2023 WICPA NOT-FOR-PROFIT ACCOUNTING CONFERENCE

YOUR SOURCE FOR KEY UPDATES & INSIGHTS ON TIMELY ISSUES

HIGHLIGHTED TOPICS:

ACCOUNTING & AUDIT UPDATE

Get an overview of recently issued standards and information on what the future holds

NAVIGATING ECONOMIC & FINANCIAL MARKET UNCERTAINTY

Find out the best numbers for not-for-profits to watch to know where we stand in the economic market cycle and what to expect in the future

EFFECTIVE GRANT MANAGEMENT

Learn how to develop a strategy for successfully managing grants from pre-award to post-award close out using real-world experiences to achieve your grant management goals

TUESDAY, SEPT. 12 | WICPA OFFICE & WICPA CPE LIVESTREAM

MATERIALS AT A GLANCE

The following materials are from the morning sessions of the 2023 WICPA Not-For-Profit Accounting Conference held on Tuesday, Sept. 12, including:

- Accounting & Auditing Update
- Effective Grant Management
- Microsoft Teams: Increase Your Knowledge & Skills With This Key Communication & Collaboration Tool

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NETWORK

LEARN

IMPLEMENT

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SAVE THE DATE!

Business & Industry Fall Conference
Monday, Sept. 18
Brookfield Conference Center & WICPA CPE Livestream

Tax Conference
Thursday, Nov. 2 - Friday, Nov. 3
Brookfield Conference Center & WICPA CPE Livestream

Accounting & Auditing Conference
Thursday, Nov. 9
WICPA Office & WICPA CPE Livestream

Accounting Technology Conference
Thursday, Dec. 7
WICPA Office & WICPA CPE Livestream

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8:10 – 9:40 a.m.

Accounting & Auditing Update

Karl Eck, CPA, *Partner, Wipfli LLP*

Wisconsin Institute of CPAs
NFP Accounting Conference
Accounting and Auditing Update

Wisconsin Institute of Certified Public Accountants

WIPFLI

Presenter

Karl Eck, CPA
Partner
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Materials/ disclaimer

- Please note that these materials are incomplete without the accompanying oral comments by the trainer(s).
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Agenda

GAAP update

GAAS update

Ethics update

Questions

GAAP Update

ASU 2020-07 Gifts in Kind

- Present contributed nonfinancial assets as a separate line item in the statement of activities, apart from contributions of cash and other financial assets
- Disclose disaggregation by category of contributed nonfinancial asset, including whether used or monetized. If used, in which areas/programs. Also any monetization policies.
- Disclose a description of donor-imposed restrictions associated with contributed nonfinancial assets
- Provide a description of the valuation techniques and inputs used to arrive at a fair value measure for contributed nonfinancial assets
- Disclose principal market (or more advantageous market) used to arrive at fair value measure if it is a market in which the recipient NFP is prohibited by donor restrictions from selling or using the contributed nonfinancial asset

ASU 2020-07 Gifts in Kind (cont'd)

- Prior to issuance of ASU 2020-07 disclosure requirements already existed for contributed services; no changes to these requirements
  - Description of the programs or activities for which the services were used
  - Nature and extent of contributed services received for the period
  - Amount of revenue recognized for the period
  - Encouraged to disclose the fair value of contributed services received but not recognized as revenue, if practicable
- Transition and effective date
  - Retrospective transition required
  - Effective years beginning after 6/15/21

ASU 2016-02 Leases

- Originally effective for public entities & NFP conduit bond obligors for reporting periods beginning after 12/15/18 and all others 12/15/20
- ASU 2020-05 deferred effective date to reporting periods beginning after 12/15/19 for public NFPs & NFP conduit bond obligors and reporting periods beginning after 12/15/21 for all others
- Multiple additional ASUs have been issued:
  - 2018-01 Land easements
  - 2018-10 Codification improvements
  - 2018-11 Targeted improvements
  - 2018-20 Narrow scope improvements
  - 2019-01 Codification improvements
  - 2021-05 Lessors with variable lease payments
  - 2021-09 Discount rate for leases that are not public business entities
  - 2023-01 Common control arrangements

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ASU 2016-02 Leases (cont'd)

- ASU 2016-02 transition through modified retrospective approach
  - Cumulative effect adjusted as of earliest period presented
- ASU 2018-11 provided additional transition method
  - Apply lease standard at adoption date and recognize cumulative-effect adjustment to the opening balance of net assets
  - If comparative financial statements, must still follow guidance under Topic 840 for prior year including disclosures
- Right of use model– a lease contract conveys a right to use an asset for a period of time in exchange for consideration
  - All leases, both operating and financing, create an asset & liability
    - Lease liability = PV of future minimum lease payments
    - ROU asset = lease liability + initial direct costs +lease prepayments – lease incentives
- Discount rate - Rate charged by lessor if known, incremental borrowing rate or private companies & NFPs can elect to use risk-free rate

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ASU 2016-02 Leases (cont'd)

- Operating leases
  - Statement of financial position – ROU asset and lease liability
  - Statement of activities – lease/rent expense
  - Statement of cash flow – cash paid for lease payments
  - Straight line expense over lease term
- Finance leases
  - Statement of financial position – ROU asset and lease liability
  - Statement of activities – Interest and amortization expense
  - Statement of cash flow – cash paid for interest and for variable lease payments
  - Expense pattern similar to capital leases under 840

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ASU 2016-02 Leases (cont'd)

- Disclosures
  - Policies and nature of leases
  - Significant assumptions
  - Quantitative disclosures
    - Finance lease costs, operating lease costs, short-term lease costs and variable lease costs
    - Weighted average remaining lease term and weighted average discount rate
    - Supplemental noncash transaction information
- ASU 2023-01 Common Control
  - Provides a practical expedient to use written terms to determine if a lease exists and if so its classification
  - Leasehold improvements amortized over economic life of the improvements as long as the lessee continues to use the underlying asset

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ASU 2016-02 Leases (cont'd)

- Additional considerations
  - ➢ Lease extensions
  - ➢ Lessor considerations
  - ➢ Nonlease components
  - ➢ Escalating/variable payments
  - ➢ Prepaid rent
  - ➢ Lease incentives
  - ➢ Direct costs
  - ➢ Lease modifications
  - ➢ Debt covenants

- Short term leases
  - Entities can make a formal policy election to not recognize short-term leases on the statement of financial position

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ASU 2016-02 Leases (cont'd)

- Free use of space
  - If no lease payments follow contribution guidance in 958-605
  - Recognize contribution revenue in period in which received, and expense in period the space is used
  - If more than one year, will need to record unconditional promise to give
    - Unconditional promise to give cannot exceed FV of contributed space
    - LT portion discounted to net present value
  - If no enforceable period contribution and rent expense recognized as it uses the space (such as weekly or monthly)
- Discounted rent
  - Lease payments below the fair rental value of property may be a donation
  - Bifurcate transaction between lease (consideration paid) and contribution (FMV in excess of consideration) and follow relevant guidance
- FMV can be determined through appraisal, realtor estimate of price per square foot, or third-party websites with information on similar property

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ASU 2016-13 Financial Instruments – Credit Losses

- ASU 2019-10 extended effective date to years beginning after 12/15/22
- Transition is a cumulative effect adjustment to net assets as of the beginning of first reporting period in which the guidance is effective
- Multiple additional ASUs have been issued
  - 2018-19 Codification improvements
  - 2019-04 Codification improvements
  - 2019-05 Targeted transition relief
  - 2019-11 Codification improvements
  - 2020-03 Codification improvements
  - 2022-02 Troubled debt restructurings
    - Eliminates accounting guidance for TDRs by creditors and enhances disclosures for certain loan refinancings/restructurings when a borrower is experiencing financial difficulty

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ASU 2016-13 (cont'd)

- "CECL" – Current expected credit losses
- New standard for measuring impairment/credit losses for most financial assets measured at amortized cost
- Recognize allowance for "lifetime" expected credit losses
- Legacy GAAP – incurred loss model
  - Under incurred loss model impairment is recognized for credit loss that have been incurred as of reporting date
  - Loss that is recognized is based on the estimated credit losses at the reporting date even if the loss has not been realized, but it does not include losses that may happen in the future
- Need to consider expected future losses with CECL, not just current conditions and historical loss experience

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ASU 2016-13 (cont'd)

- CECL requirements
  - Required to evaluate CECL in pools unless the instrument does not share similar risk characteristics with other instruments
  - Estimate credit losses for a "reasonable and supportable forecast" period then revert to historical experience
    - Also required to adjust the loss estimate for changes expected during the forecast period
  - Always required to consider the risk of loss, even if the risk of loss is remote, but "zero loss" is acceptable if expectation is that the asset (or pool)will be fully repaid
- AICPA NFP expert panel is currently reviewing potential impact of programmatic loans/investments in chapter 8 of NFP Audit Guide for potential CECL impacts
- Additional presentation and disclosure requirements

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ASU 2016-13 (cont'd)

In Scope	Out of Scope
Financing receivables (loans)	Equity securities
Trade receivables	Securities available for sale
Debt securities held to maturity	Unconditional promises to give
Contract assets	EBP loans to participants
Sales-type and direct financing lease receivables	Loans between entities under common control
Off-balance sheet credit exposure	Operating lease receivables
Reinsurance recoverables	

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Other standards

- ASU 2017-04 Goodwill and other
  - Eliminates step 2 from goodwill impairment test
  - Effective fiscal years beginning after 12/15/22 (delayed from 12/15/21)
- ASU 2019-12 Income taxes
  - Could be applicable if have UBIT
  - Effective fiscal years beginning after 12/15/21
- ASU 2022-06 Reference rate reform – effective upon issuance
  - LIBOR will cease to be published as of June 30, 2023
  - Relief was set to expire 12/31/22
  - ASU extends sunset date to 12/31/24
- ASU 2022-04 Liabilities – Supplier finance programs
  - Structured payable program
  - Enhanced disclosures, including roll forward showing activity
  - Effective fiscal years beginning after 12/15/22

Crypto assets – Exposure draft

- March 2023 – Proposal issued for crypto assets
- Measurement – Crypto assets in scope would be accounted for at fair value with changes in fair value recorded to statement of activities
- Presentation – Separate presentation on the face of the financial statements would be required for crypto assets measured at fair value (statement of financial position and statement of activities)
- Disclosure – Entities would be required to disclose a roll forward of crypto asset holdings (purchases, sales, changes in value, realized gains/losses, etc.)
- Initial measurement – Transaction costs are expensed
- Guidance expected in Q4 of 2023

GAAS Update

SAS 142 Audit Evidence

- Effective for audits of periods ending on or after 12/15/22
- Modernizes audit evidence standard and changes objective of audit evidence to be more focused on evaluation of the information used
- Expanded guidance on whether sufficient appropriate audit evidence has been obtained
  - Consideration of relevance and reliability of the information, whether it corroborates or contradicts assertions in the FS, evaluating whether the information is sufficiently precise and detailed for the auditor's purposes, and obtaining evidence about the accuracy and completeness of the information
- Automated tools and techniques
  - How items such as drones, remote observation and data analytics can be used
- Professional skepticism
  - Susceptibility of information to bias

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SAS 143 Auditing Accounting Estimates and Disclosures

- Effective for audits of periods ending on or after 12/15/23
- Addresses auditor's responsibilities relating to accounting estimates and related disclosures
- Explains nature of accounting estimates and the concept of estimation uncertainty
- Provides information about scalability and exercise of professional skepticism
- Includes risk assessment requirements relating to estimates, including separate assessment of inherent risk and control risk at the assertion level, emphasis on importance of auditor's decisions about controls relating to estimates and that audit procedures need to be responsive to assessed ROMM
- Required to evaluate whether the accounting estimates and related disclosures are reasonable

SAS 144 Use of Specialists and Use of Pricing Information

- Effective for audits of periods ending on or after 12/15/23
- Enhanced guidance about evaluating the work of management's specialists
- No longer refers to using the work of an external inventory taking firm as a management specialist
- Adds a new appendix for AU-C 540 on use of pricing information from third parties as audit evidence

SAS 145 Understanding the Entity and its Environment and Assessing the Risks of Material Misstatement

- Effective for audits of periods ending on or after 12/15/23
- New and revised risk assessment concepts and terminology
- Clarifies work effort related to understanding each of the components of internal control, including enhanced guidance on IT controls
- New requirement to separately assess inherent risk and control risk
- "Maximum" control risk when controls are not tested for operating effectiveness
  - Inherent risk = ROMM when test of controls not performed
- "Stand-back" requirement
- Revised guidance on documentation, scalability and maintaining professional skepticism

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SAS 145 (cont'd)

- Inherent risk factors
  - Characteristics of events or conditions that affect the susceptibility to misstatement, whether due to fraud or error, of an assertion about a COTABD (class of transactions, account balance and disclosure) before consideration of internal controls
    - Complexity, subjectivity, change, uncertainty, susceptibility to misstatement due to management bias or other fraud risk factors
- Spectrum of inherent risk
  - Frame of reference in determining the significance of the combination of the likelihood and magnitude of misstatement

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SAS 145 (cont'd)

- Significant risk
  - An identified ROMM for which inherent risk is at the upper end of the spectrum of inherent risk when considering magnitude and likelihood of the potential misstatement or that is required to be treated as a significant risk in accordance with requirements in GAAS

- SCOTABD
  - COTABD is significant when it has an identified ROMM at the assertion level; must perform substantive procedures for each relevant assertion of each SCOTABD

- Relevant assertion
  - An assertion about a SCOTABD (significant COTABD) is relevant when it has an identified ROMM (reasonable possibility of a material misstatement)

SAS 145 (cont'd)

- Direct controls – controls that are precise enough to address risks of material misstatement at the assertion level
  - Understand and evaluate, and for identified controls evaluate the design and determine implementation
- Direct controls include
  - ➢ Controls that address a significant risk
  - ➢ Controls over journal entries and other adjustments
  - ➢ Controls for which the auditor plans to test operating effectiveness
  - ➢ Other controls the auditor considers appropriate to enable the auditor to assess the risks of material misstatements at the assertion level and to design further audit procedures
- Control activities are direct controls

SAS 145 (cont'd)

- Indirect controls – controls that support direct controls; they are foundational and may have an indirect effect on the likelihood that a misstatement will be prevented or detected on a timely basis
  - Understand and evaluate
- Control environment, risk assessment and monitoring are indirect controls
- Information systems and communication controls are primarily direct, but may be indirect controls

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SAS 147 Inquiries of Predecessor Auditor Regarding NOCLAR

- Audits of periods beginning on or after 6/30/23
- Requires auditors to inquire of the predecessor auditor regarding identified or suspected fraud or NOCLAR
- Predecessor auditor is required to respond on a timely basis & clearly state if the response is limited for any reason
- Must occur before engagement acceptance
- Inquiries must be documented in the audit file

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Other SAS's

- SAS 148 Compliance audits
  - Aligns with effective dates of SAS 142 (on or after 12/15/22) and SAS 145 (on or after 12/15/23)
  - Amends AU-C section 935 Compliance Audits to reflect changes from SAS 142 and 145, including revised appendices
- SAS 149 Group audits
  - Effective for periods ending on or after 12/15/26
  - Risk based approach to planning and performing a group audit and identifying components
  - Introduces term "referred to" auditor
  - Revised definition of a component auditor

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Upcoming SQMS and related standards

- SQMS 1 System of quality management – designed and implemented by 12/15/25; evaluation of system of quality management required within one year following 12/15/25
- SQMS 2 Engagement quality reviews – beginning on or after 12/15/25
- SAS 146 Quality management for engagements in accordance with GAAS – beginning on or after 12/15/25
- SSARS 26 Quality management for engagements in accordance with SSARS – beginning on or after 12/15/25

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TQA's – Other information included in annual reports

- AICPA revised TQA 9165.01 to provide nonauthoritative guidance about the auditor's reporting options when an entity issues a document or documents that includes
  - Financial statements
  - The auditor's report and
  - Some but not all of the other information expected to be included in the entity's annual report

- AICPA also issued TQA 9165.04 to provide nonauthoritative guidance about whether an auditor may issue separate auditor reports when an entity issues both an annual report and separate standalone audited financial statements on the same date

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SSAEs

- SSAE 21 – Direct examination engagements
  - Effective for reports dated on or after 6/15/22
  - New AT-C section 206
  - Introduces new terms and definitions
  - Renames AT-C section 205 as Assertion Based Examination Engagements

- SSAE 22 – Review engagements
  - Effective for practitioners' review reports dated on or after 6/15/22
  - More explanation as to procedures that may be performed
  - Report to include informative summary of work performed as a basis for the practitioner's conclusion
  - Allows expression of an adverse conclusion

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Ethics Update

Ethics interpretations effective 12/31/22

- Loans, acquisitions and other transactions – effective 12/31/22
  - Clarifies definition of “beneficially owned”
  - Adds student loans as permitted
  - Alters language referring to the types of individuals with whom a covered member’s loan arrangement may result in a threat to compliance with the “independence rule”
  - Clarifies members should consider the loans of immediate family members
- Assisting attest clients with implementing accounting standards – effective 12/31/22
  - Provides guidance for avoiding self-review and management participation threats
  - Examples of how members can avoid performing management responsibilities

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Ethics interpretations effective 12/31/22

- Unpaid fees – effective 12/31/22
  - Provides a principals based approach for evaluating when fees may impair independence
  - Provides factors to consider when evaluating whether threats to independence are at an acceptable level
  - Provides examples of actions or safeguards that might help eliminate threats to independence

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Ethics interpretation effective January 1, 2023

- Information system services – Originally effective 1/1/21 and delayed until 1/1/23
  - "modernized interpretation" of AICPA Code of Conduct related to financial information systems (FIS)
  - Differentiates between "FIS" and "non-FIS"
  - FIS are general ledgers, sub-ledgers, inventory systems, supply chain, sales/POS systems, others. FIS is:
    - System that aggregates source data underlying financial statements
    - System generates information that is significant to the financial statements
    - System generates information that is significant to the financial process as a whole
  - Non-FIS are websites, business intelligence (dashboards)*, others

    **In some cases PEEC has considered business intelligence to be FIS; each situation should be carefully evaluated*

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Ethics interpretation effective January 1, 2023

- Threats are at acceptable level if member performs design, development and implementation services for non-FIS for an attest client
- Threats are NOT at an acceptable level if member designs or develops FIS for an attest client
- Threats are at an acceptable level if a member performs implementation services related to an FIS COTS (commercial off the shelf) software solution where the services do not involve design, development, customization, the building of interfaces, or the creation of data translation programs
  - May include member assisting the client with understanding and effecting configuration options as long as a client makes all decisions with respect to options
- Threats are NOT at an acceptable level for service that involves outsourcing to the member an ongoing function or process such as systems monitoring, support or maintenance
  - Services that are separate and distinct engagements and are not ongoing/continuous may be acceptable

Ethics interpretations effective June 2023

- Noncompliance with laws and regulations (NOCLAR) –effective 6/30/23
  - Sets forth member's responsibilities when they encounter NOCLAR
  - A member should alert the appropriate parties (including those charged with governance) to enable the organization to rectify the NOCLAR
  - This is applicable to all levels of service provided, not just attest services, however, different "levels" or requirements are present based on:
    - Audit or review services
    - Nonattest service
    - Senior professional accountants
    - Other than senior professional accountants
  - Specific guidance also is provided regarding communication in group audit engagements
- Compliance audits – audits beginning after 6/15/23
  - Includes two new definitions and one revised definition relating to independence in compliance audits

Questions?

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Questions?

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10 – 10:50 a.m.

Effective Grant Management

David Maccoux, CPA, *Finance Director, Calumet County*

Finance Department

Effective Grant Management

Not-For-Profit Accounting Conference

September 12, 2023

Welcome!

David Maccoux, CPA

Finance Director, Calumet County

Learning Objectives

At the end of the session, you will be able to:

- Understand roles and responsibilities related to grant management within your organization
- Learn the benefits of developing effective financial management strategies

Grant Management

What is grant management?

- Compliance is cornerstone to your grant management system
- Can be complicated
- Specific regulations and specialized requirements

Grant Management: Entity Structure

- Within an organization, grants may be decentralized, managed by different departments, or centralized where one person (department) handles all grants from start to finish Compliance is cornerstone to your grant management system
- Authority to bind organization

Grant Management Phases

Pre-Award
- Planning
- Opportunity
- Application

Post-Award
- Accounting
- Monitoring
- Reporting
- Close-out

Focus from Implementation to Close Out

- Grant management starts with designing a potential project in the strategic planning phase and grant writing; and then from the time the grant is awarded to the final grant close out report.
  - Grant budget design.
  - Understand grant requirements.
  - Develop effective risk assessment and monitoring throughout the grant period.

Risk Assessment

Risks into categories is helpful to ensure that risks aren't overly lopsided to the financial, compliance, or programmatic side. Types of risks might include:

- Risk of non-compliance with Federal and state statutes and regulations.
- Risks of non-compliance with the terms and conditions of the subaward.
- Performance risk that subaward performance goals are not being achieved.

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Risk Assessment

- Adequate financial and programmatic documentation.
- Record retention.
- Structure of financial records for individual grants.
- Cost share requirements and available funding.
- Conflict of interest.

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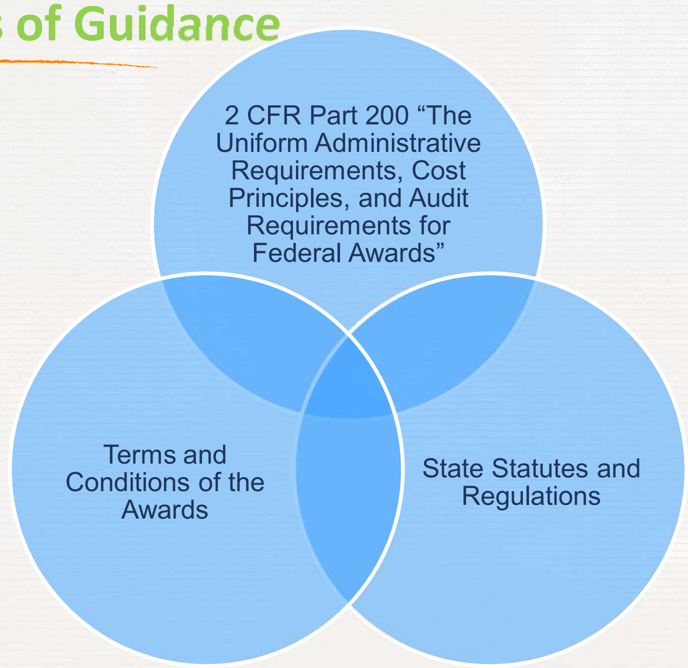
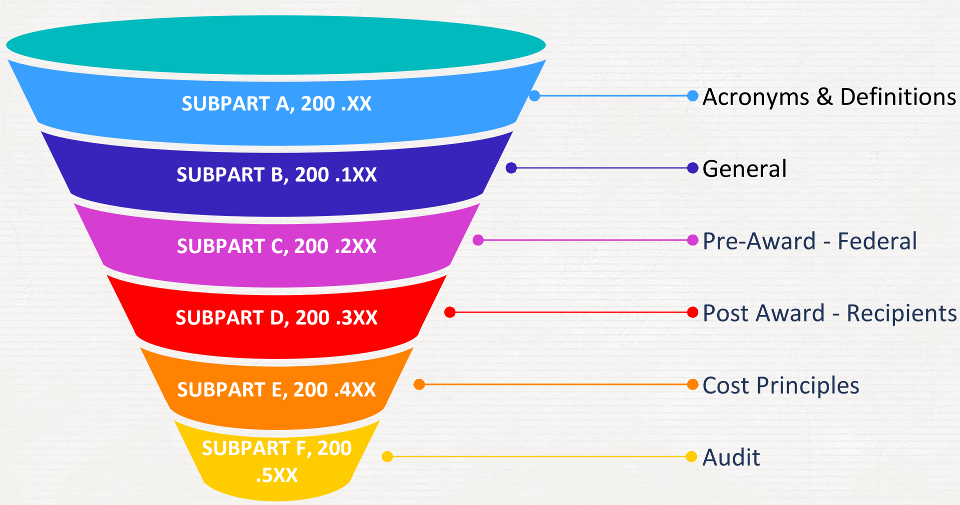
Regulatory Compliance

- Adherence to the regulations covering grant management. This area can experience change over time.
- Federal and state guides.

Sources of Guidance



Key Sections of the Uniform Guidance



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Overview of NFP's Responsibilities §200.508

1. Arrange for Single Audit of Federal and State Awards
2. Prepare Financial Statements
3. Prepare SEFA and SESA
4. Provide Auditor Access to Documentation/ Records
5. Prepare Corrective Action Plan and Summary of Prior Audit Findings
6. Implement Corrective Action Plan

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Overview of Auditor's Responsibilities

1. Single Audit Planning/Risk Assessment
2. Test Internal Control over Federal/State Programs
3. Test Compliance with Federal and State laws/regulations
4. Conduct Audit of FS/SEFA and SESA in Relationship to FS
5. Certify Reporting Package and Data Collection Form
6. Retention of Audit Working Papers

Compliance Supplement Overview

The Supplement consists of seven parts and nine appendices. The seven parts of the Supplement are:

- Part 1 – Background, Purpose and Applicability.
  - This part contains general Single Audit information.
- Part 2 – Matrix of Compliance Requirements.
  - Part 2 identifies which of the 12 types of compliance requirements are subject to audit for the federal programs included in this supplement.

Compliance Supplement Overview (Continued)

- Part 3 – Compliance Requirements.
  - Part 3 includes the generic program objectives and audit procedures pertaining to the 12 types of compliance requirements.

Compliance Supplement Overview (Continued)

- Part 4 – Agency Program Requirements.
  - Part 4 contains the specific program objectives and procedures by federal agency and CFDA number. When any of these five types of compliance requirements are applicable to a program (Activities Allowed or Unallowed; Eligibility; Matching, Level of Effort, Earmarking; Reporting; and Special tests and Provisions), Part 4 will always provide information specific to the program. The other seven types of requirements are not specific to a program and therefore not included again in Part 4 as they are in Part 3.

Compliance Supplement Overview (Continued)

- Part 5 – Clusters of Programs.
  - Part 5 identifies those programs that are to be considered clusters of federal programs.
- Part 6 – Internal Control.
  - Part 6 describes characteristics of internal control relating to each of the five components of internal control.

Compliance Supplement Overview (Continued)

- Part 7 – Guidance for Auditing Programs Not Included in This Compliance Supplement.
  - Part 7 states that for those programs not covered in the Supplement, the auditor must use the 12 types of compliance requirements described in Part 3.

Federal and State Responsibilities

“Single audits have a significant public interest component as they are relied on by federal, state and local agencies as part of their administrative responsibilities for determining compliance with the requirements of federal and state awards by non-federal entities. However, because each grant has its own unique requirements, no two audits are exactly the same.

