delaware banker

Summer 2025
Vol. 21 No. 3

To Modify or Not To Modify...

That is the (Gift Tax) Question!

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Contents

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President's Report

by
Karyn Polak
President, CEO & Treasurer
Delaware Bankers Association

"We work closely with our DBA associate member law firms, accounting firms, data and other service providers to increase knowledge, access, and ultimately economic development that benefits everyone."

Stronger Together

Alone we can do so little; together we can do so much." That's a classic Helen Keller quote. "Coming together is a beginning, staying together is progress, and working together is success." Perhaps you recognize the speaker of that one – it's Henry Ford. I'll bet, though, that you can't spell the author of my favorite #strongertogether quote: "Individually, we are one drop. Together, we are an ocean." Thank you, Ryunosuke Satoro.

Why all the cliché office poster sayings to lead off my first DBA Magazine letter from the President? Because these truly do define not just my focus as head of the Delaware Bankers Association but the core belief that drives our work, as a team, as DBA members, as an industry. Banks and trust companies are here to serve individuals, institutions, communities – and we cannot do that alone. We work closely with our DBA associate member law firms, accounting firms, data and other service providers to increase knowledge, access, and ultimately economic development that benefits everyone. Importantly, we also work with players outside our membership community: regulators, legislators, government, for-profit and non-profit organizations, anchor institutions like schools and healthcare entities, community groups, and individuals to advance financial education, stability, and growth.

A few examples to draw the picture more clearly:

- Our collaboration with the University of Delaware on Teach Children to Save Day activities, the development and delivery of the Trust Management Minor program, and the Center for Accelerating Financial Equity (CAFE)
- Our support for local non-profits like Healthy Foods for Healthy Kids, offering space at our events to share their work and draw in new volunteers and donors
- Our relationship with Wilmington University to deliver its microcredentials courses (Coursera) to our members at a reduced price, to advance professional and workforce development goals for the industry and the state

These are contemporary examples, of course, but the American Bankers Association has provided a stellar origin story on the occasion of its 150th anniversary that makes the point with even greater emphasis. At the outset of its timeline, the ABA notes,

> "In 1873, the United States faced a financial panic that led to one of the worst recessions in its history. Unemployment and bankruptcies surged, and 300 banks failed. *Amid this turmoil, bankers began informally exchanging ideas, supporting one another and sharing strategies.*
>
> *But the real turning point came from an unexpected source — the women's suffrage movement.* In St. Louis, two young bankers were inspired by the power of collective action they saw at a suffrage meeting. *They realized that bankers could also come together to accomplish more.* The idea gained momentum, and in July 1875, 349 bankers from 31 states gathered in Saratoga Springs, New York, to form the American Bankers Association. It remains the only association that represents banks of all sizes, charters and business models." (emphasis added)

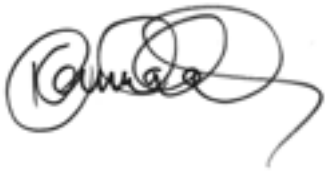
There were two factors that most influenced my decision to step into this role as President and CEO of the DBA – and, I believe, the board's decision to invite me in:

1. It's a relationship business first and foremost. Our job at the DBA is to connect people, initiatives, and challenges in order to better deliver on our public service goal as an industry: greater financial access and opportunity for every individual.
2. Nothing meaningful is accomplished alone. The DBA and our members do best when we're working in partnership on all the potential that comes from equipping people with a comfort level with and access to the financial tools for success.

With both of these factors, there is one key must-have for achievement: building teams of diverse skills and perspectives to solve complex, interdependent problems one individual, one institution, one function alone can't solve.

My goal over the next several months, along with our engaged team at the DBA, is to continue to explore these relationships – where do they exist and where are the gaps? Where is there momentum we should build on, and where should/could our members be to best serve all our neighbors in Delaware?

Got examples you'd like to share? Got ideas of places we should be present, opportunities for collaboration we should consider? Please reach out!



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View from the Chair

Caroline Horty Dickerson
Chief Executive Officer
Commonwealth Trust Company

Chair
Delaware Bankers Association

"...it's encouraging to see more women stepping into executive positions, shaping strategy, and driving innovation.."

I recently had the opportunity to participate in a panel discussion titled Real Talk with Bank CEOs on Advancement, Leadership, and Life, part of the Women Lead Symposium hosted by the American Bankers Association. The symposium brought together female leaders from across the banking industry to engage in meaningful conversations about career development, leadership, and personal growth.

Our panel featured candid insights from bank CEOs who shared their journeys, what challenged them, and what continues to drive them. The discussion touched on everything from navigating career transitions to leading with authenticity, and it offered valuable perspectives for professionals at every stage of their banking careers.

Participating in the panel prompted me to reflect on my own career in banking—a field that, for much of my journey, has been predominantly male. Like many women in the industry, I've navigated spaces where leadership often looked a certain way and advancement sometimes felt like an uphill climb.

The number of women in leadership roles across banking is steadily rising, and it's encouraging to see more women stepping into executive positions, shaping strategy, and driving innovation. Events like the Women Lead Symposium are a testament to that progress—they create space for honest dialogue, mentorship, and visibility.

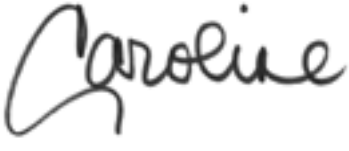
As I listened to the CEOs share their stories, I saw reflections of my own path and it reminded me that leadership isn't just about titles—it's about influence, integrity, and the ability to lift others as you climb.

One of the most energizing parts of the panel was the engagement from participants. The questions raised were thoughtful, relevant, and reflective of the evolving landscape of banking. A couple of questions stood out for me:

- **How do you get noticed in a remote or hybrid work environment?** Visibility in a virtual setting requires intentionality. Panelists emphasized the importance of clear communication, proactive collaboration, and finding ways to have a presence—even when you're not physically in the room. Building strong relationships with mentors and sponsors remains critical, regardless of location.

- **How do you maintain work-life balance in demanding roles?** The panelists acknowledged that balance looks different for everyone—and that it often shifts depending on career stage and personal priorities. What stood out was the emphasis on prioritizing tasks, setting boundaries, and actively managing your time and energy. Many shared that clarity around values helped guide decisions and maintain perspective during high-pressure moments.

These questions sparked meaningful dialogue and highlighted the importance of creating environments where professionals can exchange ideas, seek guidance, and build on shared experiences. The insights offered practical strategies for navigating today's workplace and reinforced the value of continuous learning and connection across all levels of the industry.



All Around the Hall

by
David Mench
Director, Government Affairs
Delaware Bankers Association

"Each legislative session seemingly brings some anticipated challenges and a few which were not foreseen."

The first session of the 153rd general assembly kicked off Tuesday, January 14th, 2025. Governor Matt Meyers' new administration was already beginning to take shape, and six new members were welcomed to the House of Representatives. The Democrats picked up a seat to push their majority to 27-14 just shy of the 66% majority required to pass certain legislation. In a stunning defeat Rep. Valerie Longhurst, Speaker of the House, was defeated in the primary by now Rep. Kamela Smith. This opened the door for Melissa Minor Brown to continue her tradition of firsts by becoming Delaware's first African American female Speaker of the House.

Two Senate seats remained open after the General Election as Senator Kyle Evans Gay won the race for lieutenant governor and Sarah McBride became the first transgender person in the US House of Representatives.

With a new Executive Branch administration, six new members in the House and two vacancies in the Senate, things kicked off slowly as a "feeling out" process began for the first few weeks of session.

A special election was called for Saturday, February 15th for Senate Districts 1 & 5. Dan Cruce (D) won the 1st Senate District and Ray Seigfried (D) won the 5th Senate District maintaining the Democrats 15-6 majority in the Senate.

It was not long after the House and Senate had a full complement of legislators, the most contentious legislative issue of the year began to take shape. Delaware still reeling from not so friendly publicity regarding the corporate franchise, began work on a bill to bring stability and predictability to the Delaware chancery court.

The result of this thoughtful work was SB 21 being filed on February 17th. The discussions for the bill began months earlier with the intent of bringing more predictability and stability to Delaware Corporate law. This critical bill would protect Delaware's reputation as the "Corporate Capitol of the World" and defend the $2 Billion of annual revenue it generates, representing one-third of Delaware's budget.

