolution. Washington: First in War, First in Peace, Fourth in the National League East. Washington refused the offer of absolute power, and helped establish many of the precedents that are the strength of the federal system. His place in history, and on the most widely printed currency, is cemented by the fact that he had no model upon which to do it all.

In the realm of monetary policy, Washington came into office without a banking system, without regulators, and without an effective treasury. He had the daunting task, among many, to set up it all up and put the country on a firm economic foundation. Much of this he did with his choice for the first Secretary of the Treasury, but for that story see the $10 bill.

Two Dollar Bill: Thomas Jefferson

It's doubtful that the man on the two dollar bill got there for his contribution to finance. In fact, he's probably there in spite of it. Thomas Jefferson's fame rests on his being the primary author of the Declaration of Independence, and the third president. Jefferson was also the first Secretary of State in George Washington's cabinet. Jefferson favored a more decentralized government and an agrarian economy. Unlike Washington's Treasury Secretary, who favored the businessman, Jefferson championed the common man, and in some respects this basic division has filtered down (at least in stereotype) to today's two main political parties. As such, Jefferson opposed a strong central banking system for being beyond the scope of the Constitution.

In addition, Jefferson saw banks as "raising up a moneyed aristocracy in our country which has already set the government at defiance." Jefferson viewed the national bank and its branches suspiciously, seeing it as vehicles for rampant speculation and corruption. A good deal of Jefferson's opposition to banks lay in the fact that states as well as private banks issued their own bank notes, the value of which could disappear overnight. For this reason Jefferson strongly advocated an economy built purely on the principle of metal currency, and if need be, paper currency issued only from the federal government.

Five Dollar Bill: Abraham Lincoln

Like George Washington, Abraham Lincoln had a profound impact on the history of banking, and also, like Washington, most of his financial accomplishments are due to his choice for Treasury Secretary (see $10,000 bill below). Also like Washington, Lincoln's honored for his performance outside of the realm of economics and finance.

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Ten Dollar Bill: Alexander Hamilton

You knew Alexander Hamilton before he was a Broadway star. He was right there in your wallet! Hit musical aside, to most people, Hamilton is the first real "who's he?" guy on U.S. currency. That he would wind up on such a ubiquitous denomination as the ten dollar bill ahead of many more famous Americans is significant, as is Hamilton's contributions to U.S. history – most of it financial in nature. Hamilton served under George Washington in the Revolution. After the War, Hamilton briefly served in the Continental Congress, but gave it up to practice law and found The Bank of New York, the nation's first bank, in 1784. Three years later, Hamilton attended the Constitutional Convention in Philadelphia, and was the only New Yorker to sign the completed document.

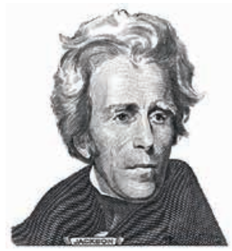
George could pick them! While the current presidential cabinets include sixteen secretaries, George Washington only had four (l to r) Henry Knox, Secretary of War; Alexander Hamilton, Secretary of the Treasury; Thomas Jefferson, Secretary of State; and Edmund Randolph, Attorney General. Three of these five made it to U.S. currency.

When Washington became president in 1789, Hamilton, being one of the few bankers in the country, was a natural choice for Treasury Secretary. Within days of taking office, Hamilton, at the request of the House of Representatives, drafted a plan for "the adequate support of public credit." For the country to grow, Hamilton reasoned, the government must have good credit. Towards this end, Hamilton argued that the federal government should assume the war debts of the states, not an altogether popular concept, especially among states that had already paid much of their debts. Hamilton also proposed that a fund be created to stabilize the price of government securities by buying them whenever they dropped much below par value.

The country's lack of banking facilities should be filled, Hamilton proposed, by the establishment of a Bank of the United States modeled after the Bank of England. Again, this plan was met with opposition, primarily from future presidents Thomas Jefferson and James Madison on the grounds that the Constitution made no provision for establishing a national bank. Ultimately, Hamilton pushed through his economic proposal with the support of George Washington. The opposition of Jefferson and Madison reportedly went away after Hamilton agreed to use his influence to have the new nation's capital situated on the Potomac River, across from Jefferson and Madison's native Virginia.

Twenty Dollar Bill: Andrew Jackson

Definitely in the Jeffersonian mould, Andrew Jackson, the 7th president, was no friend of banks. The twenty-year charter of the Second Bank of the United States was up for renewal during Jackson's administration. Many in the nation, especially western interests, saw the Second Bank as the overarching villain of the day (Missouri Senator Thomas Hart Benton called it: "the jaws of the Monster.") In an attempt to attack "the Monster," the State of Maryland tried to tax the Bank, but was prevented from doing so in the landmark McCulloch v. Maryland case.



While the taming of the beast may have failed in the courts, the Bank and its president, Nicholas Biddle, met its fiercest opponent in Andrew Jackson. Jackson accused the Bank of fraud and corruption. "Beyond question…this great and powerful institution," wrote Jackson, "had been actively engaged in attempting to influence the elections of the public officers by means of its money." While the Bank's charter was due to expire in 1836, both sides forced the issue four years earlier. At that time, Biddle applied for an early renewal of the charter which was passed through Congress with the help of Speaker of the House Henry Clay, Jackson's opponent in the 1832 election. The renewal attempt and Jackson's veto statement were both appeals to their political bases. Jackson won the election handily and his veto stood.

President Andrew Jackson slays Nicholas Biddle and the 2nd Bank of the United States in this political cartoon from the 1830s.

With the Bank's doom sealed, Jackson hastened its demise in 1833 when he instructed his Treasury Secretary, Louis McLane, to stop depositing federal funds in the Bank. McLane refused and was replaced by William Duane who also refused and was replaced by Roger B. Taney who followed Jackson's orders (and was eventually made Chief Justice by Jackson). Federal funds were subsequently deposited in "pet banks" or those allied with Jackson. Without its federal deposits, the Second Bank of the United States went into steep decline. It became a conventional bank after its charter expired, and went bankrupt five years later. While a popular move with the common man and western interests, Jackson's killing of the Bank, along with his Specie Circular (requiring government land purchases to be made in silver or gold coin) are seen as major contributors to the Panic of 1837, the country's first major depression, that struck five weeks after Jackson left office.

Fifty Dollar Bill: Ulysses S. Grant

The 18th President, Ulysses S. Grant, had several notable economic accomplishments. During his administration the nation's credit standing improved considerably, taxes were cut, and interest rates were lowered. Grant vetoed bills that would have increased federal spending and generally his policies helped reduce the impact of the Panic of 1873 (at least for Wall Street investors). All that aside, Grant, like Lincoln before him, is probably honored on currency for his role in getting the nation through the Civil War.

One Hundred Dollar Bill: Benjamin Franklin

Again, the $100 bill, like the $1 and the $5, features a man who needs no introduction. America's first great statesman philosopher,

Benjamin Franklin's economic accomplishments are fairly limited. As a printer, in 1736, Franklin devised an innovative anti-counterfeiting technique for currency he was running off for the neighboring colony of New Jersey. He also, under the pen name of Poor Richard, advised that a penny saved was a penny earned. With the rate of inflation since Franklin's time, perhaps it's appropriate that he is honored on the $100 bill, rather than the penny. (Incidentally, a 1790 penny is equivalent to about 34 cents today).

$500 Dollar Bill: William McKinley

Campaign Hypebole? Everyone, from laborers to businessmen seemed delighted to carry William McKinley to victory on a giant gold coin, though eventually he'd end up on the $500 bill.

William McKinley was a staunchly, pro-business president, perhaps the prototype for successive pro-business Republicans. Running in 1896, as the nation was emerging from the devastating Panic of 1893 (see $1,000 below), McKinley promised to promote industry, banking and prosperity. His Democratic opponent, William Jennings Bryan, ran solely on the issue of free coinage of silver, which McKinley, who

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Mr. $1,000 Bill (Grover Cleveland) escorts his successor, Mr. $500 Bill (William McKinley) to the 1897 presidential inauguration.

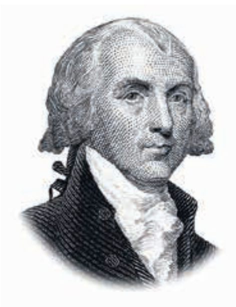
favored the gold standard, opposed as being a recipe for economic disaster. Under McKinley's administration the nation did indeed enjoy a strong economy, and McKinley was easily reelected in 1900. His assassination in 1901 deeply saddened the nation, who still fondly remembered him less than 30 years later when he was honored on the $500.

