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Welcome & Introduction

If you would like the opportunity to serve this organization, please contact Leah Davis or Lesly Bosch Annen

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WE WOULD LIKE TO THANK THE AMARILLO AREA FOUNDATION FOR UNDERWRITING THE BEAUTIFUL NEW SPACE WE ARE IN FOR THIS INSTITUTE!

JOHN STROHMEYER

UPDATES ON THE CORPORATE TRANSPARENCY ACT

8:15 a.m. – 9:15 a.m.

Apres BOI Le Deluge: Beneficial Ownership Reporting to FinCEN Required by the Corporate Transparency Act

John R. Strohmeyer
Strohmeyer Law PLLC
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12th Floor
Houston, Texas 77098
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The Corporate Transparency Act
In a Nutshell

Effective January 1, 2024, a Reporting Company must disclose information about the Reporting Company, its Beneficial Owners, and the Company Applicants to the Financial Crimes Enforcement Network (FinCEN) of the Department of Treasury.

John R. Strohmeyer
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Hi! I'm John R. Strohmeyer.

- I'm the proprietor of Strohmeyer Law PLLC in Houston, where I guide clients through the maze of estate planning, tax, international tax, and probate.
- I'm Board Certified by the Texas Board of Legal Specialization in both Tax Law and Estate Planning and Probate Law.
- I'm a Fellow of the American College of Trust and Estate Counsel.

John R. Strohmeyer
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Hi! I'm John R. Strohmeyer.

I've given a wide range of white-knuckle presentations.

- A Sun That Never Sets: International Tax Updates for Global Clients
- Income Tax Treaties, and Estate and Gift Tax Treaties
- A Whole New World: Trust and Estate Distributions to Foreign Beneficiaries
- Using Zapier to Automate the Boring Parts of Your Practice
- Hidden in Plain Sight: Estate and Inheritance Taxes Imposed by Other States on Non-Resident Decedents
- Hoisting Your Jolly Roger: How to Fund Your Retirement in a Non-Extradition Country with Your Client's Money
- IOLTA Automation: Let the Robots Help You Out

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Hi! I'm John R. Strohmeyer.

I also host the Five Star Counsel® podcast, where I try to answer the question "What would a law firm built by the founders of Disney, Four Seasons, Ritz-Carlton, and Zappos look like if they'd been lawyers instead?"

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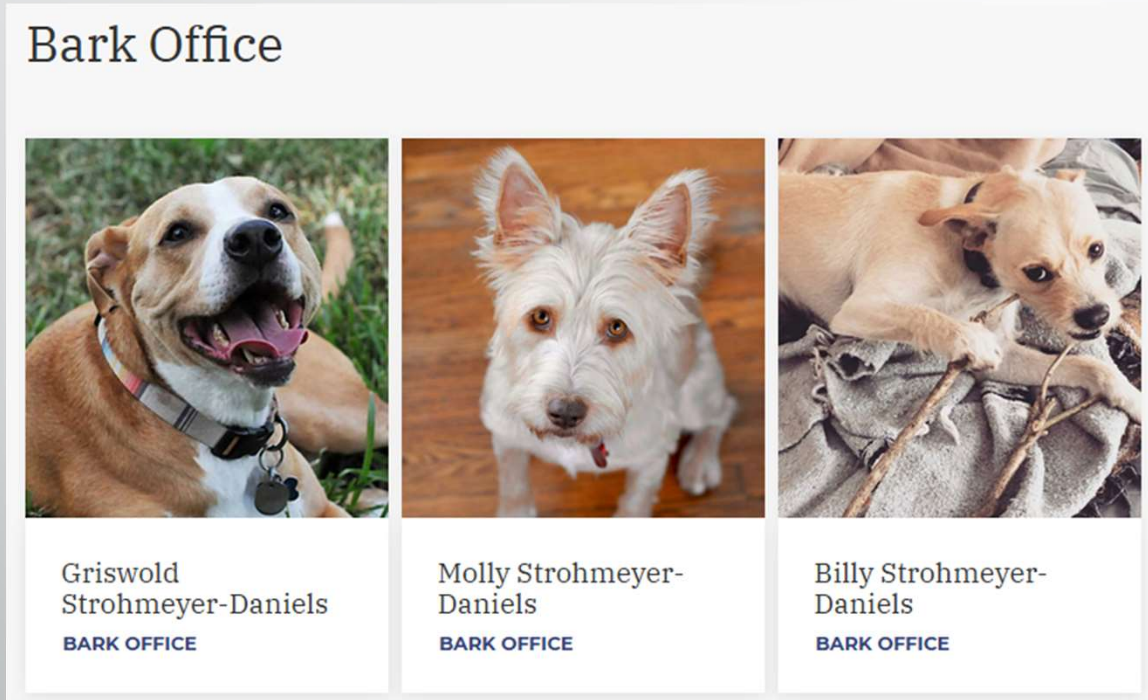
Hi! I'm John R. Strohmeyer.