A substitute for SB 21, with some minor changes, was introduced on March 12th and quickly made its way through the Senate Judiciary Committee and passed in the Senate unanimously. This set up a contentious battle in the House where a handful of legislators backed by out- of-state organizations labelled the bill the "Billionaires' Bill". Introduction of the bill in the House on March 25th led to raucous debate with out-of-state witnesses testifying. There were 7 amendments proposed by a small group of house members and all were defeated or stricken. Ultimately SS1 for SB21 passed the House 32-7.

As session kicked into high gear several bills impacting financial services were introduced.

HB 105 (Wage Transparency) presented challenges as the bill's initial draft was quite vague in its intent and scope. We met on several occasions with the staff of Rep. Melanie Ross-Levin and were able to persuade them to file a substitute bill to address our concerns. In particular, jobs which are sensitive or confidential in nature for strategic reasons were exempt. The final version also clearly limited the bill to jobs based in the State of Delaware.

Chair of the Senate Banking Committee Spiro Mantzavinos filed **SB 156 (Medical Debt Protection Act)** in conjunction with the Governors' office. This bill will prevent medical providers and other organizations from reporting medical debt to credit reporting agencies. The initial version did not include a definition of medical debt, and we were able to advocate for our members to have the definition of medical debt included in the bill. Senator Mantzavinos subsequently filed Substitute 1 to SB 156 to include a medical debt definition which

excludes medical expenses paid with a credit card unless the credit card is "specifically" for that purpose.

HB 13 (Personal Income Taxes) was introduced and would raise taxes on higher income individuals and reduce taxes on lower income brackets. Originally introduced in January, a substitute was introduced in early April to address the Governor's budget "reset" address. However, there was no appetite in the legislature to take on incomes taxes and the bill was not heard in committee.

In a historic moment, on May 22nd, the Delaware Bankers Association celebrated our 130th anniversary with numerous legislators and staff attending the DBA luncheon held in the Senate Chamber room. It was followed by tributes in both the House and Senate floor where our former President Sarah Long delivered remarks to both chambers. A special thank you to our board members and association members who joined us for this historic event.

David Mench, DBA Director, Government Affairs, In-Coming DBA President Karyn Polak, DBA President Sarah Long, and Delaware State Senator Spiros Mantzavinos in the Delaware Senate Chamber, May 22nd.

As session pressed forward it became clear several bills would be pushed off until next year or dead in their current form. **HB 45 (MCC codes for Firearms and Ammunition)** would have required credit card issuers to track customer purchases of firearms, ammunition, and firearm accessories. The sponsor, Rep. Krista Griffith, was kind enough to add an amendment to address our interstate purchase concerns. The bill died in the House as the gun lobby was successful in developing another amendment which effectively killed the bill.

Several credit card bills were placed on the back burner late in the session. **SB 89 (Credit Card Transaction Act)** would have eliminated a merchants' ability to charge a surcharge on credit card transactions over $1500. The bill met stiff resistance from a broad group of merchants. Additionally, a draft bill (not filed) **Credit Card Processing Cancellation Fees** would cap cancellation fees on processing agreements at $500. Both were non-starters in their current form, but we expect to see versions of each next year.

Two other bills **SB137 (Earned Wage Access)** which would allow employees to draw against earned but unpaid wages and **HB 84 (Prohibition of Mandatory Meetings and Communications in the workplace which are Political or Religious in Nature)** did not gain traction in the 1st session.

One of the biggest wins of the year came late in session as **HB 203 (Equity and Inclusion in Financial Literacy)** passed the house, ending its 3-year journey through the legislative process. The Delaware Bankers Association provided testimony in support of HB 203 in the House Education Committee. Rep. Hilovsky received tremendous praise from both sides of the aisle for his tenacity and willingness to work with all the stakeholders. When the bill was voted out of committee he received a standing ovation. The next legislative day the bill passed the House unanimously. Rep. Hilovsky personally thanked the Delaware Bankers Association and our membership for the letter writing, phone calls, outreach to legislators and committee testimony.

The Corporate, Partnership and Trust bills all saw smooth sailing and passed unanimously in both chambers. This represents a change from years past and most recently SB 21 which led to a bitter fight with money flowing in from outside Delaware to oppose the bill. Thanks to our partners at the Delaware Bar Association for their diligence and hard work ensuring Delaware's Corporate and Trust law remains the gold standard.

As the first session of the 153rd General Assembly gaveled out in the early morning hours of Tuesday, July 2nd it was time for a deep breath and some reflection. Each legislative session brings anticipated challenges and a few which were not foreseen. The 154th General Assembly is just around the corner and with 51 of 62 Legislative seats on the ballot in 2026, It is imperative we continue to protect the financial services industry through education and advocacy.

To our members, the DBA Government Affairs Committee, and our partners across Delaware: thank you for your unwavering support. You are not only critical to our state's economy but also to its communities—volunteering countless hours, mentoring the next generation, leading nonprofits, and providing essential support to those most in need. Together, we continue to keep Delaware strong.

What's New at the DBA

New Financial Institution Members

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Capital Bank has been providing exceptional banking services since 1999. Our commitment to people-centric banking has allowed us to help customers achieve their goals, while upholding our fiduciary duty to our shareholders. Today, Capital Bank is a subsidiary of Capital Bancorp, Inc., a publicly traded company with more than $3.2 billion in assets as of December 31, 2024 (NASDAQ: CBNK), and a member of the Federal Reserve Bank System, FDIC, and an Equal Housing Lender.

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DBA 130th Annual Meeting

Caroline Dickerson, Chief Executive Officer & Treasurer, Commonwealth Trust Company was elected the Chair of the Delaware Bankers Association (DBA) on May 15th at the DBA's 130th Annual Meeting in Wilmington. The DBA also elected and installed Diana Clift, Head of Legal, Barclays, to the position of Chair-Elect.

Incoming Chair, Caroline Dickerson, receives the gavel from outgoing Chair, Matt Parks at the 130th DBA Annual Meeting.

Former Senator Thomas Carper congratulates 2025 David Bakerian Scholarship winners Lily Phillips and Aidan Mahoney surrounded by family, friends, and representatives of the DBA and Sallie Mae at the 130th Annual DBA Meeting.

Teach Children to Save Poster Winner

Aubree Andrews, a fourth grader at Crystal Run Elementary School, was chosen as the winner of the 2025 Teach Children to Save Day Poster Contest. Students throughout the State were encouraged to create a poster on the importance of saving as part of the annual Teach Children to Save Day event. Over 100 entries were received. Aubree received $100 as the first-place winner. Two runners-up, Sawyer Jadick, a fourth grader at Newark Charter School, and Gracie Boehmer, also from Crystal Run Elementary, both received $50 prizes. Congratulations to all the winners! See Aubree's poster above.

Delaware State Fair

(l. to r.) Renée Duncan, Yanina Sgroppo Emerick, Margaret Cregan, and Corinne Stayton at the DBA booth at the Delaware State Fair.

The DBA sponsored a booth during the Kid's Day at the Delaware State Fair, July 22, 2025. DBA Director of Events, Corinne Stayton, Member Support Manager & Accounting Assistant, Renée Duncan and Margaret Cregan, Chief Administrative Officer were joined by County Bank's Senior Vice President, Yanina Sgroppo Emerick, and gave out hundreds of Great Investo and Penny comic books, Kids Savers Kits, and other sponsor giveaway items to the fairgoers. Thanks to all our members who contributed items: County Bank; Fulton Bank; Artisans' Bank; Shore United Bank; Sallie Mae; and PNC.

To Modify, or Not To Modify...

That is the (Gift Tax) Question!

by
Robert V.A. Harra III, Esq.
Joseph Bosik IV, Esq.
Michael B. Galbraith, Esq.

Gordon, Fournaris & Mammarella, P.A.

Trust modifications have become increasingly common as families seek to adapt existing trust structures to changing circumstances, tax law developments, and evolving family needs. Delaware law provides several mechanisms to modernize and modify trusts, including nonjudicial settlement agreements, judicial and nonjudicial modifications, decanting, merger, division, reformation, and commutation. Practitioners, fiduciaries, and, sometimes, beneficiaries and other interested parties, must carefully contemplate federal gift tax implications that may arise when considering a trust modification, as seemingly advantageous changes desired by all interested parties can trigger unexpected tax consequences.

A gratuitous transfer to a newly created irrevocable trust constitutes a gift by the donor of the funds for transfer tax purposes. The Internal Revenue Service views certain trust modifications as potentially creating additional transfer tax consequences, separate from the original trust funding.