One Thousand Dollar Bill: Grover Cleveland

Grover Cleveland can't catch a break. He was famous as the nation's heftiest president until William Howard Taft shattered that record. He was also known as the only president to serve two non-consecutive terms, and we know how that's worked out. Still, Grover Cleveland had a profound effect on the nation's economy. Unluckily for Cleveland, the commencement of his second term coincided with the Panic of 1893, a financial crisis precipitated by an overexpansion in railroads. To stem the rise of business and bank failures, many advocated the free coinage of silver. Seeing that the government's gold reserves were already severely depleted by the Sherman Silver Purchase Act of 1890, Cleveland refused a quick fix. Instead, he had the Sherman Act repealed and put the nation on the gold standard (as most of the other industrial nations were by this time). Then Cleveland arranged for banker J. P. Morgan to put together a private syndicate to shore up the nation's dwindling gold reserves.

At the height of the crisis, Cleveland was found to have cancer. Rather than disclose the disease and further fuel the panic on financial markets, Cleveland pretended to go on vacation. Then, on the deck of a yacht in Long Island Sound, doctors operated on the President, only revealing the truth decades later. Despite Cleveland's decisive moves, the damage was already done, and the United States suffered through what some have called its worst depression ever, with the President shouldering much of the blame. It was only in later years that his efforts were honored as his portrait was put on the $1,000 bill.

Five Thousand Dollar Bill - James Madison



A protégé of Thomas Jefferson, and the Father of the Constitution, James Madison, the 4th President, was in office when the charter of the Bank of the United States came up for renewal. Following in his mentor's philosophical footsteps, Madison allowed the charter to expire in 1811. The following year the government's financial picture was further complicated when Madison and his secretary of the treasury, Albert Gallatin, found it increasingly difficult to fund the War of 1812, especially since they just shipped $7 million to Europe to pay off the investors in the First Bank of the United States. With the First Bank gone, numerous local banks cropped up, all printing their own currency. This, in addition to the government's borrowing for the war, led to more unstable currency and higher inflation.

In the face of this situation, Madison and Gallatin were left little choice but to adopt the Hamiltonian remedies of raising revenue, issuing bonds, and chartering a Second Bank of the United States. Madison's and Gallatin's efforts were not forgotten by the Treasury. Madison's picture is featured on the front of the $5,000 bill (no longer in circulation), while Gallatin, the longest serving Secretary of the Treasury, is honored with a statue in front of the Treasury Department in Washington.

Ten Thousand Dollar Bill: Salmon P. Chase

As George Washington had Alexander Hamilton, Abraham Lincoln had Salmon P. Chase. The second most prominent Republican in the country (after William Seward), Chase lost out on the presidential nomination to Lincoln in 1860, who subsequently named him to head the Treasury. Chase oversaw the National Banking Act which established the system of national charters for banks, created the Office of the Comptroller of the Currency, and encouraged a national paper currency backed by Treasury Securities.

The main impetus of the Act was not primarily a desire to create order in the nation's banks, but rather Lincoln's dire need to raise money to fund the Civil War. The Banking Act did this by encouraging the sale of federal bonds, while at the same time imposing heavy taxes on state bonds, thus starving out their competition. A few years later, a revision to the Act would tax non-federal bank notes, which, in time, had the effect of making the federal government the only issuer of paper money.

In 1862 Chase developed the national currency known as "Green Backs," because of their color. Modestly, Chase put his own image on the first one dollar bill (above). Chase is quoted in one of his speeches as to how he came to this decision: "I went to work and made 'greenbacks' and a good many of them. I had some handsome pictures put on them; and as I like to be among the people, and was kept too close to visit them in any other way, and as the engravers thought me rather good looking, I told them they might put me on the end of the one-dollar bills."

Chase was rewarded for his efforts by being appointed Chief Justice in 1864. The promotion also effectively dampened Chase's bid to replace Lincoln for the Republican nomination that year. Such was Chase's reputation, that in 1877, four years after his death, his name was used to front the startup Chase National Bank, the forerunner of today's JPMorgan Chase. Though he had long been replaced on the dollar bill, in 1928, Chase was honored for his monetary efforts to save the Union by having his portrait put on the front of the $10,000 bill.

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One Hundred Thousand Dollar Bill: Woodrow Wilson

During the administration of Theodore Roosevelt, the nation suffered through the Panic of 1907. Total financial collapse was averted when, as in the Panic of 1893, J.P. Morgan injected liquidity into the system. In an attempt to lessen future financial meltdowns, the Aldrich-Vreeland Act was passed in 1908, establishing the National Monetary Commission. One of the Commission's main duties was to tour Europe to see how other industrial nations handled their banking. The members were stunned at the efficiency of Europe's central banks. In 1912, the Commission issued its findings and proposed a legislative cure known as the Aldrich Plan, after the chairman of the Commission, Republican Senator Nelson Aldrich of Rhode Island. Under the plan, twelve regional central banks, the National Reserve Association, would be established. These banks would be overseen by a board of commercial bankers. Critics feared the plan would give too much control of the system to private bankers.

With 1912 being a presidential election year, the Democratic candidate, Woodrow Wilson stated opposition to the notion of a central bank, while at the same time campaigning for banking reform. After entering the White House Wilson made good his promise for reform through adapting several of the key proposals of the Aldrich Plan, including the twelve regional central banks and a governing board. The difference was that the entity, The Federal Reserve, would be controlled by a board of presidential appointees, rather than private bankers. As the man who made all future federal reserve notes (our current currency) possible with the stroke of his pen, in 1928 the Fed honored Woodrow Wilson by placing his face on the highest denomination of currency.

The man who made federal reserve notes possible gets his picture on the biggest bill of all, but would Woodrow Wilson be more famous today if he had held out for the wrapper of the $100,000 bar?

So now you know who those guys are, but don't try to add any bills over $100 to your wallet. The $500 through $100,000 denominations are still legal tender, but they haven't been printed since 1945 and they were officially discontinued in 1969 by executive order of Richard Nixon in an effort to fight organized crime. These higher denominations were primarily used for transfers between banks, a process that has since been replaced by electronic funds transfers.

Greg Koseluk, Vice President, Marketing and Public Relations for the Delaware Bankers Association, is also the author several books including: Eddic Cantor - a Life in Show Business, *and* Great Brit-Coms.





Credit Card and Rewards Programs Face Uncertain Regulatory Waters Ahead

by
Glen P. Trudel
Partner
Troutman Pepper Locke

Recent developments in the federal and state consumer financial regulatory and/or legislative arenas present a number of material challenges and uncertainties to credit card issuers as a whole and for co-brand credit card and related rewards programs. And such uncertainties have only increased given the recent change in Presidential administration.

Federal Regulatory/Legislative Proposals

The Credit Card Competition Act—The Credit Card Competition Act (the "CCCA") is legislation which has for some time been championed by Senate Judiciary Committee Ranking Member Senator Richard Durbin (D-IL), as well as Senator Roger Marshall (R-KS) and other co-sponsors (including now-Vice President J.D. Vance). The CCCA is intended to broaden payment card network access for merchants and increase competition in connection with processing electronic credit transactions. Among other things, the bill would require the largest credit card issuing financial institutions in the country—namely, those with assets over $100 billion—to enable at least two unaffiliated credit card networks to be used to process all credit card transactions, but the two cannot be, in effect, both Visa and Mastercard.

A Judiciary Committee hearing on this bill occurred on November 19, 2024. At the hearing, members of the Committee strongly encouraged payment network representatives to modify their practices on their own initiative, so as to forestall and potentially avoid, direct Congressional intervention such as the CCCA, warning that in essence if progress was not made on that front, such intervention would be more likely to occur. The bill seemed to have some bi-partisan Congressional support at the hearing, but the members were divided in their views.

The credit card banking industry asserts that forcing a two network solution on card processing, coupled with the material costs of implementing such functionality, will undercut revenues available for rewards programs and co-brand partner compensation, with no resultant real benefit to the consumer. Card issuing banks, it is argued, may be forced to raise rates, or to impose or raise annual and/or other fees to replace lost revenue. Additionally, banks may find it necessary to tighten access to credit to a larger segment of persons deemed comparatively more of a credit risk, which would lower overall net converted response rates and thus prevent a larger portion of a co-brand partner's customer base from accessing the benefits of the co-brand product.