You may have questions when we're done, so you can go to AskJohnAQuestion.com and find a time to chat.



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Housekeeping

1. Yes, this is real.
2. No, this is not a joke.
3. Yes, it's too late to call your Senator.
4. While one court held it unconstitutional, the banks will be held to the parts that are constitutional.
5. Yes, I'll absolutely send you the slides.

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The Corporate Transparency Act

IT IS HERE!

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The Corporate Transparency Act

- When are reports due?
- What needs to be reported?
- Which entities must report?
- What happens if an entity doesn't report?

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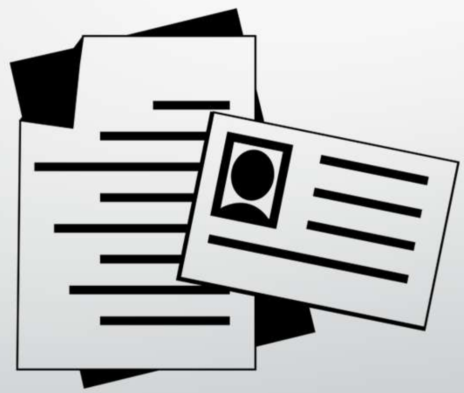
The Corporate Transparency Act
What Needs to Be Done?

Is it a Reporting Company?

Collect Info on Beneficial Owners and Company Applicants



Report Beneficial Ownership Information and Company Applicants

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Terms You'll Need to Understand

- Financial Crimes Enforcement Network ("FinCEN")
- "Existing Reporting Company"
- "New Reporting Company"
- Domestic Reporting Company
- Foreign Reporting Company
- Beneficial Owner
- Substantial Control
- Company Applicant

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THE IRS IS LISTENING

- Officers and employees of the Department of the Treasury “may obtain access to beneficial ownership information for tax administration purposes”

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A few examples as we get started.

- Strohmeyer Law PLLC, a law firm with two attorneys and four other staff and annual revenues less than $5,000,000
- Brighton Hove Albion, a law firm with 100 attorneys and 75 other staff
- Family Cabin LLC, with three members and zero revenue
- Local Growing Business Inc., with revenue of $15,000,000 and 20 employees
- Insurance Planning Escape Hatch, a general partnership owned by a trust and an individual

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Governmental Security Protocols

- Protect the security and confidentiality of any Beneficial Ownership information provided
- Require requesting agencies to establish, maintain, and abide by a secure system that would store Beneficial Owner information
- Limit the scope of information sought, consistent with the purpose of seeking the information
- Restrict access to Beneficial Ownership information to those who have undergone appropriate training, and who are authorized to access the information
- Establish an auditable system of records to track each request, purpose of the request, name of requesting individual, and any disclosure of information

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Penalties for Governmental Misuse of Information

- Any individual guilty of unauthorized disclosure or use of Beneficial Owner information
  - Is liable for a civil penalty of $500 per day the violation continues or is not remedied **and**
  - Shall be fined no more than $250,000, or imprisoned for 10 years, or both **or**
  - If violating another law of the United States or any illegal activity involving more than $100,000 over a 12-month period, a fine of no more than $500,000, imprisoned for no more than 10 years, or both

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Why is the Corporate Transparency Act?

- The purpose of the Act is to
  - Enhance national security, intelligence, and law enforcement efforts to combat money laundering, terrorism financing, and other illicit activities
  - Bring the U.S. into compliance with international anti-money laundering and countering of terrorism financing standards
  - Set a clear federal standard for incorporation practices
  - Protect U.S. national security and commerce
- The Act is not intended to create a publicly accessible registry of business entities in the U.S.