A key principle underlying gift tax analysis is whether a modification results in a gratuitous transfer of value from one party to another. The challenge lies in determining when modifications cross the threshold from administrative changes to substantive transfers that require gift tax analysis. Trust modifications that alter beneficial interests, along with the method utilized to make the modification and the parties involved, should be carefully scrutinized, as the IRS may characterize the changes as taxable gifts.

For example, it is possible through a decanting to reduce, or in some cases eliminate, a beneficiary's interest in the original trust (the "first trust"). Delaware's decanting statute can be used to eliminate a fixed income right with respect to trusts that do not, for example, qualify for the marital deduction.[1] The statute can also be used to eliminate a beneficiary's power to withdrawal trust assets, provided such power is not presently exercisable.[2] An issue that should be considered is whether a beneficiary is deemed to made a taxable gift when such beneficiary's interest in the first trust is reduced pursuant to the decanting.

There must be an act of transfer in order for a gift to occur. In the decanting context, it is the trustee, and not the beneficiary, that effectuates the transfer of trust assets from the first trust to the second trust. The beneficiary, therefore, should not be treated as having made a taxable gift when a trustee exercises its power to decant trust assets resulting in the reduction or elimination of a beneficiary's interest in the trust; provided, however, the outcome may be different if the beneficiary has a legal right to consent or object to, or otherwise participate in, the exercise of the trustee's authority to decant. Under Delaware's decanting statute, it is not necessary to obtain a beneficiary's consent to decant trust assets or, in some circumstances, even notify a beneficiary of the decanting. The beneficiary's mere acknowledgement of a decanting should not rise to the level of a taxable gift.

In certain situations, a beneficiary may also serve as a fiduciary having distribution powers (an "interested fiduciary") and, in such role, must participate in a decanting. Typically, an interested fiduciary's power to make distributions to or for the benefit of beneficiaries will limited by an ascertainable standard, such as health, education, maintenance and support. Decanting trust assets to a second trust that contains the same ascertainable standard should not, without other beneficial changes, result in any negative gift tax consequences to the interested fiduciary.

Decanting is not the only nonjudicial method to make trust modifications in Delaware; however, other methods may specifically require beneficiary consent or participation. For example, Delaware's modification by consent statute, 12 Del. C. § 3342, can be used in certain circumstances to modify an irrevocable trust for almost any purpose, including changes that are not permitted under the decanting statute such as adding beneficiaries, provided the existing trust beneficiaries are necessary parties needed for the modification. Adding new beneficiaries to a trust can constitute a gift from existing beneficiaries, as it dilutes their interests in favor of new parties. Removing beneficiaries presents the inverse situation, potentially benefiting remaining beneficiaries and creating gift tax consequences for the removed beneficiary if they consent to the modification. The gift tax consequences depend on the relationship between the parties, the modifications made, the method used to make the modification, and the value of the interests transferred.

With this in mind, it is important to know the current thinking of the IRS with respect to trust modifications.

New IRS Chief Counsel Advisory

The Internal Revenue Service's Chief Counsel Advice Memorandum 202352018, released December 29, 2023, represents a significant shift in the IRS's position regarding gift tax consequences of modifying an irrevocable grantor trust, specifically with respect to adding a discretionary tax reimbursement clause.[3] Previously, in Private Letter Ruling 201647001, the IRS concluded that a trust modification to add a discretionary trustee power to reimburse a grantor for income tax paid attributable to the trust income was administrative in nature and did not result in a change of beneficial interest. In CCA 202352018, however, the IRS directly contravened its prior position and concluded that the modification to add a tax reimbursement clause constituted a taxable gift by the beneficiaries.

The IRS determined that the addition of the discretionary power to distribute income and principal to the grantor is a relinquishment of a portion of the beneficiaries' interest in the trust. The IRS further determined that this result would be the same if the modification occurred pursuant to a state statute that provides beneficiaries with a right to notice and a right to object to the modification and a beneficiary fails to exercise such right to object.

Gift Tax Consequences of Modifying or Terminating QTIP Trusts

The qualified terminable interest property (QTIP) trust is a popular estate planning tool for married individuals. Typically, a QTIP trust provides for a surviving spouse while also controlling the ultimate distribution of assets. It allows the grantor to leave income from

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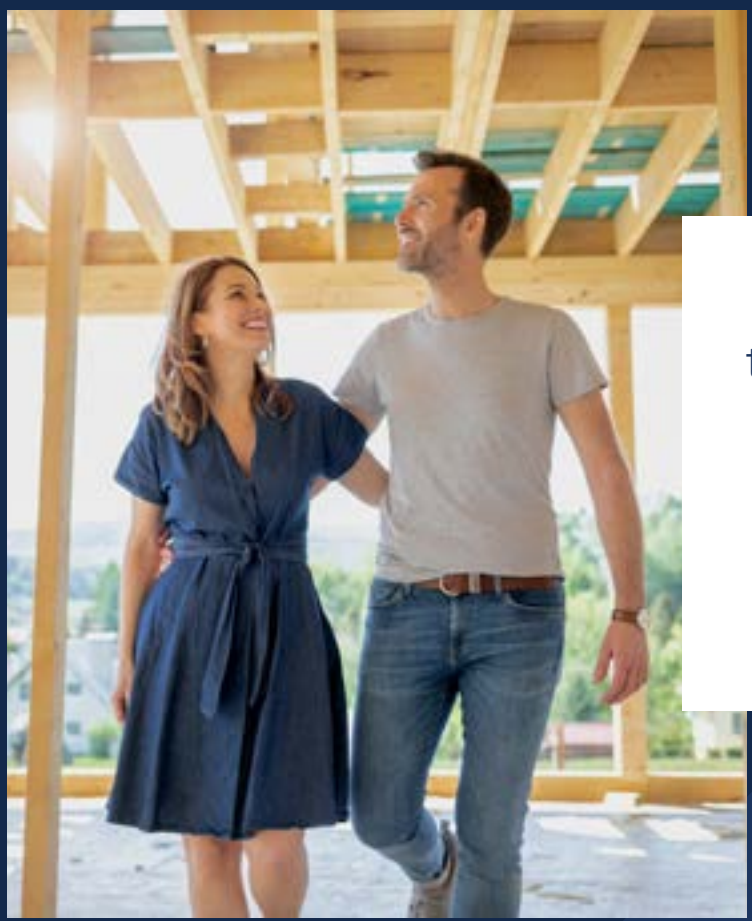

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the trust assets to a spouse, while specifying who will inherit the principal after the spouse's death.

There are occasions where a beneficiary-spouse may want to modify or terminate a QTIP trust. But as a recent Tax Court decision in *McDougall v. Commissioner*[4] underscores, prior to undertaking a trust modification, practitioners should carefully analyze the transfer tax rules in order to avoid or minimize present or future adverse tax consequences to the trust beneficiaries. Specifically, the Tax Court addressed the issue of whether a trust commutation results in separate gifts from the beneficiary-spouse to the remainder beneficiaries and from the remainder beneficiaries to the beneficiary-spouse.

The *McDougall* case involved a QTIP trust created after Clotilde McDougall's death in 2011. Her husband, Bruce McDougall, held a lifetime income interest with a testamentary limited power of appointment, while their children, Linda Lewis and Peter McDougall, held remainder interests. Over the next several years, the trust assets had doubled in value to over $100 million and the original QTIP structure had become unwieldly. In 2016, Bruce and the children entered into a nonjudicial agreement whereby all of the trust assets were distributed to Bruce and the trust terminated. Bruce then transferred substantially all the trust assets to trusts for the children and their descendants in exchange for secured promissory notes. Bruce and the children filed separate gift tax returns stating there was no gift tax, claiming the transactions were offsetting reciprocal gifts. The IRS challenged the transaction on multiple fronts, asserting that both the surviving spouse and the remainder beneficiaries had made taxable gifts as a result of the trust commutation.

Following its prior decision in *Estate of Anenberg v. Commissioner*,[5] the court ruled that Bruce did not make a taxable gift to the children under IRC § 2501 because he did not make a gratuitous transfer and the children received nothing in return. However, the court held that the children did make taxable gifts to their father.

Anenberg dealt with the similar question of whether a beneficiary-spouse made a disposition of any part of the qualifying income interest that triggered a deemed transfer of the remainder interest under IRC § 2519. The court did not need to decide that issue because, even if the disposition did trigger a deemed transfer under IRC § 2519, it only resulted in the deemed transfer of the remainder interest, but no gift resulted because the surviving spouse ended up actually owning all the assets unencumbered. "At the end of the day, she gave away nothing of value as a result of the deemed transfer."[6] The court did not consider or make a ruling with respect to the gift tax consequences to the children.

