



2024 WICPA ACCOUNTING & AUDITING CONFERENCE

YOUR SOURCE FOR KEY UPDATES & INSIGHTS ON TIMELY ISSUES

HIGHLIGHTED TOPICS:



ACCOUNTING & AUDITING UPDATE

Hear about the latest relevant current and upcoming changes in GAAP and GAAS as well as real-world practical examples and tips



NEW FEDERAL REQUIREMENT FOR BUSINESSES: BENEFICIAL OWNERSHIP REPORTING 101

Hear directly from a FinCEN representative about information on beneficial ownership reporting and how to comply with the law, including a walkthrough of how to fill out the form, as well as a period for questions



ECONOMIC & FINANCIAL MARKET OUTLOOK: POST-ELECTION PROSPECTS

Find out what the most reliable indicators point to about the economic and financial market outlook, and what that means for us all in 2025-2028

THURSDAY, NOV. 21 | WICPA OFFICE & WICPA CPE LIVESTREAM

CONFERENCE AT A GLANCE

THURSDAY, NOV. 21

WICPA Office & WICPA CPE Livestream

7 – 8 a.m.

Registration & Networking
Lower Level Foyer

8 – 8:10 a.m.

Welcome & Opening Remarks
Lower Level Conference Center

8:10 – 9:10 a.m.

GENERAL SESSION
Economic & Financial Market
Outlook: Post-Election Prospects
Lower Level Conference Center

9:10 – 9:25 a.m.

Networking Break
Lower Level Foyer

9:25 – 10:15 a.m.

GENERAL SESSION
Balancing the Ledger: Recruitment
Strategies in the Hybrid Work Era
Lower Level Conference Center

10:15 – 10:30 a.m.

Networking Break
Lower Level Foyer

10:30 – 11:20 a.m.

GENERAL SESSION
Financial Accounting Update
Lower Level Conference Center

11:20 a.m. – 12:05 p.m.

Networking Lunch
Lower Level Foyer

12:05 – 12:55 p.m.

GENERAL SESSION
Accounting & Auditing Update
Lower Level Conference Center

12:55 – 1:05 p.m.

Networking Break
Lower Level Foyer

1:05 – 1:55 p.m.

GENERAL SESSION
Maintaining Ethical Objectivity
& Independence
Lower Level Conference Center

1:55 – 2:05 p.m.

Networking Break
Lower Level Foyer

2:05 – 3:05 p.m.

GENERAL SESSION
New Federal Requirement for
Businesses: Beneficial Ownership
Reporting 101
Lower Level Conference Center

3:05 – 3:15 p.m.

Networking Break
Lower Level Foyer

3:15 – 4:15 p.m.

GENERAL SESSION
Hot Tax Practice & Procedure
& Ethics Issues
Lower Level Conference Center

4:15 p.m.

Closing Remarks & Prize Drawings
Lower Level Conference Center



Commercial Bankers, Joel Benz and Avelina Poppoert, at the Wisconsin Institute of CPA's Conference.

Commercial banking means having a trusted partner right here in your neighborhood.

Whether you are getting your businesses off the ground or getting ready to expand, our commercial banking services are here to help you succeed.

We support local businesses by showing up where it matters most.

In addition to business checking, savings, loans and lines of credit, we also offer:

- Small Business Administration (SBA) Loans
 - We are one of Wisconsin's top SBA (7a) lenders
 - We have been an SBA Preferred Lender since 1999
- Treasury Management
- Private Banking and Wealth Management Services
- Payroll Services through Payroll Complete
- And More!



Waukesha State Bank 
The Bank of Friendly Service™

www.waukeshabank.com

TOGETHER,

we have the power to make a difference.

Contributions to the WICPA Political Action Committee (CPAC) and Legislative Involvement Fund (LIF) allows the WICPA to:



Educate lawmakers about the issues impacting Wisconsin CPAs.



Ensure a healthy business climate for CPAs and the clients you serve.



Strengthen the voice and visibility of the WICPA and its members.



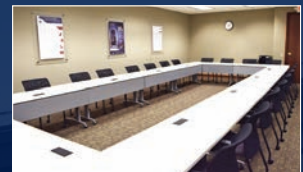
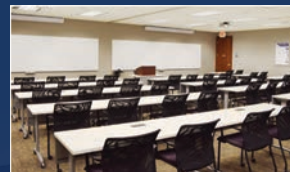
Support the election campaigns of candidates who support our issues.

Learn more and make a contribution at wicpa.org/cpaclif.

Meeting Space & Training Center Rentals Available

- ▶ Hassle-free meeting planning
- ▶ Professional environment
- ▶ Multiple room choices and layouts
- ▶ Accommodations for groups up to 60
- ▶ Full-day and half-day rental options
- ▶ Equipped with the latest A/V equipment
- ▶ Free high-speed Wi-Fi
- ▶ Free parking
- ▶ Located in Waukesha, just off I-94
- ▶ Coordinated catering and refreshments

Training Center



Executive Boardroom



For more information, visit wicpa.org/MeetingSpaces, or to schedule a tour or reserve space, contact Rachella Fortier at rachella@wicpa.org or 262-785-0445 ext. 4505.



WICPA
Educational
FOUNDATION



YOU have the opportunity to impact thousands of students and educators in Wisconsin.

Through your contribution to the WICPA Educational Foundation, you can help us reach students and educators in high school and college to create awareness about the accounting profession.

As the end of 2024 draws near and you are thinking about tax planning, consider donating to the WICPA Educational Foundation.

Questions? Contact Tammy J. Hofstede, WICPA President and CEO at tammy@wicpa.org.

To contribute, visit wicpa.org/EF.

INSPIRE FUTURE ACCOUNTANTS

PROMOTE ACCOUNTING & YOUR ORGANIZATION!

Step up and shape tomorrow's accounting professionals by hosting high school students at your organization. The WICPA Educational Foundation's Accounting Awareness Grants provide funding for high school educators to bring students to you for a presentation or activity to learn more about accounting. By volunteering to host a class, your organization will:



Spark interest in the accounting profession



Strengthen the CPA pipeline with future talent



Showcase your internships & job shadow opportunities



WICPA
Educational
FOUNDATION

Don't miss the chance to inspire and recruit the next generation of accountants. Get noticed by high school educators now!
Learn more at wicpa.org/HighSchoolActivityHost.



SAVE THE DATE!

UPCOMING WICPA CONFERENCES & SPECIAL EVENTS



CONFERENCES

WICPA conferences are your source for key updates and insights on timely issues. As a WICPA member, you can save up to \$150 on registration!

Accounting Technology Conference

Tuesday, Dec. 10

WICPA Office & WICPA CPE Livestream

Business & Industry Spring Conference

Thursday, March 20, 2025

Brookfield Conference Center & WICPA CPE Livestream

Financial Institutions Conference

Tuesday, May 13, 2025

WICPA Office & WICPA CPE Livestream

School District Audit Conference

Wednesday, May 21, 2025

WICPA Office & WICPA CPE Livestream

Business & Industry Fall Conference

Tuesday, Sept. 9, 2025

Brookfield Conference Center & WICPA CPE Livestream

Not-for-Profit Accounting Conference

Tuesday, Sept. 16, 2025

WICPA Office & WICPA CPE Livestream

Tax Conference

Monday, Nov. 3 - Tuesday, Nov. 4, 2025

Brookfield Conference Center & WICPA CPE Livestream

Accounting & Auditing Conference

Thursday, Nov. 20, 2025

WICPA Office & WICPA CPE Livestream

Technology Conference

Thursday, Dec. 4, 2025

WICPA Office & WICPA CPE Livestream

SPECIAL EVENTS

WICPA special events are unique opportunities to connect with fellow members and provide a great way to socialize and have fun!

Bowling Night

Thursday, April 24, 2025

New Berlin Ale House

Member Recognition Banquet & Annual Business Meeting

Friday, May 9, 2025

Brookfield Conference Center

New CPA Banquet

Friday, June 13, 2025

Brookfield Conference Center

Golf Outing

Friday, Sept. 19, 2025

Ironwood Golf Course

Virtual Member Orientation

Thursday, Dec. 12, 2024 | Open 8 a.m.

Tuesday, March 11, 2025 | Open 8 a.m.

Learn more and register at
wicpa.org/orientation.

Registration opens approximately eight weeks prior. For more details about each and to register, visit wicpa.org/conferences and wicpa.org/events.

2025
WICPA

Excellence

★ ★ ★

★ ★ A W A R D S



NOMINATE SOMEONE YOU KNOW FOR AN EXCELLENCE AWARD!

- ★ Accounting Educator
- ★ Accounting Student
- ★ Business & Management
- ★ CPA in Public Practice
- ★ Community Service
- ★ Distinguished Career
- ★ Diversity & Inclusion
- ★ Woman to Watch
- ★ Young Professional

Submit your nomination at wicpa.org/awards by Nov. 22, 2024.

Recipients will be announced in January and honored at the Member Recognition Banquet & Annual Business Meeting on May 9, 2025.

The individual nominated must be a WICPA member.

8:10 – 9:10 a.m.

Economic & Financial Market Outlook: Post-Election Prospects

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



WICPA Accounting & Auditing Conference

The Economic and Market Outlook 2024 – 2028

“Soft Landing” Still Most Probable Outcome

Imminent Fed Easing Will Support Economic Rebound

Political Uncertainties Could Weaken Upturn

Clare Zempel, CFA, CBE
Economist and Investment Strategist

WICPA Headquarters
November 21, 2024

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WICPA Accounting & Auditing Conference

The Economic and Market Outlook 2023 – 2028

What Do “Best Cyclical Indicators” Tell Us?

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Interest Rates and Recessions

(Inversion = 1-Year > 10-Year)

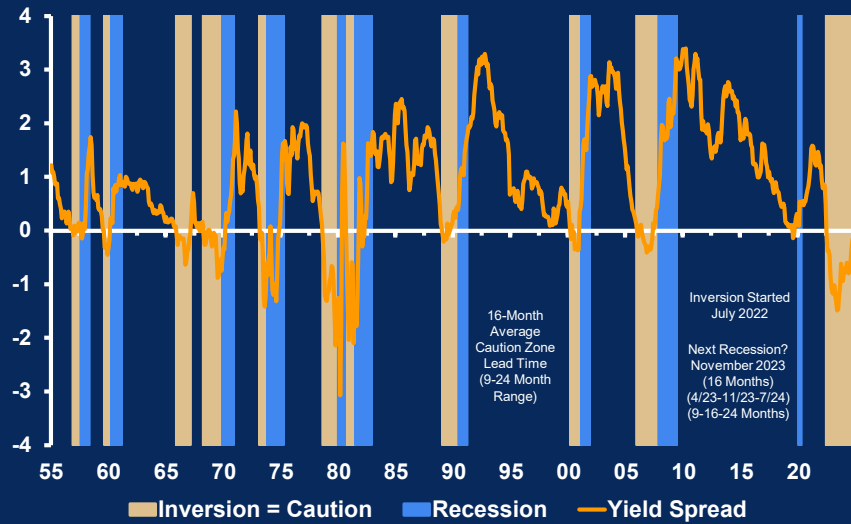
10 Recessions Since 1955

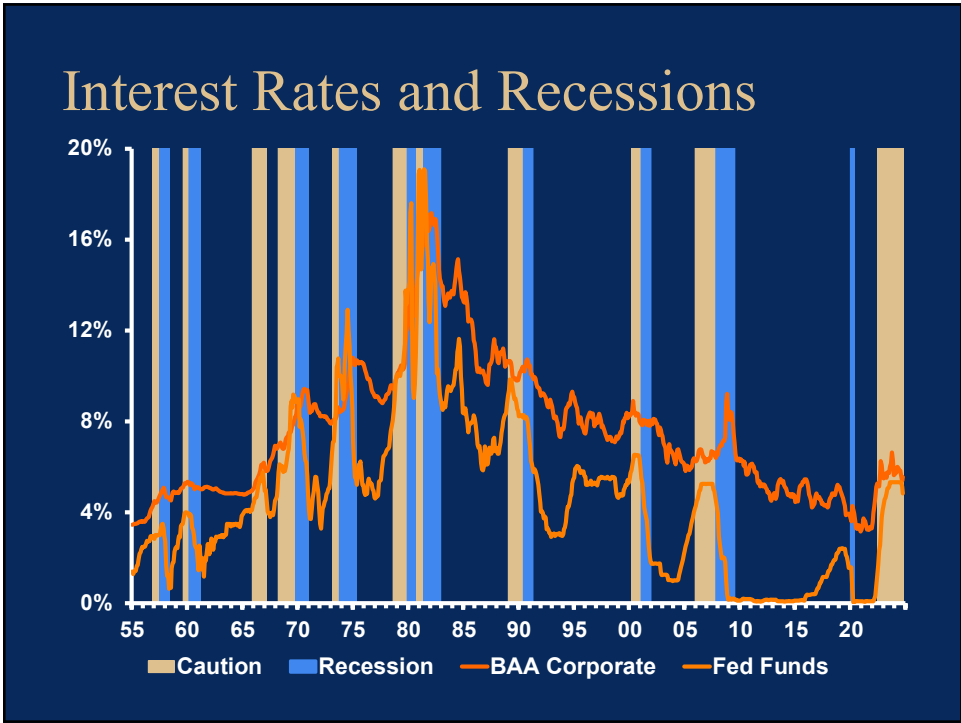
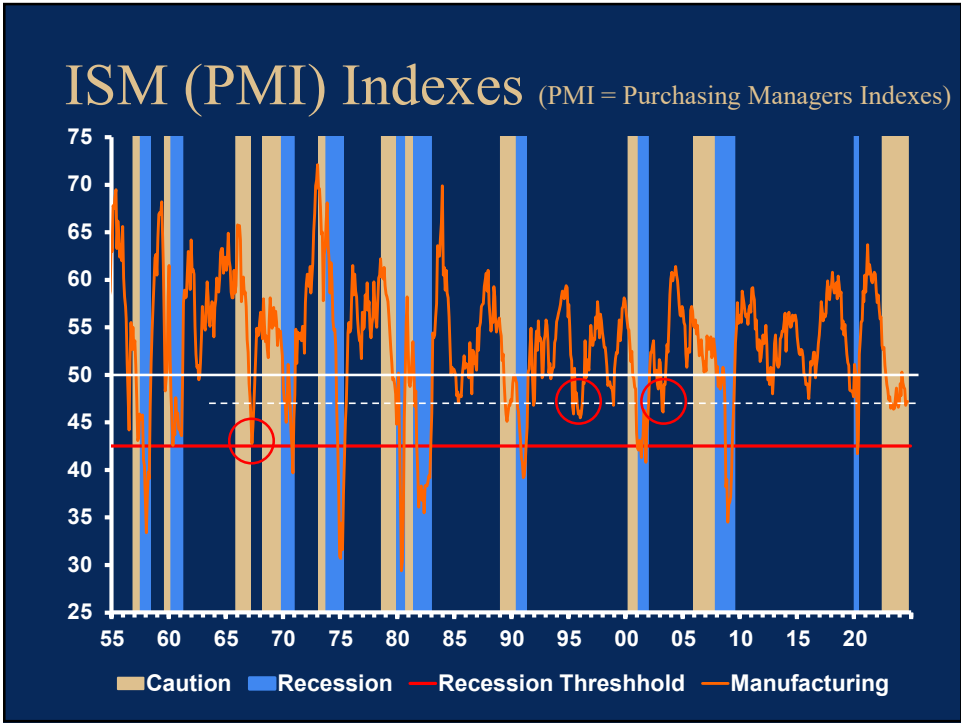


Yield Spread and Caution Zones ©

(10-Year T-Note Yield Minus 1-Year T-Note Yield) (Percentage Points)

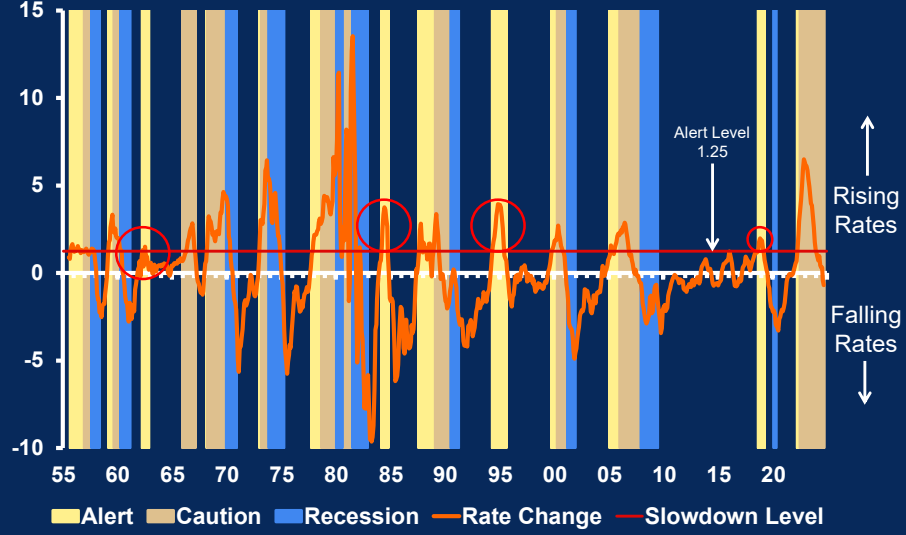
(Inversion = Caution Zone When Fed Funds Rate Is Rising)





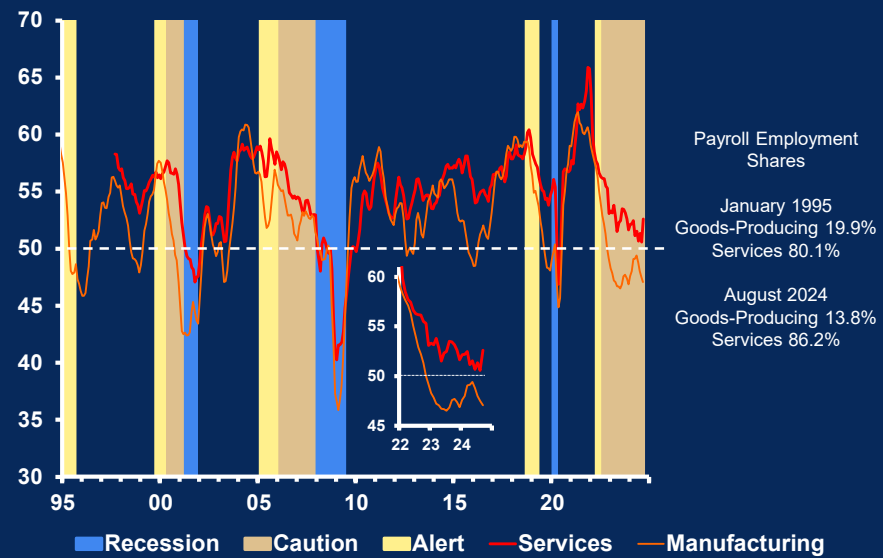
Rate Changes and Zempel Zones ©

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



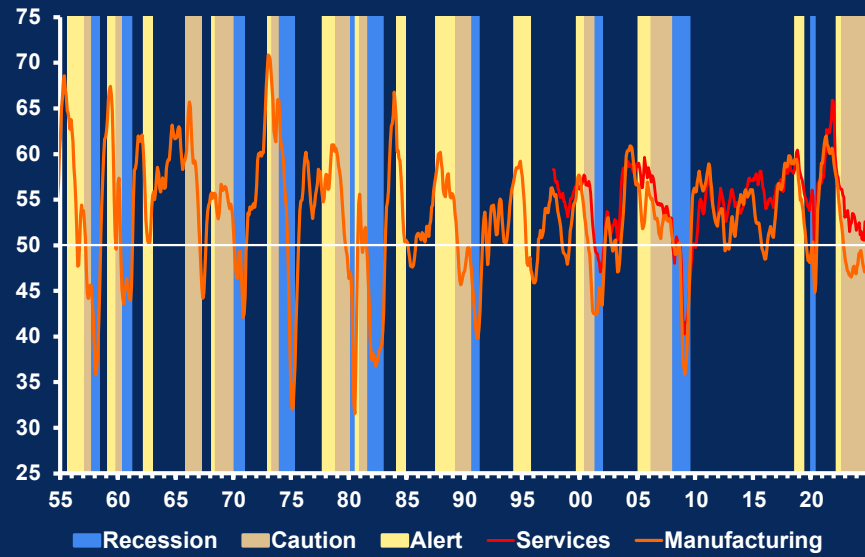
ISM (PMI) Indexes

(PMI = Purchasing Managers Indexes) (Smoothed)

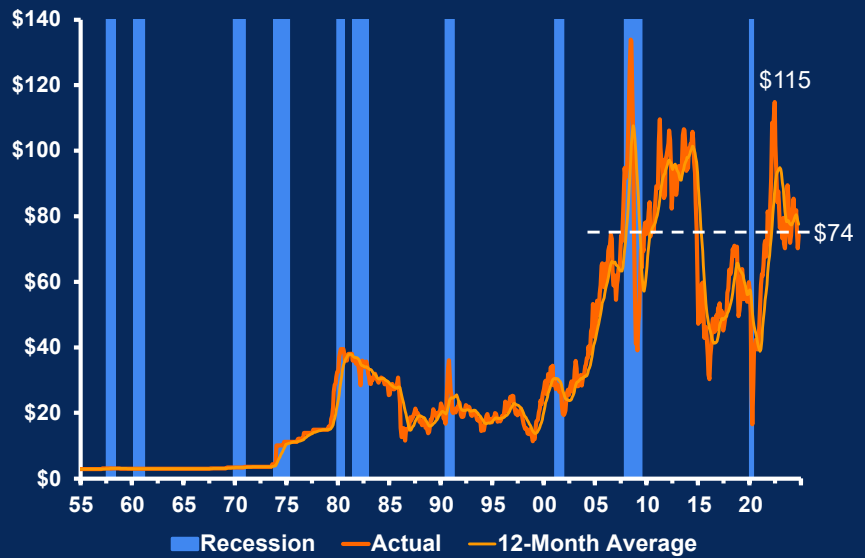


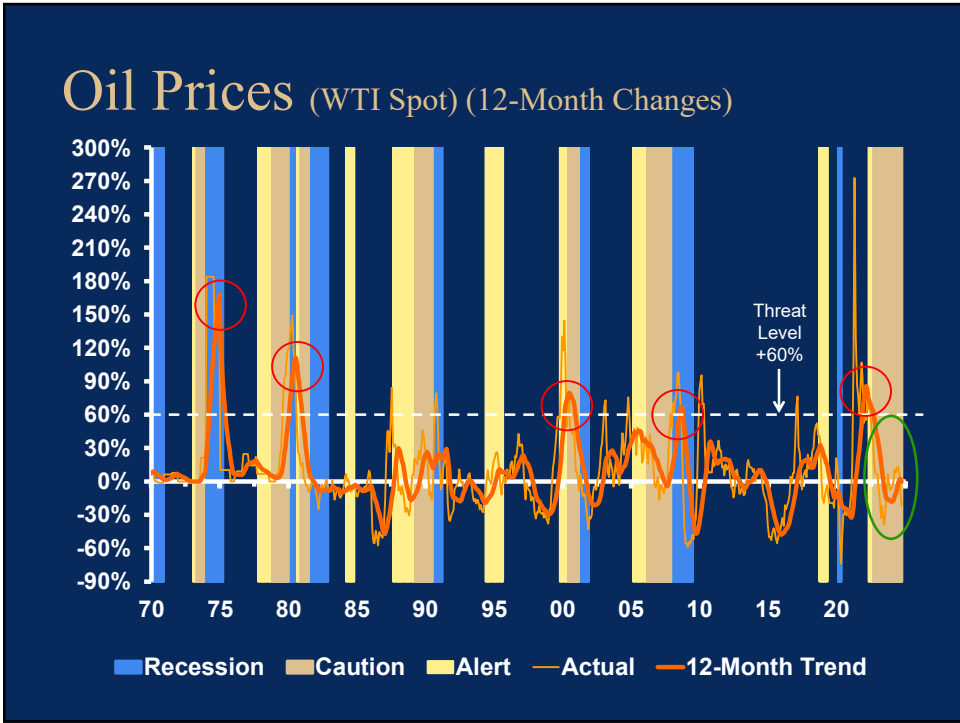
ISM (PMI) Indexes


(PMI = Purchasing Managers Indexes) (Smoothed)



Oil Prices (WTI Spot)







WICPA Accounting & Auditing Conference

The Economic and Market Outlook 2024 – 2028

What Do “Best Cyclical Indicators” Tell Us?