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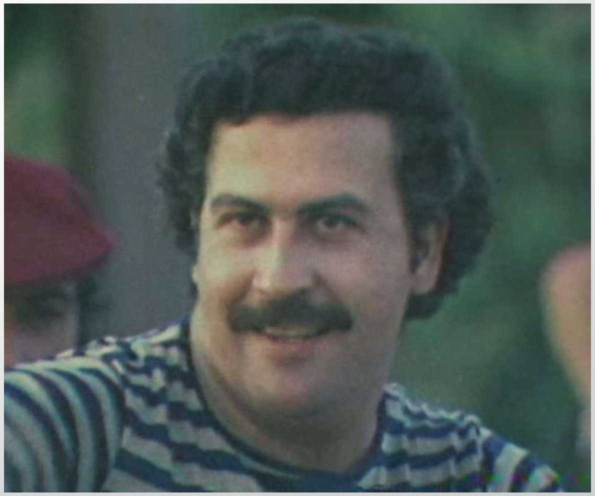
Why is the Corporate Transparency Act?

Alphonse the Money Launderer

Vladimir the Kleptocrat

Pablo the Narcotrafficker



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What is the Corporate Transparency Act?

- The CTA does not authorize public disclosure of beneficial ownership.
- FinCEN can disclose the information to other law enforcement agencies.
  - A Federal agency involved in national security, intelligence, or law enforcement activity, for the use in furtherance of such activities; or
  - A State, local, or tribal law enforcement agency as part of a criminal or civil investigation, with court approval
  - To assist the investigation of a foreign government in a Federal Agency requests
    - A financial institution with the consent of the reporting company, to facilitate compliance of the institution with customer due diligence
    - A request made by a Federal functional regulator or other appropriate regulatory agency

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When is a Reporting Company's Filing Deadline?

- "Existing Reporting Company"—Formed Before January 1, 2024
  - Initial Report is due by January 1, 2025
  - Company Applicant information is not required
- "New Reporting Company"—Formed After December 31, 2023
  - Initial Report is due 90 days after formation for entities filed in 2024
  - Initial Report is due 30 days after formation for entities filed after 2024
  - The timer starts after receipt of actual notice or public notice (in states with public notice of entity formations)
  - Company Applicant information is required

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What does a Reporting Company report about itself?

- The entity's name, as well as any trade names or DBAs
- Business street address
- Jurisdiction of formation
- Taxpayer Identification Number, or taxpayer number in home jurisdiction (non-US entities)
- A Reporting Company must file an updated statement if there is a change to any reported information, including a change of address or name change.

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What does a Reporting Company report about Beneficial Owners?

Only individuals can be Beneficial Owners

- Full legal name
- Date of birth
- Current residential address
- A unique identification number (such as a driver's license, identification card, or passport number)
- A digital copy of the identifying document

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What does a Reporting Company report about Beneficial Owners?

- An identification number
- Date of birth
- Full legal name
- Current residential address
- A digital copy of the identifying document

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What does a Reporting Company report about Company Applicants?

Only individuals can be Company Applicants

- Full legal name
- Date of birth
- Current business address (alternatively a residential address)
- A unique identification number (such as a driver's license, identification card, or passport number)
- A digital copy of the identifying document

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FinCEN ID

- A FinCEN ID is available through Login.gov after providing name, address, date of birth, unique identification number (such as a driver's license, identification card, or passport number), and a digital copy of the identifying document
- Like a CAF#, BSA, or PTIN, FinCEN will issue you an identifier number that can be provided to any Reporting Company instead of providing that information to a Reporting Company.
- Entities may also obtain a FinCEN ID.
- Any individual or entity with a FinCEN ID must update FinCEN of any change or if they become aware or have reason to know any information was inaccurate.

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What happens if a Reporting Company doesn't report?

- An individual who **willfully** provides false or fraudulent information, or willfully fails to report complete or updated Beneficial Ownership information faces a civil penalty of $500/day the violation continues or is not remedied, and a criminal fine of up to $10,000, and/or 2 years imprisonment
- There is a 90-day safe-harbor if an individual voluntarily submits a report containing correct information

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From the top:
What's Changed?

Effective January 1, 2024, a Reporting Company must disclose information about the Reporting Company, its Beneficial Owners, and the Company Applicants to the Financial Crimes Enforcement Network (FinCEN) of the Department of Treasury.