Policies and Procedures

Policies and Procedures:

- Internal controls (adequate segregation of duties).
- Policies and procedures required by *Uniform Guidance.*
- Internal systems to address procurement, time keeping, property management, and budget controls.
- Record retention.

Internal Control (§200.303)

- Focus of *Uniform Guidance*
- Internal control affects all policies and procedures.
  - ➢ Are there any different internal control considerations we should be thinking about after the pandemic?
  - ➢ Consider the following:
    - Were there changes to your operations due to pandemic (e.g., remote working)?
    - Have our policies and procedures been modified to address any changes?
    - Are there new controls or revised controls necessary for a new award?

Writing Policies

I. Purpose
   a. Define why the policy is being written.
II. Policy
   a. Provide a broad statement or description of the policy.
III. Authority
   a. Include the Organization’s authority and/or general federal or state regulation.
   b. Proper signature/date approved/effective date.

Writing Procedures

I. Purpose
   a. Define why the procedure being written.
II. Authority
   a. Include the Organization’s authority and/or general federal or state regulation.
   b. Proper signature/date approved/effective date
III. Team Responsibilities
   a. Specify what staff is involved and who is responsible for specific actions.

Writing Procedures (continued)

IV. Definitions

a. Define the terms used in the procedures.

V. Procedure

a. Step-by-Step Instructions:

- Who initiates?
- Who is authorized to approve?
- Who performs the procedure?
- What supporting documents are needed?
- Examples of appropriate or inappropriate?
- When should the procedure be performed?
- When is a response expected?

Writing Procedures (continued)

VI. Reports

a. Identify if reports are required, when they are due, and include standard data elements.

VII. Maintenance

a. Identify the department/responsible staff who developed the procedure, when it would be updated (annually, for example), effective date, and how it would be communicated to the Organization.

VIII. Violations of procedure/corrective action to be taken

IX. Distribution List

Roles and Responsibilities

Clearly defined roles and responsibilities are critical to successful grants management:

- Organizational vs an individual employee responsibility.
  - ➢ Executive director/management,
  - ➢ Organization's board of directors,
  - ➢ Grant/project manager,
  - ➢ Finance and/or purchasing teams, and
  - ➢ Partners and sub-grantees.

Roles and Responsibilities (continued)

- Post-award communication meeting with key employees to align roles and responsibilities.
  - ➢ Proper account structure/manage award budget,
  - ➢ Determining responsibility for financial and programmatic reports,
  - ➢ Verifying the calendar of key award dates, and
  - ➢ Evaluating challenges and potential risks (i.e. Need to onboard new employees to accomplish grant objectives).

Compliance Requirements (Continued)

Activities Allowed or Unallowed – These are the activities that the federal program has determined the funds can be used for or cannot be used for. Since this is very specific to each federal program, it is therefore included in the audit program in Part 4.

Compliance Requirements

Allowable Costs - This describes the types of costs that can be charged to a federal program. Generally, only necessary and reasonable costs can be charged to a federal program. There are, however, certain costs that are not allowed to be charged to a federal program such as fines, penalties, bad debt, tobacco and alcohol. Since this requirement is for all federal programs, it is included once in Part 3. Part 3B of the Supplement has an extensive list of selected items of cost and whether they are unallowable, allowable or allowable with restrictions.

31

Compliance Requirements

Allowable Costs/Activities: Time and Effort

- UGG provides for more flexibility in documenting staff time and effort spent on federal awards, but it is not clear exactly what documentation will be sufficient.
- Guidance is less prescriptive on documentation and places more emphasis on internal control. Shift from focus on Compliance to focus on Performance.
- Allows entities to replace detailed time and effort reports (timesheets) with performance-based reporting (based on milestones)
- Charges to Federal awards for salaries and wages must be based on records, and budget estimates alone do not qualify to support charges to Federal awards, but may qualify for reporting during interim periods.

32

Compliance Requirements (Continued)

Cash Management – Most federal programs are either funded on a reimbursement basis, advances or a combination of both. For advances, the organization must minimize the time elapsing between the receipt of the funds and the disbursements. For reimbursements, the organization must pay for the program costs with their own funds prior to requesting reimbursement. Since this requirement is for all federal programs, it is included once in Part 3. See Part 3C for the requirements.

33

Compliance Requirements (Continued)

Eligibility – This relates to beneficiary eligibility, not organizational eligibility. The specific requirements for eligibility are unique to each federal program. See the eligibility requirements for your federal program in Part 4.

34

Compliance Requirements (Continued)

Equipment and Real Property Management – This requirement only applies if equipment or real property is purchased with federal grant funds of over $5,000 or more, or over the organization’s capitalization policy. Since this requirement is for all federal programs, it is included once in Part 3. See Part 3F for the requirements.

Compliance Requirements (Continued)

Matching, Level of Effort, Earmarking – The specific requirements for these are unique to each federal program.

- *Matching* - provide contributions of a specific amount or percentage to match federal awards. (2 CFR 200.306, non-federal)
- *Level of effort* (program specific)
  - a specified level of *service* to be provided or *expenditures* to be maintained from period to period
  - Federal funds to supplement and not supplant non-federal funding of services
- *Earmarking* - (program specific)
  - a minimum or maximum amount or percentage of the program's funding to be used for certain activities

Compliance Requirements (Continued)

Period of Performance - Federal grants may specify a time period during which the organization may use the federal funds. Where a funding period is specified, the organization may charge to the award only costs resulting from obligations incurred during the funding period and any pre-awards authorized by the federal awarding agency. See Part 3H for the requirements.

Compliance Requirements (Continued)

Procurement, Suspension and Debarment- Organizations must use their own documented procurement procedures, provided that the procurements conform to applicable federal statutes and the procurement requirements identified in Uniform Guidance as set out in Title 2 CFR sections 200.318 through 200.326.

Compliance Requirements (Continued)

Organizations are prohibited from contracting with or making subawards under covered transactions to parties that are suspended or debarred. “Covered transactions” includes contracts awarded under a grant or cooperative agreement that are expected to equal or exceed $25,000. All non-procurement transactions entered into by a pass-through entity, irrespective of award amount, are considered covered transactions. See Part 3I for full details. Since this requirement is for all federal programs, it is included once in Part 3. See Part 3I for the requirements.

Compliance Requirements (Continued)

Reporting – This requirement relates to the reporting required to the federal agency or to the pass-through agency. It includes financial reporting (requests for advances or reimbursements), performance and special reporting. The specific requirements for reporting are unique to each federal program. See the reporting requirements for your federal program in Part 4.

Compliance Requirements (Continued)

Subrecipient Monitoring - This requirement is applicable if an organization passes the federal funds through to another organization that will be running the federal program on their behalf. The organization that passes through the funds must identify the award and applicable requirements to the other entity, evaluate the risk of their noncompliance and monitor their activities. Since this requirement is for all federal programs, it is included once in Part 3. See Part 3M for full details.

41

Compliance Requirements (Continued)

Special Tests and Provisions – The specific requirements for Special Tests and Provisions are unique to each federal program. See the specific requirements for your federal program in Part 4.

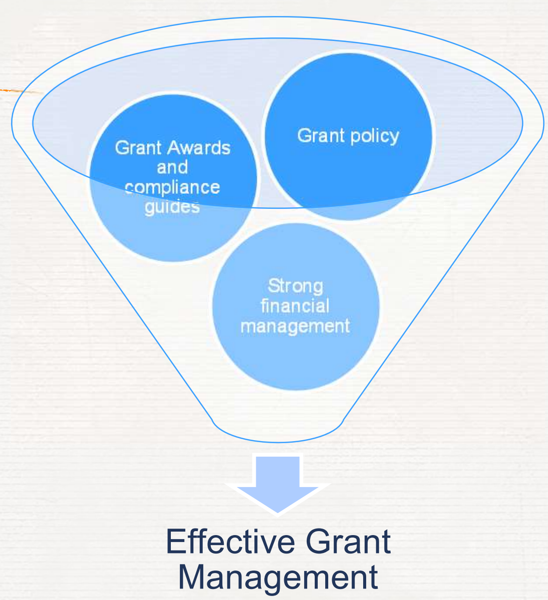
42

Grant Management: Results of Improper Grant Compliance

Noncompliance Causes

- Lack of education and training programs related to the grant.
- Ineffective or lack of communication between grant manager and other employees.
- Improper employee or employees responsible for developing and maintaining compliance.
- Failure to identify risks, take corrective action in a timely manner.
- Common findings.

Overview



Thanks!

Any questions?

You can reach me at:

David.Maccoux@calumetcounty.org

with any questions.

11 – 11:50 a.m.

Microsoft Teams: Increase Your Knowledge & Skills With This Key Communication & Collaboration Tool

Ann Strong, *Trainer*

There are no presentation slides available for this session.

Notes

Wisconsin Institute of Certified Public Accountants
W233N2080 Ridgeview Parkway, Suite 201 | Waukesha, WI 53188 | wicpa.org

12:35 – 1:25 p.m.

Navigating Economic & Financial Market Uncertainty

Clare Zempel, CFA, CBE, *Principal, Zempel Strategic*

WICPA Not For Profit Conference

The Economic and Market Outlook 2023 – 2028

2023 Soft Landing Probable Because Inflation Has Slowed Much Faster Than Spending

2024 Recession Possible Unless Fed Eases Soon

Clare Zempel, CFA, CBE
Economist and Investment Strategist

WICPA Offices
September 12, 2023

WICPA Not For Profit Conference

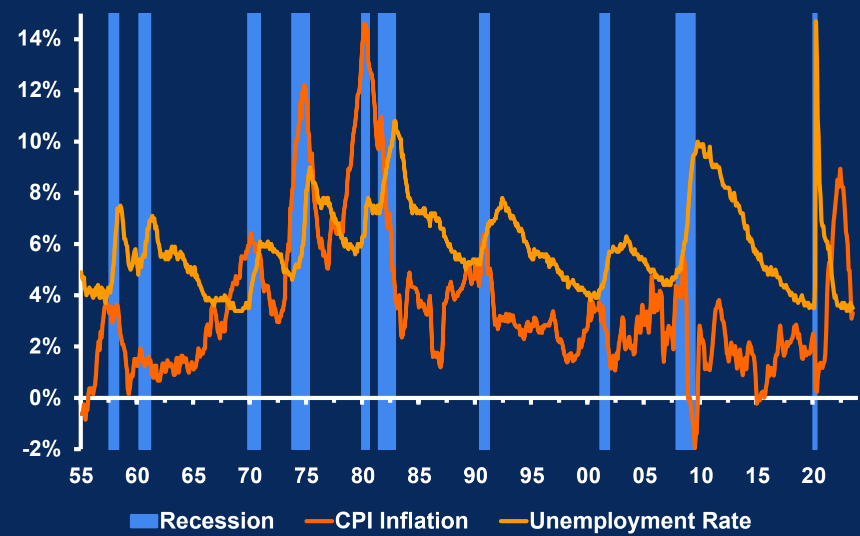
The Economic and Market Outlook 2023 – 2028

Why Monitor Business Cycles?

Inflation, Unemployment and Recessions

(CPI Inflation = 12-Month Change)

10 Recessions
Since 1955

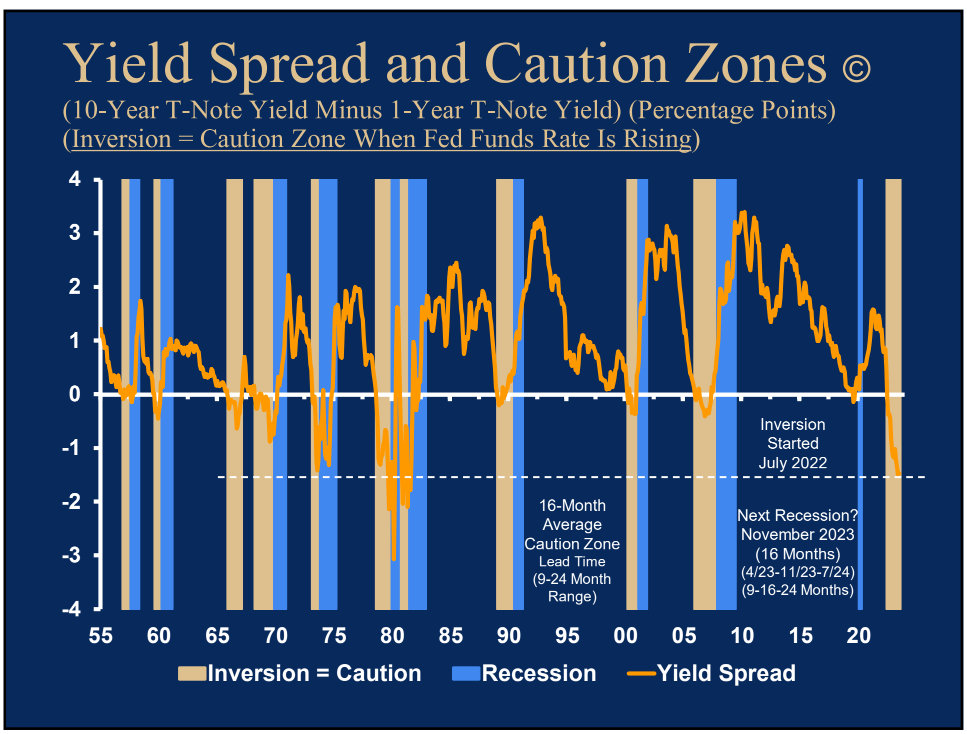


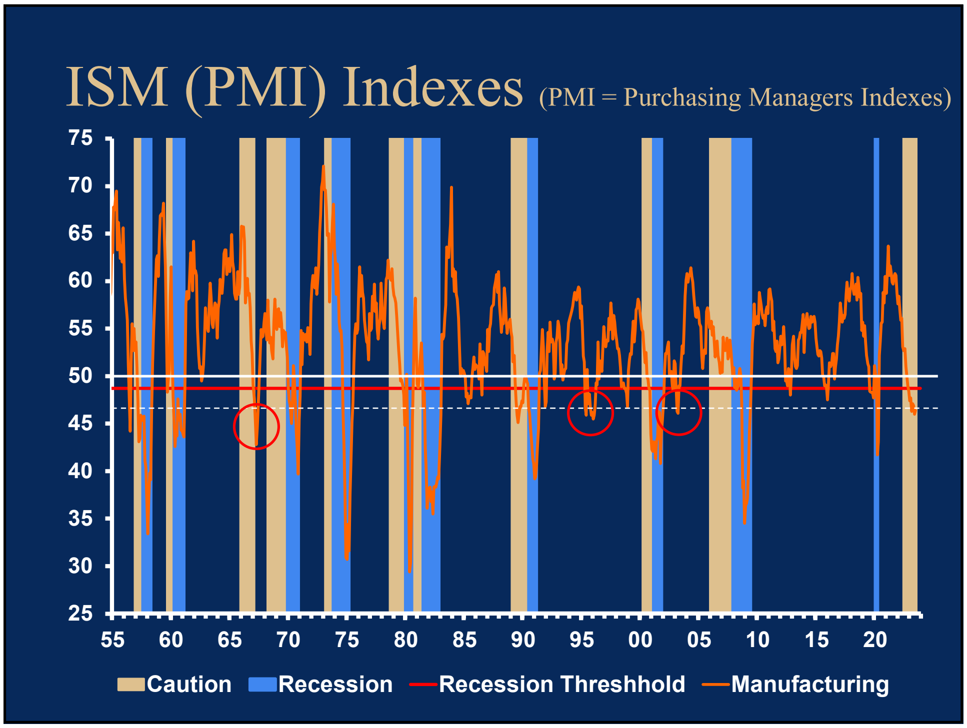
WICPA Not For Profit Conference

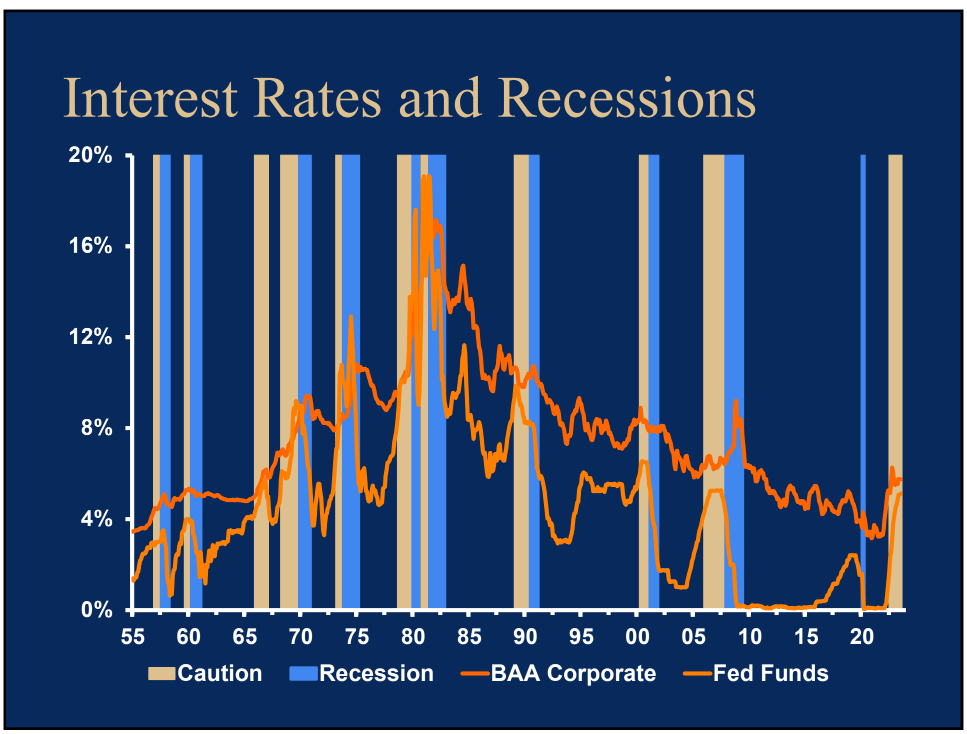
The Economic and Market Outlook 2023 – 2028

Why High Recession Concerns?


Interest Rates and Recessions
(Inversion = 1-Year > 10-Year)
10 Recessions Since 1955
16%
14%
12%
10%
8%
6%
4%
2%
0%
55 60 65 70 75 80 85 90 95 00 05 10 15 20
Recession
10-Year T-Note
1-Year T-Note

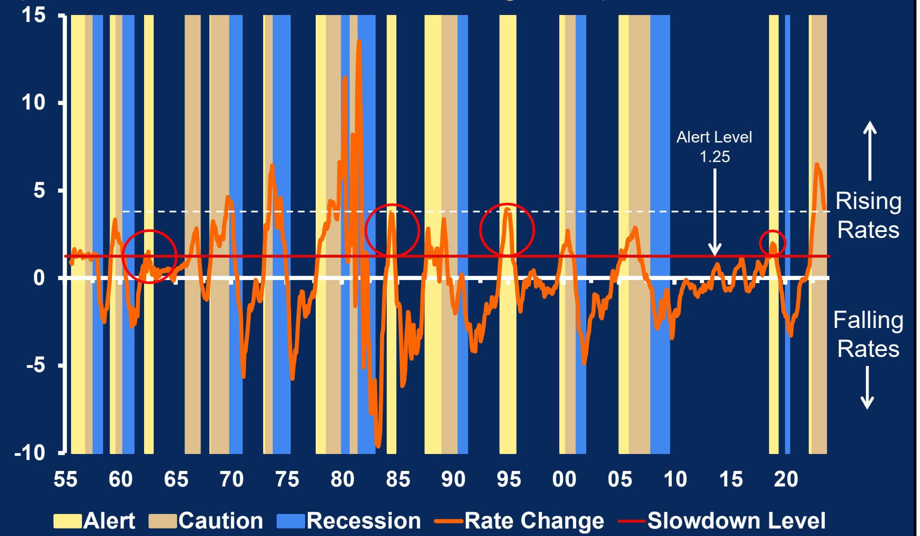

Yield Spread and Caution Zones ©
(10-Year T-Note Yield Minus 1-Year T-Note Yield) (Percentage Points)
(Inversion = Caution Zone When Fed Funds Rate Is Rising)
4
3
2
1
0
-1
-2
-3
-4
55 60 65 70 75 80 85 90 95 00 05 10 15 20
16-Month Average Caution Zone Lead Time (9-24 Month Range)
Inversion Started July 2022
Next Recession? November 2023 (16 Months) (4/23-11/23-7/24) (9-16-24 Months)
Inversion = Caution
Recession
Yield Spread


ISM (PMI) Indexes (PMI = Purchasing Managers Indexes)
75
70
65
60
55
50
45
40
35
30
25
55 60 65 70 75 80 85 90 95 00 05 10 15 20
Caution
Recession
Recession Threshhold
Manufacturing

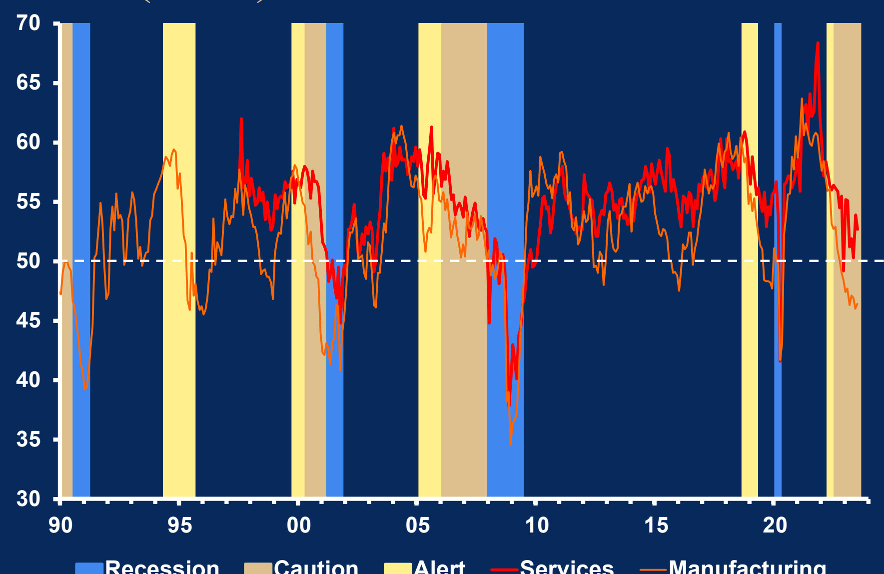

Interest Rates and Recessions
20%
16%
12%
8%
4%
0%
55 60 65 70 75 80 85 90 95 00 05 10 15 20
Caution
Recession
BAA Corporate
Fed Funds

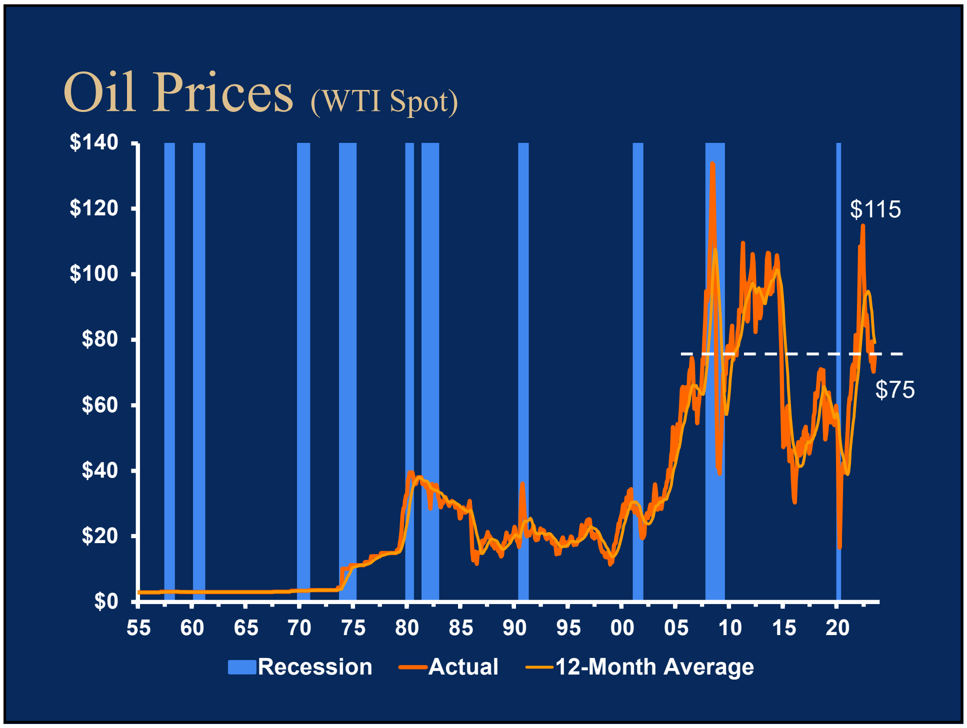
Rate Changes and Zempel Zones ©

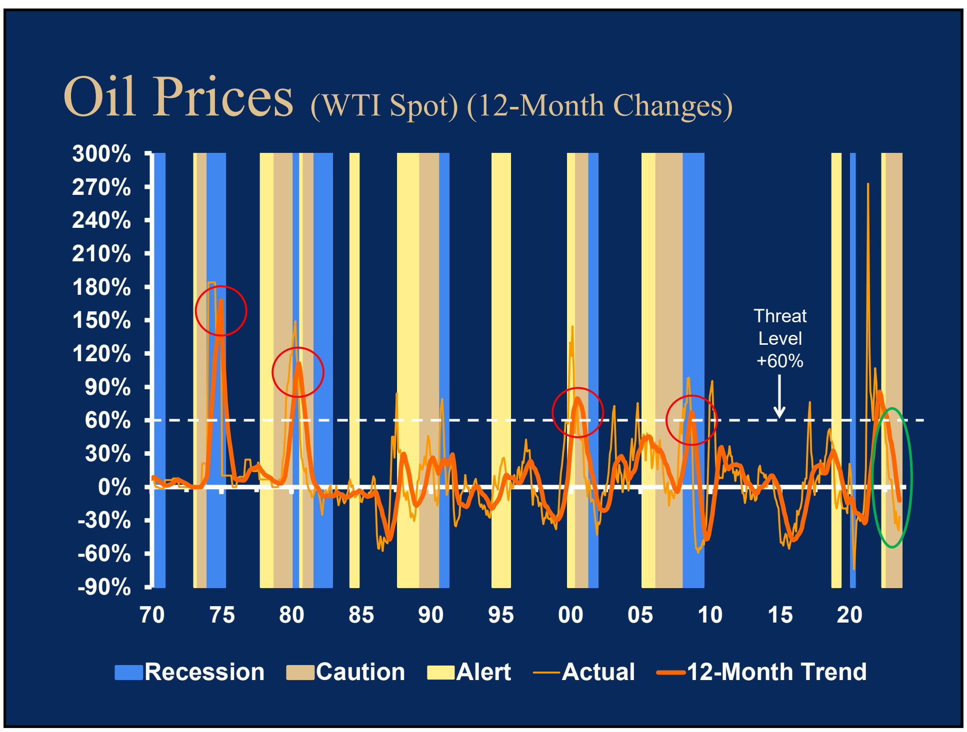
(BAA and Fed Funds) (Total 12-Month Change in Percentage Points)
(Alert Zone = When Rates Rise 1.25 Percentage Points)



ISM (PMI) Indexes (PMI = Purchasing Managers Indexes)




Oil Prices (WTI Spot)
$140
$120
$100
$80
$60
$40
$20
$0
55
60
65
70
75
80
85
90
95
00
05
10
15
20
$115
$75
Recession
Actual
12-Month Average


Oil Prices (WTI Spot) (12-Month Changes)
300%
270%
240%
210%
180%
150%
120%
90%
60%
30%
0%
-30%
-60%
-90%
70
75
80
85
90
95
00
05
10
15
20
Threat Level +60%
Recession
Caution
Alert
Actual
12-Month Trend

WICPA Not For Profit Conference

The Economic and Market Outlook
2023 – 2028

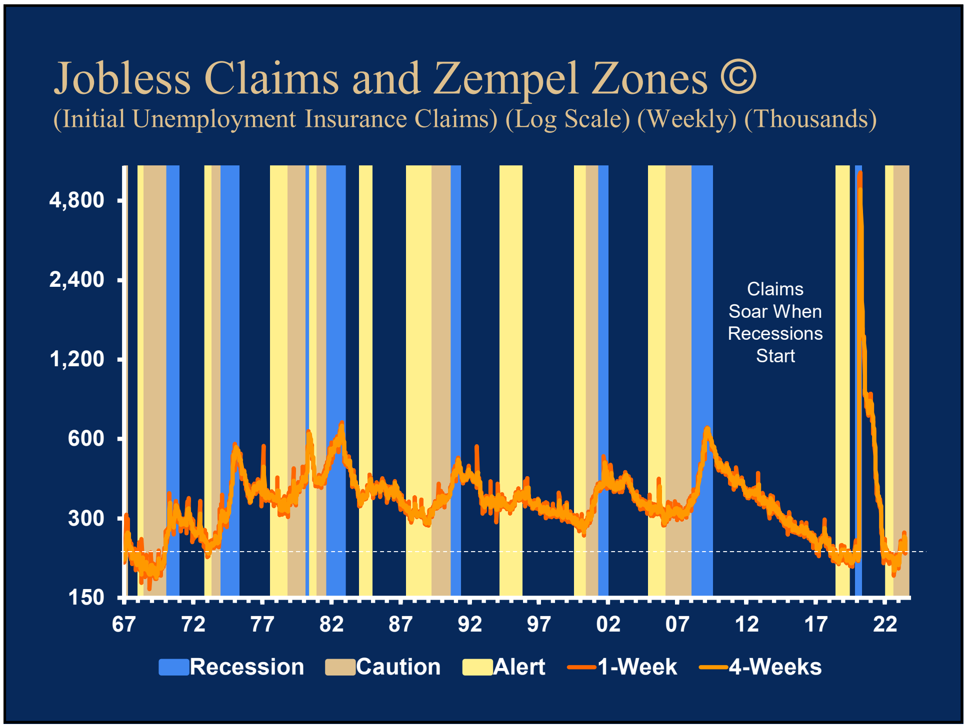
What Do “Best Indicators” Predict?