It is also observed that passage of the CCCA may require payment networks and merchants who may have volume incentive agreements in place to revisit and possibly renegotiate such agreements to reflect the new realities of the marketplace imposed by the CCCA. Passage of the CCCA could similarly affect co-branded credit card agreements in place between covered card issuers and commercial entities with material rewards programs, as the economics of these relationships may materially shift as a result of these new requirements over time, in ways that would impact the agreements' provisions on revenue sharing and how the rewards programs of such co-brand programs are being supported or funded.

The CCCA bill, in its prior or a modified form, may in all likelihood be reintroduced in the new Congress[1]. Advancing this legislation has been an ongoing, multiyear effort by Senator Durbin. The likelihood of advancement of a new bill is unclear, given that there has been little indication since the hearing from the Trump Administration regarding its position on the issues being addressed by the bill, or whether it would still be supported by Vice President Vance.

Credit Card Late Fee Rule/Litigation—This rule, as promulgated by the Consumer Financial Protection Bureau ("CFPB") would radically change the rules and options for the amount that large credit card issuers (i.e., issuers with one million or more open credit card accounts), could charge for late fees, reducing the late fee safe harbor amounts from what was $30/41 to $8, and eliminating the current structure providing for automatic Consumer Price Index increases to the permissible safe harbor amounts, among other changes.

The rule was immediately challenged by a case brought against the CFPB and Director Rohit Chopra in the United States District Court for the Northern District of Texas[2] and was quickly embroiled in complex procedural wrangling, though a preliminary injunction and stay has been imposed pending resolution of the case. Notably, on December 6, 2024, the District Court denied both the CFPB's motions to (i) dismiss the plaintiff Fort Worth Chamber of Commerce for lack of standing and transfer the case to the United States District Court for the District of Columbia, and (ii) dissolve the preliminary injunction of the late fee rule. In denying the CFPB's motion to dissolve the preliminary injunction, the court stated that, "the Final Rule violates the statutory authority granted to the CFPB under the CARD Act, the Plaintiffs maintain a strong likelihood of success on the merits, and this factor weighs against dissolution of the Court's preliminary injunction."

This decision by the District Court and the language of the opinion seem to bode well for having the court decide a motion for summary judgement favorably to the plaintiffs challenging the rule. Currently, plaintiffs' opening Motion for Summary Judgement is due on February 20, 2025, per Court filings as of the date of this writing. What is less clear is what approach the CFPB will take on this matter under the incoming Trump Administration, which might include, for example, abandoning further efforts to defend the current late fee rule under challenge and perhaps advancing a revised version of a late fee rule which takes into account the Court's rulings to date, or perhaps no longer pursuing amendments to the late fee provisions under Regulation Z.

Given such uncertainty of approach, for the large card issuers and their co-brand and private label commercial partners, the stakes in this matter remain high. Late fee revenues are often a material component of the funding used to support marketing and rewards enhancements for these programs, so any material undercutting thereof which this rule represents, would require such issuers to respond in ways similar to those measures discussed above with respect to the CCCA.

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"Temporary" 10% Credit Card Annual Percentage Rate Cap. The proposal for the imposition of a "temporary" cap of ten percent on credit card account annual percentage rates was advanced by President Trump during his campaign. Potentially affected financial institutions warned that (i) a rate cap would limit access to credit for borrowers who need it arguably the most, compelling them to seek out riskier alternatives like payday lenders; and (ii) a 10% rate cap would compel the card issuers to limit rewards and/or even stop offering credit cards to people with low incomes and credit scores. many people with low incomes and/or credit scores. Other commenters expressed doubt as to the sincerity or seriousness of the President's proposal, and reportedly some Republicans have opposed such a proposal.

Senator Bernie Sanders (I-Vt), on the other hand, has taken up the standard on this proposal. On February 4th, Senators Sanders and Josh Hawley (R-Mo.) introduced legislation aimed at immediately capping credit card interest rates at 10% for a period of five years.[3] As of this writing, the bill has been referred to the Senate Banking, Housing, and Urban Affairs Committee.

Notably, this is not Senator Hawley's first attempt to legislatively cap credit card interest rates. In September, 2023, Senator Hawley introduced the "Capping Credit Card Interest Rates Act"[4], which would have capped annual percentage rates at 18%, and expressly prohibited non-finance charge fees from being used to evade the limitation. That bill died in committee. It remains to be seen whether Senators Sanders' and Hawley's new legislation will face a different reception in the new Congress. What is clear is that the Senators can expect robust industry pushback to its advancement or enactment.

State Regulatory/Legislation and Proposals

The Illinois Interchange Fee Prohibition Act[5] ("IFPA"). This statute passed in June 2024, and its effective date is slated for July 1, 2025. The IFPA would bar financial institutions, payment networks and other entities involved in processing electronic payments from charging or receiving interchange fees on gratuities and on state and local tax portions of credit or debit card transactions. It also would limit an institution's ability to use transaction data for purposes other than processing the transactions, except as required by law.

The American Bankers Association, Illinois Bankers Association, America's Credit Unions, and Illinois Credit Union League soon filed a lawsuit against the state of Illinois in the United States District Court for the Northern District of Illinois to challenge this law and to seek a preliminary injunction. The plaintiffs claim that the IFPA would disrupt the payment system, reduce the benefits of credit and debit cards for consumers and businesses, interfere with the federal government's authority over national banks and credit unions, and require institutions to invest hundreds of millions of dollars to comply with the law.

The court granted a preliminary injunction in favor of the plaintiffs barring the enforcement of the IFPA as to national banks and federal associations, based on its conclusion that the limits on interchange fees and transaction data usage are likely pre-empted by the National Bank Act, but importantly did not in that decision suspend the effectiveness of the statute for Illinois-chartered institutions, the credit card networks, or for out-of-state state-chartered banks and credit unions, pending further briefing and legal review.[6]

On February 6th, the District Court expanded the scope of the preliminary injunction protection to include out-of-state state banks, but specifically not federal credit unions. The decision to include out-of-state state banks followed from the court's conclusion that the "plain language of [the Riegle–Neal Interstate Banking and Branching Efficiency Act] § 1831a(j)(1) is meant to ensure that out-of-state state banks can compete with nationally chartered banks. This means that because the Court granted the preliminary injunction with respect to nationally chartered banks, forcing out-of-state state banks to comply with the IFPA would run afoul of § 1831a(j)(1)." The decision to exclude federal credit unions was based on the court's conclusion, resulting from a conflicts pre-emption analysis, that the Illinois Bankers did not demonstrate that they are likely to prevail on their claim that the IFPA is preempted by the Federal Credit Union Act.

This legislation appears to be the first in the country of its kind, but may not be the last, especially if any part of the IFPA survives current legal challenges and is found to be enforceable. Other states, reportedly including Georgia, Nevada, Tennessee and Texas, have introduced/considered similar measures.

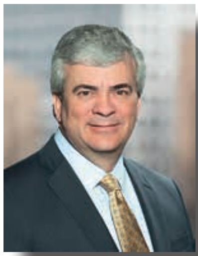
A law which restricts or reduces the amount of interchange issuing banks can collect would have a direct impact on how co-brand and private label credit card rewards programs are financed, and more generally on the level of revenue the banks would have available to potentially pay co-brand partners as compensation for their participation in such programs. As noted above, this would have potentially very material effects on the ability of financial institutions to finance the costs of co-brand and other rewards programs offered to customers. Additionally, the huge cost of implementation of the IFPA requirements (including potentially creating and implementing systems capable of distinguishing whether a transaction (or a portion thereof) is for state and local tax or gratuities) across some or all of the payment system would exacerbate the material adverse effects on the profitability of such programs.

Colorado -- Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA) Opt Out Legislation. In June 2023, Colorado passed H.B.23-1229,[7] limiting certain charges on consumer loans and simultaneously opting Colorado out of sections 521-523 of the DIDMCA, which provides federally insured banks, state credit unions and savings associations essentially the same exportation rights for "interest" rates as permitted by their home state as national banks enjoy specifically under the National Bank Act.

In response, the National Association of Industrial Bankers, American Financial Services Association, and the American Fintech Counsel filed suit in the United States District Court of Colorado challenging the law, and obtained a preliminary injunction in June, 2024, suspending the enforcement of H.B.23-1229 in connection with loans made by out-of-state state-chartered banks. As of the time of this writing, this preliminary injunction is on appeal with the U.S. Court of Appeals for the Tenth Circuit.

Until dissolved or replaced by a permanent injunction, the preliminary injunction prevents Colorado from enforcing its interest rate limits with respect to any loan made by the plaintiffs' members, to the extent that the applicable interest rate exceeds the rate that otherwise would be permitted in Colorado and the loan is made by an out-of-state bank, regardless of the location or residence of the borrower.