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What Is a Reporting Company?

- The Act defines a Reporting Company as a corporation, LLC, or other similar entity that meets either of these requirements.
  - It was created by filing a document with a secretary of state or a similar office under the law of a State or Indian Tribe.
  - It was formed under the law of a foreign country and registered to do business in the United States by the filing of a document with the secretary of state or a similar office under the laws of a State or Indian Tribe.
- LPs, LLPs, and business trusts (statutory trusts) are "similar" entities.
- Trusts are excluded as Reporting Companies, but trustees, grantors, and beneficiaries are not excluded from being Beneficial Owners.
- General partnerships should be excluded as Reporting Companies.

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23 Exempt Entities (i.e., not Reporting Companies)

- **Securities Reporting Issuer** under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or is required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).
- **Domestic governmental authorities** established under the laws of the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States; and exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision.
- **Any Bank** as defined in one of these places.
  - Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)
  - Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a))
  - Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)).
- **Any Federal credit union or State credit union** as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

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23 Exempt Entities (i.e., not Reporting Companies)

- **Depository institution holding company** as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), or any savings and loan holding company as defined in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a).
- **Any Money Services Business (money transmitting business)** registered with FinCEN under 31 U.S.C. 5330, and any money services business registered with FinCEN under 31 CFR 1022.380.
- **Any broker or dealer** as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under section 15 of that Act (15 U.S.C. 78o).
- **Securities exchange or clearing agency**. Any exchange or clearing agency, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under sections 6 or 17A of that Act (15 U.S.C. 78f, 78q–1).
- Any other entity that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq*.)

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23 Exempt Entities (i.e., not Reporting Companies)

- **Investment company or investment adviser.**
  - Either an investment company as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) or an investment adviser as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2)

  AND

  - Registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq*.).
- **Venture capital fund adviser.**
  - Any investment adviser described in section 203(l) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(l))

  AND

  - Has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission.
- **Any insurance company** defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2).

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23 Exempt Entities
(i.e., not Reporting Companies)

- **State-licensed insurance producer**.
  - An insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State; and
  - Has an operating presence at a physical office within the United States.
- **Commodity Exchange Act registered entity**.
  - A registered entity as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)
  - OR IS BOTH
  - A futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor, each as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), or a retail foreign exchange dealer as described in section 2(c)(2)(B) of the Commodity Exchange Act (7 U.S.C.2(c)(2)(B))
  - Registered with the Commodity Futures Trading Commission under the Commodity Exchange Act.

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23 Exempt Entities
(i.e., not Reporting Companies)

- **Any public accounting firm** registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.7212).
- **Any public utility** defined in 26 U.S.C. 7701(a)(33)(A) that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States.
- **Any financial market utility** designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5463).
- **Any pooled investment vehicle** operated or advised by an exempt entity that is a bank, credit union, broker or dealer, investment company or investment adviser or venture fund adviser.

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23 Exempt Entities (i.e., not Reporting Companies)

- **Tax-exempt entities.**
  - An entity defined under IRC § 501(c) (determined without regard to IRC § 508(a)) and exempt from tax under IRC § 501(a). They remain an exempt entity for 180 days after losing exempt status, giving it 210 days to report.
  - A political organization defined in IRC § 527(e)(1) and exempt from tax under IRC § 527(a).
  - Charitable Trusts under IRC § 4947(a)(1).
  - Split-Interest Charitable Trusts under IRC § 4947(a)(2).

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23 Exempt Entities (i.e., not Reporting Companies)

- **Entity assisting a tax-exempt entity.**
  - Operates exclusively to provide financial assistance to, or hold governance rights over, any exempt entity that is a Tax-exempt entity
  - Is a United States person under IRC § 7701(a)(30) (e.g., an individual, a trust, estate, partnership, association, company or corporation)
  - Is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence (i.e., people who have to file IRS Form 1040 annually)
  - Derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence.