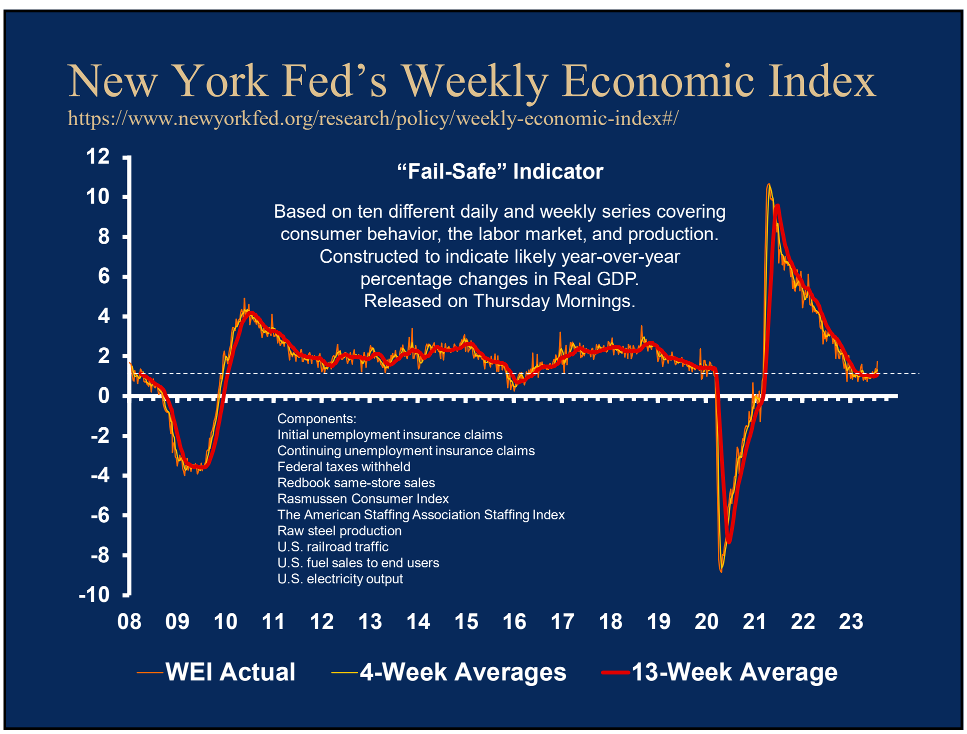
Yield Spread Remains Inverted – Implies Recession Risk
Rate-Change Still High – Implies Sustained Slowdown
Energy-Prices Still Support Economic Expansion

WICPA Not For Profit Conference

The Economic and Market Outlook
2023 – 2028

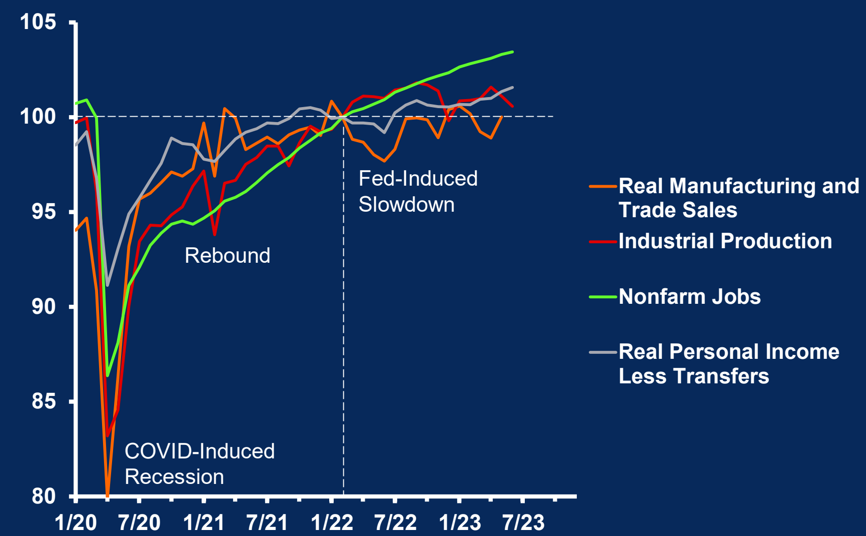
Has Recession Started?
If Not, Why Not?


Jobless Claims and Zempel Zones ©
(Initial Unemployment Insurance Claims) (Log Scale) (Weekly) (Thousands)
4,800
2,400
1,200
600
300
150
Claims Soar When Recessions Start
67
72
77
82
87
92
97
02
07
12
17
22
Recession
Caution
Alert
1-Week
4-Weeks


New York Fed's Weekly Economic Index
https://www.newyorkfed.org/research/policy/weekly-economic-index#/
"Fail-Safe" Indicator
Based on ten different daily and weekly series covering consumer behavior, the labor market, and production. Constructed to indicate likely year-over-year percentage changes in Real GDP. Released on Thursday Mornings.
Components:
Initial unemployment insurance claims
Continuing unemployment insurance claims
Federal taxes withheld
Redbook same-store sales
Rasmussen Consumer Index
The American Staffing Association Staffing Index
Raw steel production
U.S. railroad traffic
U.S. fuel sales to end users
U.S. electricity output
12
10
8
6
4
2
0
-2
-4
-6
-8
-10
08
09
10
11
12
13
14
15
16
17
18
19
20
21
22
23
WEI Actual
4-Week Averages
13-Week Average

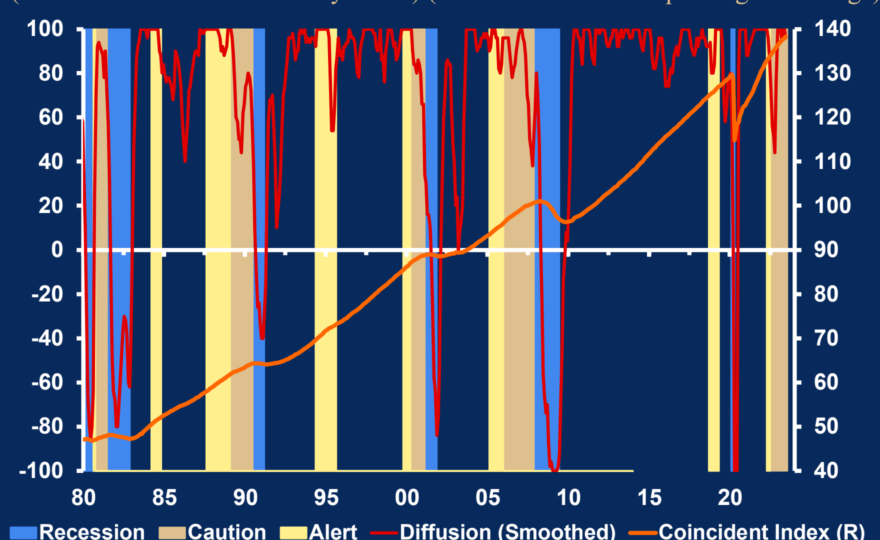
NBER Recession Watch – Four Key Numbers

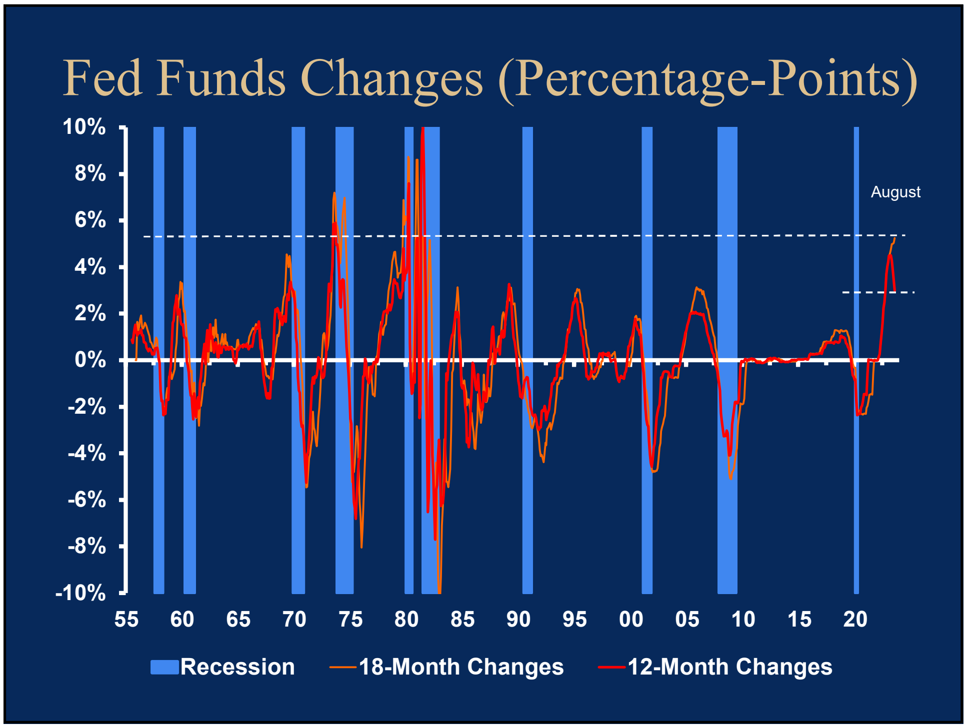
(NBER = National Bureau of Economic Research) (February 2022 = 100)

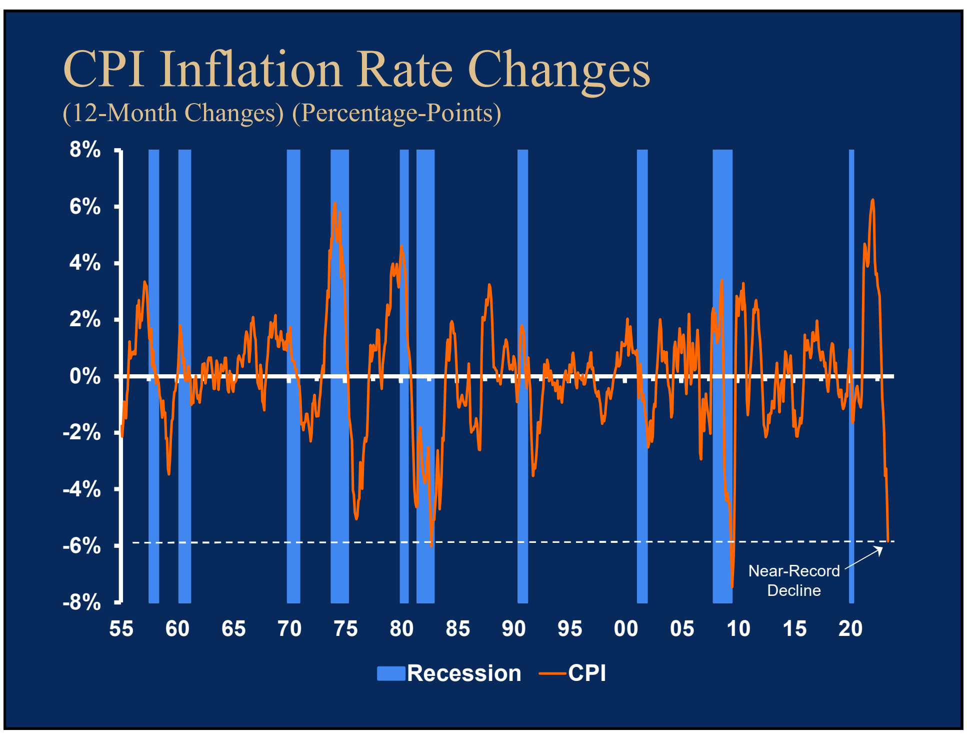


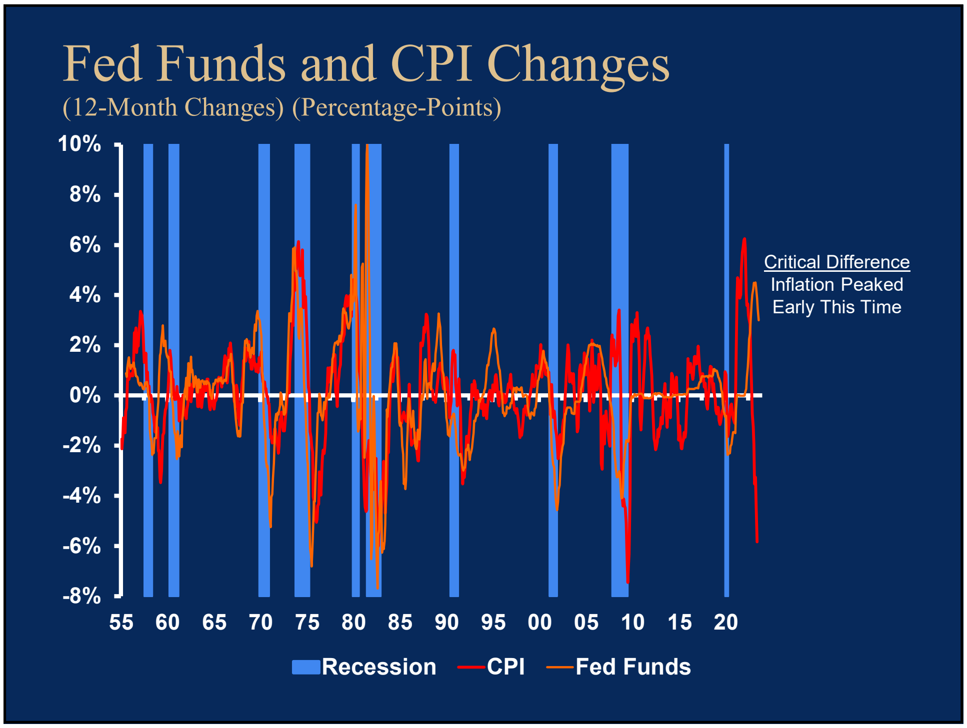
U.S. Coincident and Diffusion Indexes

(Coincident Economic Activity Index) (Diffusion = States Improving Percentage)

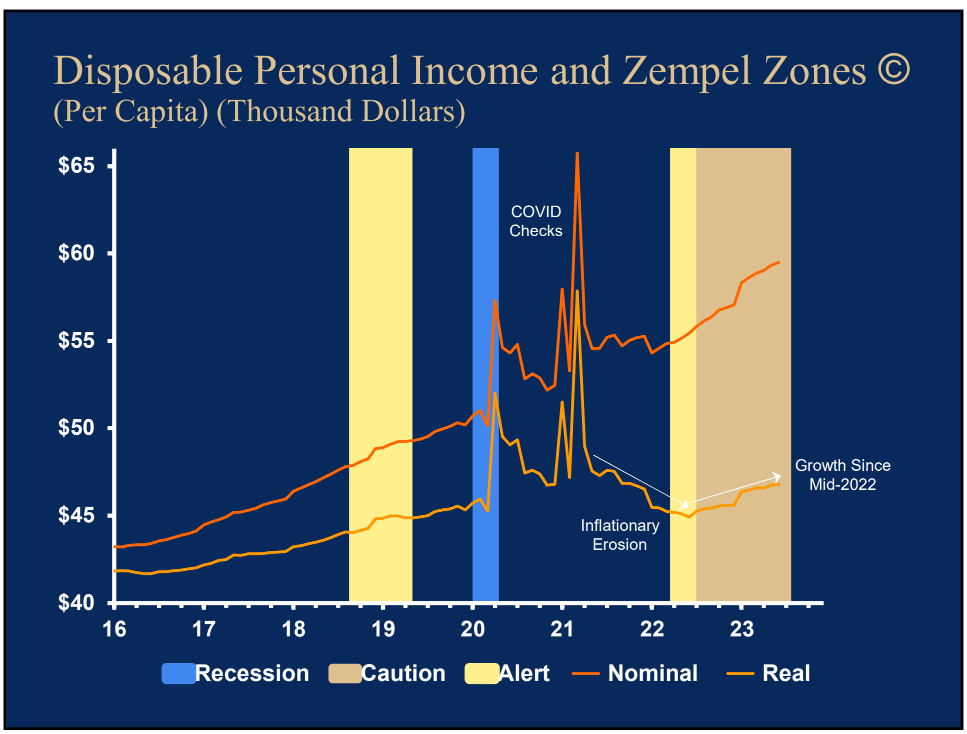



Fed Funds Changes (Percentage-Points)
10%
8%
6%
4%
2%
0%
-2%
-4%
-6%
-8%
-10%
55 60 65 70 75 80 85 90 95 00 05 10 15 20
August
Recession
18-Month Changes
12-Month Changes


CPI Inflation Rate Changes
(12-Month Changes) (Percentage-Points)
8%
6%
4%
2%
0%
-2%
-4%
-6%
-8%
55 60 65 70 75 80 85 90 95 00 05 10 15 20
Near-Record
Decline
Recession
CPI



Fed Funds and CPI Changes
(12-Month Changes) (Percentage-Points)
10%
8%
6%
4%
2%
0%
-2%
-4%
-6%
-8%
55 60 65 70 75 80 85 90 95 00 05 10 15 20
Critical Difference
Inflation Peaked
Early This Time
Recession
CPI
Fed Funds



Disposable Personal Income and Zempel Zones ©
(Per Capita) (Thousand Dollars)
$65
$60
$55
$50
$45
$40
16 17 18 19 20 21 22 23
COVID
Checks
Inflationary
Erosion
Growth Since
Mid-2022
Recession
Caution
Alert
Nominal
Real

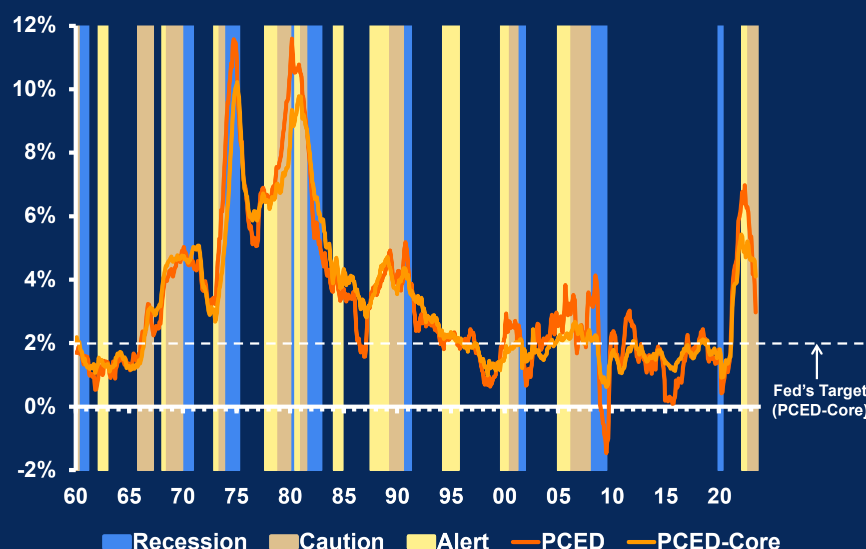
WICPA Not For Profit Conference

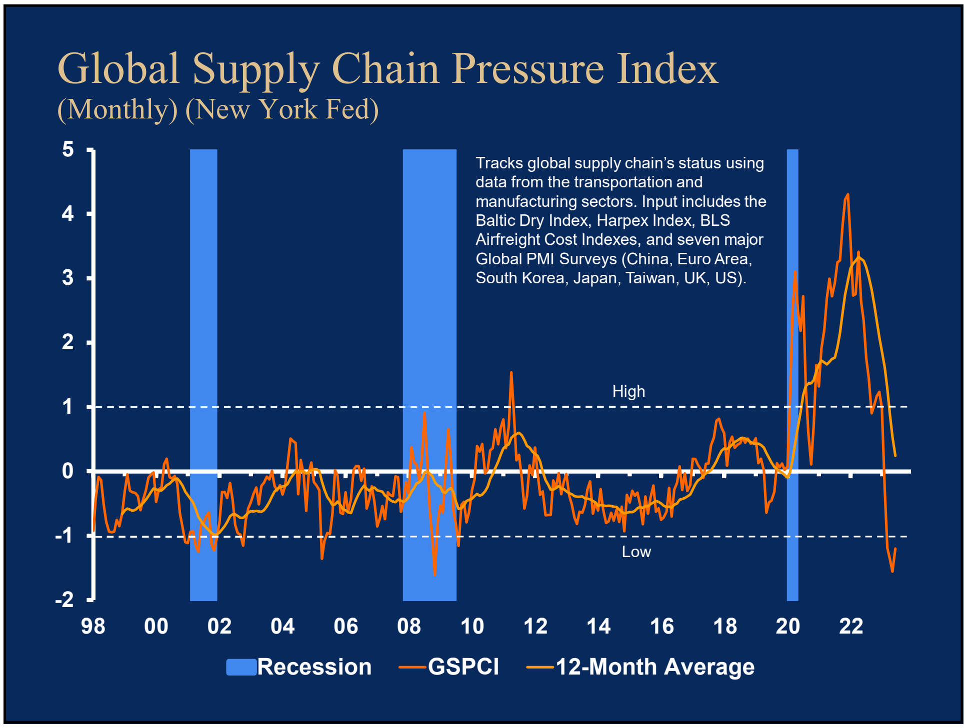
The Economic and Market Outlook
2023 – 2028

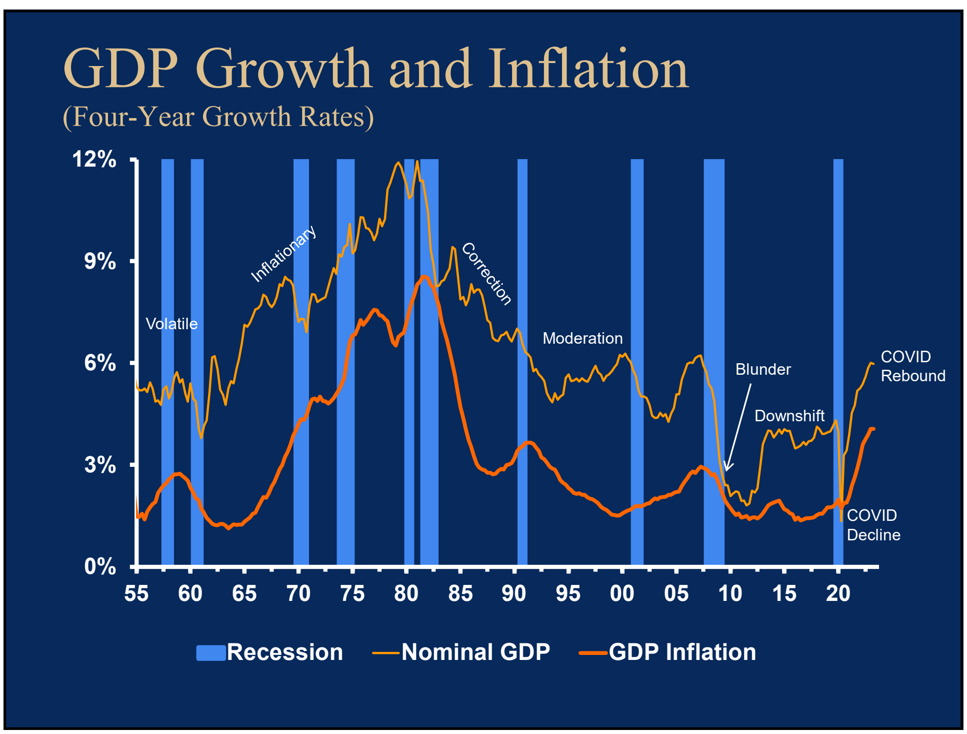
What Causes Inflation?
Why Did Inflation Peak Early?
Should Federal Reserve Policy Ease?