So far the rights of out-of-state banks to charge in Colorado the interest rates and fees of where they are located seem to be holding up, but if this changes, this foreseeably could have the effect of decreasing the revenues derived from lending in Colorado for some out-of-state credit card issuers, which in turn not only could directly threaten revenues available for supporting related co-brand and rewards programs, but potentially the depth of the potential customer base to which the issuing banks might be willing to lend to Colorado residents, among other effects.



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. (now part of Bank of America). 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.

In his business practice, Glen counsels clients in the creation of business entities and in connection with contractual, traditional corporate governance, and other matters, including providing Delaware law opinions.

Notes:
1- This has not occurred as of the date of the writing of this article.
2- *Chamber of Commerce of the United States v. Consumer Fin. Prot. Bureau*, 4:24-cv-00213-P (N.D. Tex. Mar. 28, 2024).
3- S.381 - 119th Congress (2025-2026)
4- S.2760 - 118th Congress (2023-2024): Capping Credit Card Interest Rates Act | Congress.gov | Library of Congress
5- 815 ILCS 151/150-1 *et seq.*
6- *Illinois Bankers Association's et al. v. Kwame Raoul, in his official capacity as Illinois Attorney General*, No. 24 C 7307 (N. D. Ill. Dec. 20, 2024).
7- https://legiscan.com/CO/text/HB1229/2023.

A Kinder, Gentler Approach

The Key to Keeping Trust Clients Content

by
Theresa L. Hughes
Professional Individual Trustee, Pinion in affiliation with Santora CPA Group

The story of the adversarial relationship between trustees and beneficiaries has some basis in reality. Probably no relationship carries more angst than when money is involved. Beneficiaries often feel like supplicants, beseeching trustees to bestow what they feel is rightfully theirs. Trustees can find themselves thrust into the role of strict parent, withholding privileges from a child who reaches into the cookie jar too many times. If not resolved, the beneficiary may opt for a new trustee. But it doesn't have to be that way.

Kindness and empathy are words not frequently used in business yet can be winning ingredients in cementing long-standing trustee/beneficiary relationships. They can make all the difference between the smooth execution of a grantor's wishes versus an heir feeling resentful when a trustee denies a distribution request. It behooves trustees to seek a kinder, gentler approach.

The Trustee Relationship—An Overview

The trustee relationship, undergirded by loyalty to the beneficiaries, is governed by the fiduciary principle: A beneficiary, in a position of vulnerability, places their faith in and reliance on the trustee. The trustee, bound by the grantor's wishes, must exercise prudent judgment when making distribution decisions. Nevertheless, a beneficiary may disagree, and when sufficiently unhappy, seek a new trustee. The result: client attrition.

Trustees who appreciate this delicate balance can affect beneficiaries in a positive way, standing in stark contrast with other life challenges confronting them. Though policies and procedures dictate the trustee's actions, rigidity in their implementation can be a roadblock. Trustees must ask themselves: Are we doing the best job for the grantor and, at the same time, for their beneficiaries? We all recognize the key role service plays—it is imperative to maintaining happy clients. But what exactly constitutes good service?

Components of the Trustee Relationship

The answer is to take a step back to examine the essence of the trustee relationship. The trust document spells out the grantor's desires and the terms to which the trustee must adhere while acting in the best interests of the beneficiaries. That means treating each one impartially and fairly, which can be complicated when confronting complex family relationships, especially blended ones.

Trustees also can serve in another capacity: that of in loco parentis, operating in place of the parents, which may encompass being an expert in family governance, counselor to the family, mentor, and even a servant leader. It's a heavy load, and the trustee must remember that despite the grantor's wishes, the law of unintended consequences may thwart them. For example, a grantor wants to make life easier for heirs. However, heirs may make poor choices and fail to achieve success or happiness. They may impose unreasonable demands on the trustee for distributions beyond the grantor's intentions, and the trustee must walk a tightrope to satisfy both. How can the trustee navigate a path forward?

Adopt an Empathic Approach—It's the Right Thing to Do

Merriam-Webster defines empathy as being aware of and sensitive to the feelings, thoughts, and experiences of another. In your trustee/beneficiary relationship, the client holds the primary position. Empathy is the vital ingredient in the difference between strife and contentment, and it requires a relationship grounded in kindness and trust. Here are some basics:

- Start by taking the time to understand the beneficiary—their concerns, feelings, and perspectives—and meet them where they are. Then develop a plan together to move forward.

- Build a caring relationship to make the beneficiary feel supported. When difficult discussions around distributions occur, they will be made easier when buttressed by your caring attitude.

- Follow best practices to forestall potential conflicts. Assemble a team of advisors that includes attorney, accountant, investment advisor, financial advisor, and administrator. A team approach helps to ensure a happy beneficiary and benefits each team member.

- Take down the wall between you and your client. Be open and accessible. Successful trustee relationships place the onus on the trustee to do a deliberate, soul-searching deep dive into conveying a clear message of openness with and acceptance of the beneficiary. Sit on their side while respecting the terms and provisions of the trust document.

- Pay attention to family dynamics. These can often affect beneficiaries' emotions. Be prepared to be flexible, when practical, to address both personal and financial needs. Acknowledge aging, illness, or other life events. Revisit the beneficiary's needs and make adjustments when required.

- Use tact when responding to a beneficiary's unusual distribution request. Listen carefully and be courteous in your reply. Although it may be impossible to grant it, you can use diplomacy to explain why you are saying no.

Some Practical Applications

One of my clients was surprised to learn she was a trust's beneficiary. Her requests for medical and living expenses were overwhelming initially. Having already forged a relationship, we outlined a plan to accommodate her needs, which included a life coach to address both her mental and physical health. She is now happy and thriving.

Not every situation works out that way. Bonnie Hunt, a trust and estate planning consultant in Holderness, New Hampshire, served as an administratrix in a situation in which the parent had died without a will. The children, kept in the dark about his business affairs, were angry, distraught, and distrustful. They became irate when they were hit with high legal fees to sort through the mess. It took a lot of handholding to resolve the issues, exacting a toll on everyone. "In retrospect, the best gift the grantor(s) can give to beneficiaries is to talk to them and introduce them to the team players. That way you are not a stranger walking in the door

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in the position of authority explaining to the kids what mom's and dad's intentions were," Bonnie notes. "Before accepting a successor trustee appointment, make sure you understand the issues and whether they are insurmountable," she adds.

Resolving a distribution request can be challenging. Donna LaCour is an independent trustee and owner of Shreveport, Louisiana-based Axion Financials, LLC, a family office and estate administration company. She recounts a special needs trust beneficiary who requested a distribution to cover unexpected incidentals. Donna suggested a True Link card—the only debit card approved by the Social Security Administration—that allowed her to track and monitor her client's spending. Incensed because it carried a monthly fee, the client refused the card and stormed out of the office. Donna wisely waited a couple of days to allow her client to cool down, and then patiently explained that using the card was the only option to approve the request. The beneficiary, faced with receiving no extra funds, quickly acquiesced.

Lay the Groundwork, Balancing Expectations With Compassion

Setting expectations at the outset of the relationship can avoid a host of problems down the line. Begin with a detailed explanation of the trust's terms and limits and how they are designed to avoid conflicts or misuse of funds that could avoid expensive legal consequences in the future.

Most trusts provide for health, education, maintenance, and support (HEMS). Make it clear to the beneficiary how these are interpreted. For example, a college student may be entitled to reimbursement for incidentals, but not for a new iPhone. Be transparent about the timing of distributions: Are they made quarterly or whenever a need arises? What about emergencies? Being compassionate means understanding and bolstering the beneficiary so distributions can align with their unique circumstances.

For example, a beneficiary with a $1 million trust may request a $100,000 annual distribution. You explain why that amount isn't realistic, as it would deplete the trust and compromise the beneficiary's long-term income needs. However, you can discuss the beneficiary's spending patterns and goals to devise an acceptable outcome.

Offer More Than Money

Your client may be at a crossroads, unsure about the future, and require direction. Offer guidance and education for career building. Refer them to a career counselor or coach if needed. More extreme cases may require professional services such as a counselor or therapist. Be compassionate—recognize when a situation merits these additional resources and guide your client toward them.

Emphasize how the trust's purpose dictates realistic and responsible use of funds. Educate them to achieve personal financial well-being by helping them create a budget to monitor spending, plan for future outlays, and build a smoother cashflow. Suggest apps that help track spending, manage debt and credit, and encourage them to live within their means.