The analysis for the children in *McDougall* was different. The court rejected the various arguments made to support the claim that the children made no taxable gifts. They argued the QTIP fiction (treating the surviving spouse as owning the QTIP) should apply with equal force to the children and that, in essence, "the children simply had nothing that they could give away."[7] The court reasoned that the QTIP provisions focus on deferring transfer tax until the death of or gift by the surviving spouse, *i.e.*, the provisions focus on the transfer of marital assets outside the marital unit, but "say nothing about, and do not apply to, transactions that transferees outside the marital unit, such as [the children], may undertake with respect to their own interests in QTIP."[8]

The court also did not accept the taxpayers' reciprocal gifts argument that they offset each other because when it determined that the father did not make a gift under IRC § 2519, it meant that no reciprocal gift could have occurred. The children could not receive anything of value because "they already had the remainder rights" and a deemed transfer under IRC § 2519 "added nothing to their bundle of sticks."[9] "Any rights [father] may have been deemed to hold because of the QTIP fiction do not negate the very real interest [the children] held …."[10] If the children "were to transfer their remainder interests to a third party, the transfers would clearly be a gift and Petitioners admit as much. That [their father] was the recipient of [the children's] largesse does not change this conclusion."[11]

The taxpayers also argued that no gift occurred because the economic positions of the parties were unchanged. The court disagreed. "Before the implementation of the Nonjudicial Agreement, despite the QTIP fiction, [father] did not own the assets of the Residuary Trust outright and could not do with them what he wished" but afterward, "he did and could."[12] The children, on the other hand, owned remainder interests before the termination of the trust and after, they did not. And, while under the terms of the will, the surviving spouse held a testamentary power of appointment and could have decided to reduce one of the children's shares significantly, "the Nonjudicial Agreement reduced both children's right with respect to the Residuary Trust to nothing."[13] Moreover, while trusts established for the children's benefit "eventually acquired assets transferred to [the surviving spouse] from the Residuary Trusts, that was in exchange for issuing secured promissory notes to [the surviving spouse]."[14] Consequently, the children's trusts would have to pay eventually for the assets they received. "Nothing came to those trusts simply as a result of the provisions of [the decedent spouse's] will…."[15]

Given the procedural posture of *McDougall*, the value of the children's gifts to their father – and the resulting tax owed – will be determined in separate proceedings that have not yet concluded.

Under *McDougall* and *Anenberg*, when all QTIP trust assets are commuted and pass to the surviving spouse, the surviving spouse should not be subject to gift tax on the transfer. *McDougall* demonstrates that remainder beneficiaries who consent to early trust terminations or distributions may face unexpected gift tax consequences, even when such modifications appear to benefit other parties primarily. When considering modifying or terminating a trust, it is crucial to consult a trust attorney and/or a tax advisor to assess gift tax risk - especially for remainder beneficiaries.

The McDougall case shows that the IRS and courts will not necessarily honor the idea of a balancing of gifts among beneficiaries. Every individual's transaction is evaluated separately, and reciprocal transfers do not necessarily avoid gift tax.

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Notes:

1. 12 Del. C. § 3528(a)(3).
2. 12 Del. C. § 3528(a)(4).
3. CCA 2002352018.
4. 163 T.C. No. 5 (2024).
5. 162 T.C. 9 (2024).
6. *Anenberg*, 162 T.C. at 15.
7. *McDougall*, 163 T.C. at 13.
8. *Id.*
9. *Id.* at 14.
10. *Id.* at 15.
11. *Id.*
12. *Id.*
13. *Id.* at 16.
14. *Id.*
15. *Id.*

Rothification

The Roth Catch-up Requirement for High Earners

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

Being from Delaware, I remember Senator Roth, the lone U.S. Representative from Delaware, and his two giant St. Bernards walking down Market Street, greeting all his constituents. Who knew that this affable man would leave behind a legacy that will benefit millions of people for generations to come? At the age of 76, he created the Roth IRA, an individual retirement plan that can be set up with post-tax dollars, offering tax-free withdrawals. Senator Roth was the last Republican to serve as a U.S. Senator from Delaware, and he left a big legacy: Roth IRAs were created as part of the Taxpayer Relief Act of 1997, which was signed into law by then-President Bill Clinton. In the year 2022, contributions to Roth IRAs outpaced contributions to traditional IRAs. When Senator Roth died in 2003, more than $14 trillion in Roth IRAs were owned by 31.9 million households, representing 24.3% of the U.S. population. But Roth alternatives did not stop there…

If Senator Roth Only Knew that Rothification Would Become a Word

Three years after he died at the age of 82, Roth 401(k), 403(b), and 457(b) contributions became available, in 2006. Starting in 2010, all IRA owners and participants in 401(k), 403(b), and governmental 457(b) plans became eligible to convert their traditional IRA and pre-tax retirement plan funds to Roth dollars.

Until now, Roth contributions have been voluntary, but starting in 2026, 401(k), 403(b), and 457(b) plan participants who earned $145,000 or more in the previous year (High Earners), must make all catch-up contributions on a Roth basis in the current year, a requirement established by the Setting Every Community Up for Retirement Enhancement Act (SECURE 2.0). These compulsory Roth contributions could be just the beginning of a new Rothification era. (Insert Taylor Swift here)

Rothification refers to a policy shift requiring the use of Roth after-tax contributions or accounts. As a fiscal conservative, Senator Roth's goal was to create a vehicle that provided access to retirement savings without a short-term impact on the federal budget. Rothification would force that outcome, although I'm not sure that Senator Roth envisioned a mandate, rather than a choice.

No Short-Term Impact on the Federal Budget

Contributing with post-tax dollars means that unlike the regular pre-tax contribution, a Roth contribution does not provide an immediate tax benefit to the contributing individual. There is no tax deduction for contributions; however, many years later, qualifying withdrawals are tax-free. Tax-free withdrawals means that the individual never pays tax on the appreciation of the investments held in the Roth account. Additionally, Roth accounts are not subject to the Required Minimum Distribution (RMD) Rules, further enhancing the value of the tax savings on the appreciation of the investments. Roth contributors are playing the long game, believing that the value of their investments will increase and hoping that the tax rate that would have applied to a taxable distribution would have been higher than the tax rate they paid on the dollars originally contributed. Some economists estimate that the federal government would collect an extra $1 trillion dollars in taxes over the next ten years through a Rothification mandate.

First Steps Toward Rothification: the Roth Catch-up Requirement for High Earners

The Setting Every Community Up for Retirement Enhancement Act (SECURE) 2.0 may very well have established the first Rothification requirement, by requiring catch-up eligible High Earners to make catch-up contributions to their 401(k), 403(b), and 457(b) plans on a Roth basis, effective January 1, 2026. High Earners are members of the High Earning Group, new defined terms used when referring to the new Roth catch-up mandate applying to individuals who met a $145,000 FICA Wage Threshold in the prior year.

$145,000 Wage Threshold

The $145,000 wage threshold is determined based on a participant's FICA wages for the preceding calendar year, subject to cost-of-living increases and does not need to be prorated for the first year of employment. According to this definition, nobody can be considered a High Earner during their first year of employment

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since the prior year wages would be zero for that individual's new employer. Each employer makes the determination using its own payroll's FICA wages, such that affiliated and unrelated employers are not relevant. It's important to understand that the look-back process is similar to the one for identifying Highly Compensated Employees used in the discrimination testing for qualified plans, but a High Earner is NOT the same as the Highly Compensated Employee. Additionally, a Roth feature must be universally available – An employer is not required to offer a Roth feature, but the Roth feature cannot be available only to the High Earning Group. If a plan permits the High Earning Group to make catch-up contributions as designated Roth contributions for a plan year, such plan must allow all other catch-up eligible participants to also make designated Roth contributions. Catch-up contributions on a Roth basis is an option that must be available to all participants.

Pre-tax catch-up eligibility is only available to participants who are not High Earners. If a plan does not include a Roth feature, the High Earning Group will not be permitted to make any catch-up contributions under that plan. For the High Earning Group in a plan without a Roth feature, the maximum amount permitted under applicable law is $0. Other catch-up-eligible participants can still contribute the maximum catch-up of $7,500, as indexed, or the super catch-up of $11,250 (as indexed) for individuals between the ages of 60 and 63. This potential disparity in the availability of catch-up contributions may seem discriminatory, but it's hard to imagine why an employer would not simply add a Roth feature to make the opportunity truly universal.