Yield Spread Still Inverted = Recession Risk Not Zero
But Lower Energy-Prices Support Expansion
And Fed Easing Is Imminent
So “Soft Landing” Remains Most Probable Outcome

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What Do “Best Cyclical Indicators” Tell Us?

Alert Zone (Rising Rates) = Growth Peaking
Warrants Tempering Optimism

Caution Zone (Yield Inversion) = Slowdown Developing
Implies Recession Risk
Warrants Making Recession Plans
Do Not Act Unless Jobless Claims Spike

No Zones Indicated
Implies Sustained Economic Growth
Warrants Business Expansion

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WICPA Accounting & Auditing Conference

The Economic and Market Outlook
2024 – 2028

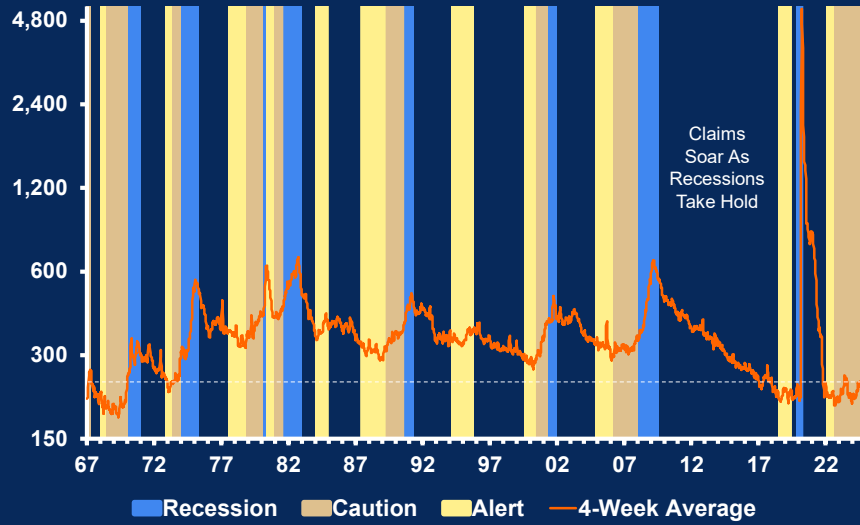
Has Recession Started? No

Why Not? Inflation Fell Much Faster Than Normal

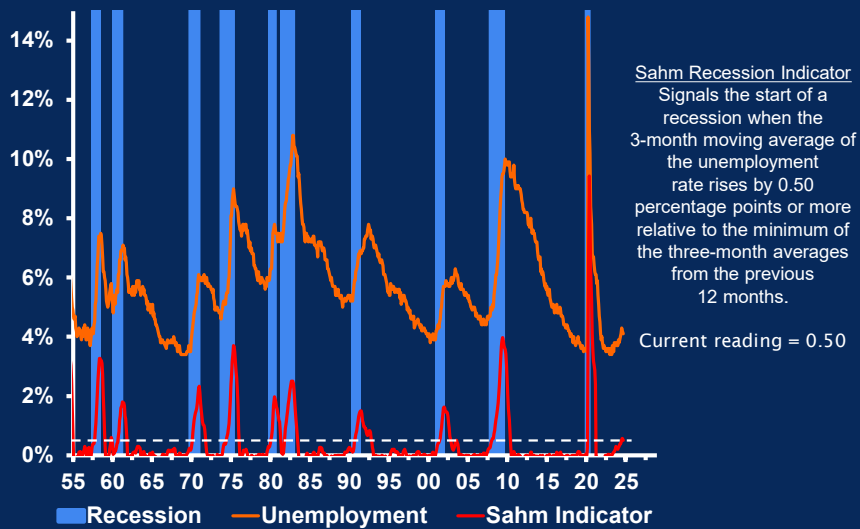
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Jobless Claims and Zempel Zones ©

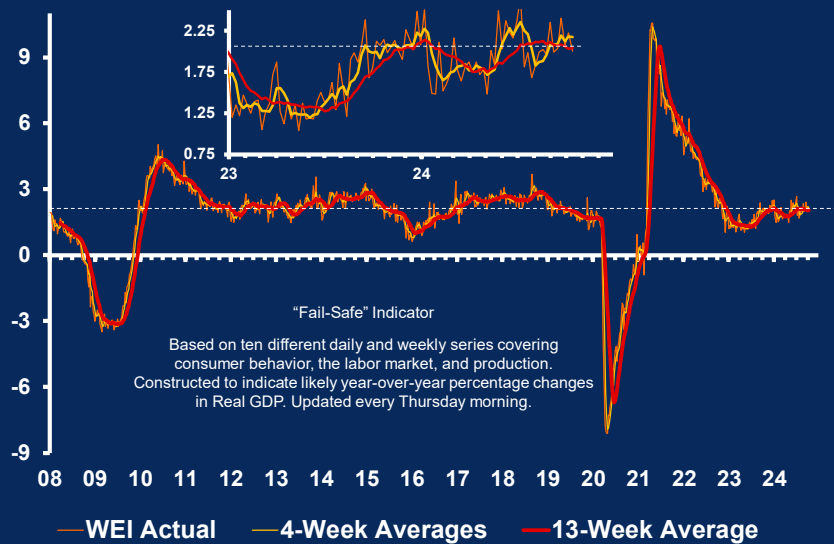
(Initial Unemployment Insurance Claims) (Log Scale) (Weekly) (Thousands)



Unemployment Rate and Sahm Rule (Months)

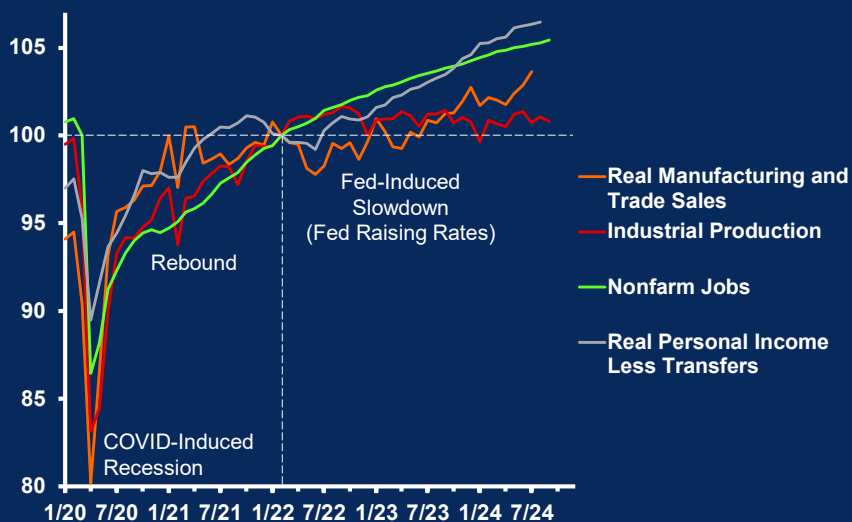


Dallas Fed's Weekly Economic Index

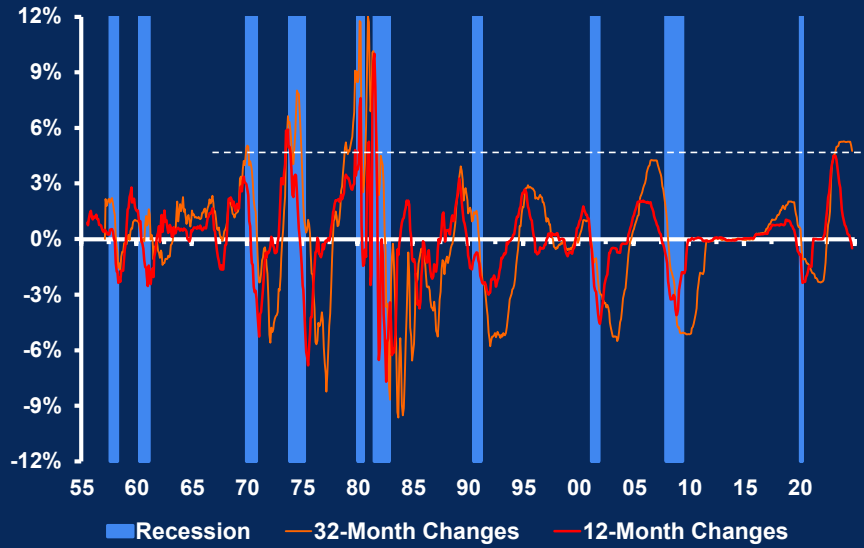


NBER Recession Watch – Four Key Numbers

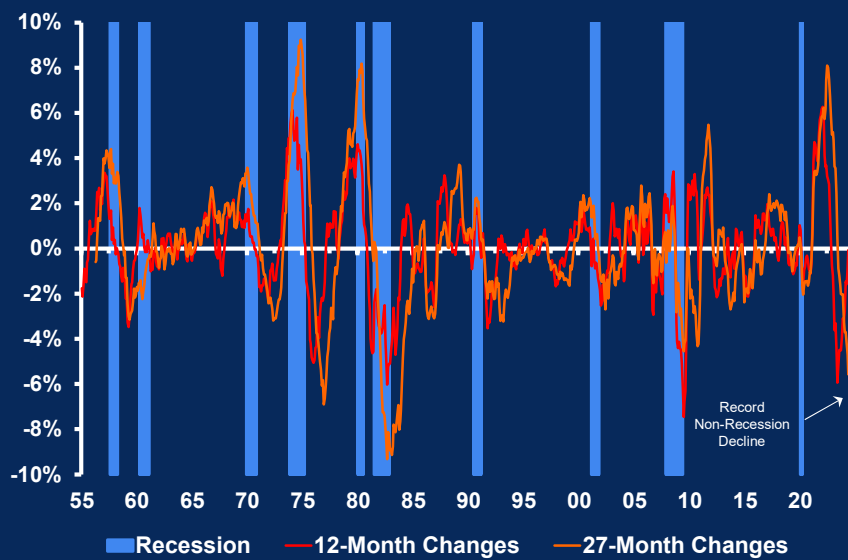
(NBER = National Bureau of Economic Research) (February 2022 = 100)



Fed Funds Changes (Percentage Points)

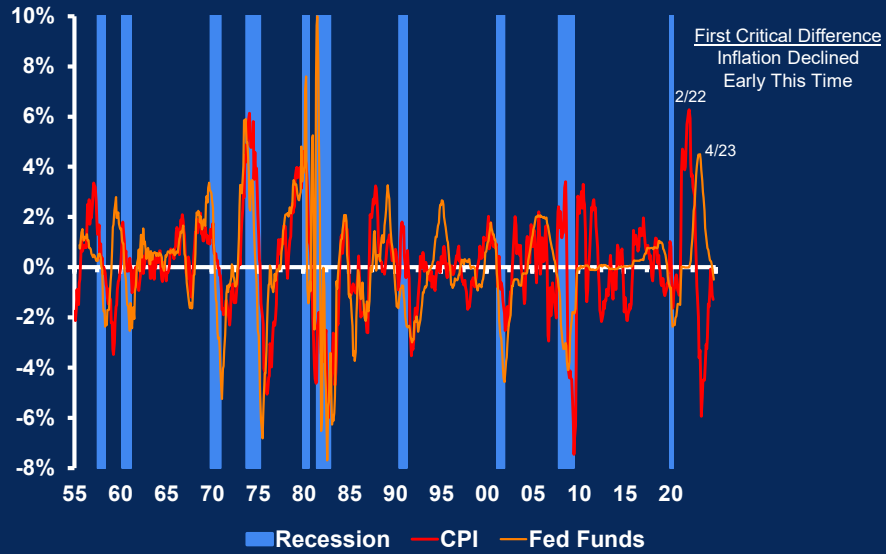


CPI Inflation Rate Changes (Percentage Points)

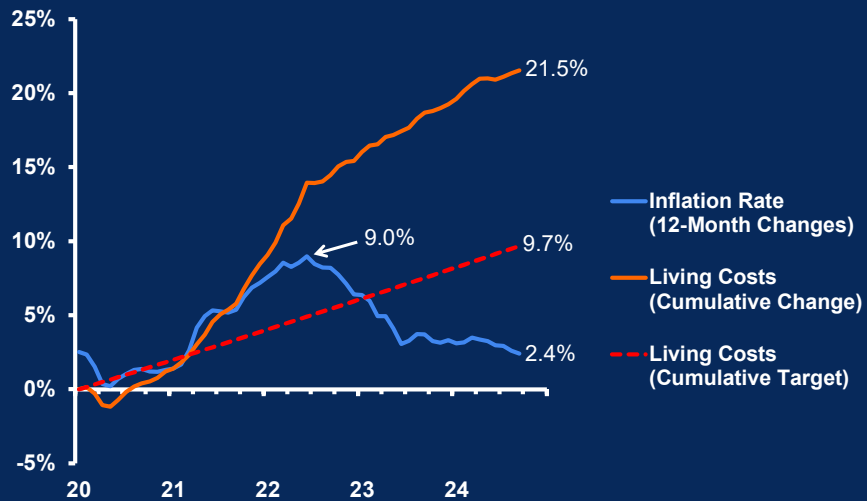


Fed Funds and CPI Changes

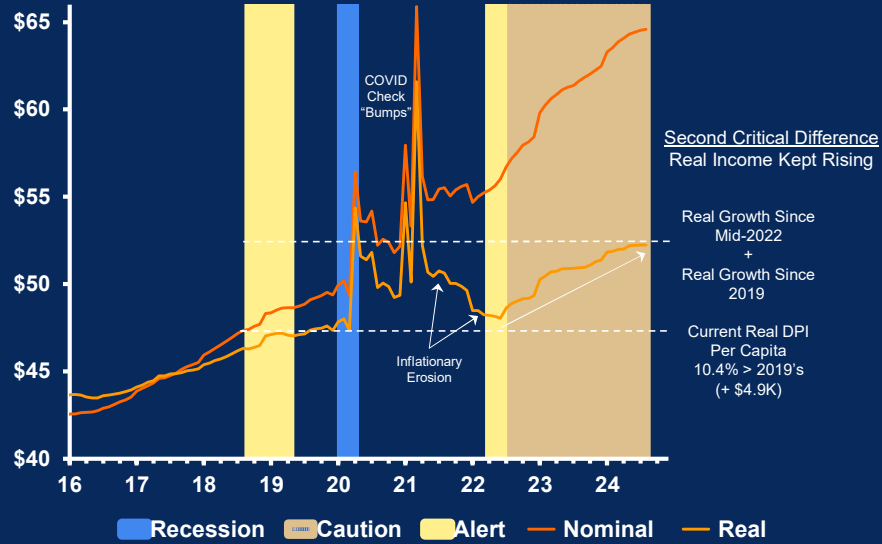
(12-Month Changes) (Percentage Points)



Consumer Price Index (Monthly)



Disposable Personal Income and Zempel Zones © (Per Capita) (Thousand Dollars)



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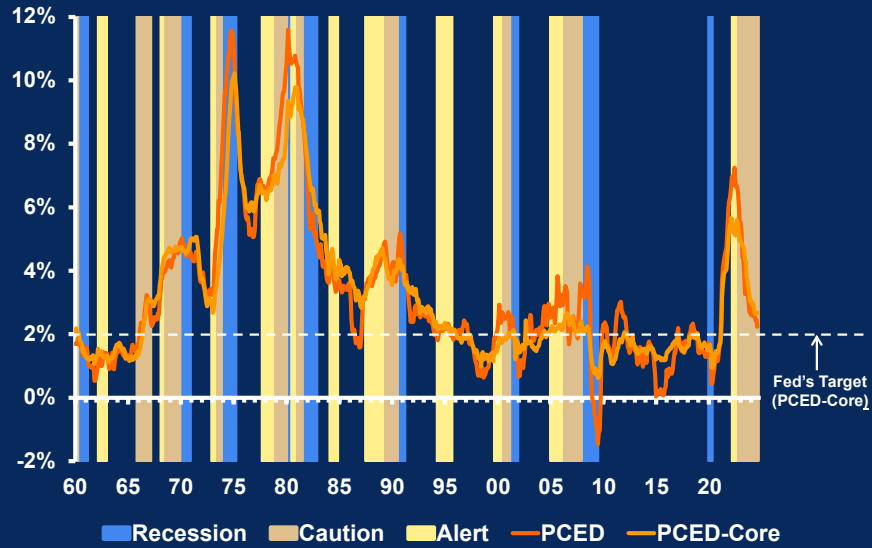
The Economic and Market Outlook 2024 – 2028

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

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PCED Inflation and Zempel Zones ©

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



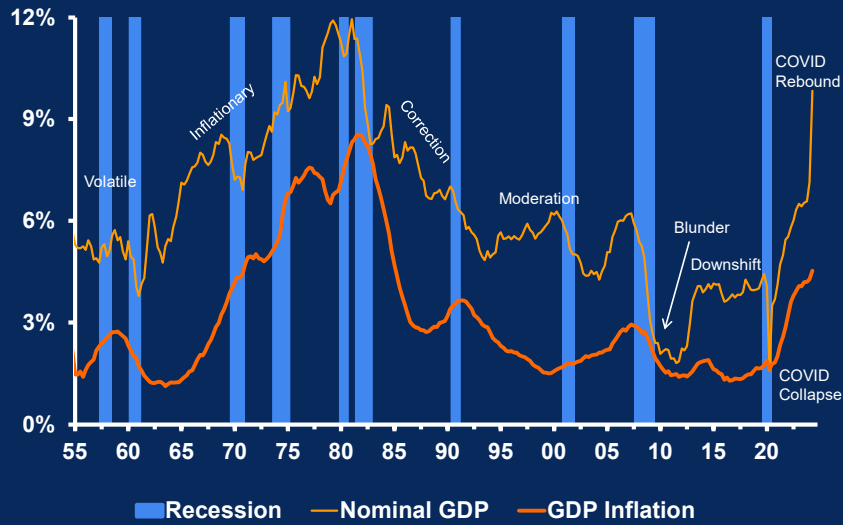
Global Supply Chain Pressure Index

(GSCPI) (Monthly) (New York Fed)

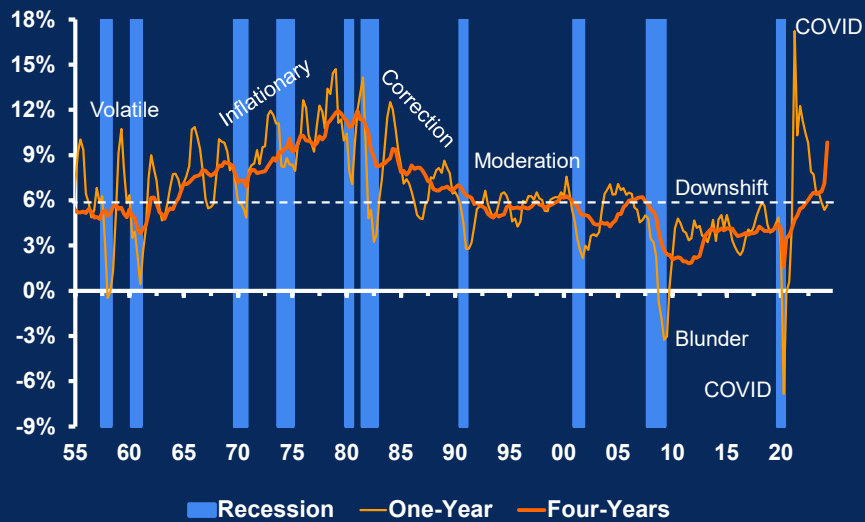


Nominal GDP Growth and Inflation

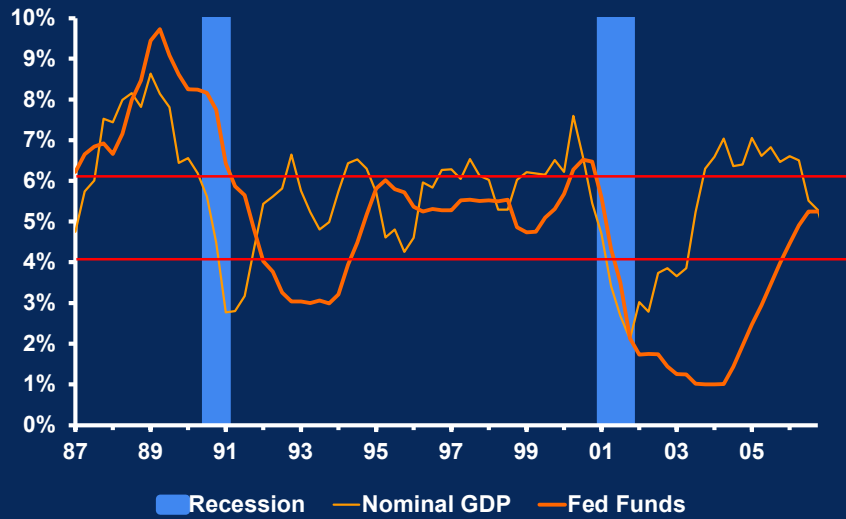
(Four-Year Growth Rates)