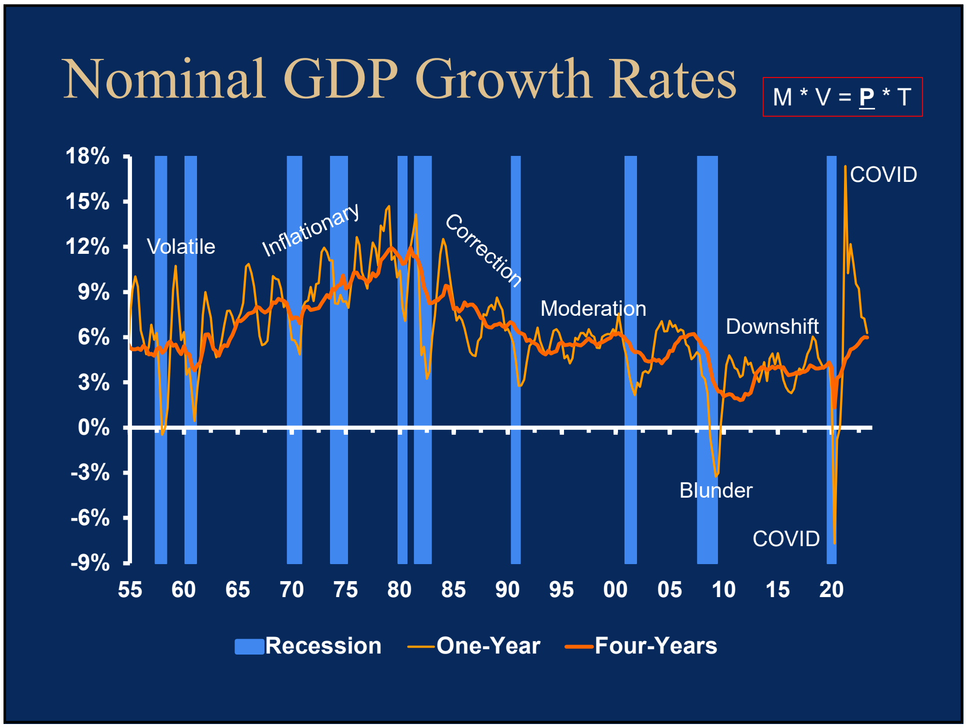
PCED Inflation and Zempel Zones ©

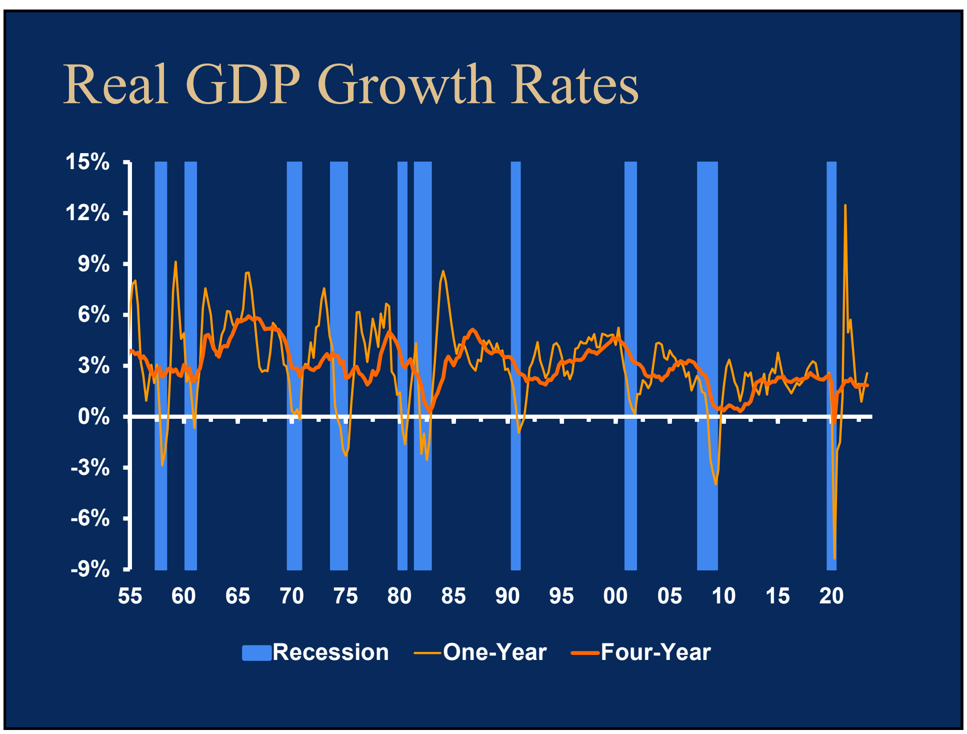
(PCED = Personal Consumption Expenditure Deflator) (12-Month Changes)




Global Supply Chain Pressure Index
(Monthly) (New York Fed)
Tracks global supply chain's status using data from the transportation and manufacturing sectors. Input includes the Baltic Dry Index, Harpex Index, BLS Airfreight Cost Indexes, and seven major Global PMI Surveys (China, Euro Area, South Korea, Japan, Taiwan, UK, US).
High
Low
5
4
3
2
1
0
-1
-2
98
00
02
04
06
08
10
12
14
16
18
20
22
Recession
GSPCI
12-Month Average


GDP Growth and Inflation
(Four-Year Growth Rates)
12%
9%
6%
3%
0%
55
60
65
70
75
80
85
90
95
00
05
10
15
20
Volatile
Inflationary
Correction
Moderation
Blunder
Downshift
COVID Rebound
COVID Decline
Recession
Nominal GDP
GDP Inflation

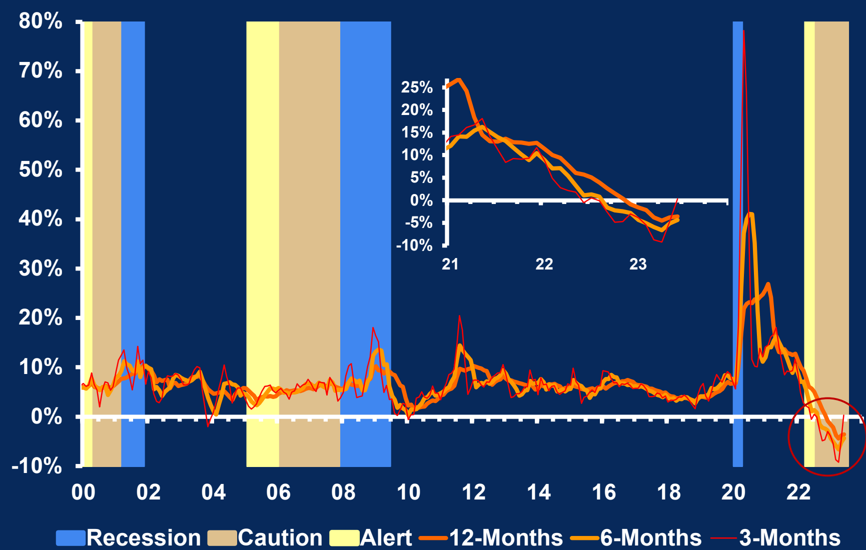

Nominal GDP Growth Rates
M * V = P * T
18%
15%
12%
9%
6%
3%
0%
-3%
-6%
-9%
55
60
65
70
75
80
85
90
95
00
05
10
15
20
Volatile
Inflationary
Correction
Moderation
Downshift
Blunder
COVID
COVID
Recession
One-Year
Four-Years

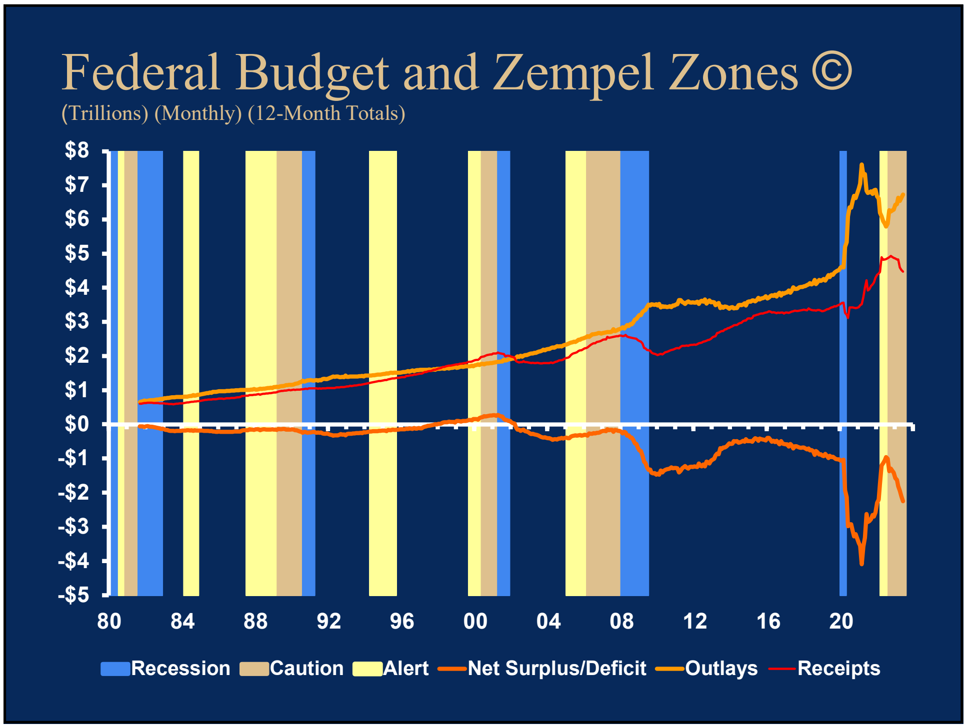

Real GDP Growth Rates
15%
12%
9%
6%
3%
0%
-3%
-6%
-9%
55
60
65
70
75
80
85
90
95
00
05
10
15
20
Recession
One-Year
Four-Year

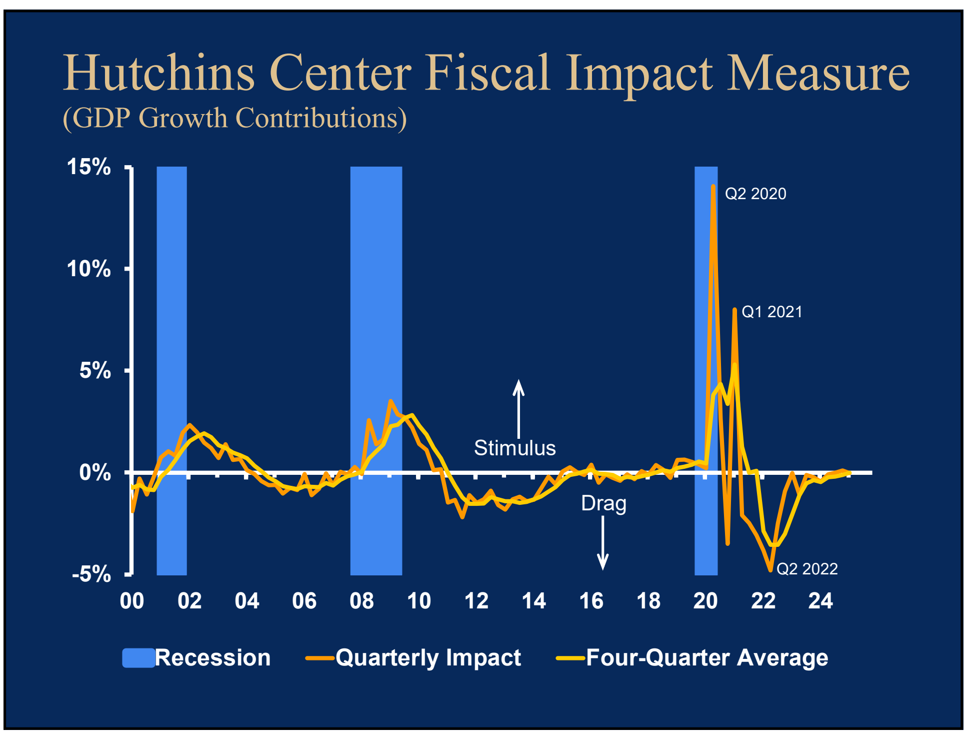
GDP Inflation Rates

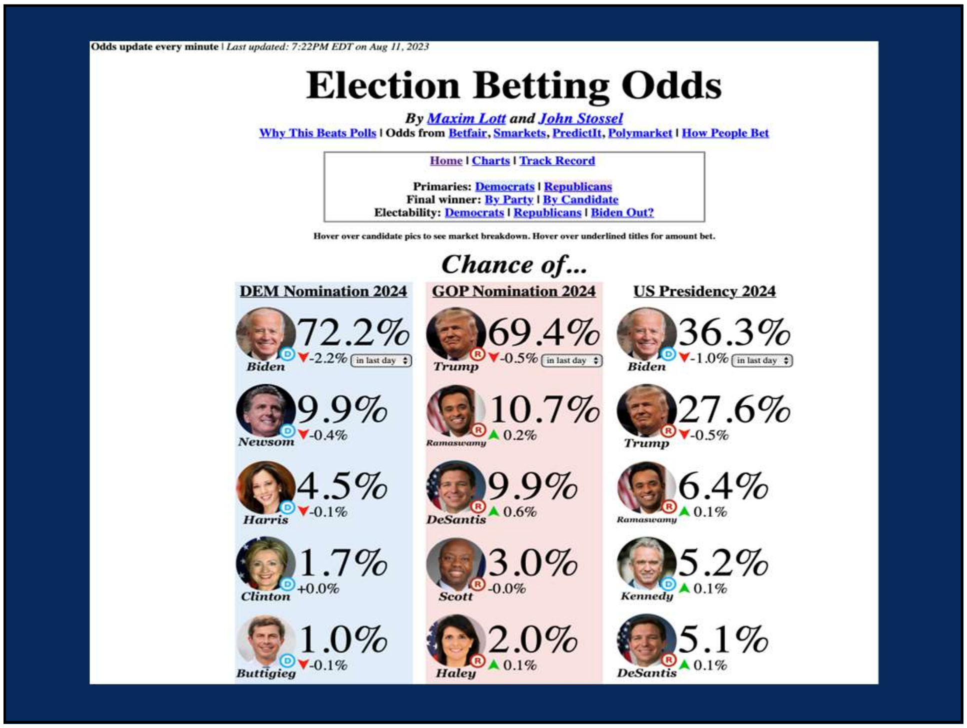
M2 Growth and Zempel Zones ©

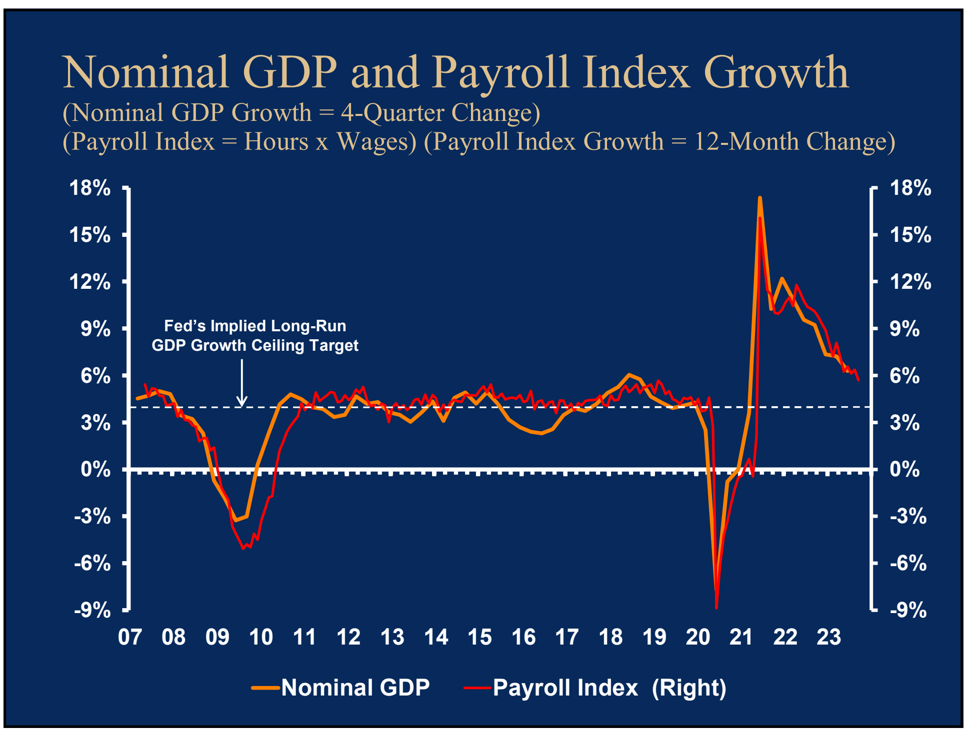
(M2 Money Stock) (Monthly)

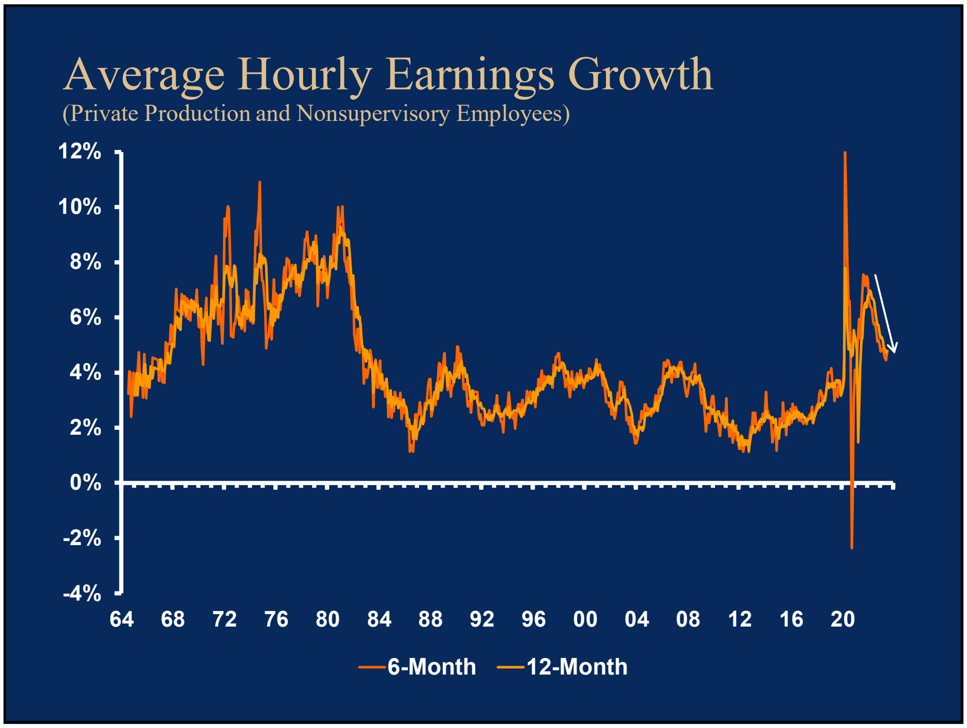


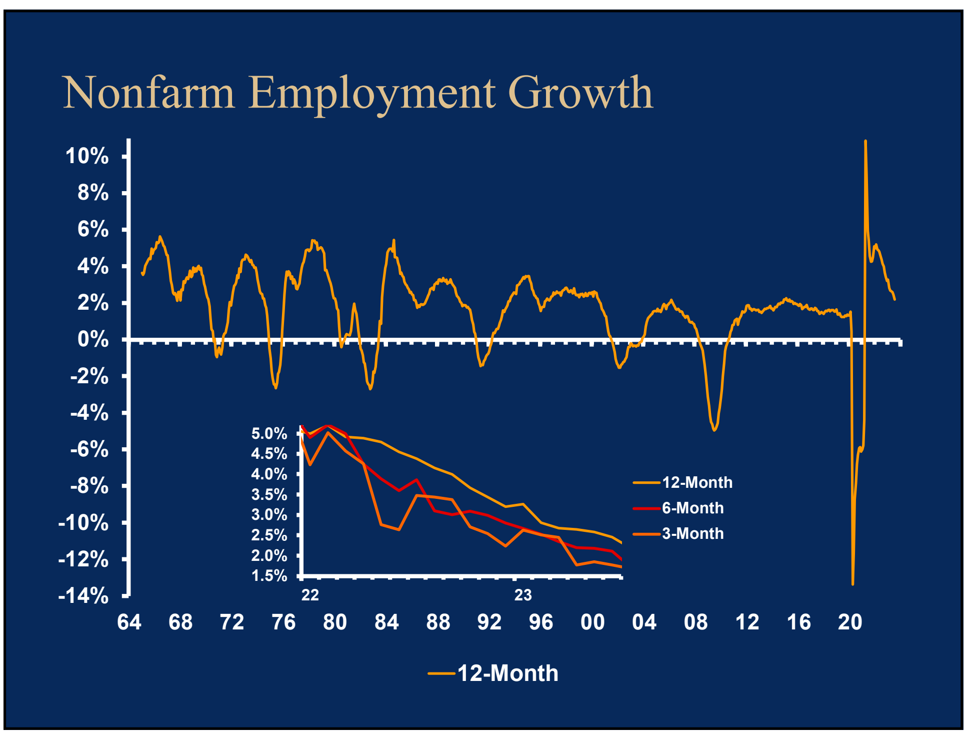

Federal Budget and Zempel Zones ©
(Trillions) (Monthly) (12-Month Totals)
$8
$7
$6
$5
$4
$3
$2
$1
$0
-$1
-$2
-$3
-$4
-$5
80
84
88
92
96
00
04
08
12
16
20
Recession
Caution
Alert
Net Surplus/Deficit
Outlays
Receipts

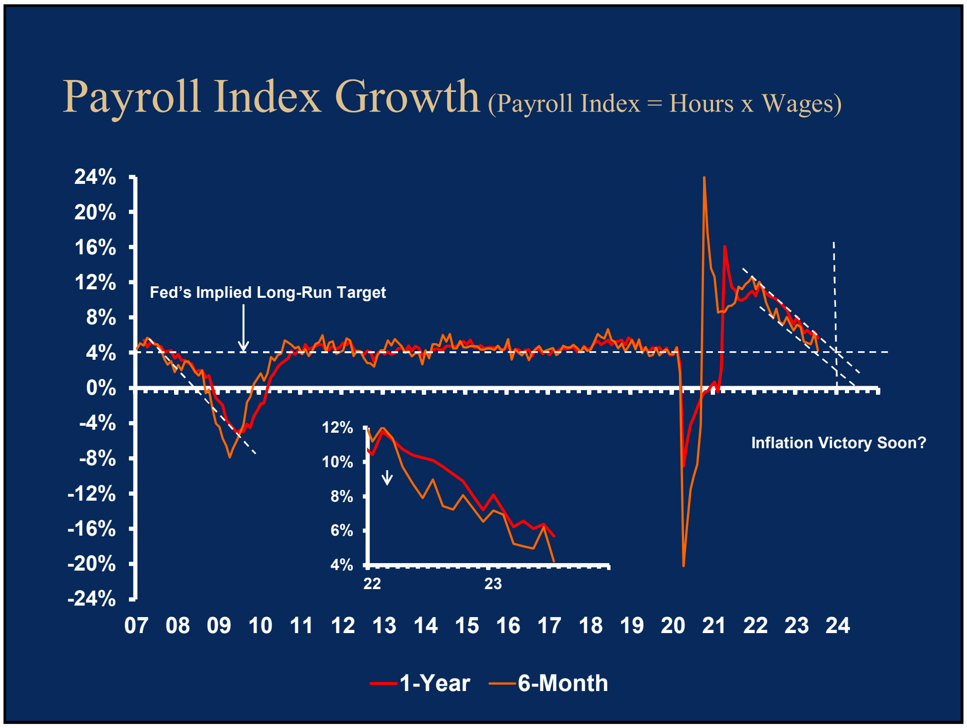

Hutchins Center Fiscal Impact Measure
(GDP Growth Contributions)
15%
10%
5%
0%
-5%
Q2 2020
Q1 2021
Stimulus
Drag
Q2 2022
00
02
04
06
08
10
12
14
16
18
20
22
24
Recession
Quarterly Impact
Four-Quarter Average


Odds update every minute | Last updated: 7:22PM EDT on Aug 11, 2023
Election Betting Odds
By Maxim Lott and John Stossel
Why This Beats Polls | Odds from Betfair, Smarkets, PredictIt, Polymarket | How People Bet
Home | Charts | Track Record
Primaries: Democrats | Republicans
Final winner: By Party | By Candidate
Electability: Democrats | Republicans | Biden Out?
Hover over candidate pics to see market breakdown. Hover over underlined titles for amount bet.
Chance of...
DEM Nomination 2024
Biden 72.2% -2.2% in last day
Newsom 9.9% -0.4%
Harris 4.5% -0.1%
Clinton 1.7% +0.0%
Buttigieg 1.0% -0.1%
GOP Nomination 2024
Trump 69.4% -0.5% in last day
Ramaswamy 10.7% 0.2%
DeSantis 9.9% 0.6%
Scott 3.0% -0.0%
Haley 2.0% 0.1%
US Presidency 2024
Biden 36.3% -1.0% in last day
Trump 27.6% -0.5%
Ramaswamy 6.4% 0.1%
Kennedy 5.2% 0.1%
DeSantis 5.1% 0.1%