Speaking of discrimination, catch-up contributions are not subject to discrimination testing or to any other applicable limit, such as the 402(g)-deferral limit, the Section 415 annual additions limit, or the plan-imposed limit. The mechanics of how much of a person's contribution is a catch-up could be more complicated because a contribution cannot be considered a catch-up until it exceeds a legislative or plan limit.

All Roth Contributions Count

All Roth contributions made by a member of the High Earning Group, including elective contributions that are not catch-up contributions, count toward the Roth catch-up contribution requirement. Using the 2025 contribution limits of:

402(g) Deferral	$23,500
Age 50 Catch-Up	$7,500
Age 60-63 Super Catch-Up	$3,750
Total	$34,750

If the participant elected to contribute the maximum, with half the contributions pre-tax and half Roth, then the participant will have already made $11,750 ($23,500/2) in Roth contributions by the time the participant's contributions exceed the 402(g) legislative limit. It means that the requirement for the catch-up contributions to be made on a Roth basis would have already been met. Roth contributions of $11,750 would already exceed the $11,250 super catch-up limit for participants between the ages of 60 and 63. No adjustments need to be made to the source code of this participant's subsequent contributions in order to meet the Roth catch-up requirements. All Roth contributions count. Unlike the classification of a contribution as a catch-up, the timing of Roth contributions amounting to the catch-up dollars does not matter. Since High Earners can be identified at the beginning of the year, employers will be able to assess whether their elections will comply with the rules and advise the participant to adjust accordingly.

Deemed Elections or Automatic Discontinuance

If the High Earner elects only pre-tax deferrals, then Roth catch-up contribution elections will be assumed, even without a participant's authorization. However, since the contribution amounts are taxable and will have financial repercussions, High Earners in this situation must be given an opportunity to make a new election, so that they can stop making elective contributions. If the participant doesn't elect to stop contributing, deemed Roth catch-up contributions are excludable from the participant's gross income on the payroll and when the Roth contribution withholdings are remitted, they are allocated to the Roth source-code in the participant's account.

Alternatively, employers of High Earners who elected only pre-tax deferrals can automatically discontinue their contributions when they reach the 402(g)-deferral limit unless they make an affirmative election to make Roth catch-up contributions. Employers can implement either a deemed election or automatic discontinuance approach for Roth catch-up contributions, and consistency in application is crucial.

Reclassifications to Roth Catch-up Due to Exceeded Limit

If the ADP test requires the reclassification of deferrals as a catch-up, the source of the reclassified contributions must be taken into account. Since a reclassification to catch-up for a High Earner involves a change in source-code from pre-tax to Roth, the taxability of the reclassified amount can be reflected on a corrected Form 1099-R like an in-plan Roth conversion, or on a corrected Form W-2.

If a contribution exceeds an employer-provided annual limit, or the Actual Deferral Percentage (ADP) test limit, then the deadline to reclassify the pre-tax contribution as a Roth catch-up, or to issue a corrective distribution, as applicable, is 2 ½ months after the close of the plan year in which the contribution was made (or six months for plans that include an eligible automatic contribution arrangement).

If a contribution exceeds the annual 402(g) elective deferral limit, then the deadline to reclassify the pre-tax contribution as a Roth catch-up, or to process a corrective distribution, as

applicable, is April 15 of the calendar year following the year in which the contribution was made.

Rothification Complications: Short-Term Revenue, Long-Term Loss

Despite the administrative burden added by the Roth-catchup requirement, plans cannot require that all catch-up contributions be made on a Roth basis to simplify the administration of this requirement.

The High Earning Group Roth Catch-up requirement was passed to pay for other tax benefits of the SECURE 2.0 Act. The complicated Roth Catch-up provisions make it clear that Congress will prioritize short-term revenue creation over the simplification of the tax code. Rothification raises revenue in the ten-year budget window used by the Congressional Budget Office to evaluate bills. However, the mandated Roth catch-up contributions only generate more revenue than traditional contributions in the short-term. Rothification is forcing participants to play a long game that is likely to be to their advantage, while costing the government in the long run. Unknowingly, the Feds are Rothifying the High Earners for their own good.

Maria Hurt leads a team of specialized retirement plan auditors and the retirement plan audit niche at Belfint Lyons & Shuman, the largest locally owned CPA firm in Delaware. She is responsible for planning, supervising, and reviewing audits of single and multiemployer benefit plans, quasi-governmental plans, and government plans. Maria is known as one of the go-to auditors in the industry, which has helped her niche experience exponential growth in the number of plan audits due to the confidence of her referral sources. As a result of her team's efficient auditing and value-added services, she has a 95% client satisfaction and retention rating. Maria spearheads the firm's employee benefit audit blog – The Art of the Qualified Plan Audit. Her blogs are frequently re-published in several national publications and she has authored white paper publications for major asset management companies.

US Banks Maintain Favorable Earnings While Confronting Economic Uncertainty

by
By Zain Tariq and Nathan Stovall
Market Intelligence

US banks' net interest margins are poised to expand, but higher-for-longer interest rates and uncertainty created by tariffs will push credit costs higher and limit earnings growth in 2025.

Banks' earnings should remain healthy through the first half of the year, buoyed by continued margin expansion, steady loan growth and benign credit quality. Earnings growth could prove more challenging in the second half of 2025 as the lagging impact of tariffs slows growth, weighs on the consumer and pushes delinquencies higher. Those emerging earnings headwinds will be modest but could provide further support for stronger bank M&A activity as institutions seek ways to grow.

Bank industry aggregate profitability metrics (%)

	2024A	2025P	2026P	2027P	2028P	2029P
Efficiency ratio	57.06	57.30	57.24	56.65	57.10	57.16
Net interest margin	3.14	3.20	3.21	3.26	3.23	3.23
ROAA	1.12	1.09	1.09	1.24	1.22	1.23
ROAE	11.36	10.96	11.00	12.34	11.97	11.86
YOY earnings growth	8.9	3.1	4.5	17.6	1.9	3.9

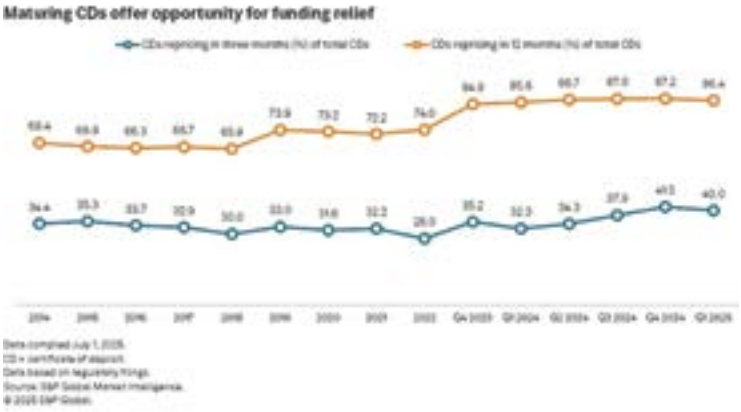
Data compiled July 1, 2025.
A = actual; P = projected; ROAA = return on average assets; ROAE = return on average equity.
Source: S&P Global Market Intelligence, proprietary estimates.

Banks Benefit From Remixing Balance Sheets as Time Heals All Wounds

Banks continue to benefit from the remixing of their balance sheets as higher-cost deposits roll off their books and are replaced with less costly forms of funding, while lower-yielding securities mature and are reinvested at higher yields. That trend should continue this year, but the pace of improvement will slow in the coming quarters.

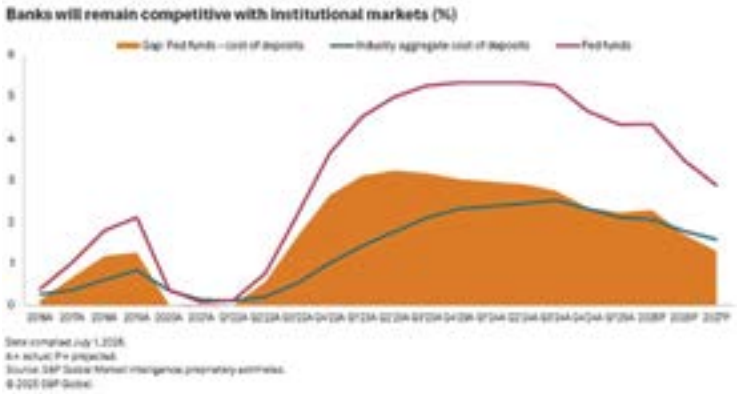
Deposit costs dropped substantially in the fourth quarter of 2024 and the first quarter of 2025, with the cost of deposits falling 20 basis points and 21 basis points, respectively, from the previous quarter. We expect smaller declines in the second quarter, and early reports from JPMorgan Chase & Co. and Wells Fargo & Co. support that thesis. A key driver of deposit costs will be the maturity schedule of certificates of deposits (CDs). Banks, particularly regional and community banks, increased their reliance on CDs for

funding during the Fed's tightening cycle. Many CDs carry one-year terms, so institutions might not feel significant pricing relief until the maturation of CDs originated before the initial Fed rate cut in September 2024.