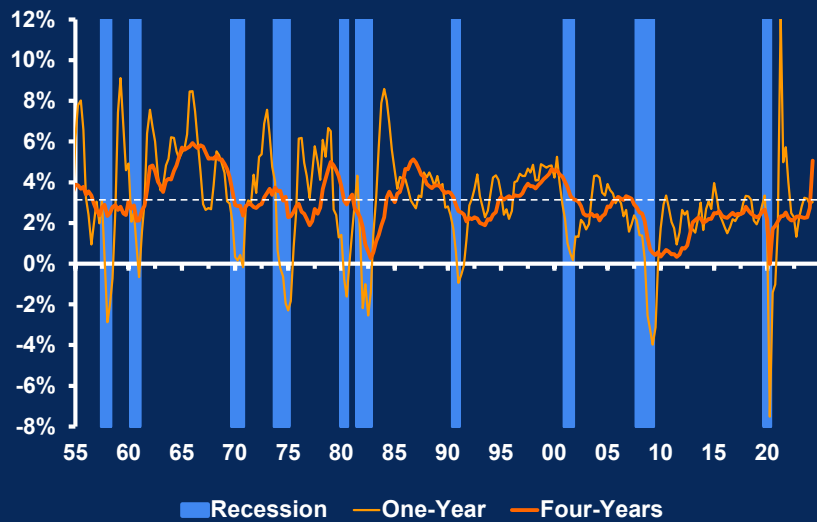
Nominal GDP Growth Rates



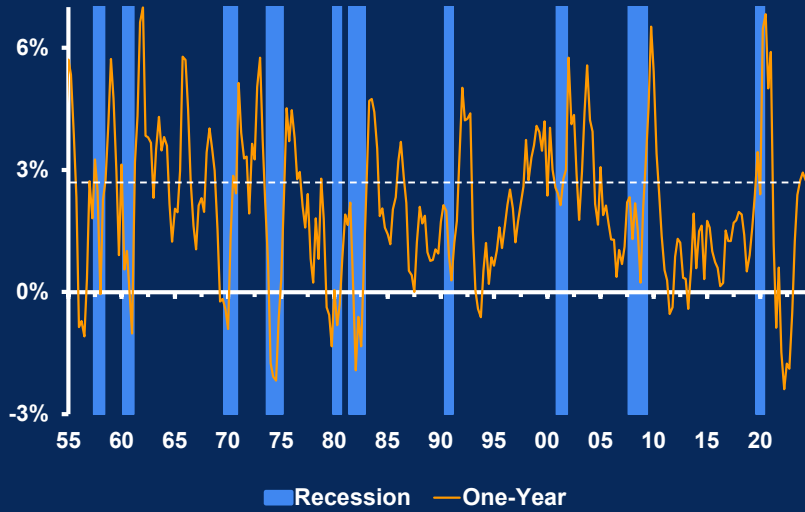
Nominal GDP Growth (Greenspan Era)



Real GDP Growth Rates



Non-Farm Productivity Growth

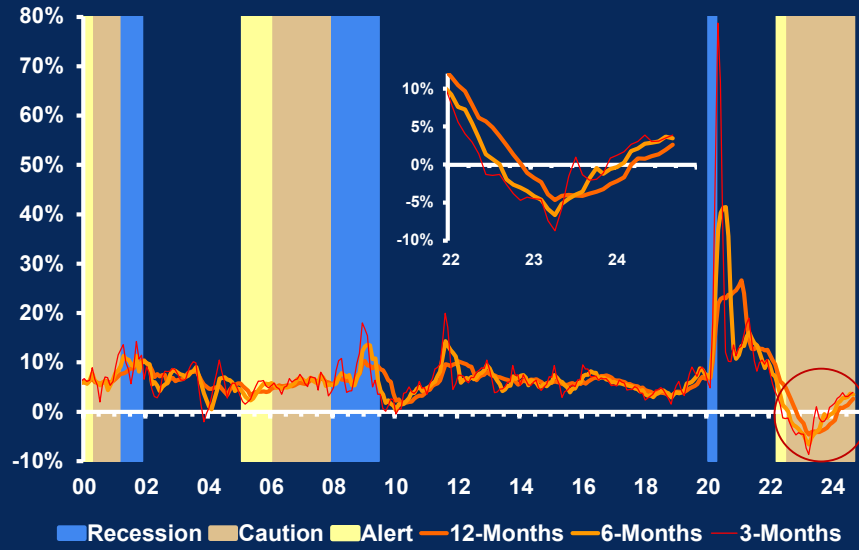


GDP Inflation Rates



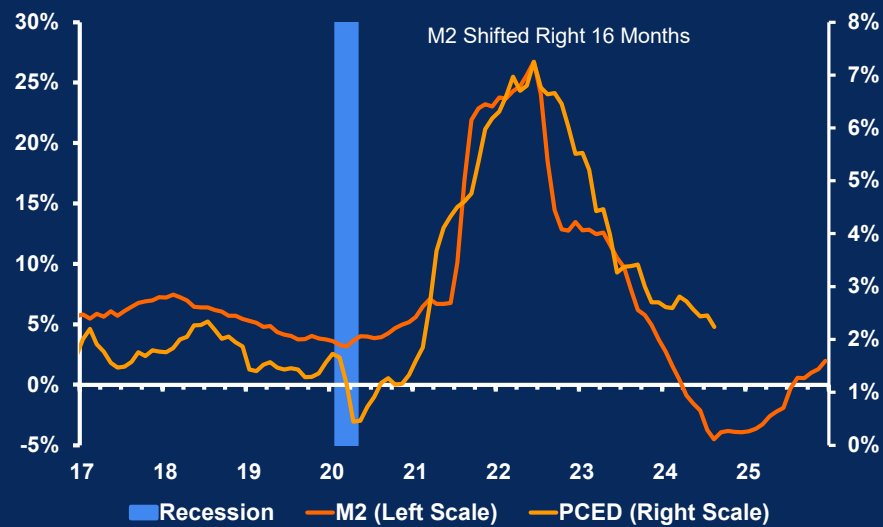
M2 Growth and Zempel Zones ©

(M2 Money Stock) (Monthly)



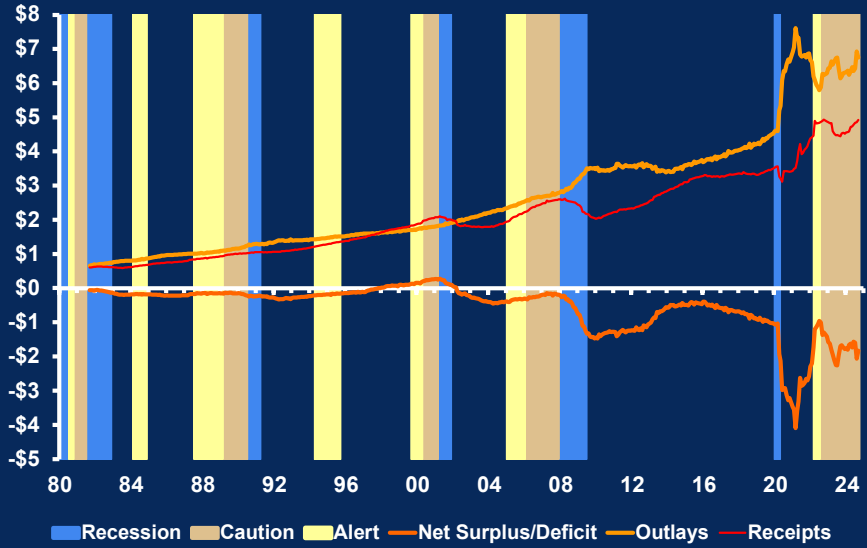
M2 Growth and PCED Inflation

(12-Month Changes)



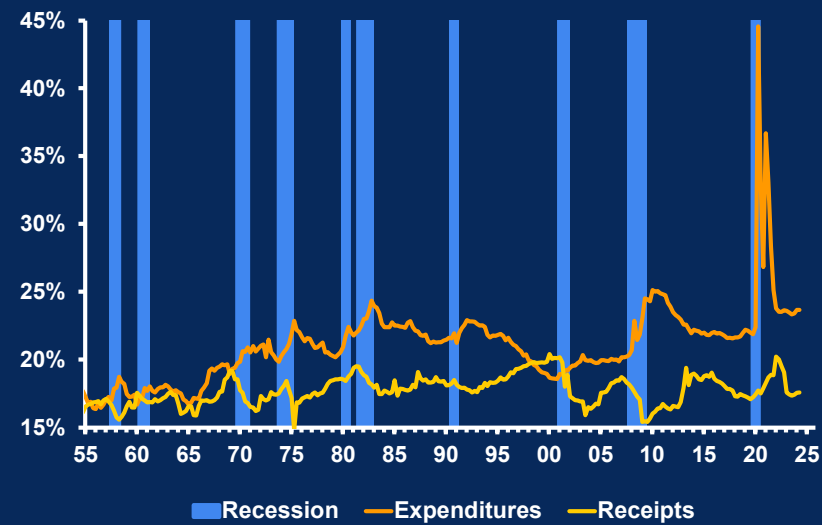
Federal Budget and Zempel Zones ©

(Trillions) (Monthly) (12-Month Totals)



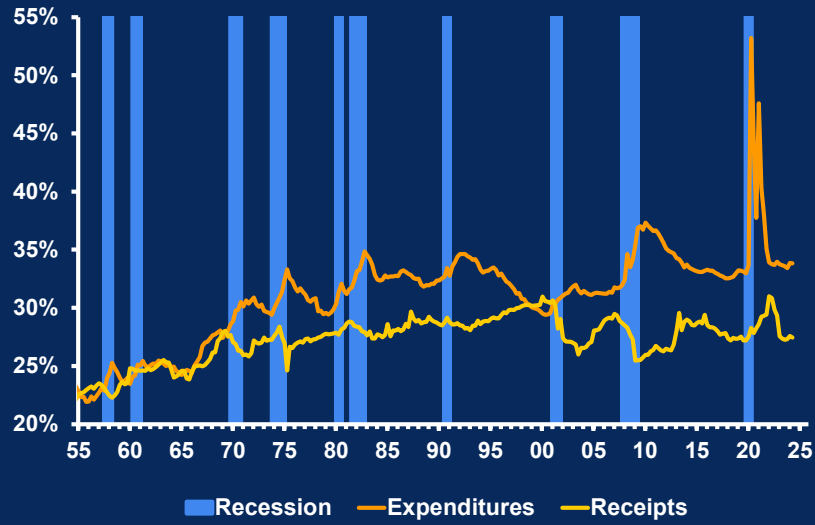
Federal Government Budget

(Percent of GDP)



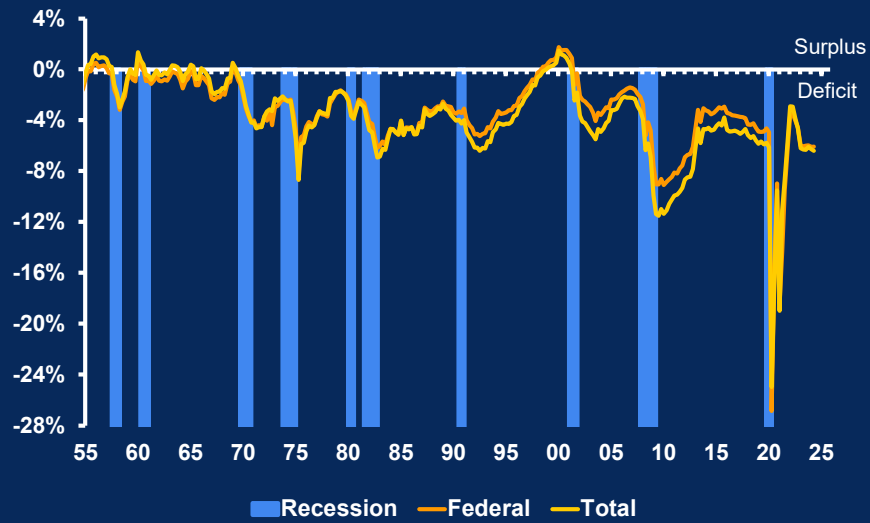
Total Government Budget

(Percent of GDP)

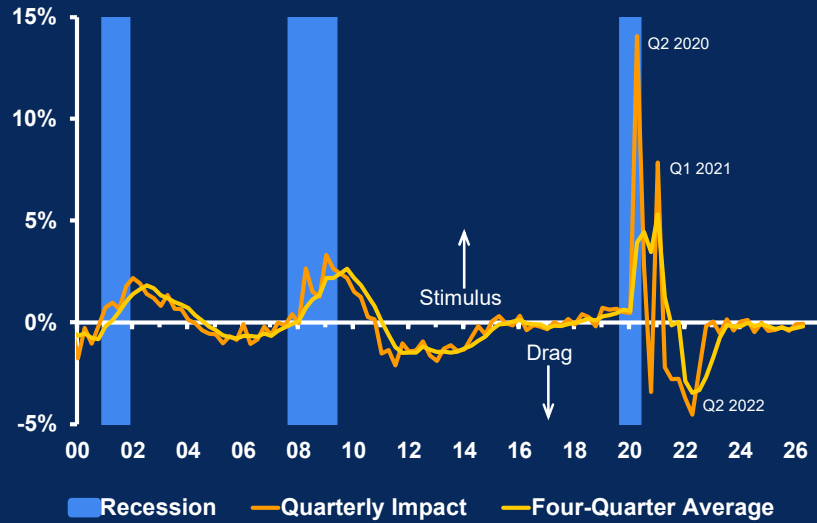


Government Budget Balances

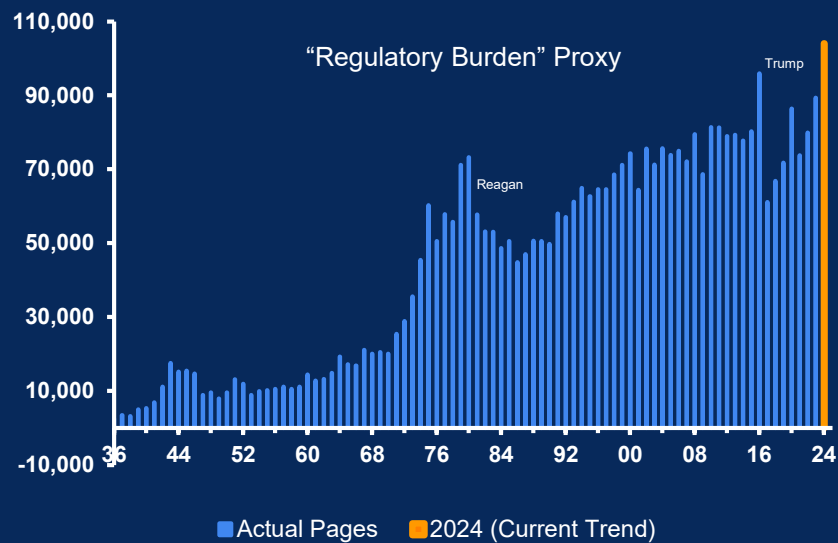
(Percent of GDP)



Hutchins Center Fiscal Impact Measure (GDP Growth Contributions)



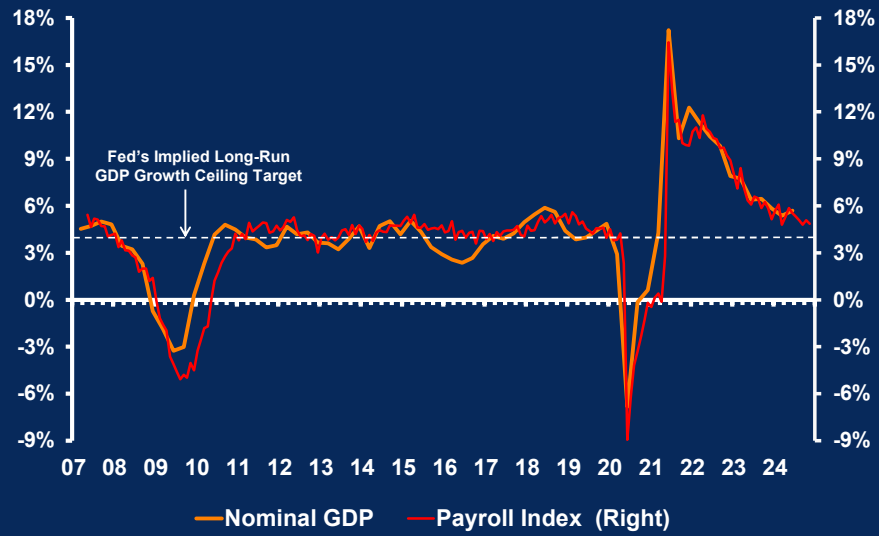
Federal Register Page Count (Actual Annual Totals in 1936-2023)



Nominal GDP and Payroll Index Growth

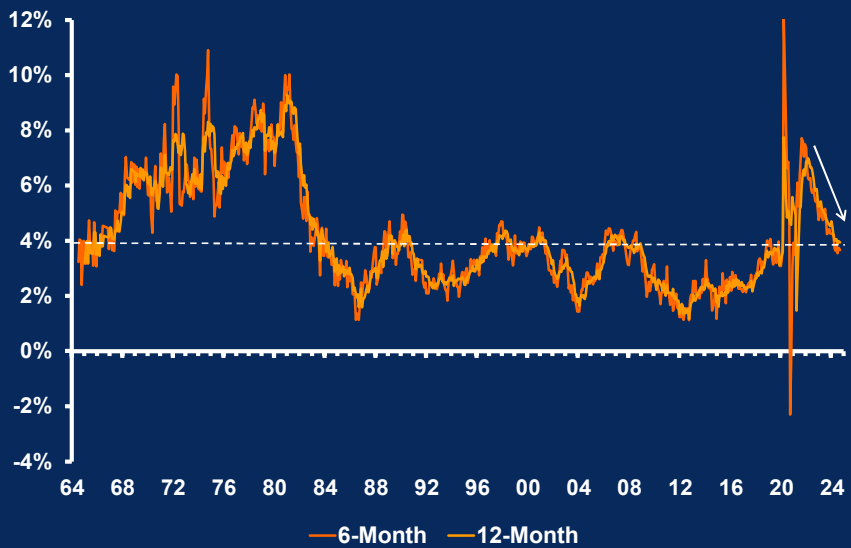
(Nominal GDP Growth = 4-Quarter Change)

(Payroll Index = Hours x Wages) (Payroll Index Growth = 12-Month Change)

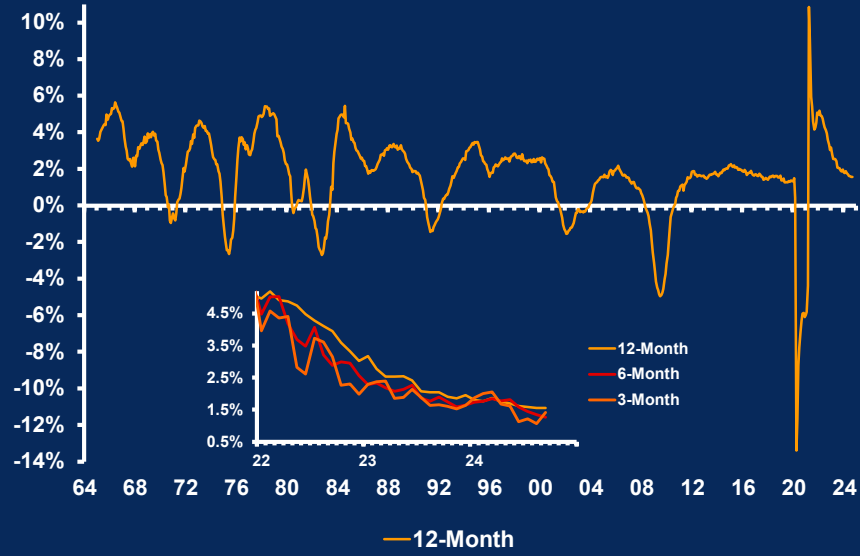


Average Hourly Earnings Growth

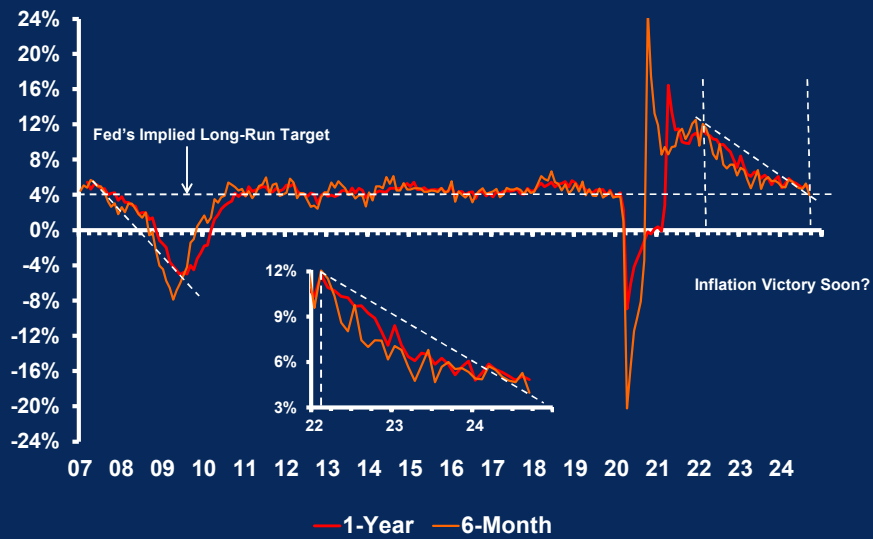
(Private Production and Nonsupervisory Employees)



Nonfarm Employment Growth

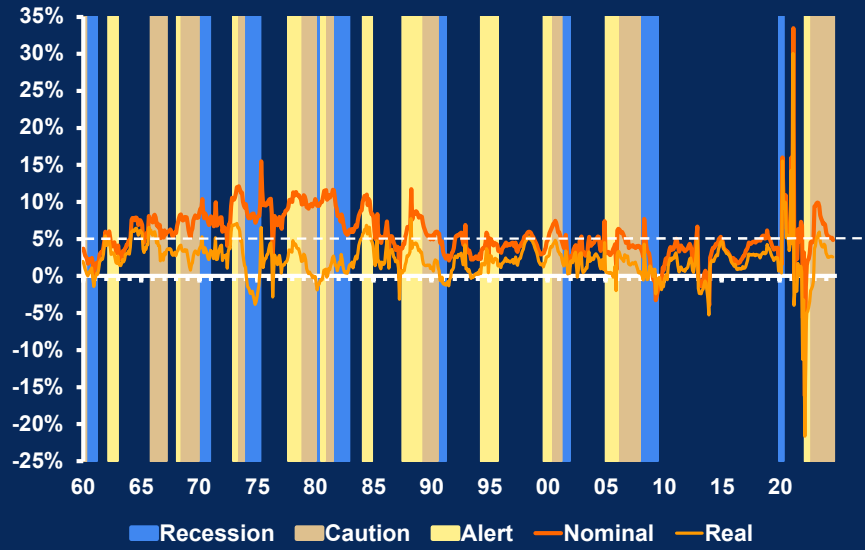


Payroll Index Growth (Payroll Index = Hours x Wages)



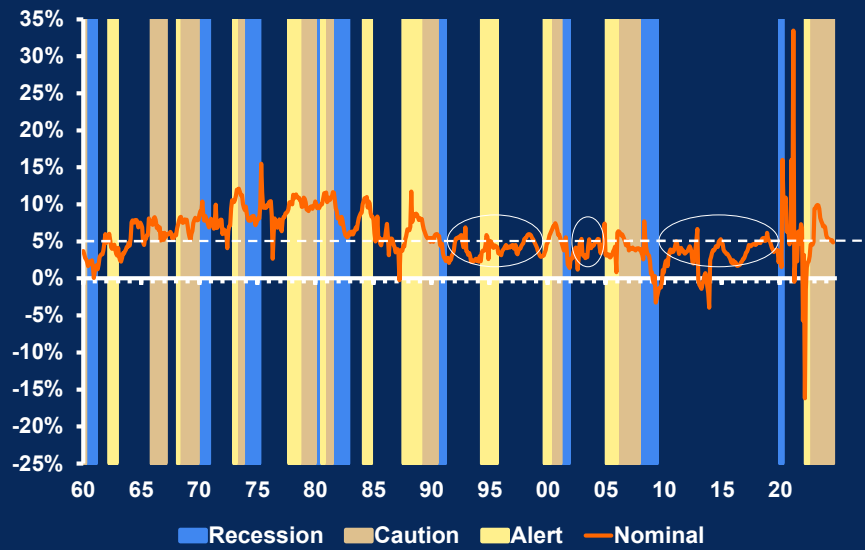
Disposable Personal Income Per Capita

(12-Month Changes)