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23 Exempt Entities (i.e., not Reporting Companies)

- **Inactive entity.** Any entity that meets all the following requirements.
  - Was in existence on or before January 1, 2020
  - Is not engaged in active business
  - Is not owned by a foreign person, whether directly or indirectly, wholly or partially
  - Has not experienced any change in ownership in the preceding 12 months
  - Has not sent or received any funds in an amount greater than $1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding 12 month
  - Does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity

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23 Exempt Entities
(i.e., not Reporting Companies)

- **Subsidiaries of Exempt Entities.** Any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more exempt entities.
- Exception! Subsidiaries of the following exempt entities must report Beneficial Owner Information.
  - Money Services Business
  - Pooled Investment Vehicle
  - Entity Assisting a Tax-Exempt Entity
  - Inactive Entity

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23 Exempt Entities (i.e., not Reporting Companies)

- **A Large Operating Company**
  - More than 20 (i.e., 21+) full-time employees in the United States
    - 30 hours of service per week in a calendar month under 26 C.F.R. 54.4980H–1(a) and 54.4980H–3
    - "United States" means States of the United States, the District of Columbia, the Indian lands (as defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States under 31 C.F.R. § 1010.100(hhh)
  - Gross receipts or sales as reported on a federal income tax or information return for the previous year showing over $5 million in gross receipts or sales, reported as gross receipts or sales (net of returns and allowances) on or the applicable IRS form (e.g., Form 1120, consolidated Form 1120, Form 1120–S, or IRS Form 1065).
    - Excludes gross receipts or sales from sources outside the United States.
    - For affiliated corporations filing a consolidated return, use the amount reported on the consolidated return.
  - Has an operating presence at a physical office within the United States
    - "regularly conducts its business at a physical location in the United States that the entity owns or leases and that is physically distinct from the place of business of any other unaffiliated entity. 31 C.F.R. § 1010.380(f)(6).

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Not Automatically Exempt Entities
(i.e., Reporting Companies Unless Otherwise Exempt)

- Law firms
- Accounting firms
- Doctor’s office
- Family Limited Partnerships
- Private Trust Companies

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Exempt Entities
(i.e., not Reporting Companies)

Do Exempt Entities as of December 31, 2023, need to file anything to claim their exempt status?

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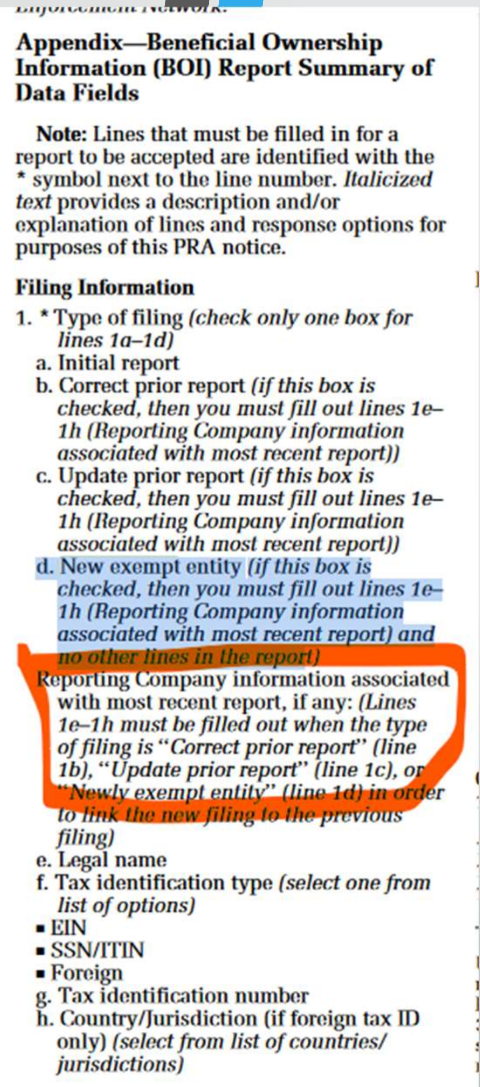

Appendix—Beneficial Ownership Information (BOI) Report Summary of Data Fields

Note: Lines that must be filled in for a report to be accepted are identified with the * symbol next to the line number. *Italicized text* provides a description and/or explanation of lines and response options for purposes of this PRA notice.