At the end of the first quarter, the bulk of CDs were set to mature in the next year, with 40.0% of all CDs maturing or repricing in the next three months, while 86.4% of CDs were set to mature in the next 12 months. At the end of the first quarter of 2025, CDs maturing in the next three months equated to 5.9% of the industry's deposits, while CDs maturing in the next 12 months equated to 12.7% of the industry's deposits.

When those CDs mature, most banks will have to meet market rates to retain the deposits. CD rates began declining late in the third quarter, with far fewer institutions offering the products at rates over 4%, but there has been less movement around the 3.5% level. The number of banks marketing one-year CDs over 3.5% included 1,054 institutions as of July 11, down from 1,079 as of March 28, 1,134 as of Dec. 27, 2024, and 1,266 as of Sept. 27.



The shedding of higher-cost CDs has helped banks lower their deposit costs, but banks will need to remain competitive with alternatives in the Treasury and money markets as they seek to cut costs further. The difference between the average fed funds rate and the industry's cost of deposits narrowed further in the first quarter of 2025 to the smallest gap recorded since the third quarter of 2022, when the Fed was still early in its tightening campaign. That gap should widen modestly in 2025 as banks balance lowering their deposit costs while staying competitive with higher-yielding alternatives to maintain deposit growth.

Weaker loan growth should also reduce banks' funding needs and let them move deposit costs incrementally lower. Deposits should grow further, but interest-bearing deposits will continue to grow at a quicker clip than non-interest-bearing deposits — banks' most prized source of funding.

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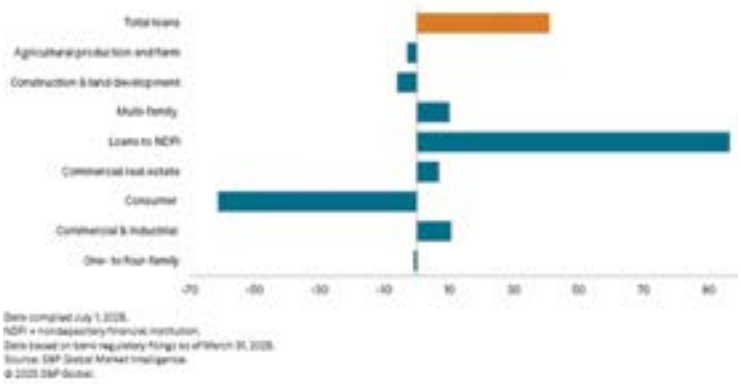
Loan growth should remain relatively weak as borrowers digest new trade policies that could change the cost of operating their businesses and households. The true impact of tariffs arguably has not been felt yet, as businesses increased inventories ahead of the landmark announcements in early April. The building of inventories has allowed some businesses to maintain prices at pre-tariff rates for now.

Notably, loans to nondepository financial institutions, including private credit firms that compete with banks, were by far the biggest driver of loan growth in the first quarter. The Fed's H.8 data captures loans to those institutions in an "other loan" bucket. Through the end of the second quarter, growth in that category remained stronger than other lending types, such as commercial and industrial, commercial real estate and consumer loans.

Loans to nondepository financial institutions driving loan growth



Credit Quality Just Normalizing For Now, But Future Looks Murkier

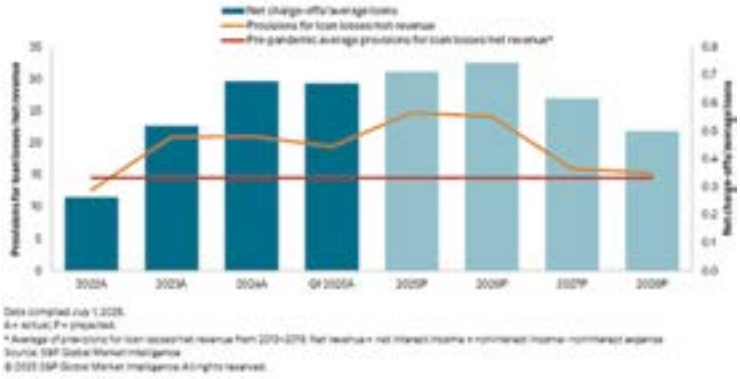
Bankers maintain that their borrower base remains healthy, and the US economy has proven resilient in the face of uncertainty created by protectionist trade policies, with job gains in June exceeding economists' forecasts. However, credit quality continues to normalize as criticized loans increase.

Criticized loans at US public banks rose again in the first quarter, with the median ratio of criticized loans to Tier 1 capital climbing to 20.04% from 18.52%. Banks classify loans as criticized if some sign of weakness emerges, but that migration does not necessarily suggest a future loss.

Much of the weakness and concerns in the investment community have related to commercial real estate loans. Some CRE borrowers face a double whammy of lower cash flows due to the rise of hybrid work and higher debt service stemming from increases in interest rates over the last few years. CRE delinquencies have risen for 10 consecutive quarters, but losses have often been less than many feared, in part due to well-funded distressed investors and private credit firms targeting the asset class. When banks have sold CRE loans — often in connection with an acquisition — sellers have recorded relatively modest discounts to par, ranging from 8% to 10%.

We expect related refinancing challenges to result in defaults and higher loss content in 2025, with net charge-offs continuing to rise from benign levels. We expect loss content to linger as banks provide borrowers with extensions in the face of some maturity walls.

Credit costs becoming a larger headwind to earnings (%)



Consumer delinquencies have also risen from historical lows. While many banks might not have sizable consumer or credit card portfolios, the consumer drives the economy. A weakened consumer could push the U.S. into a recession. The US consumer is stretched — savings rates have slowed, and excess savings accumulated during the pandemic have been exhausted — and higher prices could lie on the horizon if trade deals are not reached relatively soon.

Many banks have already set aside considerable reserves for the most troubled commercial real estate projects while preparing for normalization in consumer credit trends. Reserves rose to 1.75% of loans in 2023 from 1.59% in 2022 and held steady at 1.75% at year-end 2024 and through the first quarter of 2025. While we expect net charge-offs to rise significantly in 2025, losses and the reserves required to fund them should serve as a modest headwind to earnings rather than a severe downturn.

We expect provisions to rise to 23.3% of net revenue in 2025, up from 21.1% in 2024 and 20.9% in 2023. On average, from 2013 to 2019, banks' provisions equated to 14.6% of net revenue.

Looking Ahead

Banks would be wise to price greater risk into their loan portfolios and consider rethinking their growth goals to allow them to play stronger offense when the credit cycle eventually turns.

Bankers could find strong loan growth tough to come by, and it could be prudent to avoid pressuring lenders to make new loans aggressively at this point in the cycle. Competition should remain fierce as credit is widely available to corporate borrowers through the high-yield, leveraged loan and competing private credit markets. Credit spreads widened when tariffs first surfaced in early April, but have since tightened back to near-record levels.

Rather than fighting to meet their organic growth goals, bank managers should move in the other direction and encourage lenders to tighten pricing and lending standards, increase debt service coverage ratios and move away from their least creditworthy borrowers. While lower loan volumes may reduce earnings in the near term, avoiding risk today could pay dividends further down the road and help banks minimize credit losses. The approach could also help institutions improve their funding bases, which represent the true value of a banking franchise. Slower loan growth would reduce a bank's funding needs and allow quicker reductions in deposit costs.

A stronger funding base and continued strength in credit quality would be rewarded by investors and appeal to potential acquirers. Banks that are willing to take a step back and operate more cautiously now will also have a greater opportunity to continue growing, both organically and through acquisitions, when the next downturn occurs.

While M&A activity has remained relatively slow, the combination of modestly higher costs and slower loan growth could create more willing sellers. Greater interest could arise from institutions looking to partner with buyers, as bank valuations have recovered from the lows in April, setting the stage for much stronger dealmaking activity.