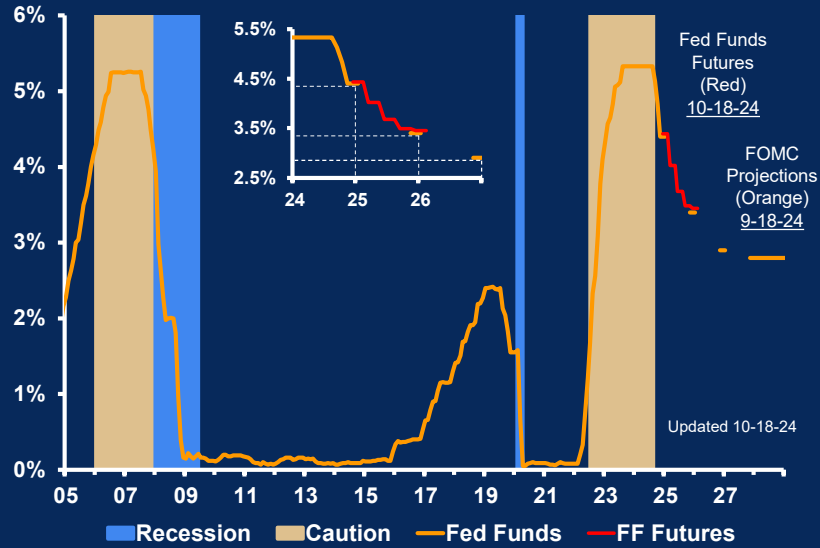


Disposable Personal Income Per Capita

(12-Month Changes)



Interest Rate Prospects



WICPA Accounting & Auditing Conference

The Economic and Market Outlook 2024 – 2028

Inflation Has Peaked – Fed’s Target Achievable Soon
 Monetary Policy Still Restrictive But Ease Is Imminent
 Fiscal Policy Remains Neutral
 Moderate Rebound Probable
 Stronger Rebound Possible If AI’s Potential Is Realized
 Weaker Rebound Possible If Taxes Hiked Sharply

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WICPA Accounting & Auditing Conference

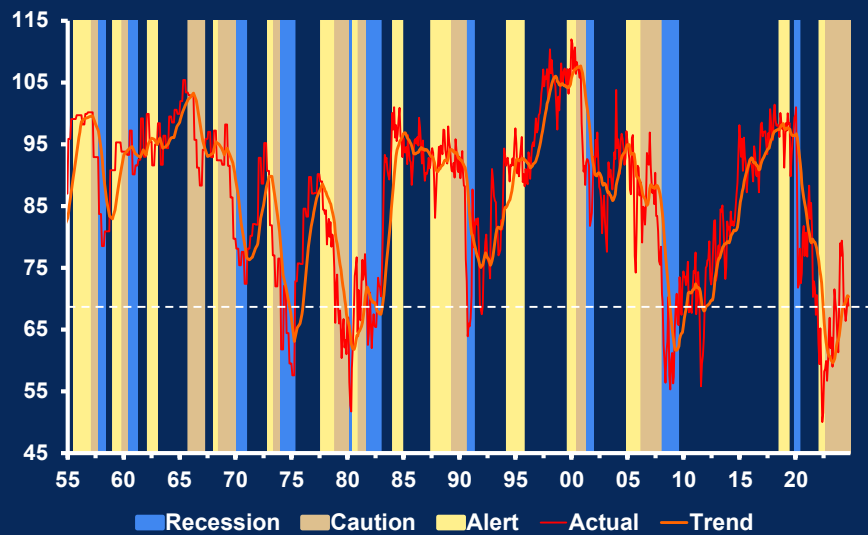
The Economic and Market Outlook 2024 – 2028

Economic Sector Prospects – Positive But Not Robust

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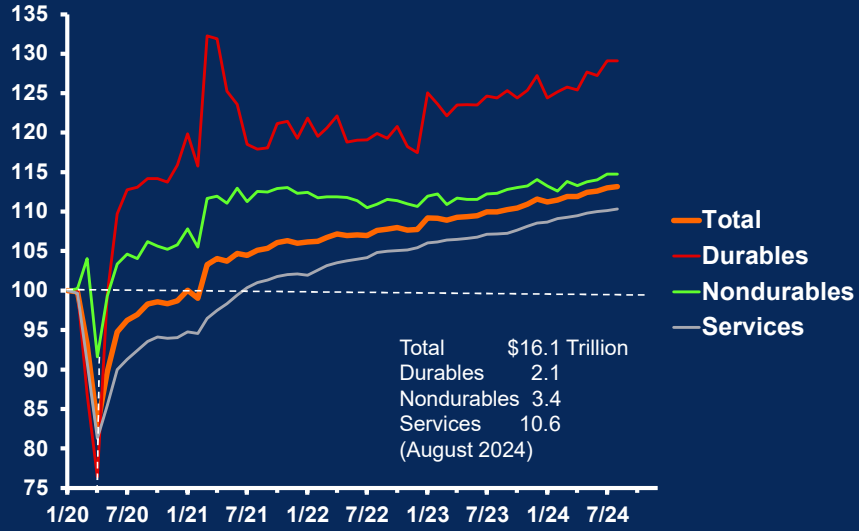
Consumer Sentiment and Zempel Zones ©

(Consumer Sentiment Index) (University of Michigan) (Monthly)



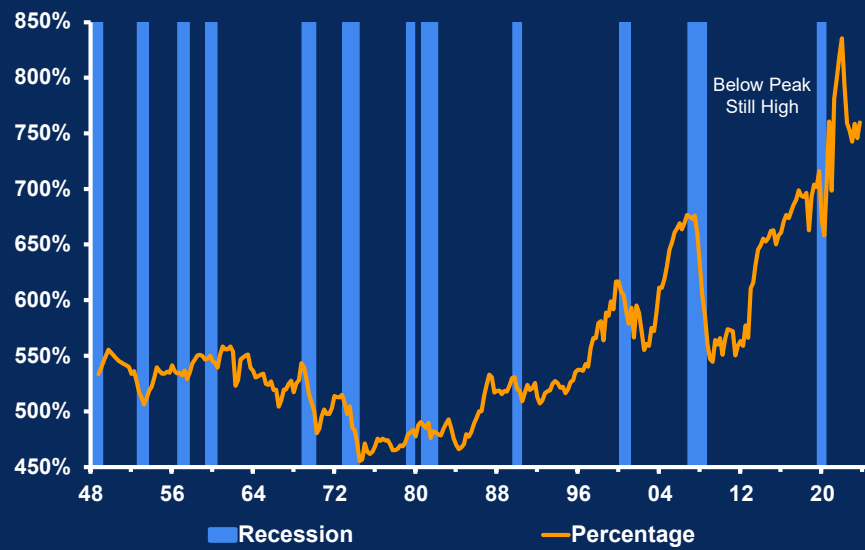
Real Personal Consumption Indexes

(January 2020 = 100)



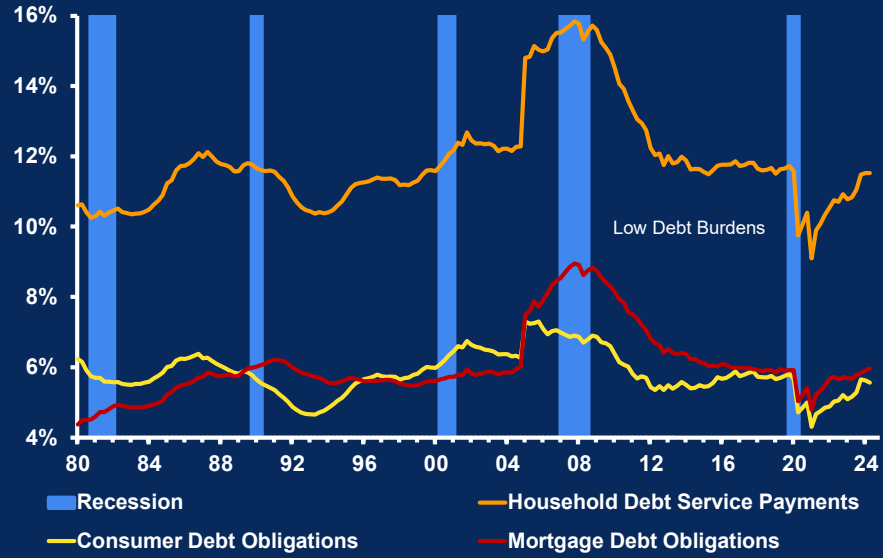
Net Worth (Percentage of DPI)

(Households and Nonprofit Organizations)

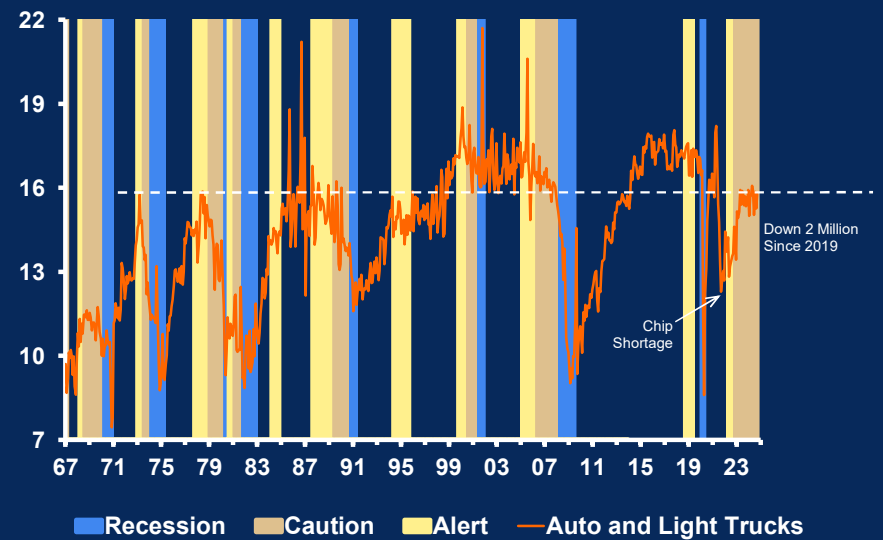


Household Debt Obligations

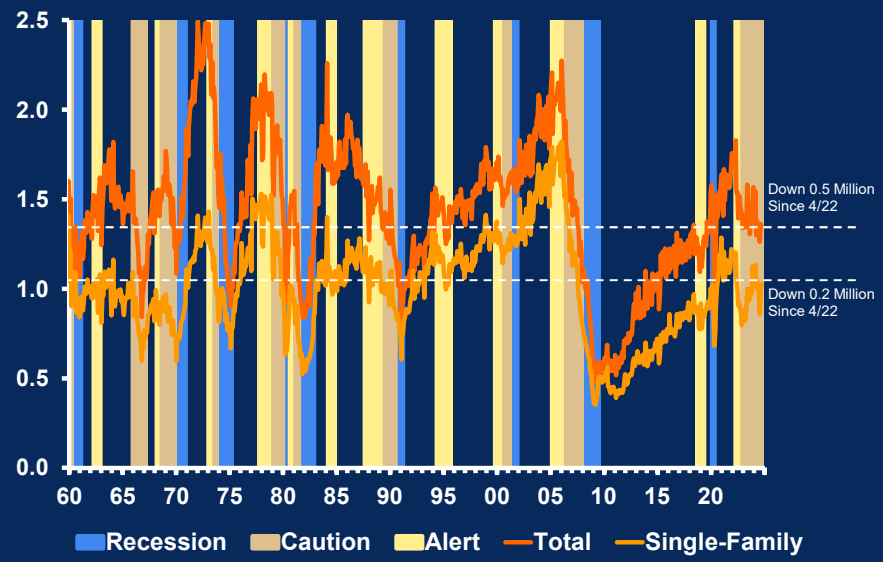
(Percent of Disposable Personal Income)



Auto and Light Truck Sales (Million Units)

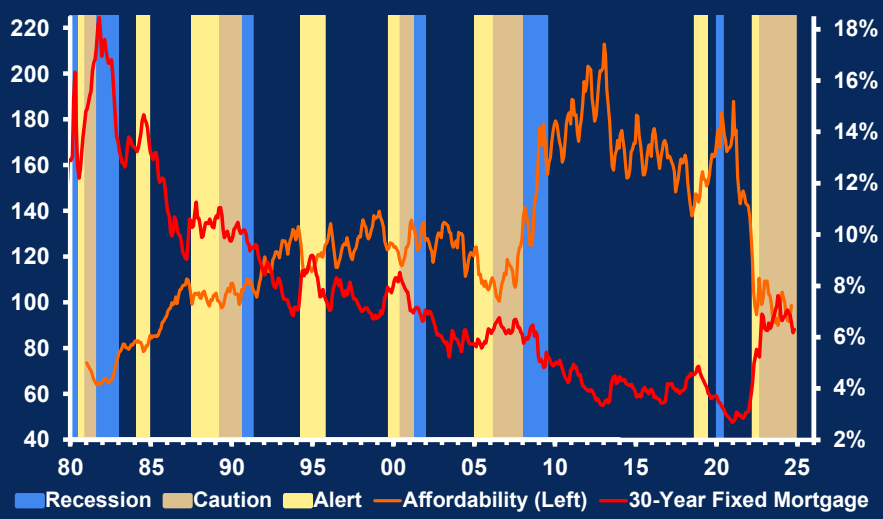


Housing Starts (Million Units)



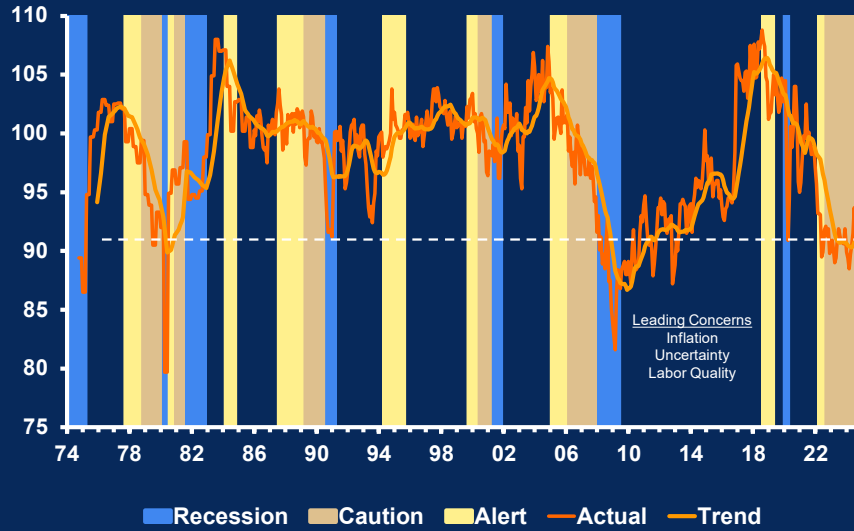
Mortgage Rate and Affordability

(National Fixed-Rate Average) (Fixed-Rate Affordability Index)



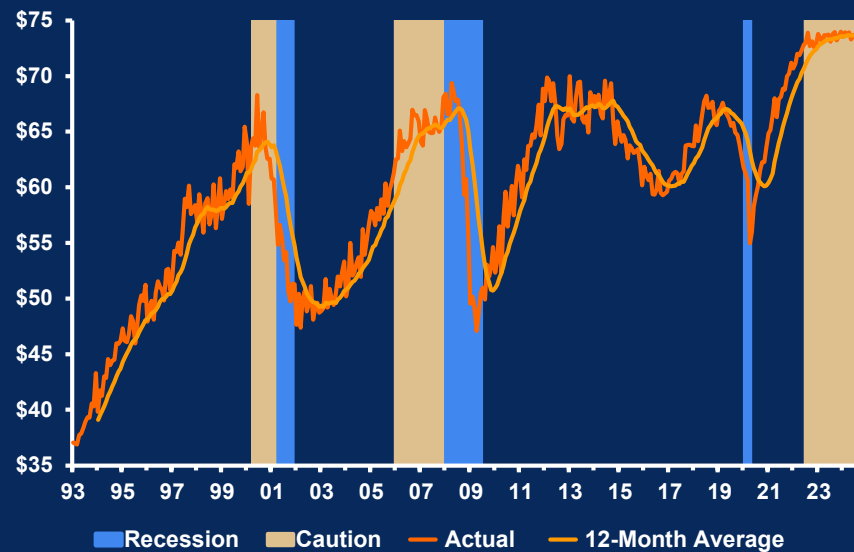
NFIB Optimism and Zempel Zones ©

(Small Business Optimism Index) (Monthly Since 1986)



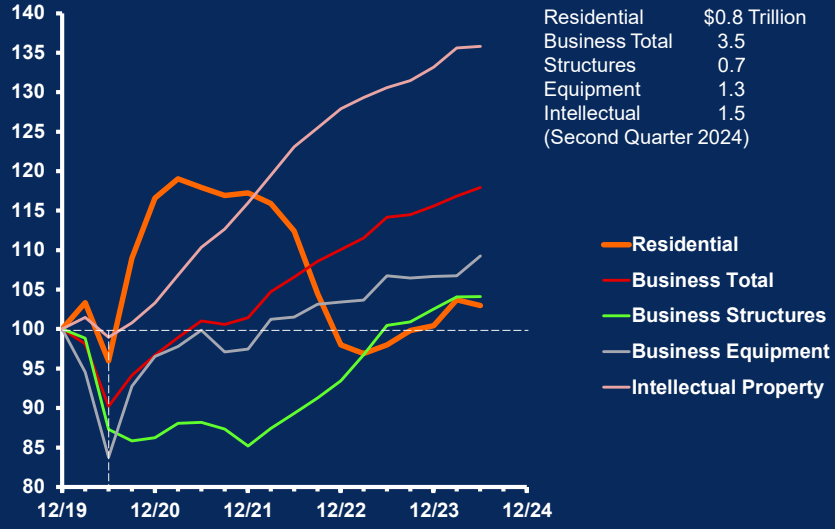
New Non-Defense Capital Goods Orders

Excluding Aircraft (Monthly) (Current Dollars) (Billions)



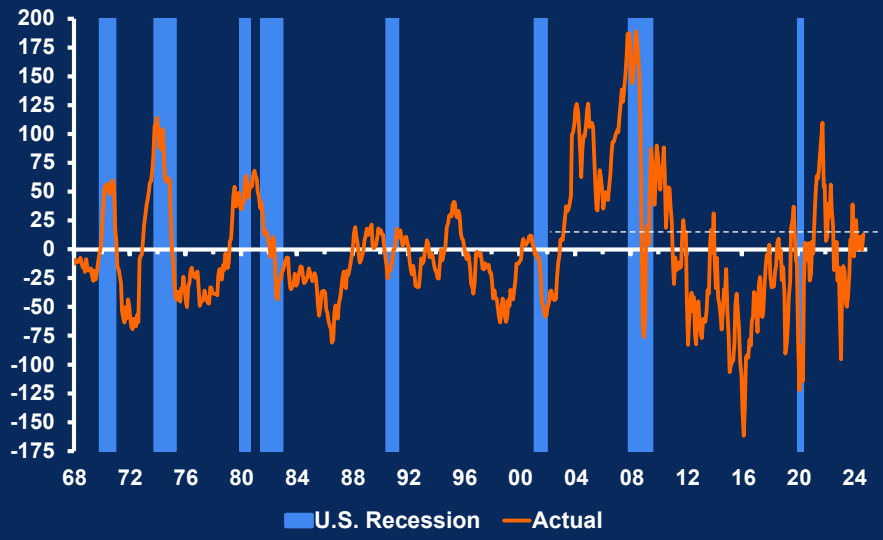
Real Investment Indexes

(Quarterly) (December 2019 = 100)



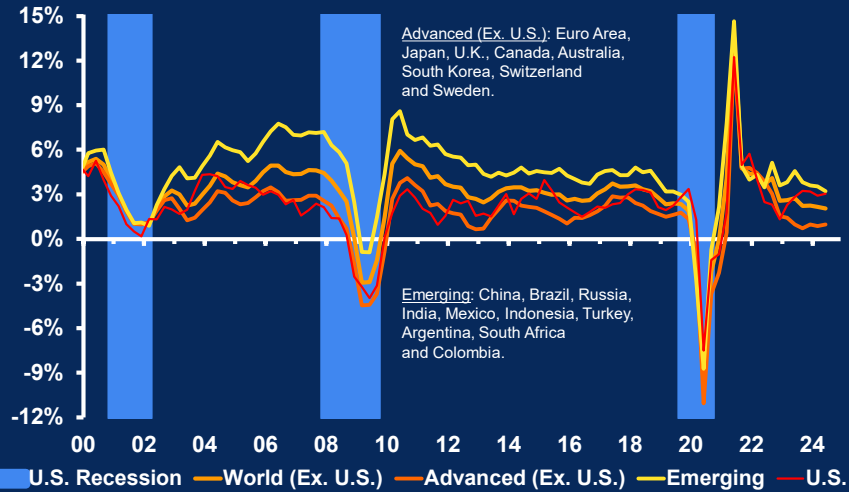
Global Real Activity and Recessions

(Global Industrial Commodity Market Shipping Volume Proxy) (Deviations from Trend)
 (Dallas Fed's Globalization & Monetary Policy Institute)