Filing Information

1. * Type of filing *(check only one box for lines 1a–1d)*
   a. Initial report
   b. Correct prior report *(if this box is checked, then you must fill out lines 1e–1h (Reporting Company information associated with most recent report))*
   c. Update prior report *(if this box is checked, then you must fill out lines 1e–1h (Reporting Company information associated with most recent report))*
   d. New exempt entity *(if this box is checked, then you must fill out lines 1e–1h (Reporting Company information associated with most recent report) and no other lines in the report)*
   Reporting Company information associated with most recent report, if any: *(Lines 1e–1h must be filled out when the type of filing is "Correct prior report" (line 1b), "Update prior report" (line 1c), or "Newly exempt entity" (line 1d) in order to link the new filing to the previous filing)*
   e. Legal name
   f. Tax identification type *(select one from list of options)*
   - EIN
   - SSN/ITIN
   - Foreign
   g. Tax identification number
   h. Country/Jurisdiction (if foreign tax ID only) *(select from list of countries/jurisdictions)*

Exempt Entities (i.e., not Reporting Companies)

- No, according to FAQ L.5, a company does not need to report to FinCEN that it is exempt from the BOI reporting requirements if it has "always" been exempt.
- There's no affirmative authority requiring Exempt Entities to file anything.
- But Exempt Entities should consider spending the 5 minutes to affirmatively claim their exempt status by reporting their legal name and TIN (plus jurisdiction of formation if foreign EIN/TIN).

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Terminated Entities

Do entities that terminated on or before December 31, 2023, need to file anything?

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Terminated Entities

- FAQ G. 4. Should an initial BOI report include historical beneficial owners of a reporting company, or only beneficial owners as of the time of filing?
- A: An initial BOI report should only include the beneficial owners as of the time of the filing. Reporting companies should notify FinCEN of changes to beneficial owners and related BOI through updated reports.
- Thoughts
  - Even if the language of the statute and the regulations doesn't say "still in existence" an entity that no longer exists has no beneficial owners and doesn't have the authority to report as required.
  - Terminated entities as of 12/31/23 have no person authorized to file and no beneficial owners. The same is true on 1/1/24 when the portal opens.
  - From 5.1 of the Small Business Guide: If your company already exists as of January 1, 2024, it must file its initial BOI report by January 1, 2025.

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What if the Reporting Company Is Owned by an Exempt Entity?

- Beneficial Owner Information is not required to be reported for entities that are wholly owned or controlled by other exempt entities.
  - Exception: If one or more of those exempt entities is a money service business, a pooled investment vehicle, or an entity assisting a tax-exempt entity, then Beneficial Owner Information must be reported.
- The Reporting Company then reports the Exempt Entity's name and TIN instead.

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Entities That Change Exemption Status

If the exemption status changes, tell FinCEN.

- Entities that lose their exemption status will need to file a report within 30 days of losing that status.
- Entities that qualify for an exemption after filing an initial report must file report within 30 days of gaining that status.

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Is this a Reporting Company?

- Strohmeyer Law PLLC, a law firm with two attorneys and four other staff and annual revenues less than $5,000,000
- Brighton Hove Albion, a law firm with 100 attorneys and 75 other staff
- Family Cabin LLC, with three members and zero revenue
- Local Growing Business Inc., with revenue of $15,000,000 and 20 employees
- Insurance Planning Escape Hatch, a general partnership owned by a trust and an individual

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Who is *Not* a Beneficial Owner?

- A minor child (defined by state law for the Reporting Company's formation)
  - But only if the information of the minor's parent or guardian is reported (both?)
- An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual.
- An individual acting solely as an employee of the Reporting Company.
  - Their control over or economic benefits from the Reporting Company must be derived solely from their employment status.
  - Unless they're a Senior Officer, then they're a Beneficial Owner.
- An individual whose only interest in the Reporting Company is through a right of inheritance.
  - Sorry, no definitions or guidance on this. ¯_(ツ)_/¯
- A creditor of the Reporting Company
  - Unless they're already a Beneficial Owner.

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Who is a Beneficial Owner?

- An individual who
- Directly or indirectly
- Through any contract, arrangement, understanding, relationship, or otherwise
- EITHER
  - Exercises Substantial Control over the Reporting Company; or
  - Owns or controls at least 25% of the ownership interests of the Reporting Company.

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Who "Owns or Controls" Interests?

- Ownership interests are calculated at the present time.
- Ownership interest is defined broadly to include equity, profit sharing agreements, voting trusts, convertible debt, and options.
  - Joint ownership with others of an undivided interest in the ownership interest.
  - Ownership through subsidiary entities.
- Any options or similar interests are treated as exercised.