Scope and Methodology

The outlook discussed in this article is based on a proprietary S&P Global Market Intelligence model that utilizes the actual results of nearly 10,000 active and historical commercial and savings banks and savings and loan associations. The outlook is based on management commentary, discussions with industry sources,
regression analysis, and asset and liability repricing data disclosed in banks' quarterly call reports. While taking into consideration historical growth rates, the analysis often excludes the significant volatility experienced in the years around the credit crisis.

The outlook is subject to change, perhaps materially, based on adjustments to the consensus expectations for interest rates, unemployment and economic growth. The projections can be updated or revised at any time as developments warrant, particularly when material changes occur.

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Zain Tariq manages a team of research analysts at S&P Global Market Intelligence and produces data-driven research. The team is primarily responsible for providing data insights on the U.S. financial and real estate industries. He has covered the banking space for over eight years including regulatory changes, financial trends, branch footprints, and M&A. Prior to joining S&P, Zain collected experience as a finance officer and accountant for multiple organizations.

Charitable Thoughts

An Ordinary Couple, An Extraordinary Legacy

Maribeth Przywara
Delaware Community Foundation

"Across Delaware, there are many quiet, generous individuals who simply want to leave the world better than they found it..."

In my office at the Delaware Community Foundation (DCF) where I serve as Director of Advancement, there is a pastel portrait of a young woman with tidy brown hair in a floral sweater. Like me, she was an animal lover, a woman of faith, and someone deeply invested in supporting Delawareans. No, we aren't related — and I never met her personally — but I feel as though I know her because I've been so inspired by her legacy.

Her name is Carolyn Smith. She established a donor advised fund (DAF) in her and her late husband Philip's name, which would later support designated beneficiary charities after her passing. This type of charitable plan is set in motion during a person's lifetime and continues to make an impact for organizations they care about long after they're gone.

In order to facilitate her charitable goals, the DCF created three designated funds to support the charities most important to Carolyn and Philip. The Phillip and Carolyn Smith Fund, Phillip and Carolyn Smith Fund for Animals, and Phillip and Carolyn Smith Fund for Basic Needs have together granted more than $1.5 million since 2020. These funds provide lasting support for Sunday Breakfast Mission, the National Park Foundation, Faithful Friends and other nonprofits of Carolyn's choosing. Many are the same nonprofits Carolyn funded through her DAF from 2006 through 2019.

At the DCF, I work with many generous donors, including individuals who've inherited trusts and assets and want to see their family's good fortune make a lasting impact in the community. Carolyn and Phillip, however, didn't come from a legacy of wealth. They weren't high-powered executives or entrepreneurs with empires to leave behind. They were everyday people — a veteran and an administrative assistant — who worked hard, saved diligently, and built a legacy large enough to give back and improve the lives of others.

Phillip passed away in 2005, and Carolyn followed in 2020. As recipients of their estate assets, the DCF received the gift of their Newark home, the sale of which went toward the Smiths' funds. While many belongings were donated or sold, a few portraits and photographs found a new home as decorations in the DCF Wilmington office. Even as staff have come and gone, images of Carolyn's beloved black lab, Misty, and her orange cat, Ochre, continue to be rediscovered and reused — small, enduring tributes to the couple's legacy.

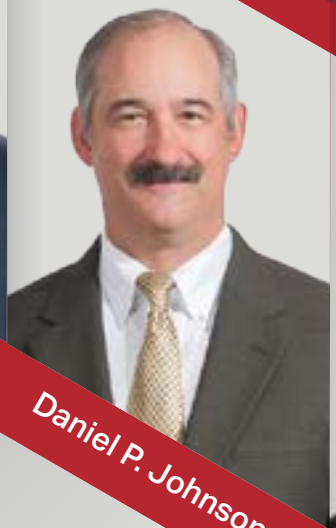
When I view Carolyn's portrait from my desk, I'm reminded of the responsibility I carry — to her, and to others like her. Across Delaware, there are many quiet, generous individuals who simply want to leave the world better than they found it, and the DCF stands ready to help them reach their goals.

Maribeth Przywara serves as the Director of Advancement at the Delaware Community Foundation. To learn how the DCF supports advisors in helping their clients reach charitable goals, contact her at 302-889-1884 or at mprzywara@delcf.org or visit www.delcf.org/advisors-partner-with-us/

YOUNG CONAWAY

John E. Tracey

John C. Kuffel



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Accounting for Success

GASB 101 Is Here – What Bankers Need to Know About Its Impact on Government Borrowers

Michael E. Mast, CPA, CFE
Government Practice Group Leader
Belfint Lyons & Shuman, P.A.

"GASB 101 is not just an accounting technicality—it reshapes how compensated absence liabilities are measured..."

For bankers, understanding GASB 101 (Governmental Accounting Standards Board) is critical because it changes how governments measure and report compensated absence liabilities - directly affecting the financial position information you may rely on to assess lending risk. Effective for fiscal years beginning after December 15, 2023, this new standard can increase reported liabilities, reshape the way government borrowers present their financial health, and may alter key metrics.

What's Changed and Why It Matters to Bankers

- **Increases in Reported Liabilities:** GASB 101 changes the way leave is measured, and many governments will report larger compensated absence liabilities. Increases in compensated absence liabilities will potentially change debt ratios, net position, and other key credit indicators.

- **Expanded Cost Recognition:** In addition to direct wages, the liability must now include salary-related costs such as payroll taxes and defined pension contributions. This means the reported obligation better reflects the true payout cost and will increase liability totals.

- **Streamlined Disclosures:** In the notes to the financial statements, governments are now only required to disclose the net change in the liability, rather than detailing gross increases and decreases. While this makes reports easier to read, it also means bankers should dig deeper into the notes for year-over-year context.

- **Modernized Definitions:** Updated terms now align with current employment practices, reducing inconsistent application across governments.

Types of Leave Covered

The standard applies broadly, including vacation, sick leave, paid time off, parental leave, bereavement leave, and certain sabbatical leaves—all of which now fall under the revised measurement rules.

Timing for Your Borrowers

If a government's fiscal year began after December 15, 2023, GASB 101 applies now. For December 31, 2024 year-end governments, the first set of financial statements under the new rules is already in the books.

Key Takeaways for Credit Analysis

- Expect increased liabilities on the statement of net position, which could affect perceived credit strength.

- Because the change impacts long-term obligations, it may influence liquidity assessments and other key credit metrics.

- Review management's discussion and analysis (MD&A) and footnotes closely for explanations of the changes and their magnitude.

- Trend analysis will need to account for the step-up effect in liabilities so that prior-year comparisons remain meaningful.

Banker Action Steps

1. **Identify** whether the borrower's fiscal year start triggers GASB 101 implementation.
2. **Compare** compensated absence liabilities year-over-year; isolate the accounting change from operational trends.
3. **Adjust Ratios** – Recalculate debt ratios considering the new liability base.
4. **Ask Questions** – How does management plan to fund these obligations? Is there a reserve policy?
5. **Document** any covenant compliance issues caused solely by the standard change.

Bottom Line

GASB 101 is not just an accounting technicality—it reshapes how compensated absence liabilities are measured, and that can ripple into the financial metrics that you rely on for lending decisions. A proactive review of your government borrowers' 2024 financial statements will help you adjust your analysis and maintain accurate risk assessments.

For Your Benefit

The "One Big Beautiful Bill Act" - Changes for Employee Benefits

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"The OBBB Act includes particularly important and highly anticipated changes for employee benefit plans."

On July 4, 2025, President Donald Trump signed a major tax and spending bill, commonly referred to as the "One Big Beautiful Bill Act" (OBBB Act), into law. The OBBB Act includes particularly important and highly anticipated changes for employee benefit plans.

HSA Expansion

As we are aware, only eligible individuals can establish HSAs and make HSA contributions (or have them made on their behalf). Those contributions can be used tax free for qualified expenses.

Effective Jan. 1, 2026, the OBBB Act expands HSA eligibility by allowing individuals with direct primary care (DPC) arrangements to make HSA contributions if their monthly fees are $150 or less ($300 or less for family coverage) adjusted annually for inflation. A DPC arrangement is a subscription-based health care delivery model often called a concierge service for which an individual is charged a fixed periodic fee for access to medical care consisting solely of primary care services. In addition, the OBBB Act treats DPC fees as a medical care expense that can be paid using HSA funds.

Also, to expand the accessibility of HSAs in the individual market, the OBBB Act categorizes as HDHPs all bronze plans and catastrophic plans that are available through an Affordable Care Act (ACA) Exchange.