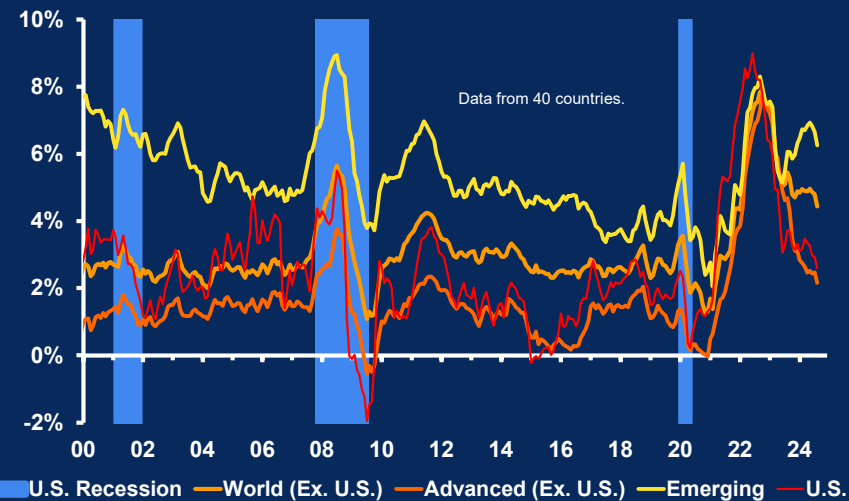
World Real GDP Growth Rates

Dallas Fed's Globalization & Monetary Policy Institute



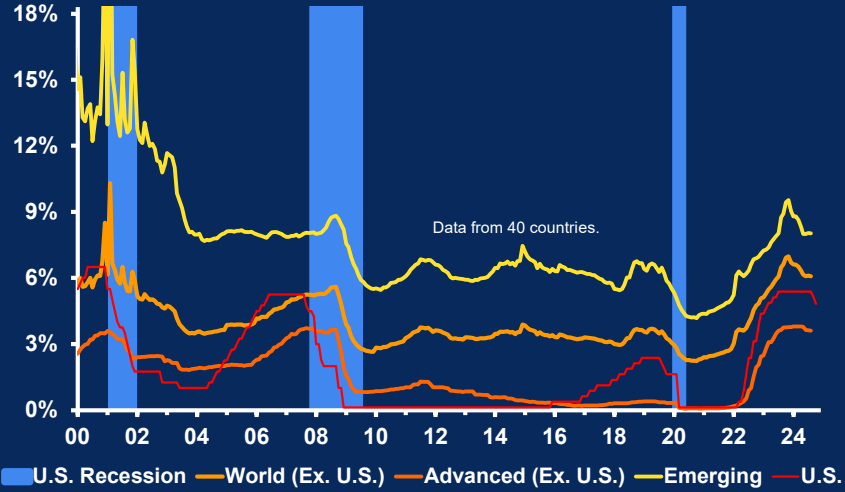
World Headline CPI Inflation Rates

Dallas Fed's Globalization & Monetary Policy Institute



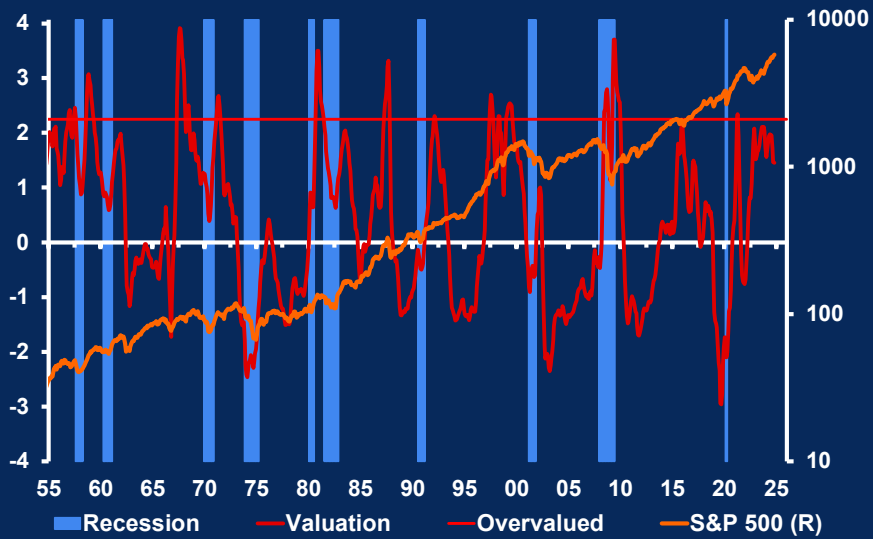
World Policy Short-Term Interest Rates

Dallas Fed's Globalization & Monetary Policy Institute

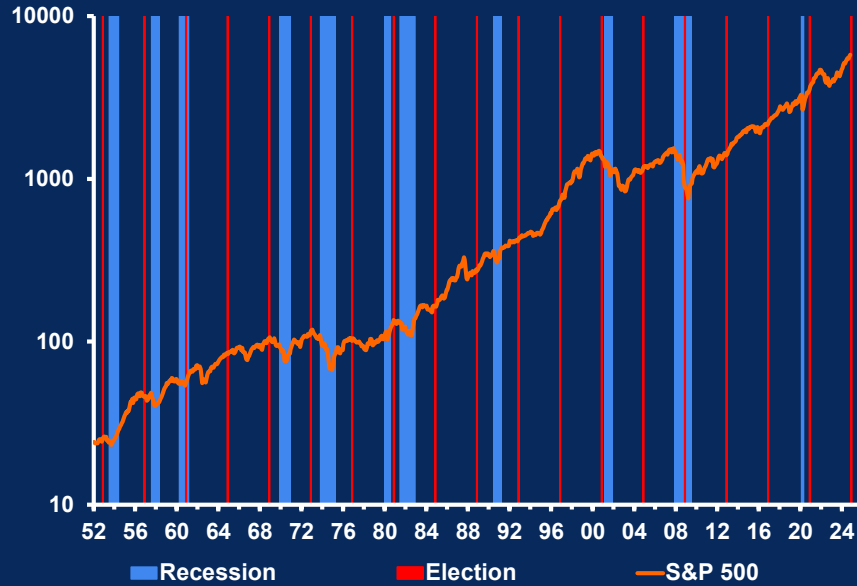


S&P 500 Valuation Index

(Operating Earnings) (Smoothed Valuation Index)

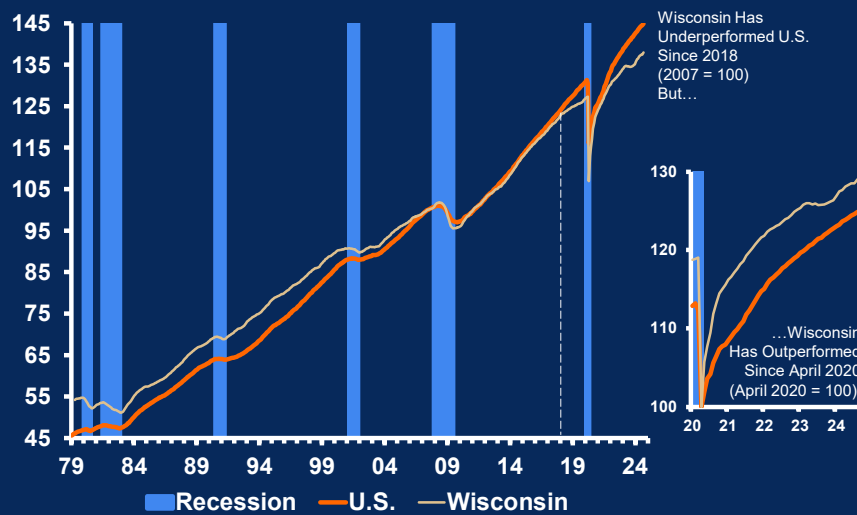


S&P 500 and Presidential Elections



Coincident Economic Indexes

(Coincident Economic Activity Index) (Philadelphia Fed)





WICPA Accounting & Auditing Conference

The Economic and Market Outlook 2024 – 2028

Has Recession Started? No
What Do “Best Indicators” Say? Slowdown + Recession Risk
Can Recession Be Averted? Or Downside Limited? Yes
Best Case? Inflation Slows Further + Fed Eases Soon
How Would Sectors Perform Then? Moderate Rebound
Worst Case? Major Tax Hikes + International Risk Spike

What to do depends on sensitivity to economic slowdowns.

“Alert Zone” means temper optimism.

“Caution Zone” means plan for recession.

But delay implementation until jobless claims soar or own orders drop.

Remain cautious now but make some tentative “bullish” plans for the rebound.

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Questions...

Clare W. Zempel, CFA, CBE

Zempel Strategic

Applied Economics and Financial Market Analysis

www.zempelstrategic.com

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9:25 – 10:15 a.m.

Balancing the Ledger: Recruitment Strategies in the Hybrid Work Era

Christine Thome, *Senior Recruiter, Truity Partners*



Balancing the Ledger: Recruitment Strategies in the Hybrid Work Era

Christine Thome

Senior Recruiter
Truity Partners, LLC



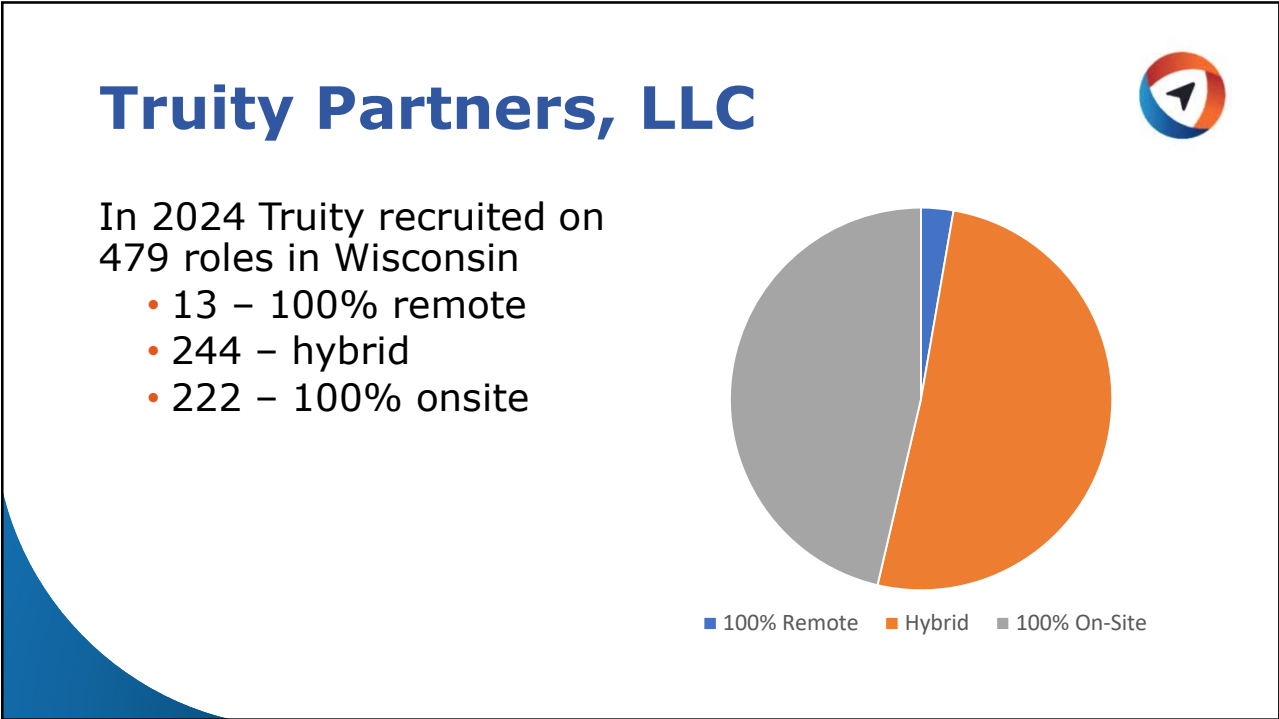
Truity Partners, LLC



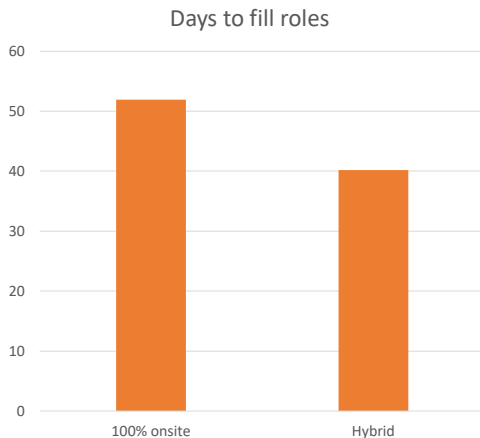
- How the shift to hybrid work is transforming recruitment in finance & accounting
- Strategies to attract and retain top talent
- Challenges of managing hybrid teams
- How hybrid work trends are expected to shape the future of recruitment and employee satisfaction



How the shift to hybrid work is transforming recruitment in finance & accounting



Average time to fill roles



- 100% onsite – 51.9 days
- Hybrid – 40.2 days

According to a LinkedIn survey, 60% of candidate will drop out of the process if it takes too long

What are accounting professionals looking for?



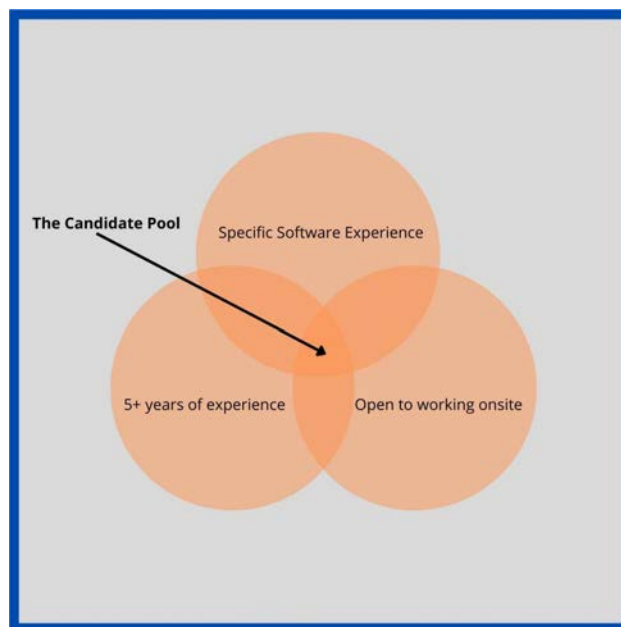
- Of 8,000 candidates surveyed by Flexjobs, 60% have left or considered leaving a job due to lack of flexibility
- Flexible work arrangements 3rd most important factor when seeking new jobs after salary and work-life balance
- BDO found that 79% of their staff wanted to be able to work from home or have a hybrid model post pandemic



But what does this look like in practice?



- Companies with remote or hybrid policies hire people at twice the rate of employers that are fully in office. This trend stayed even when tech companies were not included in the data
 - 100% remote grew headcount 5.6%
 - Hybrid 4.1%
 - In Office 2.6%
- Offering hybrid work arrangements reduce quit rates by 1/3 - this was modeled after 2 days WFH , 3 days in office





Strategies to attract and retain top talent

In 2024 these factors were most important to job seeker:

- Compensation
- Flexible work arrangements / work life balance
- Job security



In 2024 these factors were most important to job seeker:



Compensation

- Candidates want to see compensation ranges
 - SHRM research indicates more than 80% of U.S. Workers are more likely to consider applying for a position if they pay range is listed in the posting
- 70% of surveyed organizations shared that posting the pay range led to more applications
 - 66% saying the quality of applicants increased
- Remember to include total comp – 401k match, spell out insurance benefits, etc.

In 2024 these factors were most important to job seeker:



Flexible work arrangements / work life balance

- If you don't have a defined hybrid work arrangement, share how your team defines flexibility and work life balance
 - Does everyone have laptops and can employees work from home in the case of inclement weather, if they're sick, or have an appointment?
 - Share what the average number of hours look like for the team
 - Can people flex their start and end time to accommodate family commitments?

In 2024 these factors were most important to job seeker:



Job Security

- **Be transparent** – share current challenges and how they are being addressed
- **Highlight stability indicators** – growth, revenue, history of minimal layoffs
- **Emphasize career development**
- **Use specific examples** – concrete details of projects, initiatives, plans for expansion



Challenges of managing hybrid teams



Important factors for managing hybrid teams



- Define roles clearly
- Set Expectations
- Promote communication
- Build trust
- Monitor performance



Important factors for managing hybrid teams



Define Roles Clearly

- Clear job descriptions
- Define accountability
- Regular check-ins and reviews
- Clarify hybrid expectations
- Standardize processes

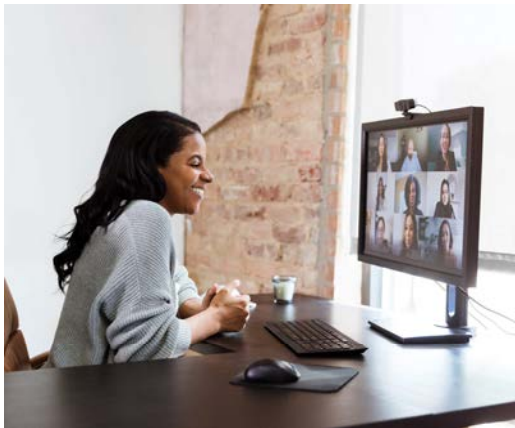
Important factors for managing hybrid teams

Set Expectations

- During the interview process be clear about expectations, reinforce during onboarding, and consistently with the entire team
- Have a clear policy for hybrid work – including working hours and availability
- Clarify if there are responsibilities that will be done in person vs remote



Important factors for managing hybrid teams



Promote Communication

- When in doubt – overcommunicate!
- Communicate expectations for "core hours"
- Have norms for response times, keeping calendars updated etc.
- Establish clear channels for communication: email, Teams, calls etc.

Important factors for managing hybrid teams

Build Trust

- Transparent + consistent communication and feedback
- Promoting accountability
- Empower autonomy
- Develop connections with regular check-ins
- Ask for feedback and be adaptable



Important factors for managing hybrid teams



Monitor Performance


- Have clear KPI's outlined
- Do not wait to have conversations if there are performance issues



How hybrid trends are expected to shape the future of recruitment and employee satisfaction

Hybrid poised to be dominant model

- McKinsey reported 87% of workers would work hybrid model if offered
- Studies show that hybrid work can lead to higher job satisfaction, productivity, and retention

A photograph of a woman with her hair in a bun, sitting at a desk in a home office. She is looking at a computer monitor. The desk has a lamp, a calendar showing the number 52, and a small plant. On the wall behind her are three framed pictures of landscapes.

Factors that influence the future of hybrid



- Loss of company culture
- Proximity bias
- Management challenges
- Technology and security issues
- Employee burnout / work-life imbalance

Conclusion



- Hybrid positions account for **50%** of the positions Truity Partners has recruited on in 2024
- Hybrid work is one of the **most important factors** for job seekers
- Managing hybrid teams requires **intentional communication and clear expectations**
- Hybrid work is poised to be the **dominant model** for the foreseeable future

Questions?



Christine Thome
Senior Recruiter



10:30 – 11:20 a.m.

Financial Accounting Update

Joann Noe Cross, PhD, CPA, CMA, CGMA, *Emerita Professor
of Accounting, UW-Oshkosh*

Wisconsin Institute of CPAs Accounting and Auditing Conference

FASB Update
Joann Noe Cross

1

Accounting Standards Update 2024-02 Amendments to Remove References to the Concepts Statements

For public business entities,

- effective for fiscal years beginning after December 15, 2024.

For all other entities,

- effective for fiscal years beginning after December 15, 2025.

2

Accounting Standards Update 2024-01

Stock Compensation – Scope Application of Profits Interest and Similar Awards

For Public Business Entities,

- effective for annual periods beginning after December 15, 2024, and interim periods within those annual periods.

For all other entities,

- effective for annual periods beginning after December 15, 2025, and interim periods within those annual periods.

3

Accounting Standards Update 2024-01

- Adds an illustrative example that includes four fact patterns to demonstrate how an entity should apply the scope guidance to determine how a profits interest award should be accounted for
 1. as a share-based payment arrangement (Topic 718) or
 2. similar to a cash bonus or profit-sharing arrangement (Topic 710).

4

Accounting Standards Update 2023-09 Improvements to Income Tax Disclosures

For public business entities,

- effective for annual periods beginning after December 15, 2024.

For all other entities

- effective for annual periods beginning after December 15, 2025.

5

Accounting Standards Update 2023-09

- Rate Reconciliation
- Income Taxes Paid
 1. The amount of net income taxes paid disaggregated by federal, state, and foreign taxes
 2. The amount of net income taxes paid disaggregated by significant individual jurisdictions
- Other
 1. Income from continuing operations before income tax expense disaggregated between domestic and foreign
 2. Income tax expense from continuing operations disaggregated by federal, state, and foreign.

6

Accounting Standards Update 2023-08

Accounting for and Disclosure of Crypto Assets

For all entities

- effective for fiscal years beginning after December 15, 2024, including interim periods within those fiscal years.

7

Accounting Standards Update 2023-08

- Applies to assets that meet all of the following criteria:
 1. Meet the definition of intangible assets as defined in the Codification
 2. Do not provide the asset holder with enforceable rights to or claims on underlying goods, services, or other assets
 3. Are created or reside on a distributed ledger based on blockchain or similar technology
 4. Are secured through cryptography
 5. Are fungible
 6. Are not created or issued by the reporting entity or its related parties.

8

Accounting Standards Update 2023-08

- Measure these assets at fair value with changes recognized in net income each reporting period.
- Disclose
 - (1) Crypto assets measured at fair value separately from other intangible assets in the balance sheet
 - (2) changes from the remeasurement of crypto assets separately from changes in the carrying amounts of other intangible assets in the income statement.

9

Accounting Standards Update 2023-08

- Disclose
 1. The name, cost basis, fair value, and number of units for each significant crypto asset holding and the aggregate fair values and cost bases of the crypto asset holdings that are not individually significant
 2. For crypto assets that are subject to contractual sale restrictions, the fair value of those crypto assets, the nature and remaining duration of the restriction(s), and the circumstances that could cause the restriction(s) to lapse.

10

Accounting Standards Update 2023-08

- Also disclose:

1. A rollforward, in the aggregate, of activity in the reporting period for crypto asset holdings, including additions (with a description of the activities that resulted in the additions), dispositions, gains, and losses
2. For any dispositions of crypto assets in the reporting period, the difference between the disposal price and the cost basis and a description of the activities that resulted in the dispositions
3. If gains and losses are not presented separately, the income statement line item in which those gains and losses are recognized
4. The method for determining the cost basis of crypto assets.

11

Accounting Standards Update 2023-08

- Transition

a cumulative-effect adjustment to the opening balance of retained earnings as of the beginning of the annual reporting period in which an entity adopts the amendments.

12

Accounting Standards Update 2023-07 Improvements to Reportable Segment Disclosures

- For Public Business Entities
 - effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024.

13

Accounting Standards Update 2023-06 Codification Amendments in Response to the SEC's Disclosure Update and Simplification Initiative

- Intended to remove align SEC disclosure guidance with FASB Codification guidance
- SEC is deleting disclosure guidance from Regulation S-X and S-K that overlaps with disclosures required by the FASB codification

14

Accounting Standards Update 2023-06 Codification Amendments in Response to the SEC's Disclosure Update and Simplification Initiative

- For entities subject to the SEC's existing disclosure requirements and for entities required to file or furnish financial statements with or to the SEC in preparation for the sale of or for purposes of issuing securities that are not subject to contractual restrictions on transfer, the effective date for each amendment will be the date on which the SEC's removal of that related disclosure from Regulation S-X or Regulation S-K becomes effective, with early adoption prohibited. For all other entities, the amendments will be effective two years later.
- Apply prospectively.

15

Accounting Standards Update 2023-06

- For all entities, if by June 30, 2027, the SEC has not removed the applicable requirement from Regulation S-X or Regulation S-K, the pending content of the related amendment will be removed from the Codification and will not become effective for any entity.

16

Accounting Standards Update 2023-05 Joint Venture Formations - Recognition and Initial Measurement

Effective prospectively for all joint venture formations with a formation date on or after January 1, 2025.

17

Accounting Standards Update 2023-05

1. A joint venture is the formation of a new entity without an accounting acquirer. The formation of a joint venture is the creation of a new reporting entity, and none of the assets and/or businesses contributed to the joint venture are viewed as having survived the combination as an independent entity—that is, an accounting acquirer will not be identified.
2. A joint venture measures its identifiable net assets and goodwill, if any, at the formation date. The joint venture formation date is the date on which an entity initially meets the definition of a joint venture.

18

Accounting Standards Update 2023-05

- Initial measurement of a joint venture's total net assets is equal to the fair value of 100 percent of the joint venture's equity. The joint venture is required to measure its total net assets upon formation as the fair value of the joint venture as a whole. The fair value of the joint venture as a whole equals the fair value of 100 percent of a joint venture's equity immediately following formation (including any noncontrolling interest in the net assets recognized by the joint venture).

19

Accounting Standards Update 2023-02 Accounting for Investments in Tax Credit Structures Using the Proportional Amortization Method

For Public Business Entities,

- effective for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years.