Operate With the Highest Standards of Integrity

When following the trust's legal terms and guidelines, you can be sensitive to beneficiaries' cultural, religious, and personal values while upholding your fiduciary duties to them. And be responsive to their emotions, which can be raw, especially if the trust became effective immediately following a loved one's recent demise.

Your own attitudes and opinions can overshadow the best of intentions. For example, it's natural to view the wealthy as being insulated from life's problems. But that's not necessarily true: They often face problems similar to those of the less well-heeled. Appreciate what they are going through. Empathy is an important equalizer.

Be mindful of subliminal messaging. One trust officer at an elite trust company referred to beneficiaries as "the idle rich," which occasionally colored his communications. His disparagement was underscored by his stringent consideration (and frequent denial) of their distribution requests. Clients are intuitive, and a trustee's dismissive attitude can have unsatisfactory consequences. Your client deserves grace—grant it to them with dignity.

Communicate Clearly

Clear communication can avert a host of problems. During onboarding, explain what the trust provisions entail. Beyond HEMS, let them know what constitutes prudent exceptions and the rationale you will apply when weighing them. Help them understand what is (or is not) acceptable.

Schedule regular updates to discuss portfolio performance and how it can affect distributions, especially during periods of market volatility. For example, when the stock market imploded in 2022 and suffered a 20% loss, percentage-based distributions plummeted. Prepare beneficiaries for how they can make necessary adjustments to combat a similar situation should it arise. Engage them in helping to develop acceptable solutions.

Listen to the beneficiary's requests and be respectful when imparting the trust's constraints. Negotiate to seek a workable pathway. For example, could an early distribution be offset by a lower amount next quarter?

Denying a distribution request entails being kind and respectful. Should your client disagree with your decision, recognize it as an opportunity to demonstrate fairness by adhering to the trust's provisions. In the long run, that stance will earn your client's respect and inure loyalty to your relationship.

In extreme cases, if it's not possible to achieve a suitable resolution, you may need to resign the relationship. Bonnie Hunt did that when she could no longer countenance a client's profligate spending. She was firm, but tactful, when she conveyed her decision.

Summary

The trust relationship comprises legal and fiduciary responsibilities, both to the grantor and heirs. In a perfect world, the grantor's wishes are not only clear but have been clearly communicated to the beneficiaries by the grantor, the trustee executes them, and the beneficiaries are happy. But it doesn't always work out that way—the trustee is oftentimes perceived to be a strict parent withholding the beneficiary's funds and making them feel infantilized.

Try a better tactic. Hearkening back to the song Glen Campbell recorded in 1969, try a little kindness—and employ an approach imbued with empathy to recognize the human aspects of beneficiaries' lives and challenges. Yes, the trust document is specific about permitted distributions, and you must be prudent when applying those standards. But you can develop strategies to satisfy the beneficiary's needs and still uphold the terms of the trust.

Communicate clearly and manage expectations by explaining to the beneficiary what is allowed. If personal difficulties arise, offer guidance and appropriate resources to help.

An empathetic approach builds trust to honor the trust creator's wishes while reducing potential conflicts with their heirs. Putting yourself in a beneficiary's shoes to understand them, how they feel, and where they are coming from can counter some of life's harsher curveballs. Remember, beneficiaries can always find another trustee. The key to ensuring they stay is to model a kinder, gentler approach, make them feel heard, and foster a long-term, mutually beneficial relationship.

Theresa L. Hughes, MBA, CTFA, AEP®, is an Individual Delaware Trustee with 40 years of experience in the personal trust business. Over the last 25 years, Theresa has led several teams of trust administrators and currently leads the Pinion Individual Trustee team in administering Delaware trusts. As an individual trustee, Theresa is uniquely positioned to provide trustee services to clients who may not meet the requirements of banks and trust companies for various reasons such as specialized assets, unusual trust language, or a desire to partner with a non-bank trustee. For more information about Pinion Individual Trustee services go to www.piniondelaware.com. You can view Theresa's LinkedIn profile at www.linkedin.com/in/thughes-indivttee.

Understanding Differences Between Fiduciary Trust Services and Wealth Management Services

by
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Compliance Officer
Compliance Hub

While some believe that fiduciary trust services and wealth management services are often thought to overlap, they are based on distinct differences and serve different purposes. To elaborate, wealth management services are designed to address a client's all-encompassing financial health, including aspects such as retirement planning, tax efficient strategies, asset allocation, risk management, and investment advice. It targets financial growth and preservation of wealth over the long term while adapting to the client's changing financial needs.

On the other hand, fiduciary trust services are much narrower in focus, concentrating on asset management and placement within a legal trust. Fiduciary trust services are tailored to safeguard assets, maintain the integrity of the trust, and ensure that the intent of the grantor is fulfilled with a clear focus on long-term responsibility. Trust management ensures that the assets are adequately administered, the terms of the trust are adhered to, and the distribution to beneficiaries occurs as intended. While wealth management addresses a wider more complex scope of financial planning, fiduciary trust services are more of a specialized mechanism within that broader framework.

A large Financial Institution (FI) may establish a wealth management group consisting of several interlocking divisions, branches, subsidiaries, and affiliates that provide a broad range of tailored financial products and services on a greater scale. A small FI, such as a community bank, may simply operate a separate "Trust" division or department that provides traditional fiduciary services and may also provide access to retail brokerage services through an affiliated or unaffiliated third-party firm located within the bank's branch network.

Let's take a closer look at the basic principles of each to clarify the differences:

Fiduciary Trust Services:

- **Duty of Care:** A fiduciary is legally obligated to act in the best interests of their client. This means prioritizing the client's needs over their own, avoiding conflicts of interest, and ensuring all decisions are made with the utmost care and diligence.

• **Legal Responsibility:** Fiduciary duty is a legal standard. For example, trustees, executors, and advisors in fiduciary roles are legally bound to act in a way that benefits the trust or the individual they serve.
• **Focus on Long-Term Interests:** Fiduciaries are often involved in managing assets that are held in trust, with a focus on preserving and growing the assets for the beneficiaries over a lengthy period.
• **Conservative Approach:** Given the legal responsibilities and duty to protect the client's interests, fiduciary trust services tend to take a more conservative approach to investing and asset management.

Wealth Management Services:

• **Comprehensive Financial Planning:** Services are more holistic in nature, often encompassing not just investment management, but also tax planning, estate planning, retirement planning, and even lifestyle management.
• **Client-Centered Approach:** Wealth managers typically focus on understanding the client's overall financial situation and goals, tailoring solutions to help clients achieve those objectives. While wealth managers can be fiduciaries, they do not always operate under the same strict legal framework as fiduciaries.
• **Investment Focus:** Services often emphasize investment management, with the goal of maximizing returns based on the client's risk tolerance and financial objectives.
• **Broader Service Scope:** Wealth managers often provide a range of services beyond investment, such as business succession planning, philanthropic strategies, and asset protection strategies.

Key Differences:

• **Fiduciary Duty:** Fiduciary trust services have a legal obligation to always act in the client's best interest, while wealth management services may not always operate under the same legal obligation.
• **Service Scope:** Fiduciary services focus more narrowly on managing assets with a primary duty to preserve and grow the client's assets, whereas wealth management involves broader, more personalized financial planning.
• **Approach to Risk:** Fiduciaries are generally more conservative in their investment strategies because of the legal responsibility to protect and preserve trust assets. Wealth managers may adopt a more dynamic and flexible approach depending on the client's goals and risk tolerance.

While both fiduciary trust services and wealth management services aim to grow and protect wealth, their focus and legal obligations differentiate the two. Fiduciary trust services are more narrowly focused on a legal duty to act in the client's best interests, whereas wealth management offers a broader set of financial services, potentially without the same level of fiduciary obligation.

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Fiduciary trust services may include:

- Investment management for trusts and estates and for charitable trust services.
- Tax reporting, trust structuring and documentation, and record-keeping.
- Guardian and conservatorship services.
- Corporate trust services.
- Fiduciary advice and guidance, as well as asset protection strategies.
- Trustee services (acting as trustee for individuals or organizations).
- Distribution of assets in accordance with the trust document or estate plan.
- Handling complex estate planning.