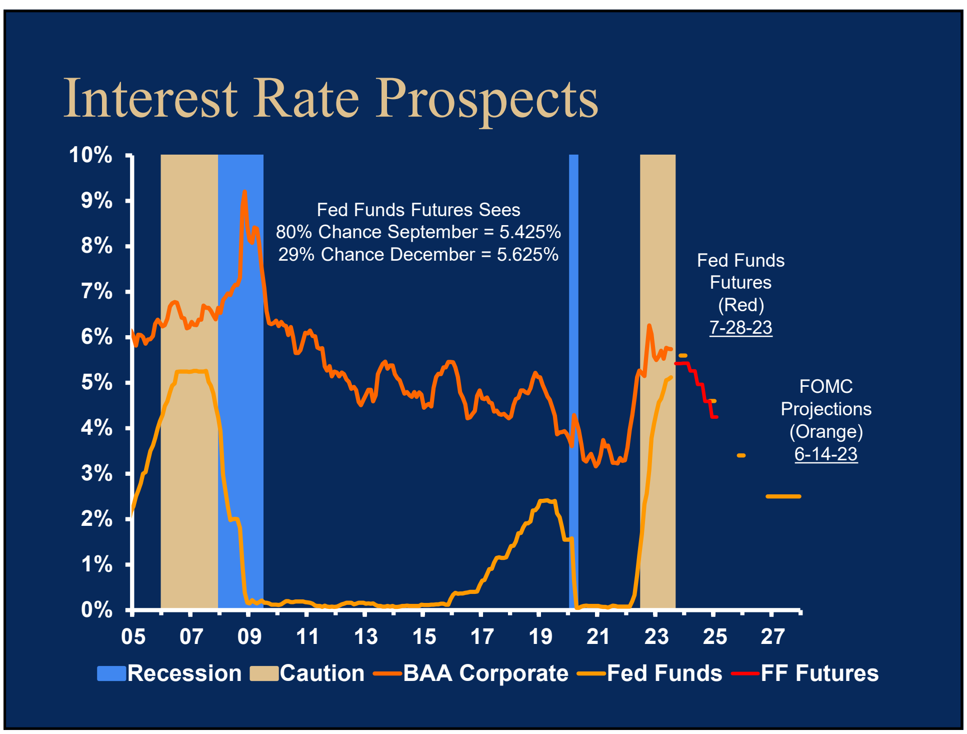

Nominal GDP and Payroll Index Growth
(Nominal GDP Growth = 4-Quarter Change)
(Payroll Index = Hours x Wages) (Payroll Index Growth = 12-Month Change)
18%
15%
12%
9%
6%
3%
0%
-3%
-6%
-9%
Fed's Implied Long-Run
GDP Growth Ceiling Target
07 08 09 10 11 12 13 14 15 16 17 18 19 20 21 22 23
Nominal GDP
Payroll Index (Right)


Average Hourly Earnings Growth
(Private Production and Nonsupervisory Employees)
12%
10%
8%
6%
4%
2%
0%
-2%
-4%
64 68 72 76 80 84 88 92 96 00 04 08 12 16 20
6-Month
12-Month


Nonfarm Employment Growth
10%
8%
6%
4%
2%
0%
-2%
-4%
-6%
-8%
-10%
-12%
-14%
64 68 72 76 80 84 88 92 96 00 04 08 12 16 20
12-Month
5.0%
4.5%
4.0%
3.5%
3.0%
2.5%
2.0%
1.5%
22
23
12-Month
6-Month
3-Month



Payroll Index Growth (Payroll Index = Hours x Wages)
24%
20%
16%
12%
8%
4%
0%
-4%
-8%
-12%
-16%
-20%
-24%
Fed's Implied Long-Run Target
Inflation Victory Soon?
12%
10%
8%
6%
4%
22
23
07 08 09 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24
1-Year
6-Month



Interest Rate Prospects
10%
9%
8%
7%
6%
5%
4%
3%
2%
1%
0%
Fed Funds Futures Sees
80% Chance September = 5.425%
29% Chance December = 5.625%
Fed Funds
Futures
(Red)
7-28-23
FOMC
Projections
(Orange)
6-14-23
05 07 09 11 13 15 17 19 21 23 25 27
Recession
Caution
BAA Corporate
Fed Funds
FF Futures

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The Economic and Market Outlook
2023 – 2028

Inflation Has Peaked – Fed's Target Achievable Soon
Monetary Policy Remains Restrictive
Fiscal Policy Remains Restrictive
Political Prospects Look Unpromising
But No Recession If Inflation Falls Further + Fed Eases
Fed's Rate Plans Do Risk Recession Next Year

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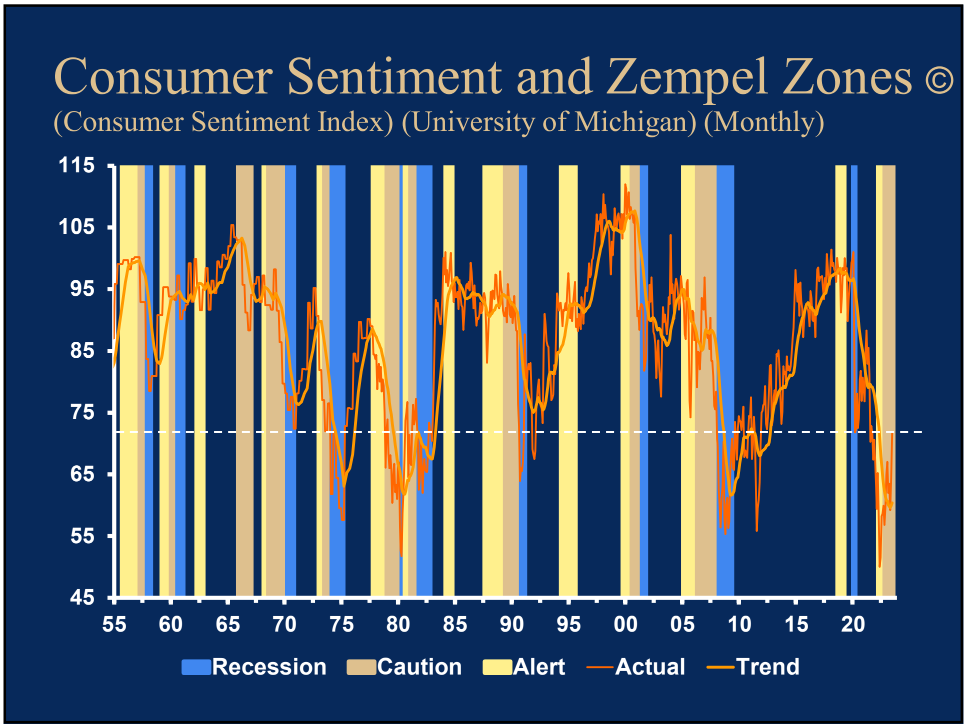
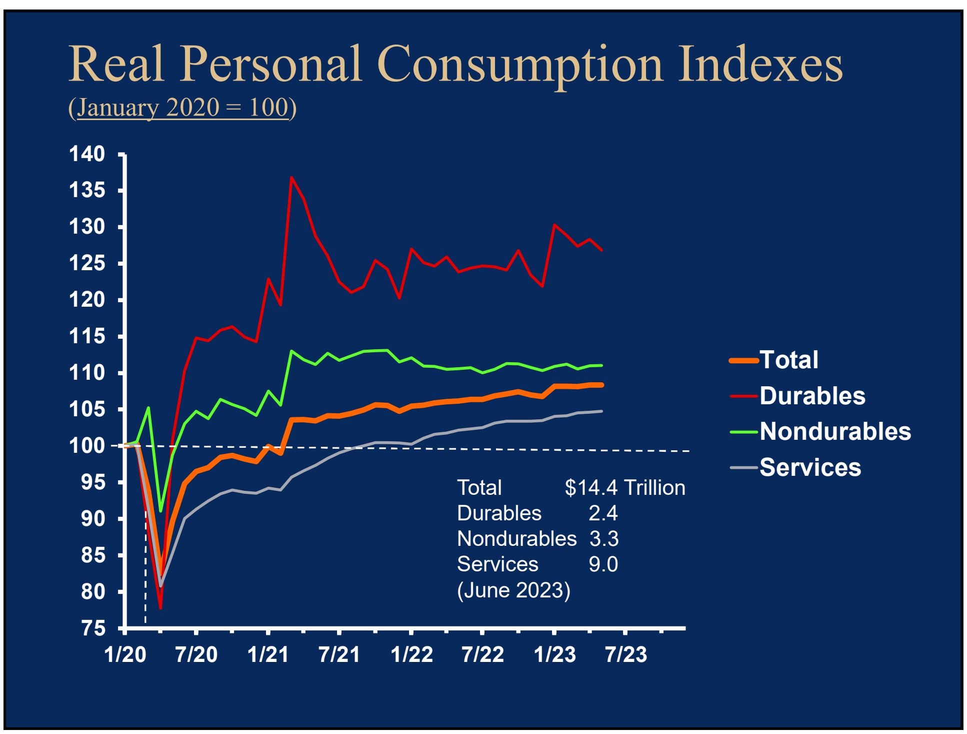
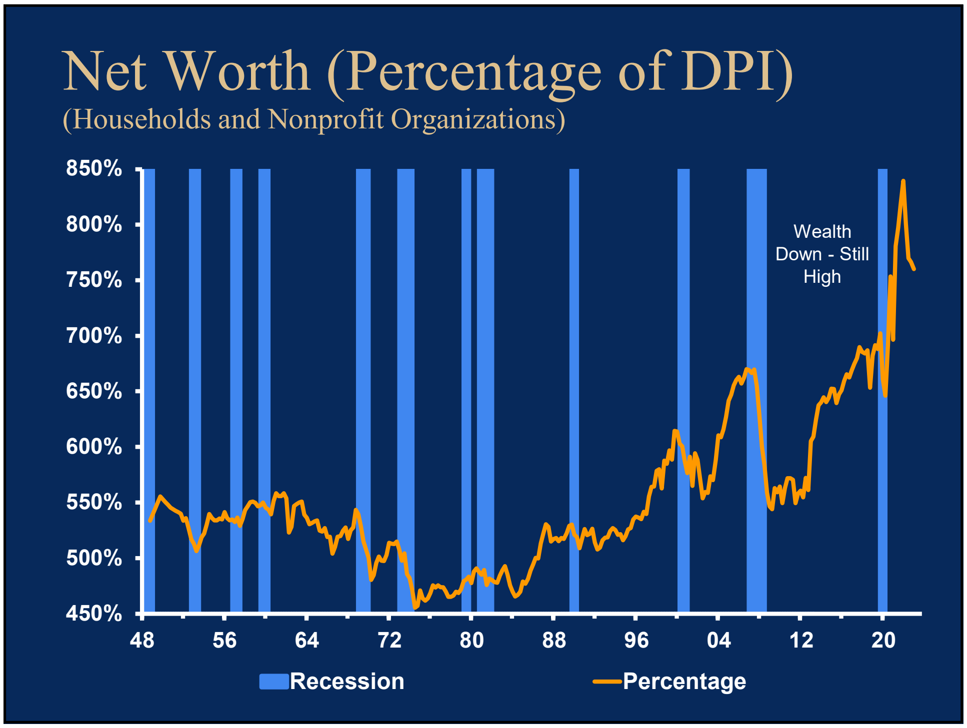
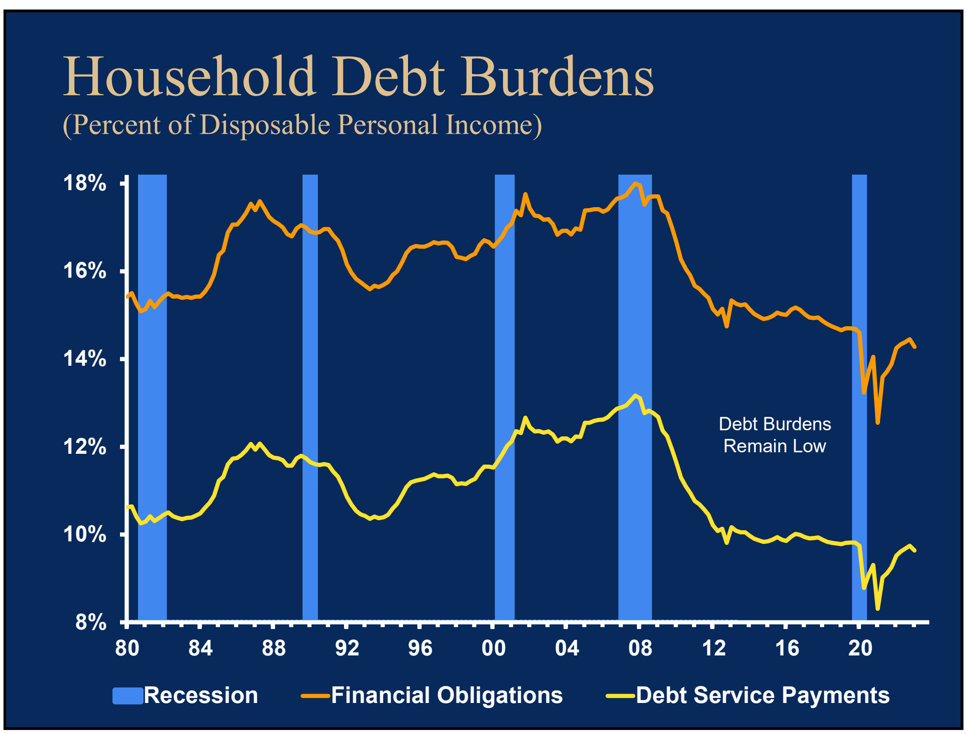
The Economic and Market Outlook
2023 – 2028

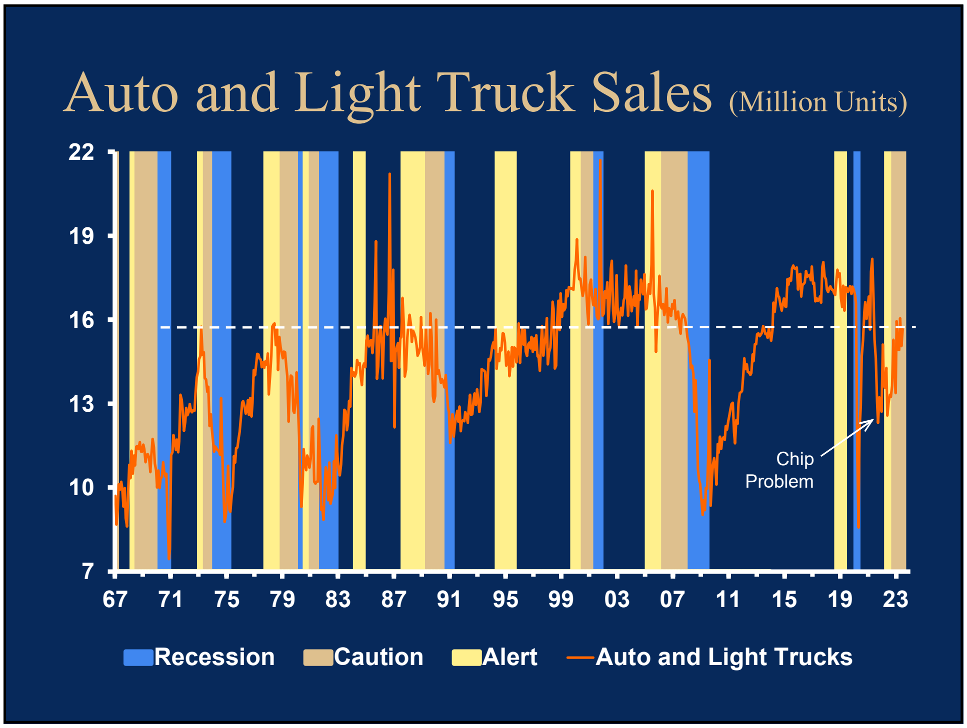
Economic Sector Performances
Prospects Remain Positive But Not Robust

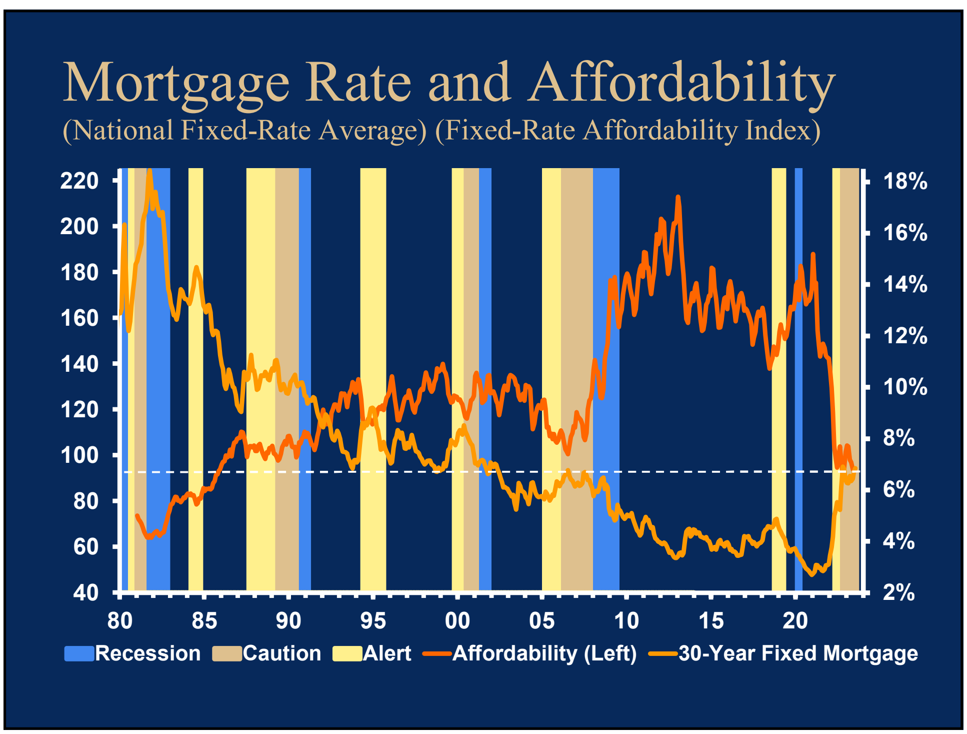

Consumer Sentiment and Zempel Zones ©
(Consumer Sentiment Index) (University of Michigan) (Monthly)
115
105
95
85
75
65
55
45
55
60
65
70
75
80
85
90
95
00
05
10
15
20
Recession
Caution
Alert
Actual
Trend

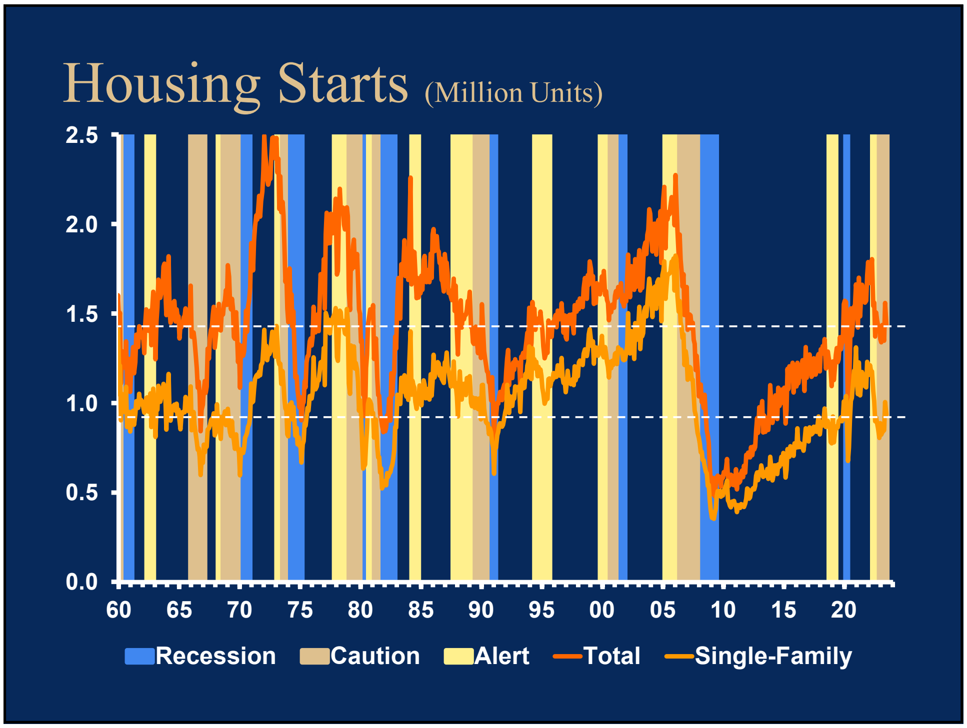

Real Personal Consumption Indexes
(January 2020 = 100)
140
135
130
125
120
115
110
105
100
95
90
85
80
75
1/20
7/20
1/21
7/21
1/22
7/22
1/23
7/23
Total
Durables
Nondurables
Services
Total $14.4 Trillion
Durables 2.4
Nondurables 3.3
Services 9.0
(June 2023)


Net Worth (Percentage of DPI)
(Households and Nonprofit Organizations)
850%
800%
750%
700%
650%
600%
550%
500%
450%
48
56
64
72
80
88
96
04
12
20
Wealth Down - Still High
Recession
Percentage

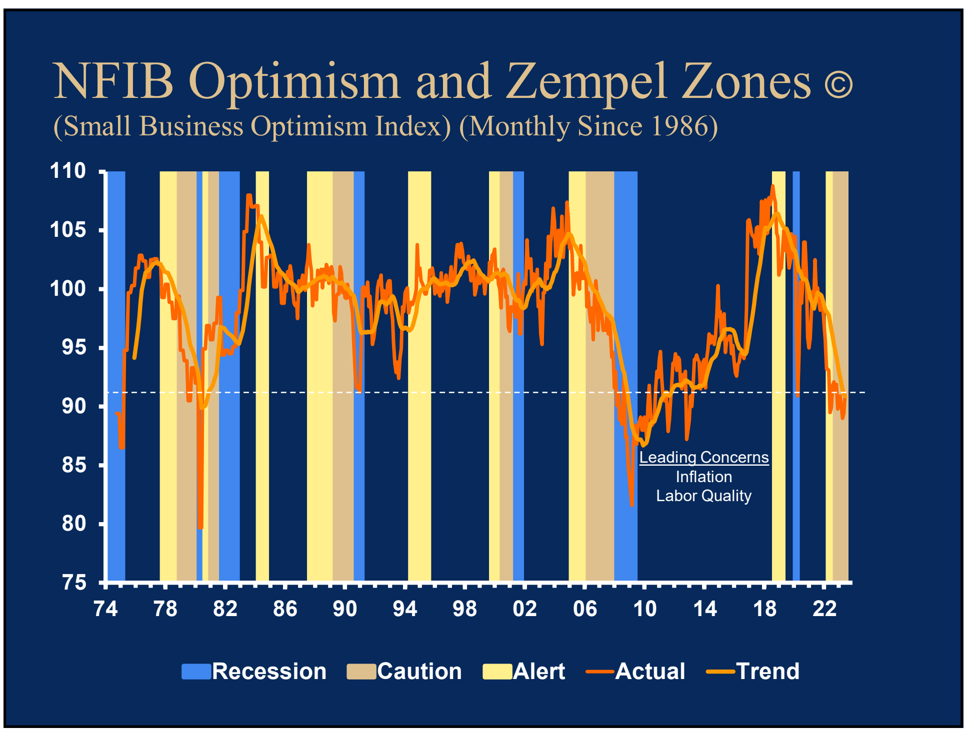

Household Debt Burdens
(Percent of Disposable Personal Income)
18%
16%
14%
12%
10%
8%
80
84
88
92
96
00
04
08
12
16
20
Debt Burdens Remain Low
Recession
Financial Obligations
Debt Service Payments


Auto and Light Truck Sales (Million Units)
22
19
16
13
10
7
67
71
75
79
83
87
91
95
99
03
07
11
15
19
23
Chip Problem
Recession
Caution
Alert
Auto and Light Trucks

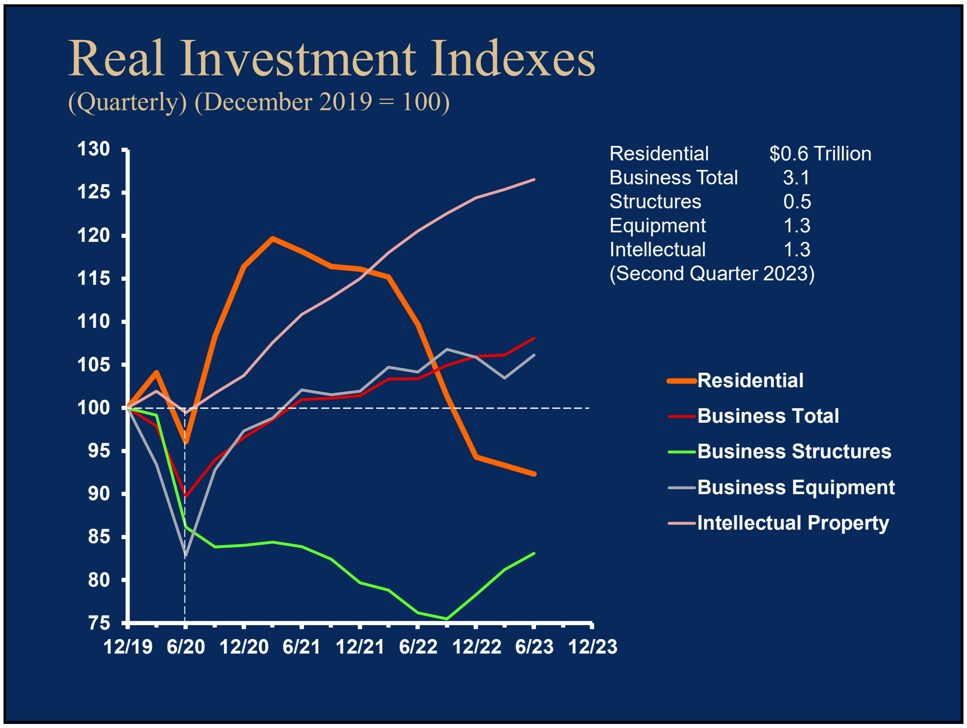

Mortgage Rate and Affordability
(National Fixed-Rate Average) (Fixed-Rate Affordability Index)
220
200
180
160
140
120
100
80
60
40
18%
16%
14%
12%
10%
8%
6%
4%
2%
80
85
90
95
00
05
10
15
20
Recession
Caution
Alert
Affordability (Left)
30-Year Fixed Mortgage