For all other entities,

- effective for fiscal years beginning after December 15, 2024, including interim periods within those fiscal years.

20

Accounting Standards Update 2023-02

- Reporting entities are permitted to elect to account for their tax equity investments, regardless of the tax credit program from which the income tax credits are received, using the proportional amortization method if
 1. It is probable that the income tax credits allocable to the tax equity investor will be available.
 2. The tax equity investor does not have the ability to exercise significant influence over the operating and financial policies of the underlying project.

21

Accounting Standards Update 2023-02

3. Substantially all of the projected benefits are from income tax credits and other income tax benefits. Projected benefits include income tax credits, other income tax benefits, and other non-income-tax-related benefits.
4. The tax equity investor's projected yield based solely on the cash flows from the income tax credits and other income tax benefits is positive.
5. The tax equity investor is a limited liability investor in the limited liability entity for both legal and tax purposes, and the tax equity investor's liability is limited to its capital investment

22

Accounting Standards Update 2023-01

Common Control Arrangements

Issue 1: Terms and Conditions to Be Considered

- The practical expedient is available to entities that are not:
 1. Public business entities
 2. Not-for-profit conduit bond obligors
 3. Employee benefit plans that file or furnish financial statements with or to the U.S. Securities and Exchange Commission (SEC).
- Use the written terms and conditions of a related party arrangement between entities under common control to determine whether that arrangement is or contains a lease.

23

Accounting Standards Update 2023-01

Issue 2: Accounting for Leasehold Improvements

- The amendments in this Update affect all lessees that are a party to a lease between entities under common control in which there are leasehold improvements.
- The amendments in this Update require that leasehold improvements associated with common control leases be:
 1. Amortized by the lessee over the useful life of the leasehold improvements to the common control group (regardless of the lease term) as long as the lessee controls the use of the underlying asset (the leased asset) through a lease. However, if the lessor obtained the right to control the use of the underlying asset through a lease with another entity not within the same common control group, the amortization period may not exceed the amortization period of the common control group.
 2. Accounted for as a transfer between entities under common control through an adjustment to equity (or net assets for not-for-profit entities) if, and when, the lessee no longer controls the use of the underlying asset.

24

Accounting Standards Update 2023-01 Common Control Arrangements

The amendments in this Update for both Issue 1 and Issue 2 are effective for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years.

25

Accounting Standards Update 2022-04 Disclosure of Supplier Finance Program Obligations

The amendments in this Update are effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years,

except for the amendment on rollforward information, which is effective for fiscal years beginning after December 15, 2023.

26

Accounting Standards Update 2022-04

- A buyer participating in a supplier financing program should disclose:
 1. The key terms of the program, including a description of the payment terms (including payment timing and basis for its determination) and assets pledged as security or other forms of guarantees provided for the committed payment to the finance provider or intermediary
 2. For the obligations that the buyer has confirmed as valid to the finance provider or intermediary:
 - a) The amount outstanding that remains unpaid by the buyer as of the end of the annual period (the outstanding confirmed amount)
 - b) A description of where those obligations are presented in the balance sheet
 - c) A rollforward of those obligations during the annual period, including the amount of obligations confirmed and the amount of obligations subsequently paid.

27

Accounting Standards Update 2022-03 Fair Value Measurement of Equity Securities Subject to Contractual Sale Restrictions

For public business entities,

- effective for fiscal years beginning after December 15, 2023, and interim periods within those fiscal years.

For all other entities,

- effective for fiscal years beginning after December 15, 2024, and interim periods within those fiscal years.

28

Accounting Standards Update 2022-03

- A contractual restriction on the sale of an equity security is not considered part of the unit of account of the equity security and, therefore, is not considered in measuring fair value.
- An entity cannot, as a separate unit of account, recognize and measure a contractual sale restriction.

29

Accounting Standards Update 2022-01 Fair Value Hedging—Portfolio Layer Method

For Public Business Entities,

- effective for fiscal years beginning after December 15, 2022, and interim periods within those fiscal years.

For all other entities,

- effective for fiscal years beginning after December 15, 2023, and interim periods within those fiscal years.

30

Accounting Standards Update 2022-01

- Expands the current last-of-layer method that permits only one hedged layer to allow multiple hedged layers of a single closed portfolio. To reflect that expansion, the last-of-layer method is renamed the portfolio layer method.
- Expands the scope of the portfolio layer method to include nonprepayable financial assets.
- Specifies that eligible hedging instruments in a single-layer hedge may include spot-starting or forward-starting constant-notional swaps, or spot or forward-starting amortizing-notional swaps and that the number of hedged layers (that is, single or multiple) corresponds with the number of hedges designated.

31

Accounting Standards Update 2022-01

- Provides additional guidance on the accounting for and disclosure of hedge basis adjustments that are applicable to the portfolio layer method whether a single hedged layer or multiple hedged layers are designated.
- Specifies how hedge basis adjustments should be considered when determining credit losses for the assets included in the closed portfolio.

32

Accounting Standards Update 2021-08 Business Combinations – Accounting for Contract Assets and Contract Liabilities from Contracts with Customers

For Public Business Entities,

- effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years.

For all other entities,

- effective for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years.

33

Accounting Standards Update 2021-08

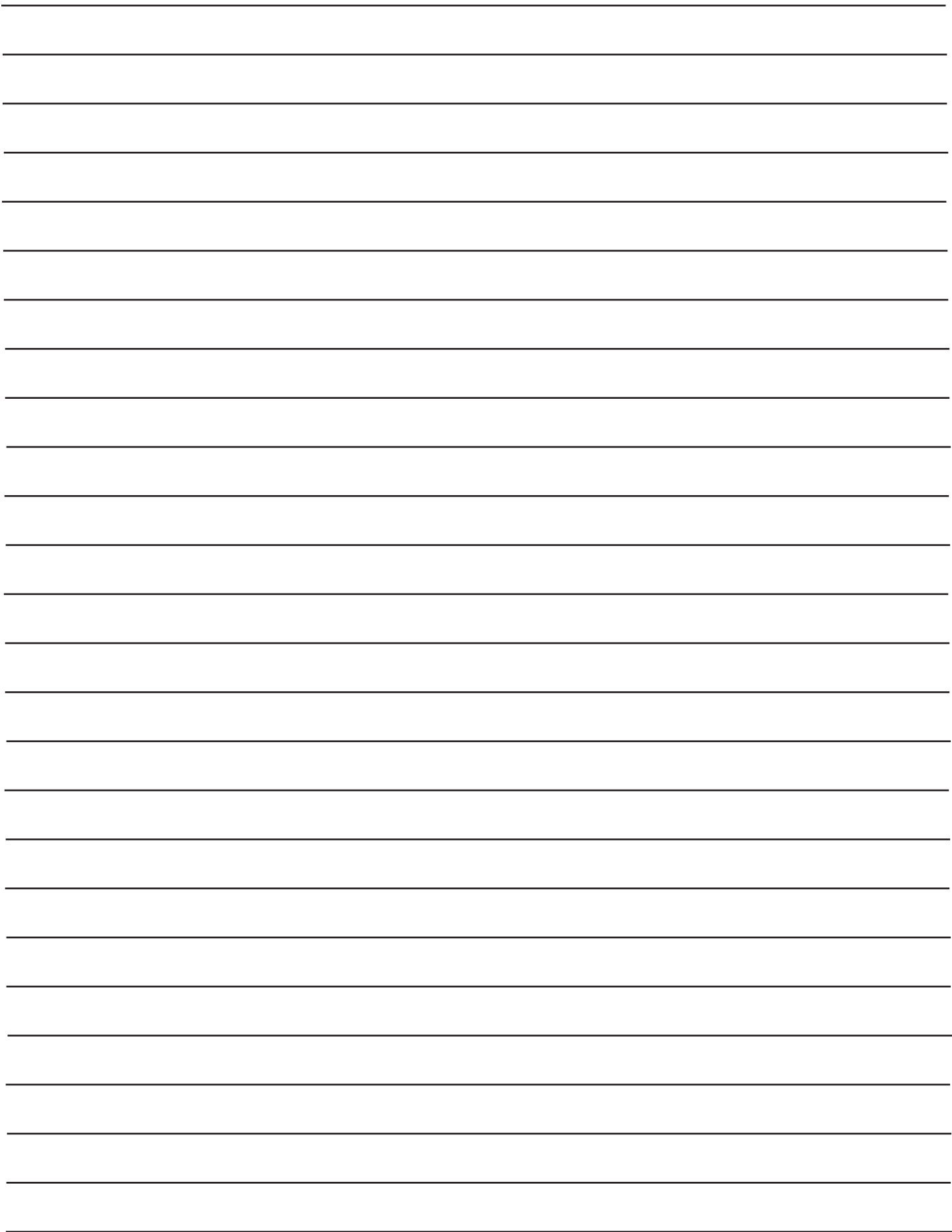
- An acquirer recognizes and measures contract assets and contract liabilities acquired in a business combination in accordance with Topic 606.
- At the acquisition date, an acquirer should account for the related revenue contracts as if it had originated the contracts. To achieve this, an acquirer may assess how the acquiree applied Topic 606 to determine what to record for the acquired revenue contracts.
- However, there may be circumstances in which the acquirer is unable to assess or rely on how the acquiree applied Topic 606
- In those circumstances, the acquirer should consider the terms of the acquired contracts, such as timing of payment, identify each performance obligation in the contracts, and allocate the total transaction price to each identified performance obligation on a relative standalone selling price basis as of contract inception or contract modification to determine what should be recorded at the acquisition date.
- Certain practical expedients for acquirers are also provided.

34

12:05 – 12:55 p.m.

Accounting & Auditing Update

Brad Hermes, CPA, *Principal, Audit & Assurance, Sikich*



1:05 – 1:55 p.m.

Maintaining Ethical Objectivity & Independence

Kathy Enstrom, MBA, CFE, *Director of Investigations,*
Moore Tax Law Group LLC

Guinevere Moore, JD, *Managing Member, Moore Tax Law Group LLC*



Wisconsin Institute of
Certified Public Accountants

MAINTAINING ETHICAL OBJECTIVITY AND INDEPENDENCE

Moore Tax Law Group
A Tax Controversy and Tax Litigation Boutique

Dangers of Getting Too Close to
Clients

SPEAKERS

Guinevere Moore

Managing Partner

Guinevere.Moore@mooretaxlawgroup.com

Chambers, Tax Controversy 2023-2024

Best Law Firms in America



Moore Tax Law Group

A Tax Controversy and Tax Litigation Boutique

Phone: 312-549-9900

Locations: Chicago and New York

Kathy Enstrom

Director of Investigations

Kathy.Enstrom@mooretaxlawgroup.com

27 years as a Federal Law Enforcement
Special Agent

Retired Executive with IRS Criminal
Investigation





A CAUTIONARY TALE

THE BEGINNING
OF THE STORY...

Moore Tax Law Group

A Tax Controversy and Tax Litigation Boutique

LEARNING OBJECTIVES

Review of AICPA Code of Conduct as it pertains to objectivity and independence

Recognize when independence is waning or compromised.

Understand the ethical requirements for tax return preparation, including taking positions on tax returns, due diligence obligations, and advising the clients accordingly.

Techniques and reminders for saying no to clients and recognizing the importance of doing so.

Understand the proper way to respond to an IRS audit.

Learn the potential civil and criminal consequences preparers and their clients face for the failure to properly prepare and file income tax returns.

POP
QUIZ!

5

WHAT WOULD YOU DO IF... YOUR PARENT OR CHILD CAME TO YOU AND TOLD YOU THAT THEY DO NOT REPORT CASH INCOME, BUT IT DOES NOT AFFECT THEIR TAX DUE?

Raise your hand with the number you identify with the most?

1. Report them to the IRS
2. Talk to them about the dangers of not reporting it
3. Ignore it and pretend you didn't hear it



6

WHAT WOULD YOU DO IF... YOUR VERY BEST FRIEND CAME TO YOU AND TOLD YOU THAT THEY DO NOT REPORT CASH INCOME OF \$2,000?

Raise your hand with the number you identify with the most?

1. Report them to the IRS
2. Talk to them about the dangers of not reporting it
3. Ignore it and pretend you didn't hear it

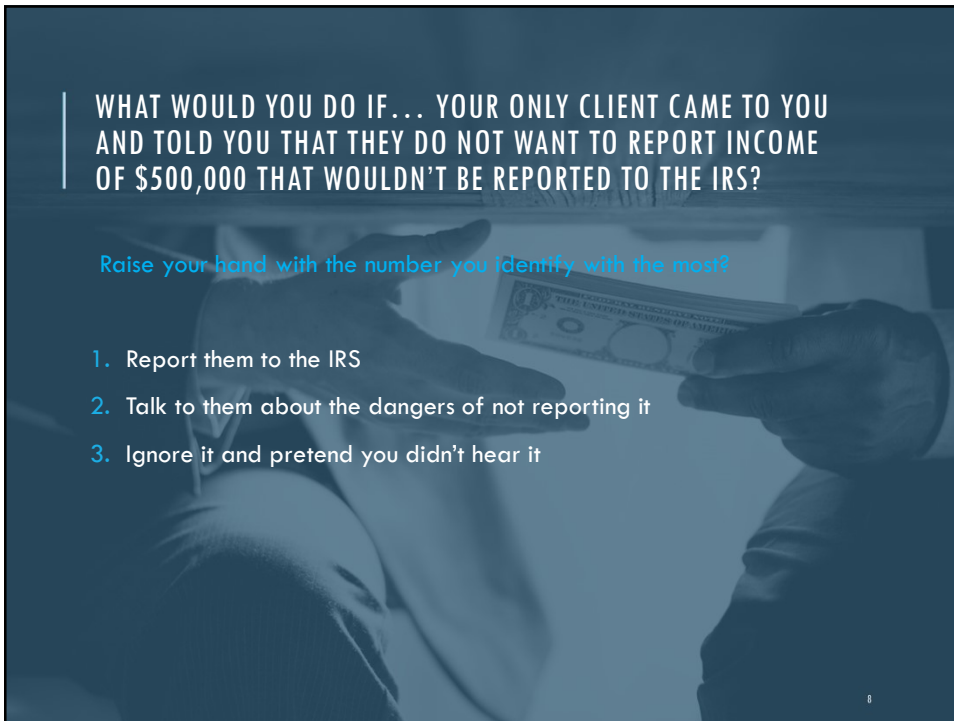


7

WHAT WOULD YOU DO IF... YOUR ONLY CLIENT CAME TO YOU AND TOLD YOU THAT THEY DO NOT WANT TO REPORT INCOME OF \$500,000 THAT WOULDN'T BE REPORTED TO THE IRS?

Raise your hand with the number you identify with the most?

1. Report them to the IRS
2. Talk to them about the dangers of not reporting it
3. Ignore it and pretend you didn't hear it



8

WHAT WOULD YOU DO IF... YOUR CLIENT ASKED YOU TO CREATE A DOCUMENT SUPPORTING EXPENSES WHICH ASSISTS THEM DURING AN IRS AUDIT?

Raise your hand with the number you identify with the most?

1. Tell them no
2. If the document is accurate, why not?



AICPA CODE OF CONDUCT



AICPA Code of Professional Conduct applies to all CPAs, in public practice, in business or otherwise (0.100.01)



AICPA bylaws require that members follow the Code (0.100.010.02)



"Each of these Principles should be considered by members in determining whether or not to provide specific services in individual circumstances." (0.300.070.03)



Integrity principle: "members should perform all professional responsibilities with the highest sense of integrity." (0.300.040.01)

AICPA CODE OF CONDUCT



Objectivity and Independence Principle:

- “A member should maintain objectivity and be free of conflicts of interest in discharging professional responsibilities.” (0.300.050.01)
- “Regardless of service or capacity, members should protect the integrity of their work, maintain objectivity, and avoid any subordination of their judgment.” (0.300.050.03)

11



CIRCULAR 230 - INDEPENDENCE

“Tax advisors should provide clients with the highest quality representation concerning Federal tax issues by adhering to best practices in providing advice, includ[ing] ... acting fairly and with integrity in practice before the Internal Revenue Service.” (10.33(a))

12



Independence means that the CPA is not unduly influenced by his or her client

An independent CPA does not subordinate his or her judgment to the client's judgment

INDEPENDENCE

CHALLENGES OF INDEPENDENCE

- Client has an aggressive or dominant personality
- Client has knowledge of IRC and ideas about how to report things
- CPA relies extensively on revenue from a single client
- CPA has long-standing, close relationship with client, making CPA overly sympathetic to client's interests



OBJECTIVITY & INDEPENDENCE

Important to understand situations that compromise your relationship with the client:

Becoming an "insider" to client and/or the business

Holding a corporate title and being introduced inside and outside the organization as staff (example: CFO or Controller)

Having a client email address with your name and using that email

Participating in client events as if you are staff or traveling for the client as staff

Investing in client's business or ventures

Making your client's favorite charities your charities

THREATS TO INDEPENDENCE

"Threats" are "relationships or circumstances that could compromise a member's compliance with the rules." (1.100.010.06-.08)

Many threats fall into one or more of these categories:

- adverse interest,
- advocacy,
- familiarity,
- management participation,
- self-interest,
- self-review,
- and undue influence.



RUTH HANDLER



"I am Mattel," Handler, played by Rhea Perlman in the movie, says. "At least, until the IRS got to me."

RUTH HANDLER
Exec. VP, VP, Controller and
Supervisor

SEC Charges, false reports
indicating \$10 million more in
sales than actual.

TYPES OF THREATS

Adverse interest threat (member in business): The threat that a member will not act with objectivity because the member's interests are opposed to the interests of the employing organization, such as when the member has or will charge the employer with violations of law. (2.000.010.09)

Familiarity threat: The threat that, due to a long or close relationship with a client, a member will become too sympathetic to the client's interests, such as when senior personnel have a long association with a client. (1.100.010.12; 2.000.010.11)

Self-interest threat: The threat that a member could benefit, financially or otherwise, from a relationship with a client, such as when a member relies excessively on revenue from a single client. (1.100.010.14; 2.000.010.12 (member in business eligible for performance bonus))

Undue influence threat: The threat that a member will subordinate her judgment to the client or a third party because of that individual's reputation, aggressive or dominant personality, or attempts to coerce the member. (1.100.010.16; 2.000.010.14; 2.170.010.02, .04 (pressure from superiors to breach the rules, approve expenditures that are not legitimate business expenses))

DOCUMENTATION

Protect yourself:

- All documents must come from client or their organization
- Get all direction and information in writing
- Notify the client in writing if you encounter errors that the client is making in entries or documentation.
- Never create a document even if pressured by client or an advisor to the client, such as lawyer or staff
- Never alter (for example, back date) documents
- Do not assume that you know the law and prepare legal documents for the client



TIME FOR AN ENGAGEMENT CHECKUP

CPAS OFTEN HAVE LONG-TERM CLIENTS...

Benefit to Continuity

- CPA knowing the client & client's business keeps costs low for the client.
- Streamline workflow
- Less time wasted importing new data, depreciation schedules, etc.
- CPA able to easily and cost effectively respond to IRS requests for information from prior years

Detriment to Continuity

- Overly familiar relationship with client
- Does not ask why often enough
- Makes assumptions



CONTROLLERSHIP SERVICES

Never provide controllership services and tax services to the same client

Controllership services cross the independence line

Refer controllership clients to other professionals for tax and audit services

REPRESENTATION RULES TO PRACTICE BY

Do not let the client make you the "front person" for them during critical meetings.

Never infer that you know what the client wants.

Never lie or make misleading statements during any audit, but especially a tax audit.

Resist the urge to "help" the client with potential criminal tax issues, you are not a lawyer or a criminal specialist.

RISKS FOR SOLE PRACTITIONERS

A sole practitioner does not have a structure or organization in place to identify risks

Sole practitioners are always trying to expand services with existing clients

Be honest with yourself as to what services you are qualified to perform

Keep a list of trusted advisors for yourself to consult with in questionable situations

Keep a list of professional referral specialists

LAPSE IN JUDGMENT - *U.S. V. BERNARD TURK*

Bernard Turk, 73-year-old CPA from the San Fernando Valley, CA.

In February 2021, Turk helped a long-time client submit a false application for a PPP loan on behalf of the client's company.

Prepared false federal corporate income tax returns claiming the business had 126 paid employees. The false return was provided to the bank to obtain the loan. To hide his involvement, he marked the return self-prepared.

He admitted the business had no employees, paid no wages and filed no return with the IRS.

Sentenced to a year and a day with a \$50,000 fine.

(Central District of California, Nov. 2022)

25

DUE DILIGENCE

A practitioner "must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete." (Cir. 230, § 10.34(d))



26

LAPSE IN JUDGMENT - *U.S. V. MARC BERGER*

Marc Berger, CPA, had a 45-year career and was chairman of the board at the mid-size accounting firm of Burr Pilger Mayer.

Berger sentenced to 8 months in prison after guilty verdict in a 3-week jury trial for aiding and assisting in filing false tax returns in violation of I.R.C. § 7206(2).

Government Sentencing Memo asked for a significant jail term, arguing "*it is likely that CPAs across the United States are committing similar crimes for their clients because they know the IRS has very limited resources.*"

(Northern District of California, December 2018)



CIRCULAR 230 CONFLICTING INTERESTS

A practitioner shall not represent a client before the Internal Revenue Service if the representation involves a conflict of interest. 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 client will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner." (10.29(a))



CONFLICT CHECKS

Best practices (and most malpractice insurance policies) require conflicts checks to be done at the beginning of every engagement.

What about after the engagement has been active? Active for many years?

Over the life of an engagement, CPA should perform conflicts checks to ensure that no conflicts of interest have arisen.



Dual representation of married spouses or former spouses

- Level of culpability for adjustments or same defenses

Partnerships and partners

- TEFRA or BBA?
- Partners may have different implications for adjustments.
- What does the partnership agreement say?

Practitioner and client

- Dual role of practitioner as planner and representative in subsequent audit or exam
- Practitioner as advocating different positions for different clients
- Reliance defense

Client and non-related clients

- Does one client want you to take a position that is contrary to other clients?

TYPES OF CONFLICTS THAT CAN ARISE

Form **1040** Department of the Treasury • Internal Revenue Service
U.S. Individual Income Tax Return 990 Use Only Do not write or staple in this space

Label (See instructions.) Your first name **John** SS **0** Last name **Americian** Your social security number **04-15-1988**

Use the IRS label. If a joint return, spouse's first name **John** SS **0** Last name **Americian** Spouse's social security number **04-15-1988**

Checkboxes: Married, please print DTIC or SSN. Married, please print DTIC or SSN. Married, please print DTIC or SSN. Married, please print DTIC or SSN.