Wealth management services are designed to address the customers' financial needs that come with substantial wealth. These services are often strategically customized to help ensure that each aspect of the customer's financial situation is addressed in an integrated way. The key components may include:

- **Banking and Lending Specialized Products and Services** (tailored savings accounts, premium credit cards, and specialized loan products).
- **Trust Services** (Estate Planning, Trust Administration, and Fiduciary Services).
- **Investment Management Services** (investment advice, asset allocation, and alternative investments strategies).
- **Portfolio Management**

Compliance and Risk Management Considerations:

Fiduciary and wealth management activities are highly regulated. Therefore, it is essential to establish a comprehensive compliance framework that can help mitigate risks related to conflicts of interest, self-dealing, and other unethical practices. When developing an effective compliance framework, several key elements and considerations must be incorporated to ensure adherence to regulatory standards and foster ethical practices. Here are some key components:

1. Clear Governance Structure:

- Establish oversight committees to monitor fiduciary activities and ensure compliance with all regulatory and ethical guidelines.
- Designate compliance officers who are responsible for enforcing compliance policies and procedures and ensuring ongoing staff training.

2. Written Policies and Procedures:

- Code of Ethics: Develop and communicate a code of ethics that outlines the fiduciary responsibilities, emphasizing the duty to act in clients' best interests.
- Conflict of Interest Policies: Identify potential conflicts and establish processes for disclosure, management, and mitigation of conflicts. Ensure that employees understand their duty to avoid self-dealing or transactions that benefit themselves at the expense of clients.
- Clear Disclosure Requirements: Policies should mandate full disclosure of any potential conflicts of interest, so clients are aware of any situation where the bank or its employees may have competing interests. This transparency helps maintain trust and accountability.

3. Client Disclosure and Transparency:

- Clearly communicate all fees, costs, and compensation arrangements. Ensure clients are aware of how fees are structured, including any performance-based fees, commissions, or compensation arrangements that could create conflicts of interest.
- Disclose any business relationships or financial interests that could influence the advice provided to clients.

4. Training and Education:

- Regular training for employees and advisers on fiduciary duties, ethical practices, regulatory updates, and how to handle conflicts of interest.
- A FI's employees should be well-trained on compliance policies, ethical standards, and legal obligations. Clear communication about ethical behavior and conflicts of interest help prevent breaches of trust and unethical behavior.

5. Risk Management:

- Effective internal controls are critical to mitigating risks. This includes ensuring compliance with regulations and conducting regular audits.
- Implement procedures for identifying and managing financial and reputational risks related to unethical behavior, fraud, and non-compliance.
- Regularly review and assess internal controls and risk management procedures, adjusting them to reflect new regulations or emerging risks.
- Establishing physical and operational firewalls between departments (e.g., trading, research, and compliance) can prevent the improper sharing of sensitive information that might influence decision-making in favor of the bank rather than the client.

6. Monitoring and Reporting:

- Establish regular audit mechanisms to ensure adherence to policies and procedures. Regular audits and assessments by independent parties (like internal or external auditors) can help ensure compliance with the policies and reveal any instances where conflicts of interest may arise.
- Implement automated systems for tracking transactions, conflicts, and compliance breaches.
- Set up a whistleblower policy and confidential reporting channels to allow employees to report unethical behavior without fear of retaliation.

7. Third-Party Due Diligence:

- Implement a robust process for conducting due diligence on external partners, custodians, or other service providers to ensure they also comply with fiduciary standards and regulations.
- Establish written agreements with third parties that clearly outline their fiduciary responsibilities and compliance obligations.

8. Regulatory Compliance:

- Having a team of knowledgeable professionals may be important in navigating the complex landscape of regulations governing investment management, such as securities laws, anti-money laundering (AML) regulations, and fiduciary responsibilities.
- Stay updated on local and international laws and regulations.
- Ensure that compliance efforts evolve as new regulatory changes or industry standards emerge.

9. Performance and Client Reporting:

- Maintain transparency and accuracy in reporting client portfolio performance, avoiding misleading statements or omissions that could mislead clients.
- Provide regular, detailed updates on portfolio performance, any changes in strategy, and associated risks.

10. Ethical Culture:

- Cultivate an organizational culture that prioritizes integrity, client interests, and ethical conduct at all levels. Encourage ethical decision-making and accountability in all staff.
- The FI needs to ensure that compensation structures for financial advisors (including bonuses or performance incentives) are aligned with client outcomes. Tying these together rather than simply the bank's financial performance can reduce the temptation to prioritize bank interests.

An effective compliance program must be dynamic and proactive in addressing potential risks and ensuring adherence to relevant laws and regulations. It should include a robust framework for monitoring activities, detecting potential violations, and addressing issues promptly. This involves internal audits, regular risk assessments, and a clear process for reporting and resolving compliance issues. Non-compliance with legal standards can have far-reaching consequences for the FIs, including regulatory sanctions, civil and criminal penalties, and damage to the FI's reputation.

Svitlana Keeney serves as a Compliance Officer for Compliance Hub. Prior to joining Compliance Alliance, Svitlana served as a compliance officer at a large financial organization supporting various businesses, including wealth management, that delivered traditional and custom financial products and services to customers, including high net worth clients.

Charitable Thoughts

It's Never Too Soon for (Next Year's) Tax Planning

Robbie Tarpley Raffish
Delaware Community Foundation

"Major changes take time, patience and planning, and the DCF can offer all three."

It's 2025, and it doesn't take a fortune teller to know that your desk is blanketed in 2024 tax forms. Which is why it may feel counterintuitive to suggest that you look past those piles to the horizon of next year's taxes. Doing so could be extremely advantageous, especially if your client recently said, "Let's push 'that' off until next year."

"In the sweet spot after year-end close and before filings, you can look back and forward to forecast for next year," said Mike DiPaolo, vice president of philanthropy and Southern Delaware for the Delaware Community Foundation (DCF).

It's likely you have clients anticipating major life changes in 2025. One may be retiring after a successful career, while another might want to sell a business or transfer property. Maybe one recently passed away and you are thinking about how to advise the next generation, or another has an "oddball" holding – anything from a yacht to a soybean crop – they want to dispose of without too much financial impact.

In all these cases, what can help smooth the transition is the incorporation of your client's desire for charitable giving

"Big financial decisions rarely happen quickly. Each takes time, patience and planning," said DiPaolo. "The DCF can offer you all three to customize your client's experience in a low-key way. This can help them achieve their financial and philanthropic goals and ease some of your work burden."

CPA Brian Stetina experienced the benefits of partnering with the DCF when his client planned to sell 30% of the company he had founded back to the employees, which would have resulted in a large capital gain. As the managing partner and tax director for Faw Casson, an accounting firm with 80 years' experience on Delmarva, he recognized there was an opportunity to couple three goals – major transition, tax mitigation and charitable impact – in one motion.

"The DCF offered what was really the perfect opportunity," said Stetina. "It was a tricky situation; this was not public stock or a piece of property, rather he was selling private ownership to an Employee Stock Ownership Plan (ESOP)."

The DCF specializes in helping charitably minded people put their passion for philanthropy into very real action. Unlike major financial houses, where the objective is on "getting the business," the DCF's sole goal is to help Delawareans focus on how they want to impact the world around them, today, tomorrow and when they are gone.

Stetina's client made a one-time gift to the DCF, establishing a donor advised fund (DAF). He liked the idea of being able to set up the DAF and having a say in how the money would be directed over a period of time. Stetina appreciated another nuance.

"The nice thing about giving away stock, (the client doesn't) have to absorb the gain because they didn't take the gain themselves; he transferred the shares directly and the gain went to the DCF. (He) got credit for full market value of the gift which he would not have gotten otherwise … (and) the DCF was able to facilitate the whole thing."

While some clients opt to support a cause with a donor advised fund, others may create a scholarship to honor a loved one or make a one-time donation for the betterment of the state.