HDHP Telehealth Exception

To be eligible for HSA contributions, individuals cannot be covered by a health plan that provides benefits, except preventive care benefits, before the minimum HDHP deductible is satisfied for the year. Historically, individuals who were covered by telehealth programs that provided free or reduced-cost medical benefits were not eligible for HSA contributions.

A pandemic-related relief measure temporarily allowed HDHPs to waive the deductible for telehealth services without impacting HSA eligibility. This relief expired at the end of the 2024 plan year. However, the OBBB Act permanently extends the ability of HDHPs to provide first dollar benefits for telehealth and other remote care services before plan deductibles have been met without jeopardizing HSA eligibility. This extension applies to plan years beginning after Dec. 31, 2024. This was welcome news for those impacted.

Dependent Care FSAs

Employers can provide dependent care assistance benefits for their employees on a tax-free basis, subject to a maximum annual limit. These benefit plans are referred to as dependent care FSAs (or dependent care assistance programs, DCAPs). Effective Jan. 1, 2026, the OBBB Act increases the maximum annual limit for dependent care FSAs to $7,500 for single individuals and married couples filing jointly and $3,750 for married individuals filing separately (up from $5,000 and $2,500, respectively). The new limit is not adjusted for inflation.

Educational Assistance Programs – Student Loans

Employers can offer programs to provide employees with undergraduate or graduate-level educational assistance. Educational assistance programs can pay for employees' books, equipment,

supplies, tuition, and other fees. Also, these programs can pay principal and interest on employees' student loans. The option to use educational assistance programs for student loans was set to expire on Dec. 31, 2025. However, the OBBB Act permanently extends this student loan payment option.

Also, tax-free benefits under an educational assistance program are limited to $5,250 per employee per year. Typically, educational assistance provided above this level is taxable as wages. Effective for taxable years beginning after 2026, the OBBB Act annually adjusts the $5,250 limit for inflation.

Trump Accounts

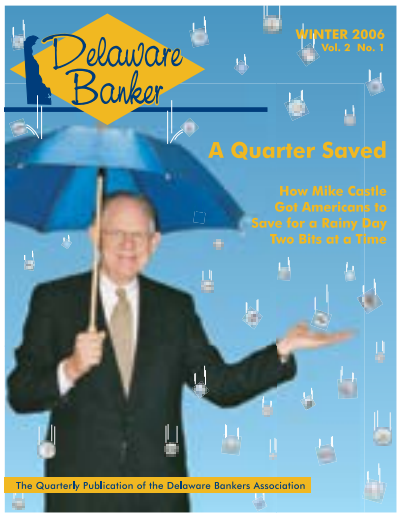
The OBBB Act creates a new type of tax-advantaged savings account for children under age 18, named a "Trump Account." Effective in 2026, Trump Accounts will operate similarly to individual retirement accounts, or IRAs, where earnings grow tax deferred. In general, annual contributions to these accounts are limited to $5,000 per child (adjusted annually for inflation beginning after 2027). The OBBB Act provides that children born in 2025-2028 may be eligible to receive a special $1,000 contribution from the federal government.

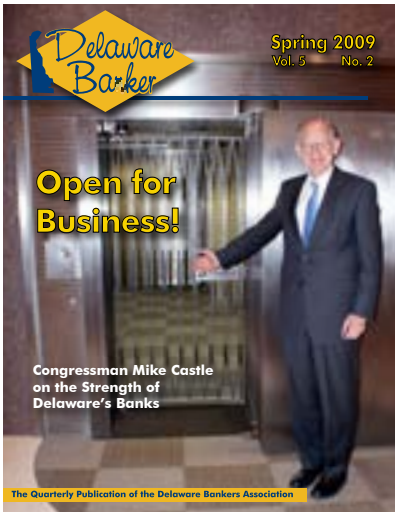
Employers may make tax-free contributions to the Trump Account of an employee or an employee's dependent of up to$2,500 (as adjusted annually for inflation beginning after 2027). These programs require a written plan document and will be subject to the same tax rules that apply to dependent care FSAs, such as annual nondiscrimination testing and employee notifications.

There are many aspects of this bill to consider. The summarized information is not exhaustive and comes directly from our resource libraries. Please contact us for all sources and/or complete articles. If you would like to be added to our email list or schedule a consultation, please contact the WBG Team at: *info@weinerbenefitsgroup.com.*

Remembering a Friend

Thank You, Mike Castle





Mike Castle, Delaware's former governor and congressman, passed away earlier in August at the age of 86. From 1967 to 2011, Mike Castle served Delaware in the State House, the State Senate, as Lieutenant Governor, Governor, and finally in the U.S. House of Representatives. Mike Castle was Lt. Governor to Pete duPont during the passage of the seminal Financial Center Development Act, the legislation that became the foundation for Delaware's preeminence as financial services leader.

A lifelong Delawarean, Mike Castle was featured on the cover of two issues of Delaware Banker magazine (see left). The first time, in 2006, the Congressman discussed the state quarter program which he helped to create as a member of the House Committee on Financial Services.

"The program has literally exceeded everyone's expectations," Mike recalled. "It's ironic because I was something of a Doubting Thomas when I first heard about it and had to be convinced. But once I grasped it and understood it was not going to be 'Monopoly Money,' but would be something that would be educational for children, and people would enjoy collecting, and would benefit the federal government in term of seniorage, I realized what a good concept and plan it was and became its strongest advocate. It's going to produce in upwards of $10 billion in savings for the federal government by the time it's over."

Three years later, in the wake of the 2008 financial crisis, Congressman Castle penned the magazine's cover story to emphasize the vitality of the First State's financial services industry.

The Congressman wrote in part:

Delaware has a rich history in banking and financial services, dating back to 1795 when our state chartered its very first bank, and located it in Wilmington. Since that time, the banking industry has expanded and evolved, becoming a fundamental component in the state economy, and a critical element of our national financial system.

Consumers and businesses alike depend upon the services banking institutions provide. In our state, banking is the largest non-agricultural private industry employer. Delaware's unique laws and court system make it a hospitable environment for doing business in the state, attracting some of the nation's largest financial institutions. As a result of the influx in this industry, thousands of other jobs have been indirectly created, contributing to the importance of this industry to our community.

On top of the good news that Delaware banks are well capitalized and strong, I am also pleased to learn that many are continuing to give back to the community through various long-term programs. These programs include financial literacy education, where bankers go into local schools and teach kids about the importance of being smart with their finances; financial fraud and security programs to help consumers keep their financial information safe; and, special lending and counseling programs to ensure access to investment and loan opportunities to all Delawareans.

In Dover and in Washington, Mike Castle represented the best in Delaware and the best for Delaware. He was a strong advocate for all the First State's financial services industry, its institutions, and employees. Thank you, and well done, Mr. Castle!

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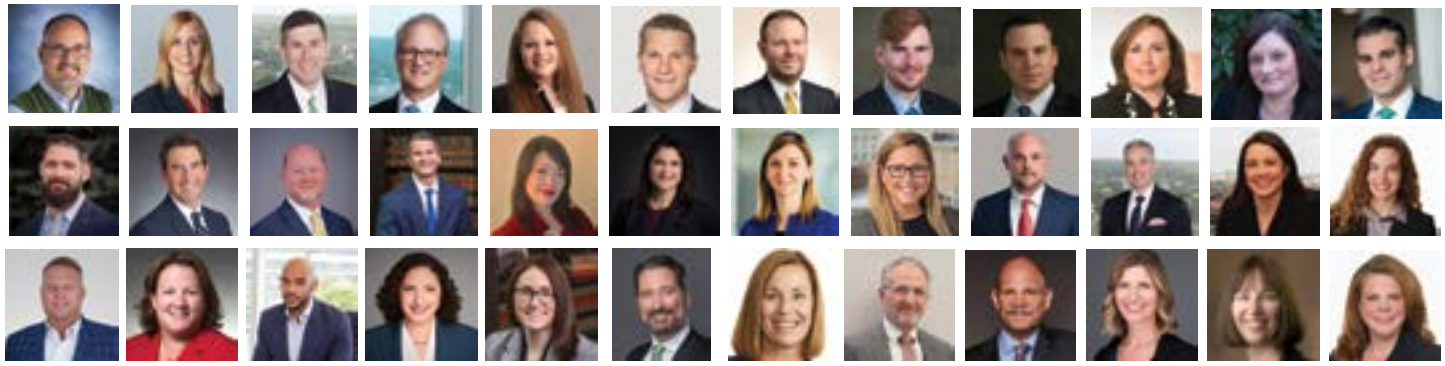

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