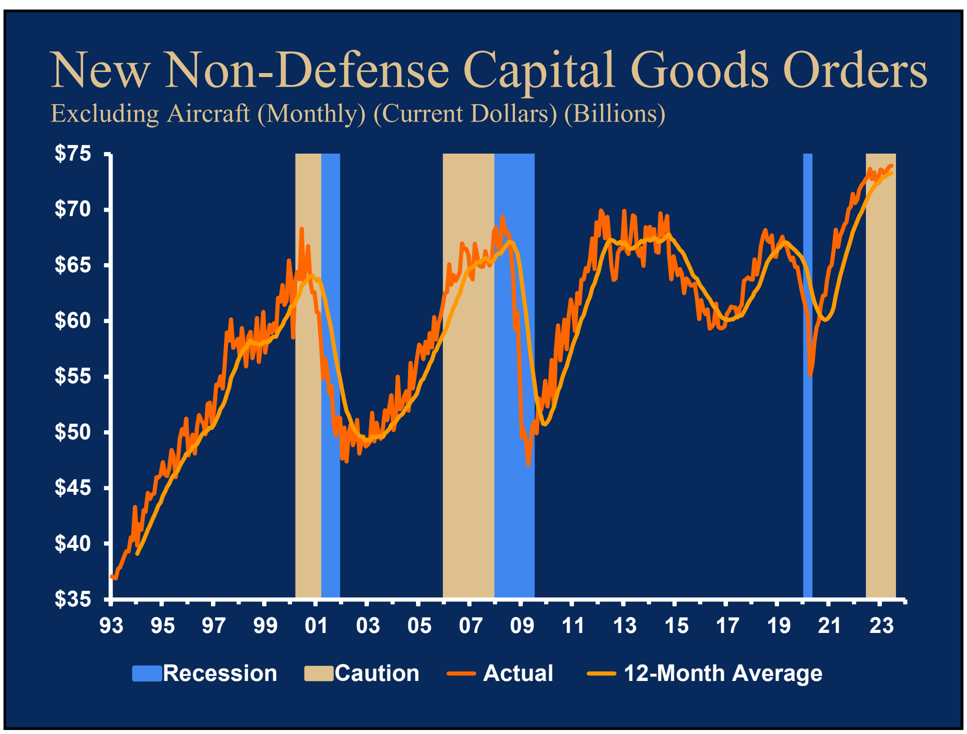


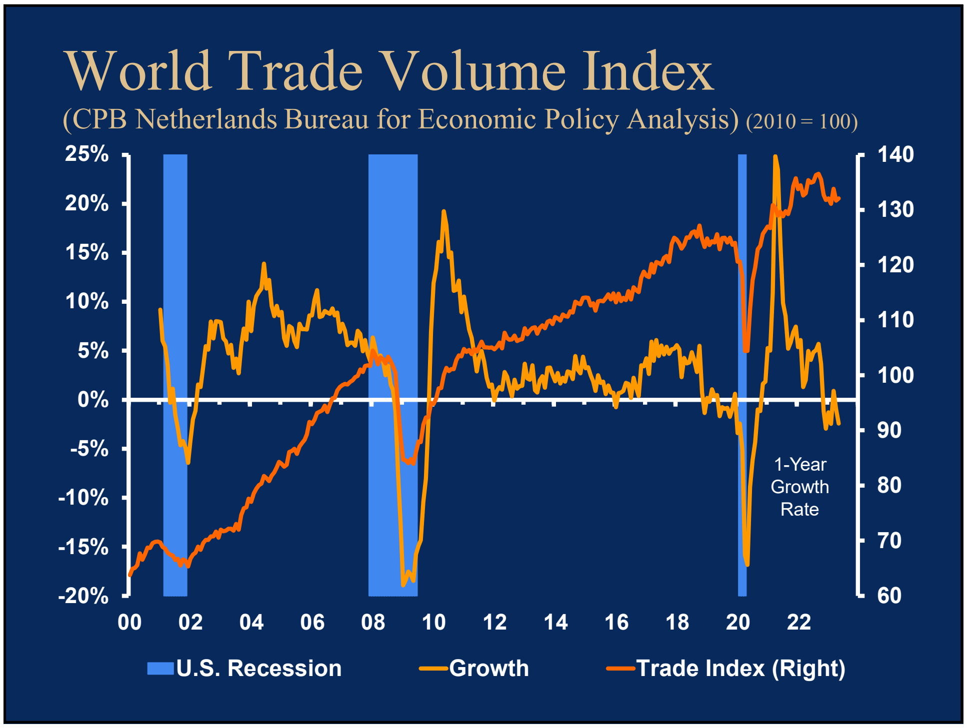
Housing Starts (Million Units)
2.5
2.0
1.5
1.0
0.5
0.0
60
65
70
75
80
85
90
95
00
05
10
15
20
Recession
Caution
Alert
Total
Single-Family

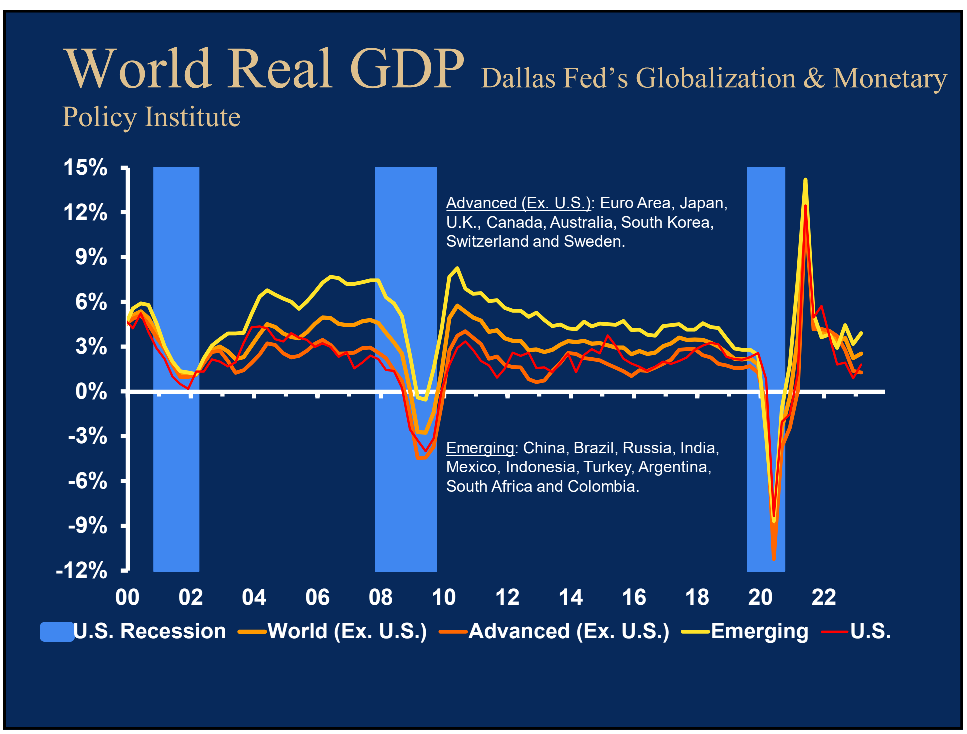


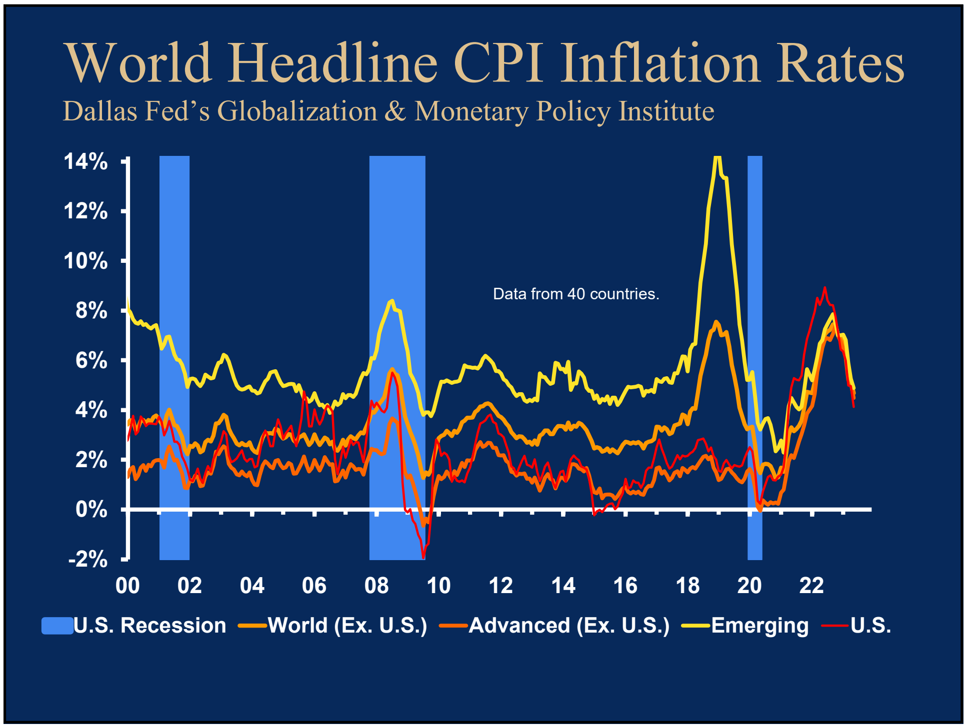
NFIB Optimism and Zempel Zones ©
(Small Business Optimism Index) (Monthly Since 1986)
110
105
100
95
90
85
80
75
74
78
82
86
90
94
98
02
06
10
14
18
22
Leading Concerns
Inflation
Labor Quality
Recession
Caution
Alert
Actual
Trend

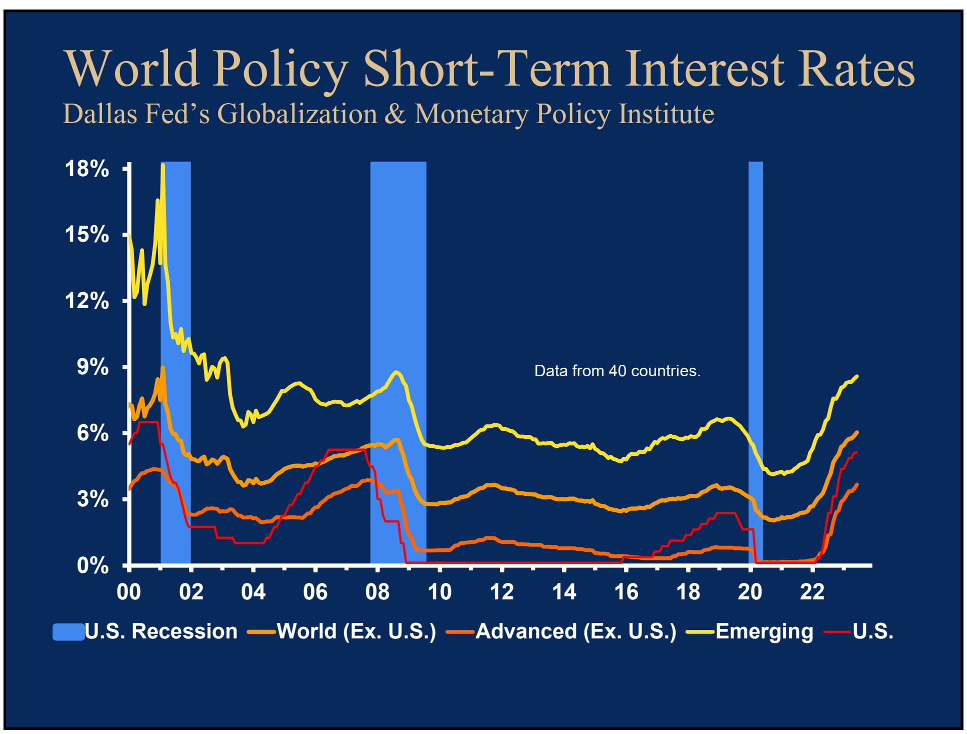

Real Investment Indexes
(Quarterly) (December 2019 = 100)
130
125
120
115
110
105
100
95
90
85
80
75
12/19 6/20 12/20 6/21 12/21 6/22 12/22 6/23 12/23
Residential $0.6 Trillion
Business Total 3.1
Structures 0.5
Equipment 1.3
Intellectual 1.3
(Second Quarter 2023)
Residential
Business Total
Business Structures
Business Equipment
Intellectual Property

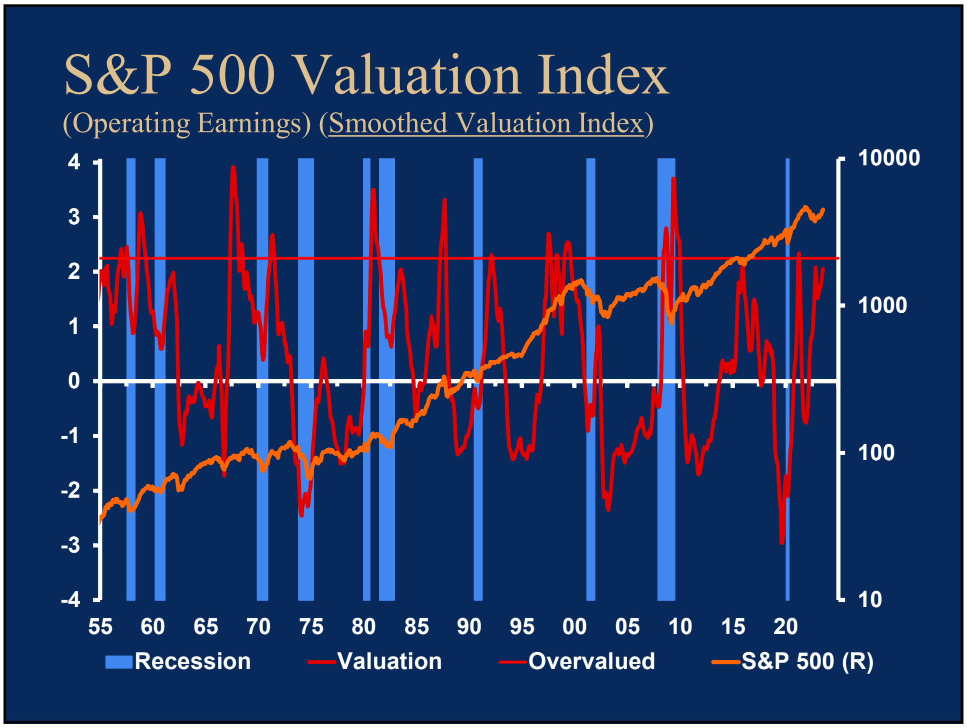

New Non-Defense Capital Goods Orders
Excluding Aircraft (Monthly) (Current Dollars) (Billions)
$75
$70
$65
$60
$55
$50
$45
$40
$35
93 95 97 99 01 03 05 07 09 11 13 15 17 19 21 23
Recession
Caution
Actual
12-Month Average

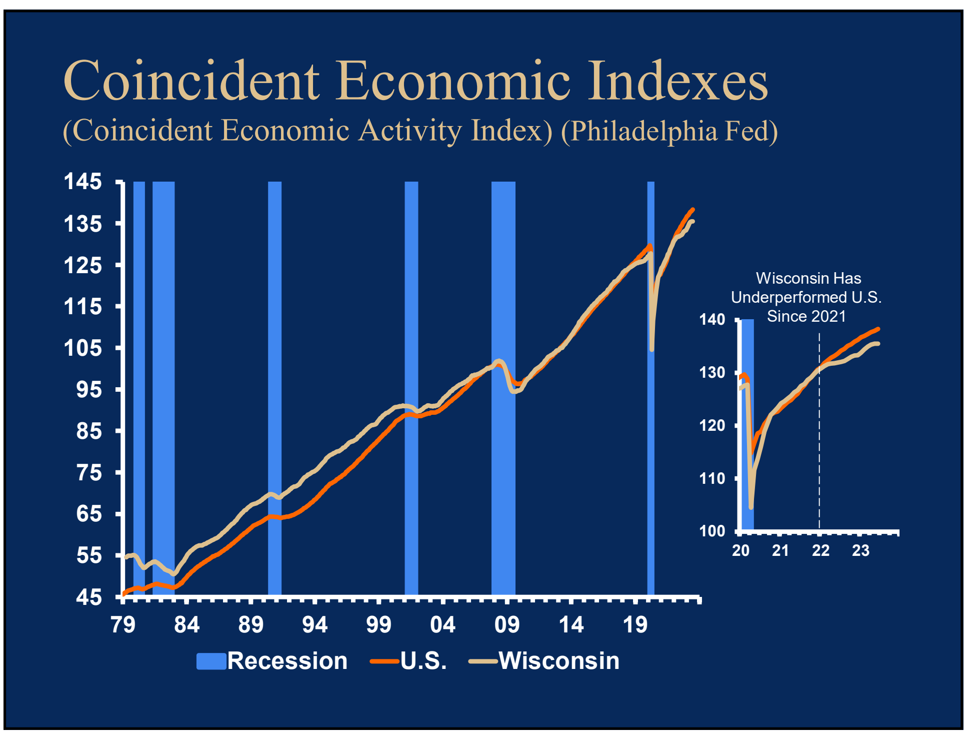

World Trade Volume Index
(CPB Netherlands Bureau for Economic Policy Analysis) (2010 = 100)
25%
20%
15%
10%
5%
0%
-5%
-10%
-15%
-20%
140
130
120
110
100
90
80
70
60
00 02 04 06 08 10 12 14 16 18 20 22
1-Year Growth Rate
U.S. Recession
Growth
Trade Index (Right)


World Real GDP Dallas Fed's Globalization & Monetary Policy Institute
15%
12%
9%
6%
3%
0%
-3%
-6%
-9%
-12%
00 02 04 06 08 10 12 14 16 18 20 22
Advanced (Ex. U.S.): Euro Area, Japan, U.K., Canada, Australia, South Korea, Switzerland and Sweden.
Emerging: China, Brazil, Russia, India, Mexico, Indonesia, Turkey, Argentina, South Africa and Colombia.
U.S. Recession
World (Ex. U.S.)
Advanced (Ex. U.S.)
Emerging
U.S.


World Headline CPI Inflation Rates
Dallas Fed's Globalization & Monetary Policy Institute
14%
12%
10%
8%
6%
4%
2%
0%
-2%
00
02
04
06
08
10
12
14
16
18
20
22
Data from 40 countries.
U.S. Recession
World (Ex. U.S.)
Advanced (Ex. U.S.)
Emerging
U.S.


World Policy Short-Term Interest Rates
Dallas Fed's Globalization & Monetary Policy Institute
18%
15%
12%
9%
6%
3%
0%
00
02
04
06
08
10
12
14
16
18
20
22
Data from 40 countries.
U.S. Recession
World (Ex. U.S.)
Advanced (Ex. U.S.)
Emerging
U.S.


S&P 500 Valuation Index
(Operating Earnings) (Smoothed Valuation Index)
4
3
2
1
0
-1
-2
-3
-4
10000
1000
100
10
55 60 65 70 75 80 85 90 95 00 05 10 15 20
Recession
Valuation
Overvalued
S&P 500 (R)


Coincident Economic Indexes
(Coincident Economic Activity Index) (Philadelphia Fed)
145
135
125
115
105
95
85
75
65
55
45
79 84 89 94 99 04 09 14 19
Wisconsin Has Underperformed U.S. Since 2021
140
130
120
110
100
20 21 22 23
Recession
U.S.
Wisconsin

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The Economic and Market Outlook
2023 – 2028

Has Recession Started? No
What Do "Best Indicators" Predict? Slowdown + Recession
Can Recession Be Averted? Or Downside Limited? Yes
Best Case? Inflation Slows Further + Fed Tempers Hawkishness
How Would Sectors Perform Then? Moderate Expansion
Worst Case? Fed's Hawkishness Triggers 2024 Downturn

What to do now depends on sensitivity to economic slowdowns.
"Alert Zone" means temper optimism.
"Caution Zone" now means plan for recession.
Delay implementation until jobless claims soar or own orders drop.

Questions…

Clare W. Zempel, CFA, CBE
Zempel Strategic
Applied Economics and Financial Market Analysis
www.zempelstrategic.com
CZempel@ZempelStrategic.com
(414) 351-1250

1:35 – 2:25 p.m.

Philanthropic Enterprise Act (the Newman Foundation Exception)

Sherry Martin, J.D., *Associate, von Briesen & Roper, s.c.*

Thomas Moniz, J.D., *Shareholder, von Briesen & Roper, s.c*

WICPA Not For Profit Conference

Private Foundations – Excess Business Holdings & the Philanthropic Enterprise Act

September 12, 2023

Thomas W. Moniz and Sherry B. Martin

Tom is Chair of von Briesen's Nonprofit and Tax Exemption Section where he focuses on tax exemption, nonprofit formation and governance, and Benefit Corporations. He also has a significant trust and estate planning and administration practice. Tom's clients view him as a legacy advisor – using a personal, connected approach to work with clients and their families related to their unique business needs, personal needs and assets in conjunction with their estate plans. Tom especially enjoys working collaboratively and strategically with clients' other trusted advisors – an approach that he believes adds value now and for successive generations. Tom is active with several nonprofits including Envision Greater Fond du Lac (Advocacy Committee), Oshkosh Area Community Foundation (Audit Committee) and Boys & Girls Club (Building & Capital Campaign).

Tom Moniz | thomas.moniz@vonbriesen.com

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Sherry focuses her practice on estate planning; tax planning including revocable trusts, irrevocable grantor trusts, life insurance trusts, supplemental needs trusts, spousal access trusts, beneficiary grantor trusts, and qualified personal residence trusts; administration of probate and non-probate estates; and premarital agreements. Sherry has significant experience creating and funding family business entities and foundations. Prior to joining von Briesen, Sherry practiced with a large Wisconsin law firm in its Estate Planning Section. During law school, Sherry was a member of the Elder Law and Estate Planning Society and graduated with Honors in the Estate Planning Concentration. Sherry is a volunteer for the Wills for Heroes Foundation.

Sherry Martin | sherry.martin@vonbriesen.com

Agenda

- Excess Business Holdings
- Philanthropic Enterprise Act
  - History
  - Test – 3 factors
- Planning Considerations
- Case Studies

History

- The excess business holdings rules were designed in part to 1) prevent foundations from running businesses to benefit family members, rather than charity, 2) keep foundation managers focused on charitable goals, rather than business operation, and 3) avoid foundation-owned enterprises from holding profit and making minimal distributions to the benefiting foundation.
- While the excess business holding rules addressed these concerns, the rules also effectively prohibited private foundations from owning substantial interests in business entities.

Excess Business Holdings

IRC 4943 – Excess Business Holdings Rules

- Limits a private foundation's ownership of business holdings.
- Private foundation with excess business holdings is subject to excise tax on its excess business holdings.

Purpose of Excess Business Holdings Rules

- Prevent private foundations from being distracted from charitable work.
- Prevent unfair competition for for-profit businesses.
- Prevent profits from escaping tax.

Excess Business Holdings

Test: The combined holdings of a private foundation and its disqualified persons are limited to 20% of the voting stock of a corporation or 20% of the beneficial interest of a partnership, joint venture, or other unincorporated enterprise.

A private foundation is generally not counted against the 20% limitation if disqualified persons do not own more than 20% of the voting stock.

Disqualified persons – substantial contributors, foundation managers, 20% owners, family members/spouses of the above, 35% owners, related private foundation, and certain government officials.

Excess Business Holdings

Penalty:

- Initial Tax: 10% of the value of the excess holdings
- Additional Tax: 200% of the value of the excess holdings

Excess Business Holdings

Exceptions:

- De Minimus Exception – not more than 2%
- Third-Party Control Exception – increase to 35%
- Newman's Own Exception (the Philanthropic Enterprise Act)

Philanthropic Enterprise Act

Adopted: February 9, 2018 by President Trump as part of the Bipartisan Budget Act of 2018

Purpose: to save the Newman's Own Foundation

Philanthropic Enterprise Act

Test:

- Exclusive Ownership Requirement
- All Profits to Charity Distribution Requirement
- Independent Operation Requirement

Philanthropic Enterprise Act

Exclusive Ownership Requirement:

(2) Ownership.—The requirements of this paragraph are met if—

(A) 100 percent of the voting stock in the business enterprise is held by the private foundation at all times during the taxable year, and

(B) all the private foundation's ownership interests in the business enterprise were acquired by means other than by purchase.

Philanthropic Enterprise Act

All Profits to Charity Distribution Requirement:

(3) All profits to charity.—

(A) In general.—The requirements of this paragraph are met if the business enterprise, not later than 120 days after the close of the taxable year, distributes an amount equal to its net operating income for such taxable year to the private foundation.

Philanthropic Enterprise Act

(B) Net operating income.—For purposes of this paragraph, the net operating income of any business enterprise for any taxable year is an amount equal to the gross income of the business enterprise for the taxable year, reduced by the sum of—

i. the deductions allowed by chapter 1 for the taxable year which are directly connected with the production of such income,

ii. the tax imposed by chapter 1 on the business enterprise for the taxable year, and

iii. an amount for a reasonable reserve for working capital and other business needs of the business enterprise.

Philanthropic Enterprise Act

Independent Operation Requirement:

(4) Independent operation.—The requirements of this paragraph are met if, at all times during the taxable year—

> (A) no substantial contributor (as defined in section 4958(c)(3)(C)) to the private foundation or family member (as determined under section 4958(f)(4)) of such a contributor is a director, officer, trustee, manager, employee, or contractor of the business enterprise (or an individual having powers or responsibilities similar to any of the foregoing),

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Philanthropic Enterprise Act

Independent Operation Requirement (continued):

(B) at least a majority of the board of directors of the private foundation are persons who are not—

> (i) directors or officers of the business enterprise, or
>
> (ii) family members (as so determined) of a substantial contributor (as so defined) to the private foundation, and

(C) there is no loan outstanding from the business enterprise to a substantial contributor (as so defined) to the private foundation or to any family member of such a contributor (as so determined).

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Philanthropic Enterprise Act

Application:

(5) Certain deemed private foundations excluded. This subsection shall not apply to:

(A) any fund or organization treated as a private foundation for purposes of this section by reason of subsection (e) or (f),

(B) any trust described in section 4947(a)(1) (relating to charitable trusts), and

(C) any trust described in section 4947(a)(2) (relating to split-interest trusts)."

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Planning Opportunities for Business Owners

- Ongoing charitable gift with business profits
- Considerations
  - Do you own the entire voting interest of the business?
  - Are you ready to give up control/employment?
  - Are you ready to give up profits?
  - Do you have individuals who could serve as directors of the foundation and the business?

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Planning Opportunities for Business Owners

- Considerations (continued)
  - Are there arrangements between the business and you, your family and other disqualified persons that violate the independent operation requirement (such as loans)?
  - Will you need a change in tax status or business structure (such as S corp classification)?

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Considerations for Private Foundations

- Structure of foundation board
- Beware violating the Philanthropic Enterprise Act and falling back under the excess business holdings rules
- Need sufficient liquidity to make 5% annual distribution
- Can certain passive-income producing activities be carried on more efficiently by the foundation itself (rather than retaining such activities in the business?

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Case Studies

- Newman's Own Foundation
- Other Examples

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Other Alternatives

- Gift business to public charity
  - Option of using a single member limited liability company
- Retain voting stock and gift non-voting stock to private foundation
- ESOPs

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Thank you!

Tom Moniz
(920) 2324856
thomas.moniz@vonbriesen.com

Sherry Martin
(608) 661-3972
sherry.martin@vonbriesen.com

2:35 – 3:25 p.m.