Residential Election Campaign: Yes No

Filing Status: Single Married filing jointly (see instructions) Married filing separately (see instructions) Head of household (see instructions) Qualifying widow(er) with dependent child (see instructions)

Exemptions: Yourself, if someone else is claiming you as a dependent, do not check box 6a. Spouse Dependent (see instructions) Other dependent (see instructions)

Income: 7 Wages, salaries, tips, etc. (Attach Form(s) W-2) **55,000.**
 8a Taxable interest. Attach Schedule B if required **923.**
 8b Ordinary dividends. Attach Schedule B if required **416.**
 8c Qualified dividends (see instructions) **95.**

SELECTED FOR AUDIT



COMMUNICATING WITH CLIENTS DURING AN IRS EXAM

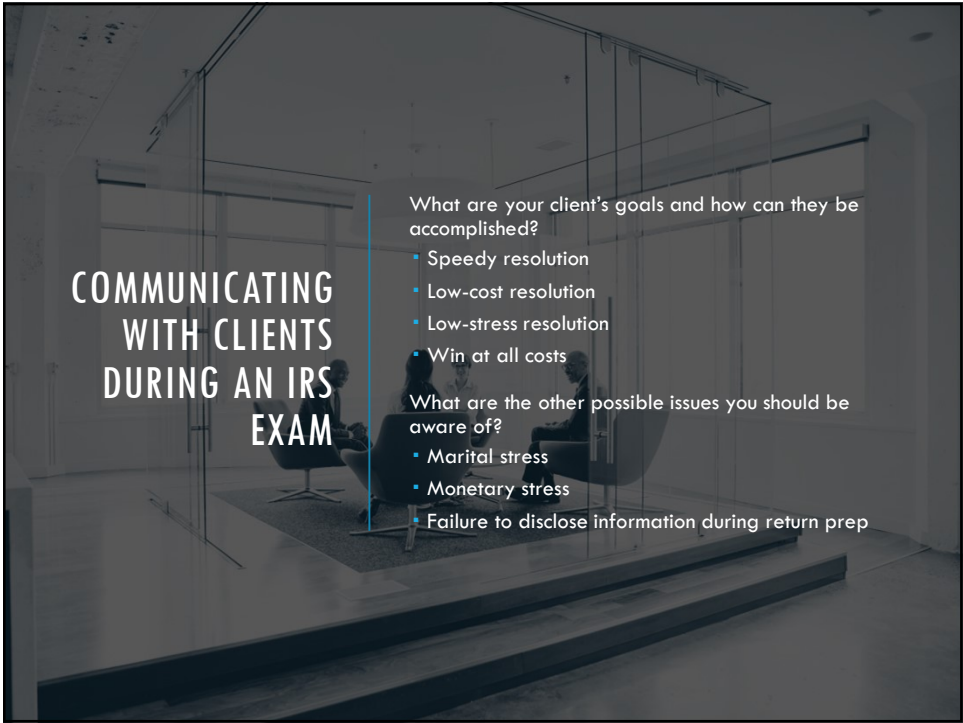
When a client receives notification of an IRS Exam, it is often one of the most terrifying moments they have experienced.

- Am I going to jail?
- How much money will this cost me?
- Will I get divorced?

Your response should be:

- Immediate
- Measured
- Realistic





BEST PRACTICES FOR CLIENT COMMUNICATIONS

Do not guaranty

- Do not guaranty results, either in tax return prep or in exam.

Avoid

- Avoid accepting responsibility for the tax due or at issue.
- The tax is the tax and we must take care not to pretend like a preparer's job or duty is to reduce or eliminate tax.

Assess

- Honestly assess whether penalties are at stake and if so, what the implications are.

DILIGENCE AS TO ACCURACY – IN PRACTICE

Gather facts from the IRS

1. Request and Review IRS documents to understand what IRS position is
2. Account transcripts for year at issue & 5 years prior
3. Wage & Income information for year at issue



DILIGENCE AS TO ACCURACY – IN PRACTICE

Compare the results to spot and resolve any inconsistencies with the client.

Testing is key.

36

PRACTITIONER'S DUTIES IN EXAM SUBMISSION OF DOCUMENTS

§ 10.34 – Standards with respect to tax returns and documents, affidavits & other papers

(b) *Documents, affidavits and other papers* —

- (1) A practitioner may not advise a client to take a position on a document, affidavit or other paper submitted to the Internal Revenue Service unless the position is not frivolous.
- (2) A practitioner may not advise a client to submit a document, affidavit or other paper to the Internal Revenue Service —
 - (i) The purpose of which is to delay or impede the administration of the Federal tax laws;
 - (ii) That is frivolous; or
 - (iii) That contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation unless the practitioner also advises the client to submit a document that evidences a good faith challenge to the rule or regulation.

KNOWLEDGE OF CLIENT'S ERROR OR OMISSION

If you know of or discover an error or omission from any return or other tax-related document submitted to the IRS, you:

- Must advise the client of the nature of the error or omission
- Must advise the client of the potential consequences of the error or omission under Code or Regulations

Consider whether an attorney needs to take over to provide attorney-client privilege.

Determine all possible consequences for client under scenarios that include disclosure, no disclosure and “get caught”, no disclosure and “don't get caught”. Include civil and, if applicable, criminal penalties.

Are you able to continue the representation if the client does not want to disclose? Make sure your client understands.

THINKING PROACTIVELY ABOUT RISK



Consider

Consider statute of limitations and impact of adequate disclosure



Evaluate

Evaluate merits of uncertain positions considering current law and knowledge of relevant facts

- Quantify tax exposure attributable to each item



Assess

Assess additional exposures

- Identify any conduct that the IRS may uncover that could expose the client to criminal liability, significant civil liability, or personal strife
- Estimate penalties & interest

39

ASSESS PROBABLE AUDIT APPROACH

Likelihood that uncertain items will be discovered

Litigating and audit position of IRS

Previous Experience with IRS examiner

Consider what information IRS already has

- prior filings
- information returns from others
- treaty information from foreign countries

IDR RESPONSES

Demonstrate compliance.

Mirror the IDR and respond to each item.

Bates number or create exhibits for each item (or both).

Offering for the IRS exam agent to come look at documents does not create a good record for the trial attorney.

Do not create documents that do not already exist unless there is a VERY good reason to do so.

Consider what objections your client has and whether they are worth making.

TAXPAYER INTERVIEW

Does the taxpayer have a Fifth Amendment concern with being interviewed?

Will the taxpayer help or hurt themselves?

Possible to get a list of questions ahead of time?

Is the taxpayer prepared?

Consider recording the interview under IRC § 7521 or, at a minimum, take very careful notes. If you take notes, one person must listen to protect taxpayer rights while the other person takes notes.

SCOPE OF SUMMONS AUTHORITY

If you do not produce documents or your client for an interview, the IRS may summons the information.

Consider scope of summons authority

- *United States v. Powell*, 379 U.S. 48 (1964)
 1. The investigation is conducted pursuant to a legitimate purpose
 2. The inquiry is relevant to that purpose;
 3. The information sought is not already within the IRS's possession
 4. The administrative steps required by the I.R.C. have been followed.
- *United States v. Clarke*, 573 U.S. __ (2014)

In summons dispute, taxpayer is entitled to examine an IRS agent when he can point to specific facts and circumstances plausibly raising an inference of bad faith.

Taxpayers need not produce documents that are not within their possession or control



BENEFITS OF COOPERATION IN EXAM

Shifting the Burden of Proof – IRC § 7491

IDR responses and completed taxpayer interviews are key for allowing the taxpayer a chance to shift the burden of proof to the IRS in litigation.

To shift the burden of proof, the taxpayer must:

- Comply with requirements to substantiate any item,
- Maintain all records required and cooperate with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews; and
- In the case of a partnership, corporation, or trust, have a net worth that does not exceed \$7 million.

Practical implications of moving to shift the burden of proof at trial are rarely that the court will agree to shift the burden, but instead we can introduce evidence showing the flawed nature of the exam.

PROS VS. CONS OF DEMONSTRATING COOPERATION

Risk of Fifth Amendment waiver

- OK to allow the IRS to summons information from third parties if your client has Fifth Amendment implications, because they will get the info anyway, but your client won't be waiving Fifth Amendment rights.

If you are even thinking about the Fifth Amendment, **get a lawyer involved.**

Some clients are their own worst enemy / witness for reasons that have nothing to do with the actual tax due or problems with a tax return.

EGGSHELL AUDITS

If your initial review of the facts revealed potential criminal exposure or other significant liability

or

If the auditor's questions raise red flags

or

If the client reveals bad facts at any point,

then

You are in an "eggshell" audit and must practice the art of fulfilling your professional and ethical obligations while minimizing your client's exposure.



YOUR CLIENT WANTS TO SETTLE, BUT....

You can't get the examiner to agree. Now what?

There are realistic options for achieving settlement with the IRS if you cannot convince the examiner to see your client's point of view.

Escalating the Issue to a Manager or Above

Protest to Appeals

Alternative Dispute Resolution

Appeals Conference after Filing in Tax Court

Settlement with IRS Counsel after Filing in Tax Court

Settlement with DOJ Tax after Filing in District Court or Court of Claims



FRAUD REFERRAL PROGRAM

IRS Civil can refer a case for Criminal Investigation review and consideration.

All leads must go through a Fraud Enforcement Advisor (the wall between civil and criminal to avoid Tweel issues)

Badges of Fraud must be present in the referral:

- Altered documents submitted
- Second set of records
- False statements
- Destruction of records
- Concealment of income sources
- Any other conduct to conceal or mislead

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TIMELINE OF CRIMINAL INVESTIGATION

Receive Fraud Referral – accept or decline

Open Criminal Investigation – administrative or grand jury

Special Agents gather evidence (subpoena/summons)

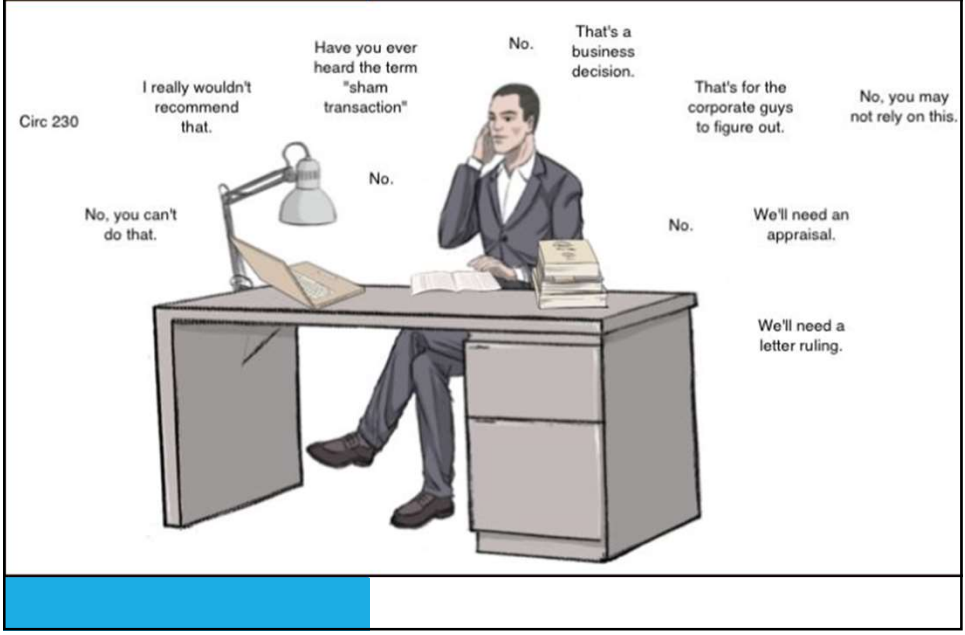
Interview subject, return preparer and other witnesses

Prosecution report - reviewed by many levels, including Department of Justice Tax Division

Sent to the U.S. Attorney's Office for charging

50

Things a Tax Attorney Says



2:05 – 3:05 p.m.

New Federal Requirement for Businesses: Beneficial Ownership Reporting 101

Channing Mavrellis, *Guidance and Outreach Advisor,
Beneficial Ownership and Transparency Unit, Financial
Crimes Enforcement Network*



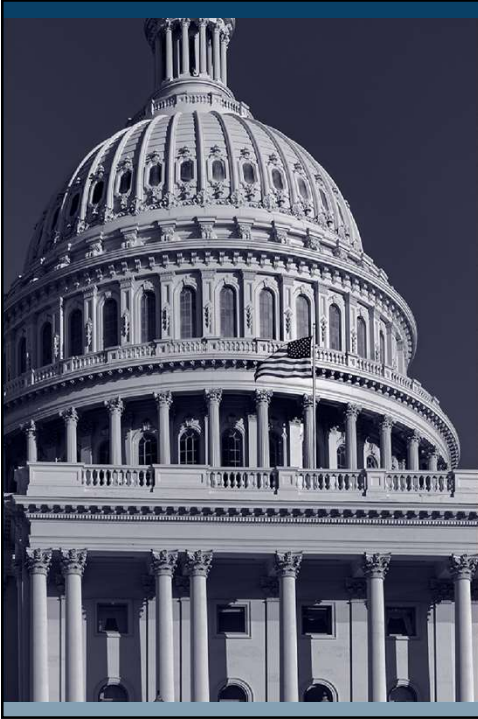
BOI
Beneficial Ownership
Information

The Corporate Transparency Act

Beneficial Ownership Information Reporting Requirements for Companies

The reporting requirements for certain individuals and entities have been affected by a federal court ruling. More information is available at www.fincen.gov/boi.

U.S. Department of The Treasury | Financial Crimes Enforcement Network



What is the Corporate Transparency Act, or CTA?

- The bipartisan CTA, enacted by Congress in 2021, requires many companies doing business in the United States to securely report their beneficial ownership information—basic information about who really owns or controls them—to the U.S. government.
- Many companies are required to report their beneficial ownership information to the Financial Crimes Enforcement Network, or FinCEN, a bureau within the U.S. Department of the Treasury.
- This framework is an important step in stopping the flow of illicit funds that hurt law-abiding small businesses, as well as protecting our economic and national security from bad actors.

2

Beneficial Ownership Reporting Resources

- Effective **January 1, 2024**, many companies in the United States have to begin reporting information about their beneficial owners, i.e., the individuals who ultimately own or control the company, and their company applicants.
- You can find resources—including a comprehensive compliance guide, FAQs, multimedia content, and more—at www.fincen.gov/boi.



Small Entity Compliance Guide

Available at www.fincen.gov/boi



01	Does my company have to report its beneficial owners?.....	5
02	Who is a beneficial owner of my company?	6
03	Does my company have to report its company applicants?	7
04	What specific information does my company need to report?.....	8
05	When and how should my company file its initial report?.....	11
06	What if there are changes to or inaccuracies in reported information?.....	13

01: Does my company have to report its beneficial owners?

Domestic Reporting Company: a corporation, limited liability company (LLC), or any other entity created by the filing of a document with a secretary of state or similar office.

Foreign Reporting Company: a corporation, LLC, or other entity formed under the law of a foreign country that is registered to do business in the United States by the filing of a document with a secretary of state or similar office.

Non-Reporting Companies include entities that are not created by filing with a secretary of state, e.g., sole proprietorships and certain trusts.

Exempt Companies include banks, credit unions, tax-exempt entities, public utilities, and certain large companies. The Small Entity Compliance Guide includes a full list of exemptions.



5

02: Who is a beneficial owner of my company?

- If your company is a reporting company, your next step is to identify its beneficial owners. A beneficial owner is **any** individual who, directly or indirectly:
 - » owns or controls at least 25 percent of the **ownership interests** of a reporting company;
 - OR**
 - » exercises substantial control over a reporting company.
- An individual might be a beneficial owner by virtue of their substantial control, ownership interests, or both.
- **Ownership Interests** – Reporting companies are required to identify **all** individuals who own or control at least 25% of the **ownership interests** of a company.
- Ownership interests include equity, stock, or voting rights; a capital or profit interest; convertible instruments; options or privileges; and any other instrument, contract, or other mechanism used to establish ownership.
- There are several exceptions to the definition of beneficial owner, including a minor child, a nominee, intermediary, custodian, or agent, an employee, an inheritor and a creditor.

The Small Entity Compliance Guide has detailed graphics, checklists, and examples to assist in reporting companies in identifying their beneficial owners.

6



02: Who is a beneficial owner of my company?

- **Substantial Control** - Reporting companies are required to identify all individuals who exercise *substantial control* over the company.
- An individual exercises **substantial control** over a reporting company if the individual meets **any** of four general criteria:
 1. The individual is a senior officer;
 2. the individual has authority to appoint or remove certain officers or a majority of directors of the reporting company;
 3. the individual is an important decision-maker; or
 4. the individual has any other form of substantial control over the reporting company.

The Small Entity Compliance Guide provides more information about these criteria.

7

03: Does my company have to report its company applicants?



IF

Domestic/Foreign Reporting Company Created or Registered on or after Jan. 01, 2024.

THEN

Required to Report Company Applicants



IF

Domestic/Foreign Reporting Company Created or Registered before Jan. 01, 2024.

THEN

Not Required to Report Company Applicants

Company Applicants are:

- » The individual who directly filed the documents that created or first registered a domestic or foreign reporting company.
- » The individual who was primarily responsible for directing or controlling the filing of the creation or first registration document.



8

04: What specific information does my company need to report?

- Your reporting company must provide information about **itself**:
 - » legal name
 - » any trade name or any “doing business as” (d/b/a)
 - » complete U.S. address
 - » State, Tribal, or foreign jurisdiction of formation
 - » for a foreign reporting company: State or Tribal jurisdiction of first registration
 - » Taxpayer Identification Number (TIN) or foreign tax ID



04: What specific information does my company need to report?

- A reporting company must provide information about its **beneficial owners** and **company applicants**:
 - » name
 - » date of birth
 - » address
 - » identifying number and issuing jurisdiction from a non-expired driver’s license, U.S. passport, or an identification document issued by a State, local government, or Indian tribe, or a foreign passport (if none of the other document exist); an image of the document must also be provided

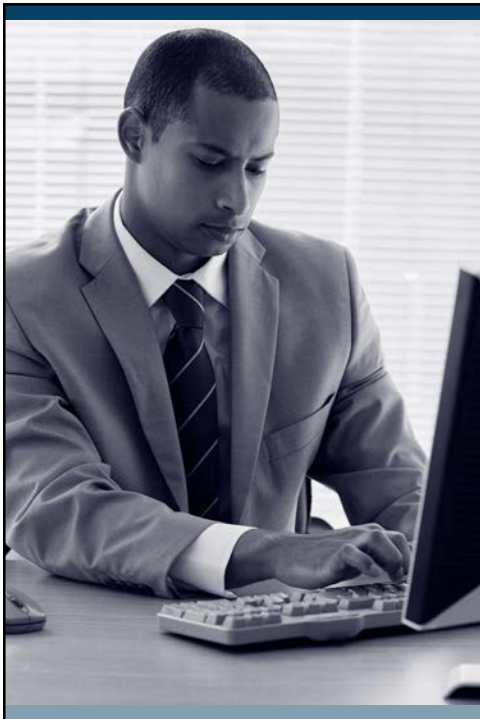


04: What specific information does my company need to report?

- A “FinCEN identifier” is a unique identifying number that FinCEN will issue to an individual or reporting company upon request after the individual or reporting company provides certain required information to FinCEN.
- An individual or reporting company may only receive one FinCEN identifier.
- FinCEN identifiers may be reported instead of certain required information about beneficial owners or company applicants.



11



05: When and how should my company file its initial report?



The reporting requirement went into effect on January 1, 2024. FinCEN began accepting beneficial ownership information reports on this date.

Initial reports are required for all companies that meet the definition of reporting company and are not exempt from that definition.

Existing Reporting Companies



Reporting companies created or registered to do business in the United States before January 1, 2024 must file by **January 1, 2025**.

Newly Created or Registered Companies



Reporting companies created or registered to do business in the United States in 2024 have **90 calendar days** to file after receiving actual or public notice that their company's creation or registration is effective. **Starting January 1, 2025 new reporting companies will have 30 calendar days to file.**

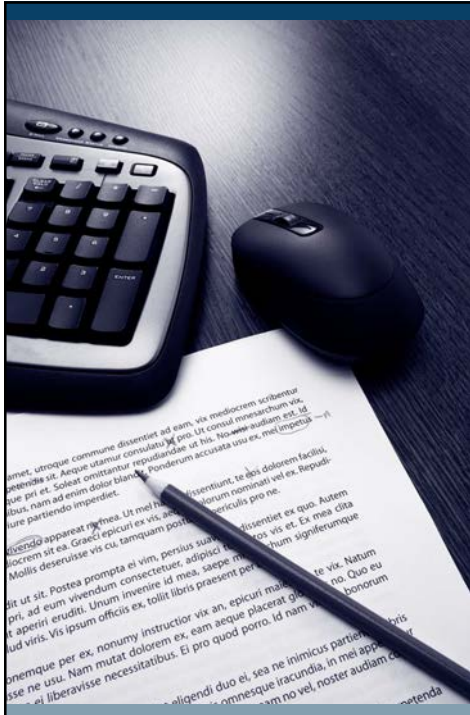
12

05: When and how should my company file its initial report?

- If your company is required to file a beneficial ownership information report, you must do so electronically through a secure filing system. FinCEN began accepting beneficial ownership information reports on January 1, 2024.
- FinCEN has published instructions on how to complete the report.
- Sign up for FinCEN Updates or periodically check our website at www.fincen.gov/boi.



13



06: What if there are changes to or inaccuracies in reported information?

Updated Reports

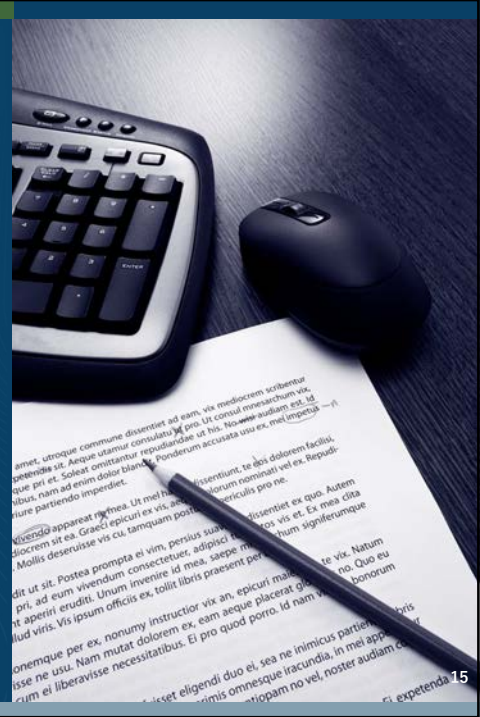
- Required when there is a change to previously reported information about the reporting company itself or its beneficial owners.
- Updated reports are due within **30 calendar days** after a change occurs.

14

06: What if there are changes to or inaccuracies in reported information?

Corrected Reports

- Required when previously reported information was inaccurate when filed and remains inaccurate.
- Corrected reports due within **30 calendar days** after the reporting company becomes aware or has reason to know of an inaccuracy.



What happens if my company does not report BOI in the required time frame?

FinCEN is working hard to ensure that reporting companies are aware of their obligations to report, update, and correct beneficial ownership information. FinCEN understands this is a new requirement. If you correct a mistake or omission within 90 days of the deadline for the original report, you may avoid being penalized. However, you could face civil and criminal penalties if you disregard your beneficial ownership information reporting obligations.



Additional Resources

Visit www.fincen.gov/boi to learn more about beneficial ownership information reporting requirements.

Sign up for FinCEN Updates to be immediately notified of beneficial ownership updates via email at www.fincen.gov/boi



3:15 – 4:15 p.m.

Hot Tax Practice & Procedure & Ethics Issues

Michael Goller, JD, *Shareholder & Tax Department Chair,*
Reinhart Boerner Van Deuren s.c.