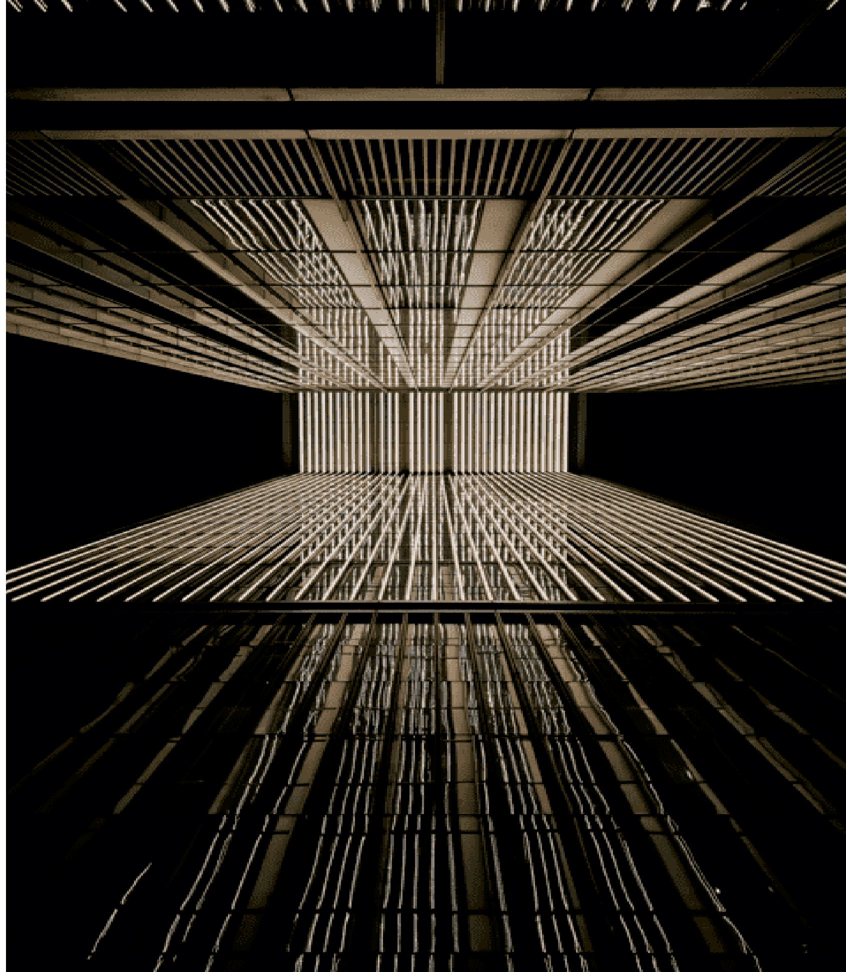
"There are many options – the key is that people can feel confident that they will be able to make a measurable impact in their own way and on their timetable," said DiPaolo. "Our ability to assist with the sale of complex assets – and an understanding of the nuances of Delaware – set us apart. From stock portfolios to real estate to classic cars, from a flock of chickens to a crop of soybeans, we can help."

The DCF recently assisted a donor who instructed his attorney to sell a commercial building after his death in order to mitigate estate taxes and establish a legacy gift. His attorney noted the efficiency of the process and the low fees. Equally important, the sale funded a major gift that has transformed Alzheimer's research at universities in Delaware and Pennsylvania, a direct representation of the donor's philanthropic passion.

Back to your desk. Envision sitting there in early 2026, feeling secure that the philanthropic needs of your clients have been put into action.

Attorney Michelle Porcino-Wells of Porcino-Wells & Woodland, working on an unrelated case, recently said, "I love DCF as a resource because I know that if I have clients who are interested in philanthropy, I've got somebody that does this all the time that I can refer them to, and they're going to be in good hands."

To learn more about how the Delaware Community Foundation can support you and your client's with their charitable goals, reach out to Mike DiPaolo at 302-889-1884 or at mdpaolo@delcf.org. Learn more at www.delcf.org/advisors-partner-with-us/



IRS Amnesty Explained: Streamlined Filing Compliance Procedures for U.S. Taxpayers with Offshore Accounts

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"Moving abroad poses various challenges, particularly regarding income taxation, as the U.S. taxes based on citizenship, not residence."

Over 4.4 million U.S. citizens live abroad – four times the population of Delaware! Moving abroad poses various challenges, particularly regarding income taxation, as the U.S. taxes based on citizenship, not residence. This worldwide income taxation captures U.S. and foreign income from both U.S. individuals moving abroad as well as foreign individuals becoming U.S. taxpayers. While the law provides for ways to avoid double taxation, U.S. taxpayers may also have additional reporting requirements under the Report of Foreign Bank and Financial Accounts (FBAR) regime, requiring U.S. persons with financial interest in or signature authority over foreign financial accounts exceeding $10,000 in aggregate at any time during the year to file an FBAR. Failure to comply can result in penalties of at least $10,000/year. Often, in lending applications or in reviewing financial or estate plans, it is discovered that clients have offshore assets and have not been aware of these filing requirements, let alone disclosed the assets and paid taxes on the income.

Enter the Streamlined Filing Compliance Procedures, an IRS amnesty program allowing taxpayers who have failed to report foreign financial assets and pay related taxes to come into compliance. The program requires taxpayers to certify that their noncompliance was due to non-willful conduct which includes conduct that was due to negligence, inadvertence, mistake, or conduct that was the result of a good faith misunderstanding of the requirements of the law.

Who Can Use the Streamlined Filing Compliance Procedures?

Only individual U.S. taxpayers, including their estates, can use these procedures. Corporations, partnerships, S-Corps, and trusts are ineligible. Eligible individuals include U.S. citizens, lawful permanent residents, or resident aliens, but exclude those under IRS examination or criminal investigation. While both taxpayers residing inside and outside the U.S. can qualify, the eligibility requirements and scope differ slightly.

Streamlined Foreign Offshore Procedures (SFOP)

Taxpayers filing under SFOP must meet the non-residency requirements. U.S. citizens and lawful permanent residents (LPRs) qualify if, in any one or more of the most recent three years for which the due date (including extensions) of their tax return has passed, the taxpayer had no U.S. abode and was physically outside the U.S. for at least 330 full days. Non-citizens and non-LRPs qualify if they did not meet the substantial presence test of IRC §7701(b)(3) in any one or more of the last three years for which the tax return due date (including extensions) has passed. Additionally, taxpayers must have failed to report income from foreign financial assets, pay the resulting taxes, and may have failed to file FBARs with respect to those assets.

Streamlined Domestic Offshore Procedures (SDOP)

SDOP are designed for taxpayers who fail to meet the non-residency requirements discussed above but otherwise satisfy the general eligibility rules. Additionally, taxpayers must have previously filed a U.S. tax return for each of the most recent three years for which the due date (including extensions) has passed and must have failed to report income from foreign financial assets, pay the resulting taxes, and may have failed to file FBARs with respect to those assets.

Filing Requirements

Using either procedure requires filing delinquent or amended tax returns for the most recent three years for which the due date (including extensions) has passed and any delinquent FBARs for the most recent six years. Taxpayers must pay any tax and interest due at the time of filing. Under SFOP, taxpayers avoid paying penalties for failure-to-file and failure-to-pay, accuracy-related penalties, information return penalties, and FBAR penalties. Under SDOP, however, taxpayers are required to pay a 5% penalty on the highest aggregate balance (by year) of their foreign financial assets.

Special Considerations for Expatriation

Taxpayers planning to relinquish citizenship or permanent residence can use the program to become compliant but must certify that they have complied with all U.S. federal tax obligations for the five years preceding the date of the expatriation. While the streamlined foreign offshore procedures can significantly reduce taxpayers' penalties for the three most recent years, taxpayers will still have to file the additional years and may incur additional penalties and interest.

The Streamlined Filing Compliance Procedures offer an important path to compliance for U.S. taxpayers, alleviating penalties for many and ensuring adherence to U.S. tax laws.

GAO on Crypto in 401(k)s: Risks and Oversight Challenges

Louis D. Memmolo, AIF, GBA, NQPA
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"By approaching cryptocurrency with caution and due diligence, plan sponsors can better protect participants while navigating the challenges of this rapidly evolving market."

Recent findings from the Government Accountability Office (GAO) highlight critical considerations for sponsors exploring cryptocurrency as a retirement plan investment option. The GAO report emphasizes that while cryptocurrency assets remain a small portion of the 401(k) landscape, they carry significant risk.

Known for their high volatility, crypto assets like bitcoin can lead to substantial swings in portfolio value. For instance, a GAO simulation found that allocating 20% of a portfolio to bitcoin resulted in notably higher volatility compared to smaller allocations of 1% or 5%. Such unpredictability underscores the importance of exercising caution.

Limited Oversight and Data Gaps

One of the major challenges with including cryptocurrency in retirement plans is the lack of comprehensive oversight and data. According to the GAO, the Department of Labor (DOL) currently lacks the tools to systematically measure the presence of crypto assets in 401(k) plans. Reporting gaps in plans with fewer than 100 participants and those within self-directed brokerage windows — as well as regulatory blind spots — create uncertainty for fiduciaries trying to assess potential risks.