Internal Controls

Rachel Swanson, *Senior, CLA*

Lauren Wanta, CPA, *Senior Accountant, CLA*

We'll get you there.
CPAs | CONSULTANTS | WEALTH ADVISORS

Internal Controls

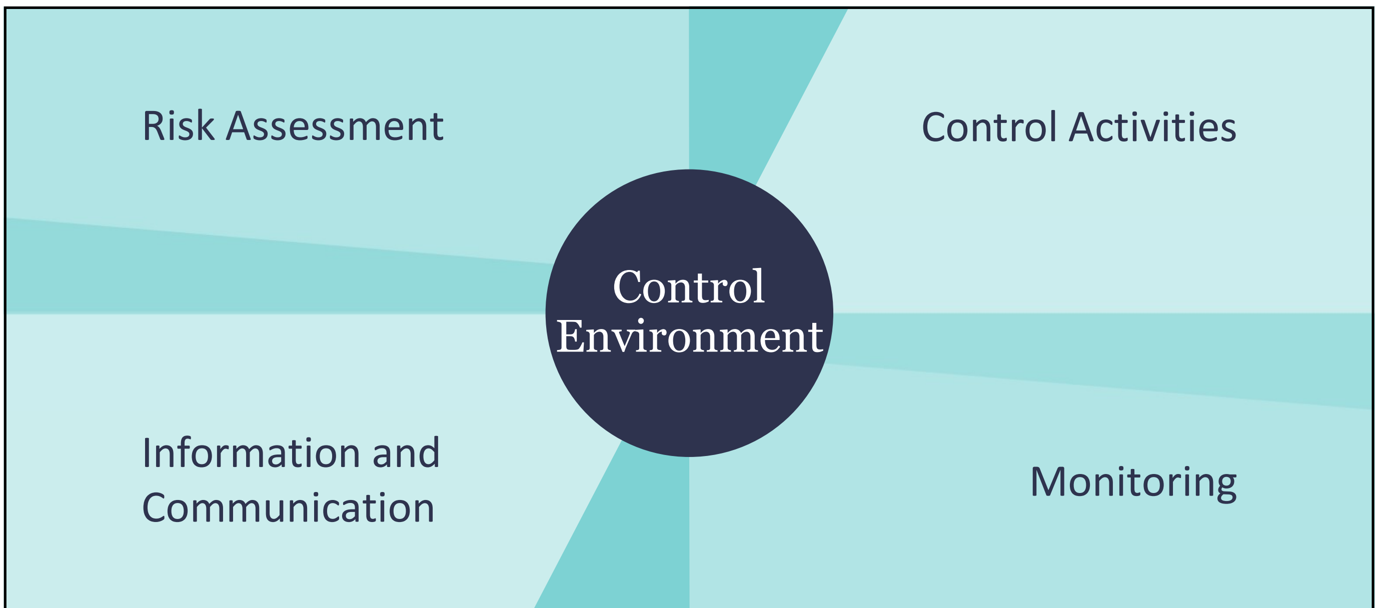
Rachel Swanson and Lauren Wanta

Objectives of Today's Session

- Gain an understanding of the internal control framework
- Identify areas where you can strengthen internal controls to better business procedures and help prevent fraud risks
- Discover best practices for remote work and use of technology

The Purpose of Internal Controls

- To safeguard assets
- To produce accurate accounting data
- To contribute to efficient operations
- To promote compliance with board policy and donor restrictions
- Internal controls help to limit the ***opportunity*** to commit fraud.



Elements of Internal Controls

Control Environment

The foundation of internal controls is the tone of your business at the management level.

- Having policies and procedures in place to guide the organization
- Emphasizing the importance of internal controls
- Leading by example with integrity and ethical values
- Formal budget process and regular review of variances
- Goal to attract and retain competent staff
- Effective board committees

Control Environment
Risk Assessment
Control Activities
Information & Communication
Monitoring

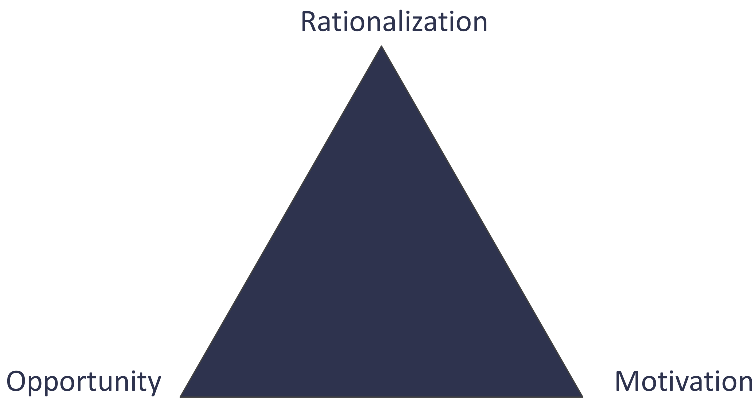
Risk Assessment

Analyzing risks of the company from internal and external factors.

- Having clear objectives about operating, financial reporting, and legal compliance functions
- Assessing and evaluating risks related to the objectives to prevent an adverse event from occurring

Control Environment
Risk Assessment
Control Activities
Information & Communication
Monitoring

Fraud Triangle



Control Activities

Actions established through policies and procedures to help ensure risk responses are effectively carried out.

- Segregation of duties, approvals, authorizations, reconciliations, and security over assets
- Preventative or detective
- Manual or automated

Control Environment

Risk Assessment

Control Activities

Information & Communication

Monitoring

Information and Communication

Exchange of information within the company.

- Developing and maintaining effective financial management information systems
- Enables management to share clear communications to employees
- Internal and external communication
- Publicized channels for employees to report suspected fraud
- Procedures in place for handling reports of suspected fraud

Control Environment

Risk Assessment

Control Activities

Information & Communication

Monitoring

Monitoring

Assessing the internal control procedures in place to ensure they are operating effectively.

- Identifying and correcting weak controls
- Comparing supporting schedules to accounting records
- Following up on budgeted results vs actual results

Control Environment

Risk Assessment

Control Activities

Information & Communication

Monitoring

Summary Question – True or False

Internal controls that are well-documented and firmly implemented will always run effectively and efficiently.

True or False

Best Practices

- Consistency and Effectiveness
- Safeguarding Assets
- Segregation of Duties
- Review and Approval
- Authorizing and Training

Consistency and *Effectiveness*

- Documenting policies and procedures in place
- Uniform training to ensure procedures performed are consistent

Having consistent and effective procedures helps to reduce errors and eliminate duplicate efforts.

Safeguarding Assets

- Safes and locked cash drawers should be used
- Tracking equipment held to reduce the risk of assets being misplaced
- Limiting access to authorized individuals

Segregation of *Duties*

- Segregating duties so one individual does not authorize, execute, and record a transaction
- Performing reconciliations of accounts

Helps to reduce the risk of inaccurate financial reporting and improper use of funds.

Best Practices

Review and *Approval*

- Adding a level of review and approval performed by a knowledgeable individual independent of the process
- Documenting approval
- Timely review

Helps to reduce errors and to detect irregularities and incomplete information.

Best Practices

Authorizing and *Training*

- Consistent training
- Limiting access to authorized personnel
- Documenting what employees can initiate purchases, approve purchases, and sign checks.

Best Practices

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Summary Question – True or False

An appropriate way for ABC Company to limit inefficiencies within their information system is to give all employees administrative rights.

True or False

Specific Controls

Specific Controls

Bank Accounts

- Limited number of accounts
- Use of an entity name, not an individual
- Limited number of check signers
- Monthly reconciliations
  - Timely review of reconciliation by an independent party
- Regular review of cancelled checks and statements

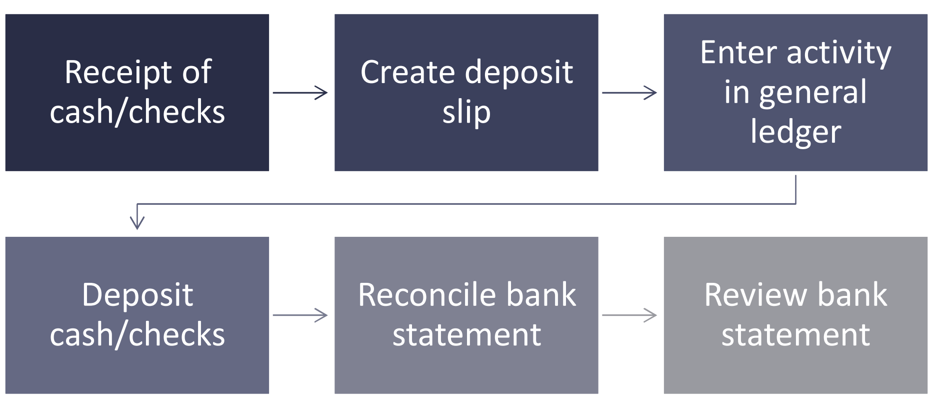
Specific Controls

Cash Receipts

- Immediate endorsement of all receipts
- Cash on hand is held in a secure location
- Cash is deposited in a bank account on a timely basis
- Deposit detail is retained (deposit slips from bank or listing prepared internally)

Cash Receipts

Cash receiving, processing, and recording functions are segregated between individuals



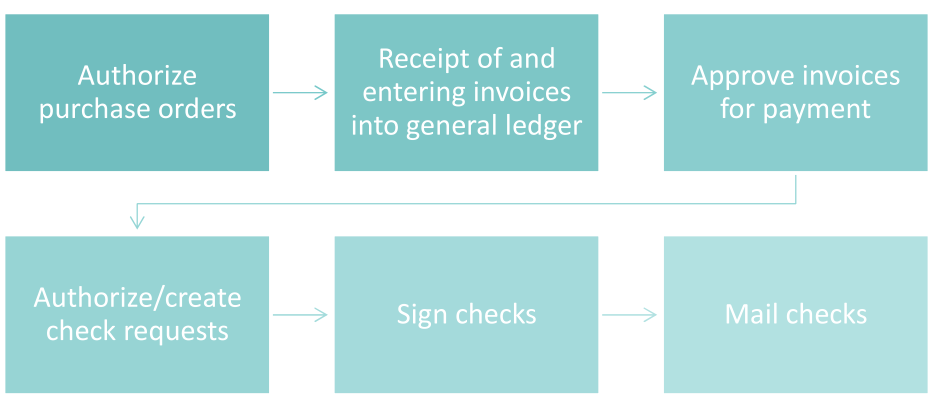
Specific Controls

Disbursements

- Using pre-numbered checks
- No pre-signed checks
- Blank checks are securely stored
- Two signatures required on each check
- Alteration and retaining of voided checks
- Require adequate support (original invoices with proper authorization) before writing checks
- Capitalization Policy

Cash Disbursements

Authorizing, processing, check signing, and recording functions are segregated between individuals



Summary Question – True or False

Segregating duties will make an organization more efficient.

True or False

Specific Controls

Investments

- Custody of investments should be segregated from accounting personnel
- Use of independent custodians and investment managers
- Reconciliation of activity using investment statements
  - Timely review of reconciliation by an independent party
- Board approved Investment Policy

Specific Controls

Receivables

- Specific approval required for all write-offs
- Allowance for doubtful accounts has special approval
- Regular review of delinquent accounts
- Reconciling accounts receivable aging to trial balance account(s)
  - Timely review of reconciliation by an independent party

Specific Controls

Payroll

- Timesheets are maintained and approved by managers/supervisors
- New hires, terminations, wage changes, and payroll deductions are authorized
- Timely recording of payroll transactions

Payroll

Authorizing new employees, payroll approval, and recording functions are segregated between individuals

Sign employee contracts → Approve employee timesheets → Enter payroll data → Review payroll data prior to submission

→ Submit payroll → Receive final payroll → Review final payroll with initial payroll → Review add/change report

Specific Controls

Payables

- All approved invoices and payments are promptly recorded in accounts payable register
- Unpaid invoices are tracked
- Invoices from unfamiliar or unusual vendors are reviewed and approved for payment
- Reconciling accounts payable aging to trial balance account(s)
  - Timely review of reconciliation by an independent party

Specific Controls

Fundraising

- Thank-you letters to donors
- Internal tracking of donor restrictions
- Control access to safe
- Cash on hand is held in a secure location
- Regular reconciliation of donor databases to trial balance account(s)
  - Timely review of reconciliation by an independent party

Specific Controls

Financial Reporting

- Budgets are prepared
- Financial statements are prepared on a timely, regular basis and presented to board members or management for review and discussion
- Data-retention policy
- Policy and procedures manuals

2 Person Office

Bookkeeper

- Record all general ledger activity
- Reconcile bank statements
- Receive cash
- Authorize invoices
- Write & mail checks
- Approve payroll

President / Treasurer

- Read only general ledger access
- Review bank reconciliations
- Complete deposit slips
- Sign checks
- Perform bank transfers
- Approve timesheets
- Distribute payroll
- Sign employee contracts

3 Person Office

Bookkeeper

- Record general ledger activity
- Write checks
- Reconcile bank statements

Office Manager

- Process and approve invoices
- Mailing checks
- Receive cash
- Approve & distribute payroll
- Authorize timesheets

President / Treasurer

- Completes deposit slips
- Signs checks and performs bank transfers
- Review bank reconciliations
- Sign employee contracts

4 Person Office

Bookkeeper	Senior Accountant	Office Manager	President / Treasurer
Record general ledger activity	Receive cash	Complete deposit slips	Sign checks; approve invoices
Write checks	Authorize check requests	Process invoices	Review bank reconciliations
Reconcile bank statements	Mail checks	Approve invoices	Sign employee contracts
	Distribute payroll	Approve payroll	Approve employee timesheets

Summary Question – True or False

Timely reconciliations and financial statements review are key parts of a strong internal control system.

True or False

High Risks Areas for Fraud or Error

Unsupported Journal Entries

Recommended Control: Review of entry and supporting documentation by independent individual

Revenue

Recommended Control: Reconciling fundraising software to trial balance account(s)

Cash

Recommended Control: Timely bank reconciliations and safeguards for physical cash

Payroll

Recommended Control: Reviewing payroll registers for fictitious employees and having supervisors approve timecards

How to Segregate Duties With Limited Staff

Board of Directors Involvement

- Sending Board of Directors monthly financial packets for review
  - Bank and investment account reconciliations
  - Manual journal entry reports
  - Payroll registers
  - Accounts payable and accounts receivable aging
- Member of the Board of Directors signs checks

Information Technology - Controls

- Unique logins and passwords
- Required vacation time
- Ensuring audit trail is capturing system activity
- External threats
- Banking controls (positive pay, FOB passwords, maximum thresholds for activities, etc.)
- Data recovery and back-ups of system activity

Remote Work Environment - Controls

- Re-evaluate and update policies and procedures documentation to account for virtual work environment
- Document approvals in electronic form
  - Invoice approval in PDF (DocuSign or Adobe functions)
  - Email approval
- Maintaining timely reconciliations
- Electronic receipt of invoices when available
- Ensure accounting system has appropriate (limited) user access
  - Limited administrative access

Remote Work Environment - Controls

- Review of user access listings to all systems
  - Removing terminated employees
- Use of Electronic Payments
  - ACHs and Wire Transfer
- Lockbox
  - Payments sent directly to a predetermined financial institution. Checks are posted based on reports received from bank.

Summary Question – True or False

Board of Directors should always take a hands-off approach to the internal control systems of their organization.

True or False

Key Takeaways

Questions?

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3:35 – 4:35 p.m.

Hot Tax Practice, Procedure & Ethics Issues Faced by Not-for-Profits

Michael Goller, J.D., *Shareholder & Tax Department Chair,*

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HOT TAX AND IRS PRACTICE AND PROCEDURE ISSUES THAT IMPACT THE NOT-FOR-PROFIT

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Michael G. Goller is a shareholder in Reinhart's Tax, Litigation and Business practices. He focuses on tax controversy and tax litigation, as well as tax and estate planning. His clients range from large public corporations to midsized, privately held businesses and their owners. Michael works on behalf of his clients in disputes with the IRS, the Department of Justice and various other taxing authorities.

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Table of Contents

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PART I
Hot Practice and Procedure Issues

- The IRS is going to receive a lot of money. How will it be spent?
- What are the hot audit issues?

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Hot Issues – Which Will Get Hotter

- Partnership Audits
- High Net Worth Audits
- Estate and Gift - Valuation Issues
- Net Operating Loss and Basis Issues
- Passive Losses and the Real Estate Professional
- Section 183 – "Hobby" Loss Cases
- **Refund Claim Traps**
- **Employment Tax Audits**
- **Penalty Issues**

PARTNERSHIP AUDITS

New Partnership Audit Program and related high net worth audit program are HOT in FY 2022, and beyond.

Source: Tax Notes (9/20/21)

Overview

The BBA, among other things, eliminates the so-called TEFRA Unified Partnership Audit Procedures[1] and the Audit Procedures for Electing Large Partnerships.[2] It also creates a more streamlined partnership audit approach, thus making it easier for the IRS to audit a partnership.

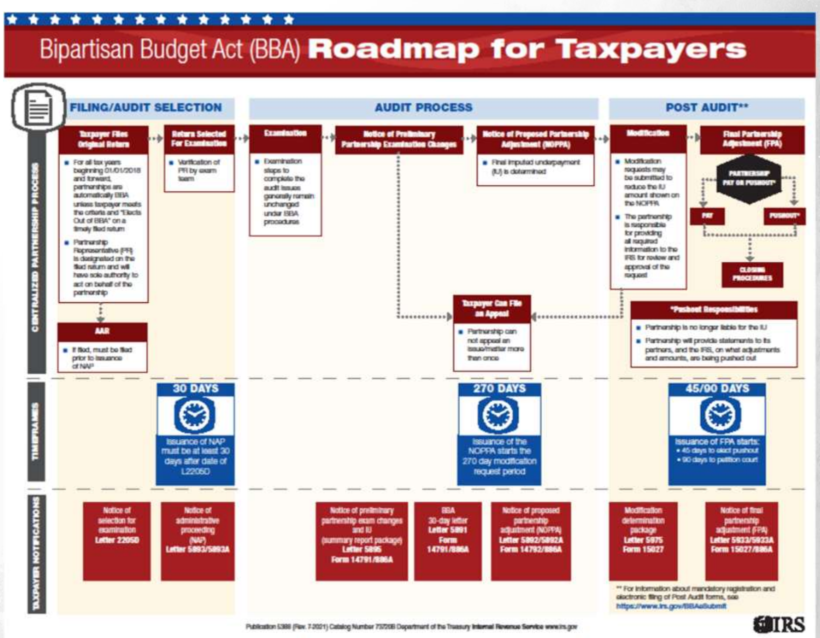
1 These were first created in the Tax Equity and Responsibility Act of 1982.

2 Created as part of the Taxpayer Relief Act of 1997.

Neutral Revenue Raiser

- The BBA was promoted as a "neutral" revenue raiser (*i.e.*, a revenue raiser in disguise); in that an increase in partnership audits will raise revenue without increasing taxes.
- It is expected that the new audit procedures and increased audits will yield $9.3 billion of additional revenue over ten years. As such, the law gained quick approval in Congress.

Partnership Audit Road Map



Current Status

- These audits seem to be off to a slow start
- IRS is asking for lengthy statute extensions

IRS Acknowledgement IDR--
Happens at the end of the audit

- IRS issues to most larger taxpayers an IDR that attempts to box the taxpayer into certain facts
- How to respond to the IDR?
- Why noncompliance is not an option:
  - Burden of proof issues
  - Rule of evidence issues (must make info available to opponent)
  - Penalty issues--arguing reasonable cause
  - IRS appeals uses a nonresponse as a basis for not appealing
  - Qualified Offer issues

Cooperation Issues

- Consider if you are eligible to switch the burden of proof to the IRS
  - Cooperation is important
  - Adequate records are important
- Noncooperation leads to admissions (e.g., statements or inferences that are later used against you)

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Acknowledgement IDR

- Use the acknowledgement IDR to support your case

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Getting to Appeals

- 30 day letter
- Protest – Skinny or fat – pros and cons
- Do an FOIA request
- Exam’s “T-letter”

Settling the Case at Appeals

- Hazards of litigation
- Does the IRS have uniform settlement guidelines?
- What to do if you hit a “brick wall”?

Which Court to go to

- U.S. Tax Court
- Federal District Court (refund)
- U.S. Court of Federal Claims (refund)
- Issues to consider
  - Precedent
  - Discovery issues and cost
- IRS v. DOJ

IRS Attorneys Requests for Information

- IRS attorneys have a set of standard questions
- Need to be able to address these questions in a cost-effective manner
- Trap - the failure to respond can lead to formal discovery or deemed admissions

Penalty Avoidance Matrix

	Reasonable Basis §1.6662-3(b)(3)	Reasonable Cause §6664 §1.6664-4(b)	Disclosure §6662(d)(2)(B) §1.6662-3(a)	Substantial Authority §1.6662-4(d)
Negligence	Yes	Yes	No[1]	Yes[2]
Disregard of the Rules or Regulations	Yes[4]	Yes	Yes[3]	Yes[5]
Substantial Understatement of Income Tax	No	Yes	Yes[6]	Yes
Substantial Valuation Misstatement (Income)	No	Yes[7]	No	No
Substantial Valuation Misstatement (E&G)	No	Yes	No	No
Gross Valuation Misstatement (Income)	No	No[7]	No	No
Gross Valuation Misstatement (E&G)	No	Yes	No	No

1. § 1.6662-7(b).
2. There must also be a reasonable basis for the position, adequate records must be kept and the position must be properly substantiated. §1.6662-3(c). In a case where there is substantial authority for a position, since this standard is higher than the reasonable basis standard (which negates negligence), there is no negligence. §1.6662-3(b)(3).
3. There must be reasonable basis and the taxpayer must keep adequate books, records and substantiation. § 1.6662-3(c)(1).
4. The disregard can be careless, reckless or intentional. § 1.6662-3(b)(2). The first two (careless and reckless) are for all practical purposes, the same as negligence, meaning reasonable basis would negate these two triggers. Further, however, if a position is intentionally contrary to a rule or regulation, reasonable basis would not be enough. However, see the disclosure election.
5. A position that is contrary to a Revenue Ruling or Notice is not treated as disregarding the ruling or notice if the contrary position has a realistic possibility of being sustained (a standard that is lower than substantial authority § 1.6662-3(b)(2). It is technically possible to have substantial authority that is contrary to a Treasury Regulation, which means the penalty could apply. In this case the taxpayer should be sure to make a disclosure.
6. There must also be a reasonable basis for the tax treatment of the disclosed item. §6662(d)(2)(B)(ii).
7. There is no reasonable cause exception for a gross valuation misstatement with respect to charitable deduction property and the exception only applies to a substantial valuation statement when there is a qualified appraisal and the taxpayer made a good faith investigation of the value of the property. § 6664(c)(3).

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Income Tax Overstatement of Value e.g., a Charitable Contribution

- Substantial Valuation Misstatement
  - There is a 20% penalty applicable to any underpayment attributable to a Substantial Valuation Misstatement
    - Section 6662(b)(3)
  - A substantial valuation misstatement occurs if the value (or adjusted basis) of any property claimed on a return claimed income is 150% or more of the correct amount
    - Section 6662(e)
  - The penalty is not imposed unless the misstatement results in an underpayment of greater than $5,000 ($10,000 for a C-corporation)
    - Section 6662(b)(2)

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Gross Valuation Misstatement

- There is a 40% penalty in the case of a Gross Valuation Misstatement.
- A Gross Valuation Misstatement occurs if the value of the property is 200% or more of the correct value section.
- The standard is automatically met if the correct value is zero.
  - Treas. Reg. Section 1.6662-5(g).
- Example
  - Donor claims a deduction under Section 170 for the donation of property to a qualified charity

Reasonable Cause and the Income Tax Valuation Penalties

- A reasonable cause exception under Section 6664 can apply when the underpayment is attributable to a substantial (but not a Gross) understatement with regard to a charitable contribution if the following occurs:
  - The claimed value of the property is based upon a qualified appraisal by a qualified appraiser;
  - The taxpayer also made a good faith investigation of the value of the contributed property; and
  - The taxpayer acted with reasonable cause and in good faith
    - Section 6664(c)(3)

Comment: Review the definitions of a qualified appraiser and appraisal in Treas. Reg. Section 1.170A-13(c)(3) and (5)

Penalty for Erroneous Refund Claims – Section 6676

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Penalty for Erroneous Refund Claims (Section 6676)

- Penalty equal to 20% of the excessive amount claimed unless:
  - It is shown that there is reasonable cause for the claim for the excessive amount.
  - Assume reasonable cause is the same as under Section 6664.

Comment: Reasonable cause is a defense.

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PART II
Ethics

Ethical Obligation to Talk About Penalty Avoidance

- Under IRS Circular 230, practitioners must advise the client of any penalties that are reasonably likely to apply and the practitioner must discuss the possibility of penalty avoidance via disclosure. §10.34(c)

The Office of Professional Responsibility

- There is often a tendency to assume that the Department of the Treasury's Circular No. 230 (Circular 230) pertains solely to preparing tax returns, tax opinions or dealings with the IRS
- The conventional wisdom is that a violation Of Circular 230 must mean a practitioner has engaged in some sort of outrageous behavior
- The reach of this ethical code is far greater than one might think
- A violation can (and does) occur in many more situations than practitioners might otherwise expect

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A Violation of Circular 230 Is a Serious Matter

- Public discipline for violating Circular 230 usually involves obvious misconduct such as one's own failure to file or pay tax, or the conviction of a criminal offense
- We have been seeing more cases that pertain to alleged "bad tax practice," such as a lack of due diligence, failure to give sound tax advice, conflicts of interest or other issues that indicate a tax practitioner's lack of fitness to practice before the IRS

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Who Is Subject to Circular 230? Section 10.3 (Revised June 9, 2014)

- Circular 230 applies to those who "practice before the IRS"
- "Practice before the IRS" comprehends all matters connected with a practitioner's presentation to the IRS with respect to a taxpayer's rights, privileges or liabilities under the tax law, including
  - Preparing or filing documents, correspondence and communicating with the IRS
  - Rendering written advice with respect to an entity plan or arrangement that has a potential for tax avoidance or evasion
  - Representing a client at IRS conferences and hearings

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Who Is Subject to Circular 230? Section 10.3 (Revised June 9, 2014)

- Attorneys and CPAs (including in-house practitioners) who are not under suspension or disbarment from practice before the IRS may file a Power of Attorney (POA) (Form 2848)
  - This permits them to and practice before the IRS and makes them subject to Circular 230
- One need not file a POA to provide written tax advice, however, providing written tax advice constitutes practice before the IRS
  - *i.e.*, makes the individual subject to Circular 230

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When Is Conduct Sanctionable?

- Generally, a practitioner may be sanctioned if the practitioner:
  - Is incompetent or disreputable;
  - Intentionally misleads a client so as to defraud that client; or
  - Is acting with a specific mental state or competency standard (*i.e.*, willful, reckless or gross incompetence), fails to comply with key provisions of Circular 230

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AICPA Rules

- Statements on Standards for Tax Services

Statement on Standards for Tax Services No. 1, *Tax Return Positions*

  - Interpretation No. 1-1, Reporting and Disclosures
  - Interpretation No. 1-2, Tax Planning

Statement on Standards for Tax Services No. 2, *Answers to Questions on Returns*

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AICPA Rules

Statement on Standards for Tax Services No. 3, *Certain Procedural Aspects of Preparing Returns*

Statement on Standards for Tax Services No. 4, *Use of Estimates*

Statement on Standards for Tax Services No. 5, *Departure from a Position Previously Concluded in an Administrative Proceeding or Court Decision*

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AICPA Rules

Statement on Standards for Tax Services No. 6, *Knowledge of Error: Return Preparation and Administrative Proceedings*

Statement on Standards for Tax Services No. 7, *Form and Content of Advice to Taxpayers*

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ABA Model Rules of Professional Conduct

- Some Version of the MRPC has been adopted in almost all states.
- Rules are mandatory.
- Comments to the rules are aspirational (not mandatory).