HOT TAX PRACTICE AND PROCEDURE ISSUES

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Contents

- IRS Update
- Loper Bright – What do IRS Regulations mean?
- Other Issues
 - High “Net Worth” Audits
 - Airplane Cases
 - Family Office - Planning
 - Real Estate Professional Status
 - Research Credit Audits
 - Interest Free Adjustments in Form 941 Cases
 - Valuation Issues
 - Tax Ethics Update



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IRS – Chief Counsel Update

- Effective October 6, 2024 IRS Counsel Attorneys in LB&I SB/SE merged into – Division Counsel Litigation and Advisory (L&A).
- 14 Attorneys are in the group headed in Milwaukee (not all in Milwaukee)

Loper Bright – How important is an IRS regulation?

- Loper Bright Enterprises et al. v. Raimondo et al. and Relentless, Inc. v. Dept. of Commerce, 603 U.S. ___, 144 S.Ct. 2244 (2024)
- Corner Post v. Board of Governors of the Federal Reserve System, 603 U.S. ___, 144 S.Ct. 2440 (2024)

Background

- Loper overruled Chevron U.S.A. v. NAT. Resources Defense Counsel, Inc. 467 U.S. 837 (1984)
- Administrative Procedures Act
- Section 706 – Courts will decide “all relevant questions of law.”
- Section 553 – Contains a detailed notice and comment period for government regulations.

Background (cont.)

- Section 533(b) – APA Section 553 procedures apply to “legislative” regulations. Do not apply to “interpretive” regulations.
- Malbury v. Madison 5 U.S. 137 (1803)
- I.R.C. §§ 7805(a) “. . . the Secretary shall prescribe all needful rules and regulations for enforcement of this title [26 of the U.S.C.], . . .”

Background (cont.)

- Loper
- The Administrative Procedures Act (5 U.S.C. §§ 551 et seq.) requires courts to exercise independent judgment when deciding whether an Agency has acted within its statutory authority; courts may not defer to the Agency interpretation of the law simply because the statute is ambiguous.
- Corner Post
- Statute of limitations to challenge regulations starts when there is a harm suffered by virtue of the Reg.

Background (cont.)

- Relevant Cases
- Skidmore v. Swift Co., 323 U.S. 134 (1944) Skidmore Deference - courts will defer to an agency depending on the thoroughness of its consideration, validity of its reasoning, consistency with other pronouncements and all those factors which give it a power to persuade.
- The doctrine survives after Loper. Courts may defer to the agency if the agency's interpretation has the "power to persuade." The "best read of a statute is that the agency may well be authorized to exercise a degree of discretion." Loper, Slip. Op. at 17

Background (cont.)

- Chevron USA Inc. v. National Reserve Defense Counsel, 467 U.S. 837 (1984) – two famous factors used to make a Reg. legally binding
 - Regulation must be consistent with the plain meaning of the statute
 - Regulation is not an unreasonable interpretation of the statute.

Background (cont.)

- *Stare Decisis* - Loper
- Mayo Foundation for Medical Education and Research v. U.S., 562 U.S. 44 (2011) FICA Reg. upheld under Section 7805(a)
- Varian Medical Systems v. Comm’r, 163 T.C. No. 4 (Aug. 26, 2024)
 - Section 254A v. Section 78 effective dates
 - Treas. Reg. 1.78-1 clarifies dates. Reg. was issued under Sections 245A and 7805. The court noted a “change in unambiguous provisions of the statute” is not allowed. Id.

Background (cont.)

- There is a basic difference between filling a gap left by Congress and rewriting rules Congress enacted. *Id.* (Citing *Loper* at 2263).
- When, however, Congress has delegated authority to an agency, the court's role is to fix the boundaries of that delegated authority. *Id.*

A Walk-through – Regulations That May Be At Issue

- Facts
- Section 6501(a) and a Section 481 adjustment
- § 446(a) – “Taxable income is computed under the method of accounting on the basis of which the taxpayer regularly computes his income . . .”
- § 446(c) – Lists permissible methods - cash, accrual, any other method permitted by Chapter 1 of the Code and “any combination of the foregoing methods permitted under regulations prescribed by the Secretary.”
- A change in accounting method occurs when, under the lifetime income test, income changes. Does the change result in more or less income over the taxpayer's lifetime? If so, it is not a CIAM. Hyatt Hotels Corp & Subsidiaries, 2023-122 (2023) (citing *Peoples Band & Tire Co. v. Comm'r*, 412 F.2d. 1341, 1344 (7th Cir. 1969)).

A Walk-through – Regulations That May Be At Issue

- Treas. Reg. 1.446-1(e)(ii)(d)(2)(i) – A change in the “depreciation or amortization period of recovery, or convention of a depreciable or amortizable asset” is a CIAM. (Reg. was issued under 7805)
- IRS view is that the statute and this reg. cover a change from depreciable to non depreciable classification (i.e., depreciable property to land).
- The argument will be that an allocation to land increases basis. Basis reduces gain and thus Gross Income and (after deductions) Taxable Income. Depreciation does not reduce Gross Income but is deducted from Gross Income to arrive at Taxable Income. So, assuming the property is sold, life time Taxable Income is the same.
 - Comment: What about 1031 exchanges and step-up-at-death? Or, what if land is sold and the increased basis will reduce the Section 1231 gain, and possibly reduce future 199A deductions, which is a new deduction for years 2018, forward. Some of the properties at issue were depreciated pre 2018. So the change results in less life than Taxable Income than if no change occurred??

Qualified Appraisal and Form 8283 Issues Appraisal Issues for In Kind Donations

- Facts
- Section 170(f)(11)(A)(i) provides that no charitable contribution deduction is allowed unless the taxpayer meets certain requirements.
- (B) requires the taxpayer to “include with the return . . . a description of such property and such other information as the Secretary may require . . .”
- (C) requires that for donations over \$500,000 the taxpayer must “attached to the return a qualified appraisal of [the donated] . . . property.”
- Section 170(f)(11)(H) – IRS can issue regulations
- Reg. 1.170A-13(c)(2)(A) must attach a qualified appraisal to the return; and (2)(B) must attach the appraisal summary.
- Reg. 1.170A-13(c)(4)(iv)(H) – Reasonable Cause

Qualified Appraisal and Form 8283 Issues Appraisal Issues for In Kind Donations (cont.)

- Arguments
 - Qualified Appraisal
 - Taxpayer must provide sufficient information to permit the IRS to evaluate the reported contributions, as intended by Congress. See *Mohamed v. Comm'r T.C. Memo 2012-152*, quoting the *Estate of Clause v. Comm'r 122 T.C. 115, 122 (2009)*. The qualified appraisal and Form 8283 that was attached to the 1040 meet this test.
 - Form 8283
 - Note: *RERI Holding I, LLC et al v. Comm'r*, 149 T.C. No. 1 No. 17-1266 (5/24/19) Aff'd USCA DC (2019) case disallowed a \$33 Million charitable contribution deduction because basis was missing on the Form 8283. Does not indicate if the taxpayer attempted to "fix" the Form 8283.

Qualified Appraisal and Form 8283 Issues Appraisal Issues for In Kind Donations (cont.)

- Strategy
- "While the Service has never requested that the defects on the Form 8283 alleged in the Revised Lead Sheets at issue be corrected, a new Form 8283 is being faxed to you. The Taxpayer is providing the IRS with a new Form 8283 that is signed by the appraiser and donee. Also, the basis of the donation at issue is included on this form.

As noted in the instructions to Form 8283, failure to attach a correct Form 8283 to a tax return will not result in a contribution deduction being disallowed if the failure is due to reasonable cause and not willful neglect. See instructions to Form 8283 at 8 (Rev. December 2021).

Qualified Appraisal and Form 8283 Issues Appraisal Issues for In Kind Donations (cont.)

Further, Treasury Regulation Section 1.170A-13(c)(4) and (c)(4)(iv)(H) note that a taxpayer is allowed to explain if he or she has reasonable cause for an inadequate Form 8283. The same regulation allows the IRS to request that a taxpayer provide a correct Form 8283 within 90 days. If this request is complied with the charitable deduction will not be disallowed as long as the taxpayer's error was in good faith. See Treas. Reg. § 170A-13(c)(4)(iv)(H).

In the instant case the Service has not requested that the alleged defects noted in the Revised Lead Sheets on the Form 8283 be corrected."

Case To Watch

- Tribune Media Co. v. Comm’r, T.C. Memo. 2021-122
Appeal Pending Dkts. 23-1135, 23-1136, 23, 1243 (7th
Cir.)
 - At issue is the partnership anti abuse rule under §1.701-2(a)(1). Is this a Reg. authorized under 7805(a) and the mere summary of anti abuse law traceable to Gregory v. Helvering or, should the Reg. be afforded nothing more than Skidmore deference.

Accuracy Related Penalty

- Section 6662(a) & (b)(1)
 - Statute that imposes a 20% penalty for disregard of the rules and regulations
 - Now that a regulation is entitled to for less deference, does this do to the statute? Especially with a Section 6664 Reasonable Cause Defense.

Disregard of Rules or Regulations

- Is defined as any "careless, reckless, or intentional disregard"
 - Section 6662(c)



Reasonable Cause

- Defined as Ordinary Business Care and Prudence
- Section 6662 Penalty can be avoided by showing reasonable cause (in most-cases)
- Proof of Reasonable Cause, when arguing reliance on a professional – 3 part test
 - Advisor was competent and had significant expertise to justify reliance
 - Taxpayer gave advisor adequate and necessary information
 - Taxpayer relied in good faith upon the advisor

Raising Reasonable Cause Can Waive a Privilege

- CAUTION:
- Raising the assertion of reliance on professional advice constitutes reasonable cause probably waives the attorney/client privilege and the Section 7525 privilege.



Raising Reasonable Cause Can Waive a Privilege (cont.)

- IRM 20.1.5.6.4 (January 24, 2013)
(If the taxpayer claims a tax memorandum or advice is privileged, the IRS will not abate the penalty)
- Comment: Would the IRS assert a penalty to force a privilege waiver?

SALT Ramifications

- WI – Tetra Tech EC, Inc. v. W. WDOR, 382 Wis.2d 496 (2018)
 - Not bound by agency but will give “due weight” to the agencies experience, technical competence, and specialized knowledge under Section 227.57(10), Wis. Stats.
 - Very disjointed opinion.
- IL – Hartney Fuel Oil v. Hamer, 998 N.E. 2d 1227 (Ill. 2013)
 - Illinois Department of Revenue regulations are entitled to substantial weight and deference. Regulations enjoy a presumption of validity
- FL – Amendment 6 to Florida’s Constitution now requires courts to interpret statutes de novo. FLA. CONT. art. V §21(11/6/2018)

Other “Hot Issues”

- High Net Worth Audits
- Real Estate Professional Status
- Airplane Cases
- Family Office Planning
- The Research Credit – IRS & WDOR
- Interest in Form 941 Cases

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- IRS Announces New Pass-Through Unit to Scrutinize Wealthy
By David van den Berg
- Law360 (September 20, 2023, 6:33 PM EDT) – The Internal Revenue Service will launch a new group focused on scrutinizing pass-through organizations as part of its broader plan for beefing up enforcement work against the wealthy, according to an agency statement. . . [A] new unit scrutinizing pass-through organizations is part of a previously announced plan. . . to ramp up enforcement work against high-income earners, corporations and partnerships.
- The agency said the initiative will drill down on large or complex pass-throughs. . . to ramp up enforcement work against high-income earners, corporations and partnerships. . .
- The pass-through group will be housed in the IRS' Large Business & International Division, according to the agency. The pass-through entity's workforce will eventually also include current employees in both Large Business & International and the Small-Business & Self-Employed divisions, the agency said. The IRS statement also said the pass-through group will include the more than 3,700 revenue agents it plans to hire for expanded enforcement work geared toward large corporations and complex partnerships. . .

IRS Announces New Pass-Through Unit to Scrutinize Wealthy (cont.)

- The IRS' strategic plan for the funding increase provided by the Inflation Reduction Act called for expanded enforcement work against large partnerships and said the agency would hire specialized compliance workers and train others to help ensure pass-through entities comply with the law. . .
- Greater resources are needed to evaluate the compliance of pass-through entities, especially large and complex ones, and pass-through audit rates dropped because of funding cuts, the agency said. . . [its] the strategic plan. The agency audited 4.4% of pass-throughs in 2010, and the rate dropped to 0.1% in 2017, the most recent year with nearly all audits closed, according to the plan, which was released in April.

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High Net Worth Issues

- Responding to Information Document Requests can be very burdensome, with a number of practical and ethical concerns
- IRS Counsel is often involved through the audit
- Often if information is not produced by the IDR deadline the IRS will issue a pre-summons letter and then an IRS summons

High Net Worth Issues

- Some examples of the broad scope of high net worth audits include
 - Estate and Gift Tax Issues
 - **Valuation Issues**
 - Executive Compensation
 - C corporation and S corporation Issues
 - **Noncash Charitable Contributions**
 - **Partnership and LLC Issues**
 - Passive Activity Loss
 - Foreign Trusts
 - Foreign Bank Account Reporting
 - Basis and At-Risk Issues
 - Transfer Pricing Issues
 - **Private Airplane Issues**

Airplane Cases

- Use a Partnership or Corporate structure
- SIFL or §274-10(e)
- Personal Entertainment v. Non-Personal Entertainment
- SIFL is much more favorable than §274-10(e)
- Avoid Schedule C Structure – CCA 202117012 (4/30/21)
 - IRS: Can not pay a fringe benefit to a sole proprietor so income is not SIFL income. Simply disallow all personal expenses. Unclear how to measure expenses.

Airplane Cases (cont.)

- Section 280F
 - Leasing Trap
 - Here's a new one – a single member LLC is not a single member LLC

Airplane Cases (cont.)

- Depreciation and the Section 280F trap
- Need 51% business use to take accelerated depreciation. The first 25% of business use cannot be a rental to a related party.
- Entertainment Facility trap
 - No deduction is allowed for an entertainment facility. §274(a)(1)(B). Transportation entertainment facilities are deductible if the facility is used in pursuit of a trade or business. §1.274-2(b)(1)(iii)(1); TAM9608004. If a partnership or corporation use SIFL or §274-10(e). If a Schedule C, see CCA 202117012. Need to document the business purpose for the airplane.

Airplane Cases (cont.)

- Section 183 – Hobby Loss
 - Business Plan
 - Factors §1.183-2(b)

Airplane Cases (cont.)

- IRS Activity
 - IRS Notice – IR – 2024-46 (2/21/24)
 - LB&I “Campaign” Issue

Passive Losses and the Real Estate Professional

- Section 469
- Rental Real Estate
- Real Estate Professional
- Proving Material Participation
- Make a Grouping Election – watch limited partnership trap

Passive Losses and the Real Estate Professional

- My Worst Nightmare
 - 280F – Airplane Leasing Trap and/or
 - 469 – Passive Loss Argument
- Rental is Per Se Passive
 - Need a “Dry Lease” for FAA reasons

Passive Loss Rules

- Limit a taxpayer from deducting losses and excess credits from a passive activity against income from nonpassive activities. I.R.C. § 469(a).
- A passive activity is one that:
 - Involves the conduct of a trade or business in which the taxpayer does not materially participate. I.R.C. § 469(c)(1).
 - Is a rental activity. I.R.C. § 469(c)(2).

Passive Loss Rules (cont.)

- Establishing Material Participation.
 - A taxpayer materially participates in an activity if, and only if, the taxpayer meets one of the following seven tests:
 - Work done in a taxpayer's capacity as an investor does not count toward the 500 Hour test, unless the taxpayer is directly involved in the day-to-day management or operations of the activity. Treas. Reg. § 1.469-5T(f)(2)(ii).
 - Investor activities include studying and reviewing financial statements or reports on an activity, preparing studies or analyses of the activity's finances or operations for the taxpayer's own use, and monitoring the activity's finances or operations in a nonmanagerial capacity

Passive Loss Rules (cont.)

- Facts and circumstances. Treas. Reg. § 1.469-5T(a)(7).
 - Taxpayer can establish material participation by regular, continuous and substantial involvement in an activity based on all the facts and circumstances
 - Must participate in activity for more than 100 hours. Treas. Reg. § 1.469-5T(b)(2)(iii).
 - Caution! Services performed in the management of an activity are disregarded unless:
 - No other individual is compensated for performing management services in connection with such activity; and
 - No other individual performs management services that exceed the hours spent by the taxpayer. Treas. Reg. § 1.469-5T(b)(2)(ii).

Passive Loss Rules (cont.)

- A taxpayer must establish hours of participation under the seven tests.
 - Any reasonable means of proof is sufficient to establish hours of participation. Treas. Reg. § 1.469-5T(f)(4).
 - Courts and the IRS are skeptical when a taxpayer makes extravagant claims on the number of hours of participation.
 - Courts generally do not accept "post-event ballpark guesstimate" of hours unless supported by credible testimony and other objective evidence
 - Taxpayers are recommended to keep careful records of participation
 - Practice Tip
 - Use an affidavit
 - A client interview

Passive Loss Rules (cont.)

- Special Rules for Real Estate Rental Activities.
 - Taxpayers who qualify as "real estate operators" may treat their real estate rental activities as nonpassive upon a showing of material participation. I.R.C. § 469(c)(7).
 - To qualify as a "real estate operator":
 - For CHCs:
 - More than 50% of the corporation's gross receipts for the year must be derived from real property trades or businesses in which the corporation materially participates. I.R.C. § 469(c)(7)(D)(i).

Passive Loss Rules (cont.)

- For individuals:
 - The taxpayer must satisfy the two following requirements:
 - More than one half of all personal services performed in trades or businesses must be performed in the real property trades or businesses; and
 - More than 750 hours of services must be performed in real property trades or businesses in which the taxpayer materially participates. I.R.C. § 469(c)(7)(B).
 - Personal services include any work performed by the individual in the connection with a trade or business, except for:
 - Worked performed by an individual in the individual's capacity as an investor. Treas. Reg. § 1.469-9(d)(4).

Passive Loss Rules (cont.)

- Services performed as an employee, unless the employee is a 5% owner of the employer. I.R.C. § 469(c)(7)(D)(ii).
 - Practice Tip: When looking to purchase Real Estate (e.g., Apartment Buildings), document that the activity is not investment activity
- Services of the taxpayer's spouse cannot be combined to satisfy either of the two requirements. Treas. Reg. § 1.469-9(c)(4).
- Caution! Rental activities held through a passthrough entity constitute a single interest if the entity grouped its real estate as a single activity. Treas. Reg. § 1.469-9(h). However, if a taxpayer owns directly or indirectly a 50% or greater interest in the passthrough entity, each interest in rental real estate is treated as a separate interest unless the taxpayer makes his or her own election to treat all interests in real estate as a single activity.

Family Office Planning

- Lender Mgmt LLC V. Comm'r,
T.C. Memo 2017-25
- Family office takes a profits interests in investments and is treated as a trade or business.
- Has to be a real trade or business

The Taxpayer Has Two Business Argument

- Example – Real Estate
- - 1.469 – 9(e)(3)(i) – Trap
 - May net group rental real estate with any other activity (i.e., group rental real estate with development to determine material participation in the rental real estate.
- Comment: Are they really separate activities or is development and rental “one activity.”

Section 41 Research Credit

- Four Tests
- Funded Research

Interest Free Adjustments in Form 941 Cases

- Employee v. I.C. Issue
- ERC Audits

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.

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.

Valuation Checklist

- The Cover Letter – Summary
- Who is the retaining party and other intended users?
- Use the Correct Definition of Fair Market Value ("FMV"), FMV for a gift, Treas. Reg. Section 25.2512-1 defines fair market value as
 - [T]he price at which property would change hands between a willing buyer and a willing seller, Neither being under any compulsion to buy or sell and both having reasonable knowledge of the Relevant facts

Valuation Checklist (cont.)

- The "as of" or date
- Purpose of the valuation and intended use (e.g. estate and gift tax purposes)
- Type of asset and interest being valued (i.e. a minority interest . . .)
- Control Rights - in any
- Access to Liquidity
- The Scope of Work
- Information Considered
- Methodologies Utilized
- Fair Market Value Conclusion

Valuation Checklist (cont.)

- The Report- Body
- Standard of value – Define FMV again
- Purpose of the valuation
- What is being valued?
- Prior transactions if any
- Rights, preferences, and privileges of interest being valued
- Economic overview / market conditions
- Company specific information
- Methodologies used to determine FMV (Holding Company v. Active Business).

Valuation Checklist (cont.)

- Discounts. Do not rely only on case law. Berg Estate v. Comm'r, T.C. Memo 1991-279
- Explain the weight given to each methodology used. Otherwise if one methodology is rejected, the whole report may fail. True Estate v. Comm'r T.C.Memo 2001-167 aff'd., 390 F.3d 1210 (10th Cir 2004)
- Tax Affecting Earnings if an S Corp. or Partnership. Calculation both ways. Recent Cases, Kress, Estate of Jones. If do not tax affect, can the marketability discount be increased.
- Do I need a good Form 8283?

Valuation Checklist (cont.)

- Justify the discount rate being used in the calculation
- Statement of qualifications that meets Tax Court Rule 143
- Exhibits showing calculations
- What is the FMV of the interest being valued?
- Signed certification

Ethics Hypothetical

- We are preparing a tax return for a new client's parents. The parents are planning on donating land, which has been previously used a quarry, to the local municipality and taking a deduction for the donation. There is an easement on the land that mirrors local law.
- We select the appraiser, who we have used in the past to value a service business (i.e., an insurance agency). The appraisal comes back, after numerous revisions and drafts from our out of state appraisal firm. The firm values the property at much higher than the client expected. We rely on the appraisal. The number seems great! We send an e mail to the family saying that we like the appraised value for deduction purposes. Ultimately, with our help, the parents long time CPA prepares and signs the parent tax return.
- Do you prepare the tax return, claiming the charitable deduction for the amount of the appraised value. What are the ethical issues?
- If there is a tax audit a few years later, what are the additional ethical issues? Note, the audit could go very well, the IRS does not have the budget approval to obtain an appraisal.

Michael Goller Thoughts

- Who is my client. Define. Is there a conflict?
- Circular 230 Section 10.29 (and AICPA -Conflict of Interest ("COI"))
- Scope of services in the engagement letter
- Circular 230 Section 10.22 – Diligence
- AICPA – Code of Prof Conduct Art. V - Due Care
- Circular 230 Section 10.35 Competence
- Circular 230 Section 10.34 – Talk about disclosure (see chart on slide 78)
- Who is the return preparer – AICPA rules make it clear

Michael Goller Thoughts (cont.)

- Circuit 230 Section 10.37(b)– Reliance on Written Advice and our written advice must be reasonable.
- Frivolous Return - Circuit 230, AICPA Due Care and Section 6694– Frivolous Return
- What is privileged Section 7525, A/C, Spousal
- Kovel Letter – how to get an appraisal.
- Does the appraiser know local law? All appraisals are local.
- Section 170(f) and 1.170A-13 – Qualified Appraisal
- Need a good Form 8283

Michael Goller Thoughts (cont.)

- New AICAP rules – nonsigning is still a return preparer.
- Circular 230 Section 10.3 Practice before the IRS who signs the POA.
- Circuit 230 – COI – Practitioners' own interest
- Circular 203 10.36 Department management
- Circuit 230 10.20 to 10.23 –Cooperation with IRS
- Burden of Proof Section 7491 - Cooperation