Fiduciary Responsibility and Due Diligence

The DOL has previously cautioned plan sponsors to act with "extreme care" when considering crypto assets. Despite cryptocurrencies such as bitcoin recently hitting record highs, sponsors must evaluate whether offering such investments aligns with their duty to act in the best interest of participants. The unique risks associated with crypto — including cybersecurity threats, potential theft and lack of standardized return projections — warrant careful consideration before including these options in investment lineups.

A Call for Greater Oversight

Massachusetts Congressman Richard Neal, a leading voice on retirement policy, requested the GAO report and has reiterated the need for stronger federal oversight of cryptocurrency in plans and robust measures to safeguard participants. "[The GAO] report shows there's more to do to protect American workers and their retirement savings from the volatile, high-risk environment that comes with cryptocurrencies," Neal said in a statement.

Considerations for Plan Sponsors

For employers considering or already offering cryptocurrency options, it's advisable to:

- Review fiduciary obligations. Ensure all investment options meet the highest standards of prudence and regularly evaluate potential risks of including cryptocurrencies in the plan lineup.
- Monitor regulatory updates. Stay informed about developments in federal oversight and reporting requirements.
- Educate participants. Provide clear information on the risks and volatility of crypto investments.
- Limit exposure. If offering crypto, consider restricting allocations to a small percentage of portfolios to mitigate risk.
- Consult with legal counsel. Ensure compliance with ERISA guidelines and other relevant federal regulations when considering cryptocurrency investments.

By approaching cryptocurrency with caution and due diligence, plan sponsors can better protect participants while navigating the challenges of this rapidly evolving market.

Sources
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https://www.dol.gov/newsroom/releases/ebsa/ebsa20220310

This article is not intended to be exhaustive. There are many factors to consider when determining if a Crypto is right for you. The summarized information comes directly from our resource libraries, RPAG, FMG Suite, Legislative Update Newsletters, and Zywave partnerships. Please contact us for all sources and/or complete articles. If you want to be added to our email list or schedule a consultation, contact the WBG Team.

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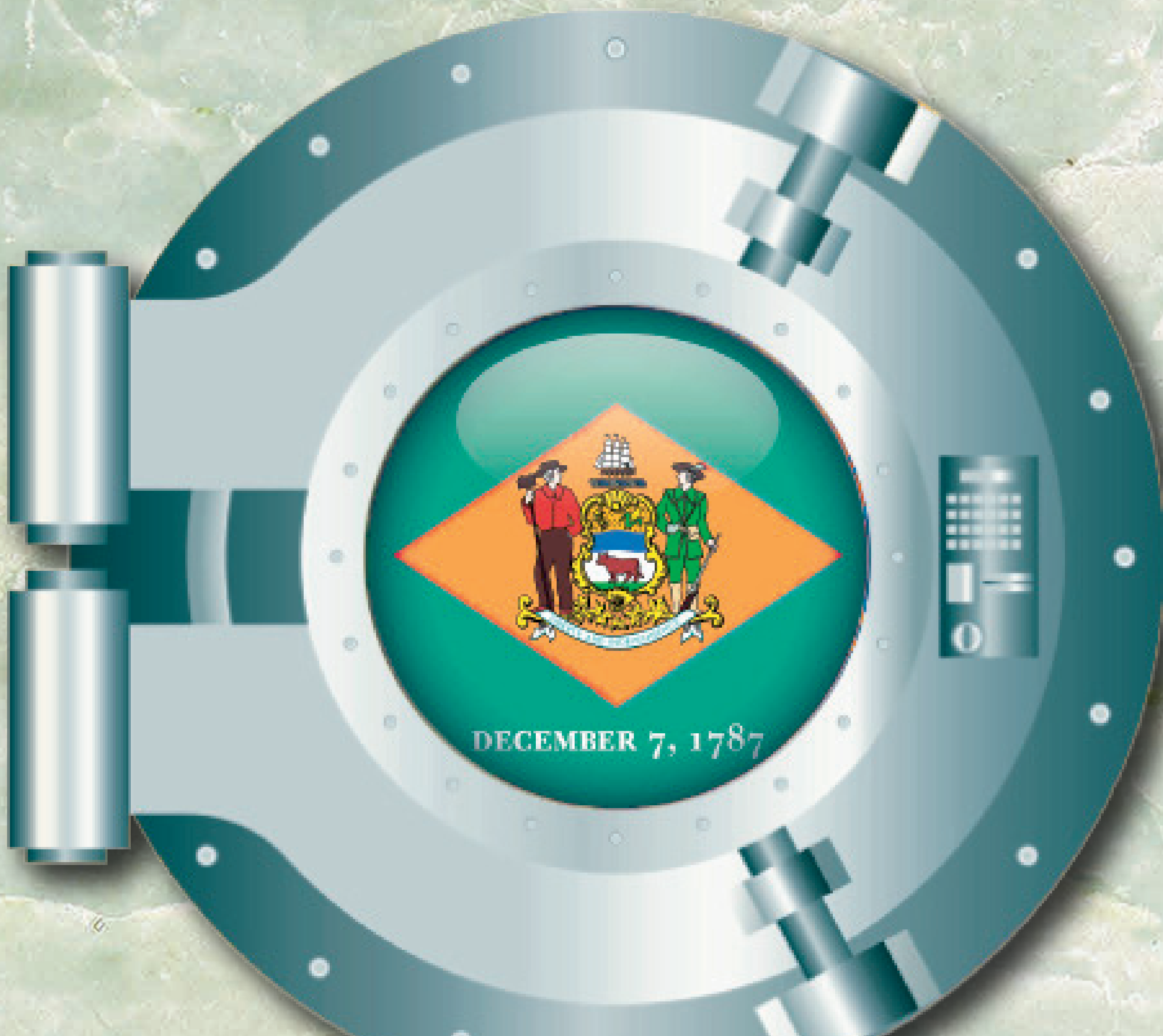

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Mortgage Lenders: Please Require Tenant Estoppel Certificates

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"Tenant estoppels are one of the last requirements that a bank should waive in loan closings today..."

The legal principle of "estoppel" is a bar that prevents one from asserting a claim or right that contradicts what one has said or done before. It is an important legal tool when used appropriately.

Bank loans made to construct or refinance buildings that contain one or more tenants are primarily underwritten based on cash flow from leases. Therefore, it is essential to make sure that the leases themselves will generate the rents shown on the borrower's pro forma income statement and rent roll. Borrowers not only have incentive to present a rosy picture to their banks but also may not know what is going on with their tenants on a real-time basis. Property appraisers rarely go below the surface of leases and do not carefully analyze the strength of each tenant.

Therefore, lending lawyers long ago developed the practice of requiring "tenant estoppel certificates" from property tenants to be signed at the time of the loan closing. These certificates not only are the only verification of lease terms and status independent from the borrower's assertions, but also can "estop" the tenant from making adverse claims against the borrower (unless negotiated away by a clever tenant lawyer). They contain a healthy bunch of representations intended to "smoke out" lease problems, such as no landlord or tenant defaults, no tenant improvement allowances owed by the borrower to the tenant, and so forth.

Increasingly, though, estoppels are not being required by banks due to "deal velocity" and competition to close loans very quickly after approval. Because there is no universally accepted tenant estoppel form, sending an estoppel certificate to a significant tenant likely results in the tenant's counsel taking time to review the certificate; and it is the rare lease that has a short deadline (or any deadline) for doing so.

Often banks reason that they can waive estoppel certificates as to all leases or as to small value leases due to the strength of a loan guarantor (if any). But this is a mistake, as the requirement of a mortgage in the first place belies the fact that the loan underwriting requires income-based property value and cash flow. Or they accept tenant estoppels post-closing, resulting in finding out that the borrower has a real problem when it is too late to deal with it from a lending perspective. If there are tenant disputes, they can lead to borrower liabilities under the leases—even under leases from small tenants-- that can greatly exceed monthly cash flow. Especially given the weakness of many commercial real estate sectors at this time, tenant defaults and disputes with their landlords are no longer uncommon. Even strong tenants may bring pressure on landlords due to the urge to downsize. Tenant estoppels, then, are one of the last requirements that a bank should waive in loan closings today—they are certainly worth waiting for.

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BY THE NUMBERS

$44B in community development financing

$575M in philanthropy & pro bono engagements

$15B in lending to small businesses in low- and moderate-income (LMI) communities

$5B anticipated spend for diverse suppliers

$600M in support for Community Development Financial Institutions

$200B in lending to LMI consumers and consumers residing in LMI communities

Growing Bank On certified checking accounts by at least **50%**

30% of our branches & Cafés in LMI communities maintained