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Circular 230 Conflicts of Interest Section 10.29

- A major cause of malpractice claims, especially for Estate Planners

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A Conflict of Interest Exists If

- The representation of one client will be directly adverse to another client; or,
- There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or third person, or by the personal interest of the practitioner.

Comment: Rule is very similar to Model Rule 1.7

Other Authority

- ACTEC Commentary to Model Rule 1.7

Conflict Waivers – Circular 230 10.29

- The client must provide a written consent waiving the conflict within 30 days of giving verbal consent.
- The written waiver must be retained for at least three years after the conclusion of the representation of any affected client.

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Obtain a Waiver

- Where a conflict exists, a practitioner may still handle the matter if the practitioner reasonably believes that he/she will be able to provide competent and diligent representation to each affected client, the representation will not otherwise violate the law and each affected client waives the conflict in an informed consent at the time the conflict is discovered by the practitioner.

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Traps for the Unwary

- Representing spouses
- Personal interest of the lawyers
  - penalty issues
  - lawyer as a fiduciary
- Lawyer paid by a third party
- Innocent spouse relief issues

Tax Court Rule 24(g)

- The Rule goes beyond the normal conflict definition and states that if Counsel of Record was involved in planning or promoting a transaction at issue before the Court, that attorney must either obtain a consent or withdraw from the case.
  - This is a trap for the unwary.

Comment: More cases are becoming docketed in Tax Court due to the IRS insistence that a year or more remain on the assessment statute. The estate tax statute on assessment cannot be extended. Thus, the application of Rule 24(g) will come up more often in estate tax cases.

Why are more and more estate planners finding it necessary to docket a case in Tax Court?

- Two reasons
  - IRS budget cuts
  - Section 6501(c)(4)(A) provides that the statute of limitations on assessment can be extended with regard to "any tax imposed by this title, except *the estate tax* . . ." (emphasis added)
  - Practical Comments

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Additional Trap for the Unwary

- Tax Court Petition is due before an executor is appointed (presumably an income tax issue that pertains to a pre-death year).
- Petition is filed in the name of Joe Smith, Deceased.
- Under Rule 60, must ratify Petition or the case may be dismissed.
- Dismissal of your Tax Court Petition means the IRS assessment stands.

Comment: If the estate has multiple beneficiaries, does the estate and a surviving spouse have a conflict?

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More Conflict Traps for the Unwary

The Practitioner's Own Interest

- A common conflict, which is often overlooked, is the situation where a practitioner prepares a tax return, either as a signing or nonsigning preparer, and then handles the subsequent tax audit or appeal.
- In this situation, there may be a conflict if the practitioner has a personal interest that conflicts with the client's interest.
- For example, if the IRS asserts an accuracy-related penalty, will the practitioner be hesitant to argue that the penalty should not apply because of the taxpayer's good-faith reliance on the practitioner's tax advice?
- What if the practitioner has a conflict because of an unreasonable fee?

Comment: The estate and gift tax valuation penalties are mathematical triggers. Thus, if value is too low the trigger (and thus a possible conflict) could arise without much warning.

More Conflict Traps for the Unwary (cont.)

Representing Both Spouses

- Another common conflict exists when the practitioner represents both a husband and wife, and the two spouses' interests become adverse.
- In such a situation, the practitioner may be unable to represent either spouse.
- Example – clients divorce and there is a pending Tax Court case. Does one spouse have a claim for relief under Section 6015 (i.e., innocent spouse and similar relief)?

Need both a PTIN and a Data Security Plan

IRS

Return Preparer Office September 24, 2019

Resources:

- IRS.gov
- Frequently Asked Questions
- Annual Filing Season Program
- Enrolled Agent Information
- Pay.gov System
- Online PTIN System

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Dear Tax Professional,

Summer is over, and it won't be long until you're sitting down at your computer to renew your preparer tax identification number (PTIN) for 2020. In mid-October when renewal season begins, you will notice a *data security responsibilities* statement has been added to the PTIN renewal process. It serves as a reminder of your legal responsibility to have a data security plan and to provide data and system security protections for all taxpayer information. When completing your PTIN renewal, a checkbox will be available to confirm your awareness of these data security responsibilities.

Data security continues to be a hot topic. That's because tax professionals remain a top target of identity thieves and data breaches continue to affect tax professionals at an alarming rate. Cybercriminals use sophisticated and ever evolving techniques to gain access to your systems. These criminals steal sensitive taxpayer data to file fraudulent tax returns and create financial havoc for your clients. There are simple steps you can incorporate in your daily operations to minimize your vulnerability and protect client data, including:

- Protect email accounts with strong passwords and two-factor authentication if available.
- Install an anti-phishing tool bar to help identify known phishing sites.
- Use anti-phishing tools that are included in security software products.
- Use security software to help protect systems from malware and scan emails for viruses.
- Never open or download attachments from unknown senders, including potential clients. They should instead make contact first by phone.
- Send only password-protected and encrypted documents when files must be shared with clients over email.
- Never respond to suspicious or unknown emails.
- Back up sensitive data to a safe and secure external source.
- Properly dispose of old computer hard drives that contain sensitive data.

You should also make sure to have a written data security plan in accordance with the Federal Trade Commission's Safeguard Rule. Remember, protecting your clients is not only good for business, it's also the law. While the hope is that you're never the victim of a data breach, preparation and education will go a long way in helping to protect your clients and yourself.

More information:
Publication 4557, Safeguarding Taxpayer Data

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Publication 5293, Data Security Resource Guide for Tax Professionals
Identity Theft Information for Tax Professionals

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Firm Management Procedures to Ensure Circular 230 Compliance Section 10.36 (Revised June 10, 2014)

- The IRS appears to be attempting to create a "culture of compliance"
- Practitioners in a position of authority must do more than ensure their own compliance with Circular 230
- Supervising practitioners must ensure that all individuals they supervise comply with Circular 230 as it pertains to the preparation of returns, claims for refund or other documents submitted to the IRS

Section 10.36

- A practitioner responsible for implementation of Circular 230 compliance procedures will be subject to disciplinary action if:
  - 1(a) The responsible practitioner, through willfulness, recklessness or gross incompetence, does not take reasonable steps to ensure that the firm has adequate procedures to comply with Circular 230; and
  - 1(b) One or more individuals who are members of, associated with, or employed by the firm are, or have engaged in a practice in connection with their practice with the firm of failing to comply with Circular 230;

Section 10.36

2(a) The responsible practitioner, through willfulness, recklessness or gross incompetence, does not take reasonable steps to ensure that firm procedures in effect are properly followed; and

2(b) One or more individuals who are members of, associate with, or are employed by the firm or have engaged in a pattern or practice, in connection with their practice with the firm of failing to comply with Circular 230; or

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Section 10.36

3(a) The responsible practitioner knows or should know that one or more individuals who are a member of, associated with, or employed by the firm are, or have engaged in a pattern or practice in connection with their practice with the firm that does not comply with Circular 230, as applicable; and

3(b) The responsible practitioner, through willfulness, recklessness or gross incompetence, fails to take prompt action to correct the noncompliance.

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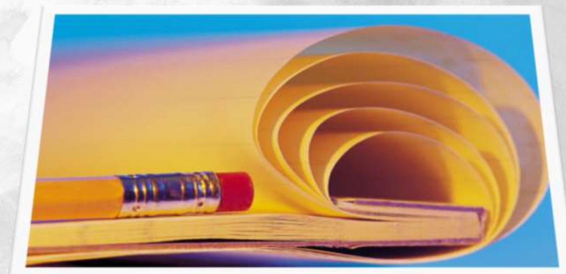
Written Tax Advice Form Section 10.35 and Section 10.37(a) Revised June 9, 2012

- The Covered Opinion Rules (Former §10.35)
  - These have gone away – Proposed regulations were issued on September 14, 2012
  - Final regulations were issued June 9, 2014 and became effective on June 12, 2014



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Old Rules

- Certain burdensome requirements existed if one issued one of the following:
  - A listed transaction opinion;
  - Principal purpose opinion is tax avoidance; or
  - Significant purpose to avoid tax opinion PLUS the opinion is one of the following opinions
    - Reliance Opinion
    - Marketed Opinion
    - Opinion subject to conditions of confidentiality
    - Opinion subject to contractual protection

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Ramifications of the Withdrawal of the Covered Opinion Rules

- No more legends on our e-mails
- Issuing a tax opinion may be more complex than before
- It is clear under the new rules that government submissions on matters of general policy and continuing education presentations are not considered written tax advice

Requirements for Written Tax Advice Section 10.37(a) (Revised June 9, 2014)

- The Practitioner must
  - Base written advice on reasonable factual and legal assumption
    - Including assumptions as to future events
  - Reasonably consider all relevant facts and circumstances the practitioner knows or reasonably should know
  - Use reasonable efforts to identify and ascertain the facts relevant to written advice on each federal tax matter

Requirements for Written Tax Advice Section 10.37(a) (Revised June 9, 2014)

- Not rely upon representations, statements, findings or agreements (including projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance upon them would be unreasonable
- Relate applicable law and authorities to the facts; and not, in evaluating a federal tax matter, take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit

Further, reliance upon a representation, statement, finding or agreement is specifically unreasonable if the practitioner knows or reasonably should know that one or more representations or assumptions on which any representation is based is incorrect, incomplete or inconsistent

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Reliance on Others Section 10.37(b) Revised June 9, 2014

- The practitioner may only rely on the advice of another person if the advice was reasonable and the reliance is in good faith considering all the facts and circumstances
- Reliance is specifically not reasonable when
  - The practitioner knows or reasonably should know that the opinion of the other person should not be relied upon;
  - The practitioner knows or reasonably should know that the other person is not competent or lacks the necessary qualifications to provide the advice; or
  - The practitioner knows or reasonably should know that the other person has a conflict of interest in violation with Circular 230
    - *e.g.*, the conflict has not been properly waived

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Standard of Review
Have I Complied with the Rule?

- In evaluating whether a practitioner's written tax advice complies with Section 10.37, the IRS will apply a "reasonable practitioner" standard, considering all facts and circumstances, including, but not limited to the scope of the engagement and the type and specificity of the advice sought by the client

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Standard of Review
Have I Complied with the Rule?

- In the case of an opinion the practitioner knows or has reason to know will be used or referred to by a person other than the practitioner in promoting, marketing or recommending a transaction, a significant purpose of which is the avoidance or evasion of tax, the IRS will apply an elevated "reasonable practitioner" standard. Emphasis will be given to the additional risk, caused by the practitioner's lack of knowledge of the specific taxpayer's particular circumstances **(*i.e.*, when tax advice is going to be used to promote a transaction to a third party, the IRS will apply an elevated standard of care).**

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Due Diligence
Section 10.22 (Revised June 9, 2014)

- Practitioner Must Exercise Due Diligence
  - Every practitioner must exercise due diligence when practicing before the IRS
    - This includes exercising diligence in preparing documents relating to IRS matters and verifying the correctness of oral and written presentations made to both the IRS and one's client with regard to any matter administered by the IRS
    - A practitioner's duty to be diligent is a very broad concept
    - A lack of diligence would seem to exist in most instances of deficient practice-related conduct

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Due Diligence
Section 10.22 (Revised June 9, 2014)

  - The concept of diligence seems to require more than the mere belief that a presentation is correct the moment it is submitted to the IRS or a client
    - The implied approval of past incorrect statements would seem to be a violation of Section 10.22
    - If a practitioner fails to correct an incorrect statement made to the IRS or a client, knowing full well that the recipient continues to rely on that statement
    - A failure to correct the error is inconsistent with the practitioner's obligation to be diligent

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Reliance on Others

A practitioner will be presumed to have exercised due care if the practitioner relies on the work product of another person so long as the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, **taking into account the nature of the relationship between the practitioner and the other person**

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Diligence as to Accuracy §10.22

- Trap for the unwary – FBAR (FinCin 114) and foreign bank accounts

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IRS Circular 230 Issues

Purpose and Operation of the ERC

The ERC is a refundable tax credit. The ERC was enacted for employers who continued paying employees during a shutdown due to the COVID-19 pandemic or who experienced significant declines in gross receipts, from March 13, 2020, to December 31, 2021.

Eligible employers may claim the ERC on an original or amended Form 941.

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IRS Circular 230 Issues (cont.)

To claim the ERC, employers must have:

- Sustained a full or partial suspension of their business operations due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to COVID-19 during 2020 or the first three quarters of 2021,
- Experienced a significant decline in gross receipts during 2020 or the first three quarters of 2021 because of COVID-19, or
- Qualified as a recovery startup business for the third or fourth quarters of 2021. (Only recovery startup businesses are eligible for the ERC in the fourth quarter of 2021.)

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IRS Circular 230 Issues (cont.)

The amount of the ERC depends on various factors, including:

- the number of employees
- the amount of the employer's payroll and gross receipts
- and whether the employer paid any sick or family leave wages.

The amount of the ERC reduces the employer's allowable wage deduction on its income tax return. **Employers cannot claim the ERC for any quarter for which wages were reported as payroll costs in obtaining Payroll Protection Plan (PPP) loan forgiveness or were used to claim certain other tax credits.**

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IRS Circular 230 Issues (cont.)

In its news releases, the IRS has noted that some advisers were urging employers to claim the ERC without appropriately informing them of the limitations on eligibility and the correct computation of the credit.

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IRS Circular 230 Issues (cont.)

Tax Professionals’ Role in ERC Compliance

The IRS’s outreach efforts to employers about possible excessive ERC claims have prompted requests from tax practitioners for the IRS—and, in particular, the Office of Professional Responsibility (OPR)—to provide guidance on their obligations in connection with clients’ ERC claims.

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IRS Circular 230 Issues (cont.)

Diligence as to Accuracy – Section 10.22(a)

Practitioners who prepare income, employment, and other tax returns for clients have a duty of due diligence to inquire of their clients with sufficient detail to ascertain the information necessary to determine clients’ eligibility for the ERC and to claim the proper amount of the ERC on the clients’ returns.

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IRS Circular 230 Issues (cont.)

Reliance - Section 10.34(d)

- Must be good faith

IRS Circular 230 Issues (cont.)

Duty to Inform Client of a Prior Mistake – Section 10.21

- Promptly inform the client of the mistake and consequences of the mistake.

IRS Circular 230 Issues (cont.)

Standards with Respect to Tax Returns - Section 10.34(b)

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IRS Circular 230 Issues (cont.)

Written Advice and a Conflict of Interest

A prior adviser, who may have advised the client to claim the ERC, has a conflict because of the amount of the fee the adviser charged for the advice, then the practitioner's reliance on that advice may not be reasonable?

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Use of Estimates

- AICPA Statement on Standards for Tax Services No. 4, Use of Estimates
  - Unless prohibited by statute or by some other rule, a CPA may use the taxpayer's estimates in the preparation of a tax return if it is not practical to obtain exact data and if the CPA determines that the estimates are reasonable based on the facts and circumstances known to the CPA
    - The taxpayer's estimate should be presented in a manner that does not imply greater accuracy than exists

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Preparer Penalty Standards Under I.R.C. Section 6694(a) and Cicular 230 Section 10.34

Standard	Preparer Duty
Frivolous[1]	Cannot prepare tax return
Reasonable basis[2]	Can prepare tax return with disclosure[3]
Substantial authority[4]	Need not disclose unless a tax shelter or a Section 6662A Reportable Transaction[5]
Reasonably believe more likely than not (i.e., more than 50%)	Need not disclose

[1] The percentage of comfort is perhaps 5% or less
[2] Reasonable basis is defined in Section 1.6662-3(b)(3); the percentage of comfort is perhaps 20%
[3] Use Form 8275 or 8275R, or disclose pursuant to annual revenue procedure (e.g., Rev. Proc. 2015-16)
[4] "Substantial authority" is defined in Section 1.6662-4(d). It is a comfort level of perhaps 40% or more
[5] A tax shelter is an arrangement that has a significant purpose of avoidance or evasion of income tax. Section 6662(d)(2)(C)(iii). See Notice 2009-5 for how, in limited situations, to lower the standard to substantial authority for a tax shelter (basically educate the taxpayer about penalty exposure and document this fact)

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Competence – Section 10.35 (Revised June 9, 2014)

- A practitioner must possess the necessary competence to engage in practice before the IRS
- Competent practice requires knowledge, skill, thoroughness and the preparation necessary for the matter at issue
- A practitioner may become competent through various methods such as consulting with experts or studying the relevant law

Comment: Sections 10.35 and 10.36 together mean that managers have a duty to ensure that their subordinates have the requisite knowledge and skill and that they appropriately use that knowledge and skill

AICPA Rules

- AICPA Code of Professional Conduct, Section 50, Article V, Due Care
- "... Members should be diligent in discharging responsibilities to clients, employers and the public. Diligence imposes the responsibility to render services promptly and carefully, to be thorough, and to observe applicable technical and ethical standards ..."

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MRPC -1.3

- A lawyer shall act with reasonable diligence and promptness in representing a client

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Prompt Disposition of Matters and Responses to Requests for Information §10.20 and §10.23

- If the IRS makes a proper request for records or information, a practitioner must promptly respond to the request unless the practitioner reasonably has the good-faith belief that the information is privileged
- A practitioner may not unreasonably delay the prompt disposition of any matter before the IRS

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Prompt Disposition of Matters and Responses to Requests for Information §10.20 and §10.23

- The practitioner must make a reasonable inquiry of the practitioner's client as to who has possession or control of the requested information
  - However, a practitioner need not make inquiry of any other persons or verify information provided by the client

Comment: Consider these rules when responding to a "wealth squad" IDR, a detailed LB&I IDR or a very broad discovery request.

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Prompt Disposition of Matters and Responses to Requests for Information §§10.20 and 10.23

- Where the documents or information requested by the IRS are not in the possession of the practitioner or client, the practitioner must promptly provide the IRS employee seeking the information with any information the practitioner has about who has possession or control of the requested information

Comment: This rule certainly seems to raise Section 7525 and attorney-client concerns

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Professional Responsibility and the Employee Retention Credit

Michael Goller

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Professional Responsibility and the Employee Retention Credit

Internal Revenue Service (IRS) sent this bulletin at 03/07/2023 04:16 PM EST

Alerts from Office of Professional Responsibility (OPR) 03/07/2023

OPR Resources

- Circular 230 Tax Professionals
- Circular No. 230 (Rev. 6-2014)
- Frequently Asked Questions
- Latest News and Guidance from OPR
- Disciplinary Sanctions - IRB
- OPR Webinars

Issue Number: 2023-02

Inside This Issue

Professional Responsibility and the Employee Retention Credit

Since the Fall of 2022, the IRS has issued several warnings to employers to beware of third parties promoting improper Employee Retention Credit (ERC) claims. See IRS IR-2023-40 (Mar. 7, 2023); IRS IR-2022-183 (Oct. 19, 2022); COVID Tax Tip 2022-170 (Nov. 7, 2022). With tax filing season in full swing, tax professionals are requesting guidance to ensure they are meeting their Circular 230 professional responsibilities and the standards required to prepare and sign original tax returns, amended returns, or claims for refund relating to these credits.

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Privileges In a Tax Setting

- Federal Rules of Evidence – Rule 501- Privileges in General
  - Rule 501 provides that common law governs a claim of privilege unless provided otherwise by the Constitution, a federal statute, or rules prescribed by the Supreme Court. In a civil case, state law governs.
- There are a Number of Relevant Privileges
  - Attorney-Client
  - Accountant-client or practitioner privilege
  - Work Product Doctrine
    - Each can be waived
    - There are exceptions to each Recent case law
  - Spousal Privilege

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Attorney-Client Privilege (cont.)

<u>The Kovel Letter</u>

- The Privilege Can Extend Communications with the Attorney's Agents
- So long as a client's communication is made to an agent of an attorney (*i.e.*, a CPA that has been retained by the attorney) in confidence, for the purpose of obtaining Legal Advice from the lawyer, it is privileged. *United States v. Schwimmer*, 892 F.2d 237, 243 (2d Cir. 1989).
- What is a *Kovel* Letter?
- This rule, generally known as the *Kovel* rule. The application of the *Kovel* rule can be difficult in situations where non-legal services, such as preparing a tax return, are provided with legal services because it is difficult to distinguish between communications made for the preparation of a tax return and those made for the provision of legal services. Because the *Kovel* rule rests on the attorney-client privilege, the protection of the *Kovel* rule is lost anytime the attorney-client privilege is lost.
- When to use a *Kovel* Letter.

<u>Comment</u>: The key is the facilitation of communication between the lawyer and client

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OBTAINING A "GOOD" VALUATION REPORT – The Do's and Don'ts
Obtaining a "Good" Report

- How to retain an expert
  - Kovel letter
- Does my expert understand the tax law?
  - Section 2703
  - Tax affecting earnings
  - Use of a weighted average when there are multiple valuation methods
- Reliance
- Privilege waiver
- Tax Court Requirements – T.C. Rule 143(g)
- Ethically – What can I tell my experts?

Switching the Burden of Proof to the IRS

- Burden of proof can be important in valuation cases.
- This is especially so if the IRS does not obtain a good valuation report.
- Thus, failure to shift the burden can be a significant malpractice issue.

Comment: Given IRS budget issues, it is more difficult for the IRS to obtain a solid valuation report.

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Make Sure During the Audit That the Burden of Proof Will Switch at Trial

- Burden to IRS
  - In most civil controversies, a rebuttable presumption existed that the IRS's determination of tax liability is correct
    - *i.e.*, the taxpayer has the burden of proving the IRS is wrong
  - Section 7491 switched the burden to the government in any non-criminal court proceedings, regarding a factual issue, if the taxpayer introduces credible evidence, which is relevant to determination of its liability.

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Make Sure During the Audit That the Burden of Proof Will Switch at Trial (cont.)

- Qualification
  - Code Section 7491, which switches the burden of proof to the IRS, applies only to litigation in the courts between the taxpayer and the IRS;
  - In order to obtain a shift in the burden of proof, the taxpayer must first comply with all requirements of the code section;
  - Comply with substantiation requirements contained in the Code and Regulations;
  - Cooperate fully with the IRS;
  - Exhaust all administrative remedies available to the taxpayer, such as going to the IRS Appeals office; and
  - Produce credible evidence at trial.

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Make Sure During the Audit That the Burden of Proof Will Switch at Trial (cont.)

- The requirement to prove credible evidence means that the burden technically starts out on the taxpayer, but shifts to the government unless the taxpayer produces evidence that would enable the court to find in favor of the taxpayer, absent any contrary evidence being produced by the IRS and ignoring the judicial presumption of IRS correctness.

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Make Sure During the Audit That the Burden of Proof Will Switch at Trial (cont.)

- Finally, the shift in the burden of proof applies to all income, gift, estate, generation-skipping, taxes and all penalties in addition to tax
  - However, it does not apply to corporations, partnerships or trusts with the net worth exceeding $7 million (book value)

Failure to Obtain PTIN Section 10.8(a)

- Any individual who, for compensation, prepares or assists in the preparation of all or substantially all of a tax return or claim for refund must have a PTIN
- Generally, one must be a licensed attorney, certified public accountant, enrolled agent or registered return preparer to obtain a PTIN

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PART IV

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Employment Tax Issues

- New Audit Program
- Three Main Issues -
  - Employee/Independent Contractor
  - Fringe benefit issues
  - Deduction issues

October 1, 2021 – A very interesting day

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Fringe Benefit Issues

- Executive compensation issues in general
- Vehicle and tool *per diem* issues
- IRS is looking at the issue of whether employees are attempting to turn "wages" into taxable *per diem* allowances
  - Carefully scrutinize what expenses can be included in a *per diem*
- Comment: Contractors who have a large amount of unreimbursed business expenses are asking for increased per diems due to the nondeductability of these expenses.

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Section 530 of the Revenue Act of 1978

- Generally allows taxpayer to treat worker as not being an employee for employment tax, but not income tax or other purposes
- Must have reasonable basis and meet certain requirements

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Section 530 of the Revenue Act of 1978 (cont.)

- *Reasonable basis* for treating a worker as an independent contractor exists if the taxpayer reasonably relied on

1. Past IRS audit practice with respect to the taxpayer, or
2. Published rulings or judicial precedent, or
3. Long-standing recognized practice in the industry of which the taxpayer is a member, or
4. If the taxpayer has any "other reasonable basis" for treating a worker as an independent contractor.

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Section 530 of the Revenue Act of 1978 (cont.)

Comment: When section 530 relief is at issue, the IRS is supposed to consider the application of this relief before determining if an employment relationship existed.

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Section 530 of the Revenue Act of 1978 (cont.)

- Additional requirements
  1. The taxpayer must not have treated the worker as an employee for any period
  2. All federal tax returns, including information returns, must have been filed on a basis consistent with treating such worker as an independent contractor
  3. The taxpayer (or a predecessor) must treat all workers holding substantially similar positions consistently for purposes of employment taxes
     - The "similar worker consistency requirement"

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Statute of Limitations in Employment Tax Cases

Section 6513 governs when a return is deemed to be filed for purposes of Section 6511 (i.e., for purposes of whether a claim for refund is timely filed). Subsection (c) pertains to Social Security Taxes and Income Tax Withholding (i.e., the taxes reported on a Form 941). Section 6513(c) provides that:

> If a **return** for any period ending with or within a calendar year **is filed before April 15** of the succeeding calendar year, such return shall be considered filed on April 15 of such succeeding calendar year. § 6513(c)(1). (Emphasis added.)

Thus, when a Form 941 for a period is filed before April 15 of the following period, the tax return is considered filed on April 15 of that following year.

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Interest-Free Adjustments

- Generally, for employment tax (i.e., Form 941 obligations), if the adjustment to the Form 941 (i.e., the tax deficiency) is
  - paid on or before the due date of the 941 for the period in which the error is "ascertained,"
  - the amount of the underpayment shall be paid without interest being charged.
- An error is ascertained when resolved at examination or with appeals.

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Interest-Free Adjustments (cont.)

- If, however, the case is not resolved at Appeals and the taxpayer receives a notice and demand for payment from the IRS, the adjustment will not be interest free.
- In addition, the taxpayer will not be allowed an interest free adjustment where a prior audit found that additional tax was due with respect to the same issue.

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CONCLUSION

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