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Who “Owns or Controls” Interests?

- Capital or profits interests are calculated as percentage of the total outstanding capital or profits interests (not the total ownership interests).
- For corporations, entities taxed as corporations, and S corporations, the shares owned is the greater of these options.
  - The total combined voting power (e.g., voting shares in an S corporation), or
  - The total combined value of the ownership interest of all classes of ownership (e.g., non-voting shares in an S corporation)

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Who “Owns or Controls” Interests?

- What happens if the facts and circumstances do not permit either the capital-or-profits-interest calculations or the vote-or-value calculations for corporations to be performed with reasonable certainty?
- Then any individual who owns or controls 25% or more of any class or type of ownership interest of a Reporting Company is treated as a Beneficial Owner.

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Who “Owns or Controls” Interests In Trust?

- If a trust is involved, then the Regulations identify five (non-exhaustive) situations that will trigger Beneficial Owners status.
  - A trustee of the trust or other individual (if any) with the authority to dispose of trust assets under 31 C.F.R. § 1010.380(d)(2)(ii)(C)(1).
  - A beneficiary who is the sole permissible recipient of income and principal from the trust under 31 C.F.R. § 1010.380(d)(2)(ii)(C)(2)(*i*).
  - A beneficiary who has the right to demand a distribution of or withdraw substantially all of the assets from the trust under 31 C.F.R. § 1010.380(d)(2)(ii)(C)(2)(*ii*).
  - A grantor or settlor who has the right to revoke the trust under 31 C.F.R. § 1010.380(d)(2)(ii)(C)(3).
  - A grantor or settlor who has the right to otherwise withdraw the assets of the trust under 31 C.F.R. § 1010.380(d)(2)(ii)(C)(3).

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Who “Owns or Controls” Interests In Trust?

- A trustee or other individual with authority to dispose of the asset.
  - Executors, Administrators, & Personal Representatives
  - Trust Protectors
  - Guardians, Custodians, & Conservators
- Who is the trustee?
  - Individual
  - Corporate Trustee that is a Reporting Company
  - Corporate Trustee that is not a Reporting Company (i.e., it is an Exempt Entity)
- Relevant Dates
  - Date of Acceptance
  - Date of Funding
  - Date of Death
  - Date of Resignation

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Who "Owns or Controls" Interests In Trust?

- A beneficiary who is the sole permissible recipient of income and principal from the trust.
  - This should include wards in guardianships.
- A beneficiary who has the right to demand a distribution of or withdraw substantially all the trust assets (e.g., a lifetime power of appointment)
- Relevant Dates
  - Date of Funding
  - Date of Death

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Who “Owns or Controls” Interests In Trust?

- A grantor of the trust if it is revocable.
- A grantor of the trust if they have the right to withdraw trust assets regardless of form (e.g., a swap power for grantor trust status).
- Relevant Dates
  - Date of Funding
  - Date of Death

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Who Has "Substantial Control"?

- "Senior Officers" who have *De Jure* Control
  - An individual holding the position or exercising the authority of a president, CFO, general counsel, CEO, COO, or any other officer who performs a similar function, regardless of official title.
  - Maybe not a secretary or a treasurer if they're just ministerial roles.
- Others with *De Facto* Control
  - The ability to appoint and remove any Senior Officer
  - The ability to appoint or remove a majority of the board of directors
  - The ability to direct, determine, or have substantial influence over "Important Decisions" made by the Reporting Company

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What is an "Important Decision"?

- The sale, lease, mortgage, or other transfer of any principal assets
- The reorganization, dissolution, or merger of the Reporting Company
- Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget
- Selection or termination of business lines or ventures, or geographic focus
- Compensation schemes and incentive programs for senior officers
- The entry into or termination, or the fulfillment or non-fulfillment, of a significant contract
- Amendments of any substantial governance documents

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What is an “Important Decision”?

“any other form of substantial control over the reporting company”

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Who Is a Beneficial Owner?

- A Manager of Family Cabin LLC
- President of Local Growing Business Inc.
- H-E-B store manager
- Angel investor who can appoint 2 out of 5 directors
- Creditor with security interest in the sole business asset
- The Managing Director of Corporate Trustee, which serves as the trustee of a trust that owns 25% of a Reporting Company
- Someone with the right to replace the trustee of a trust that owns 25% of a Reporting Company

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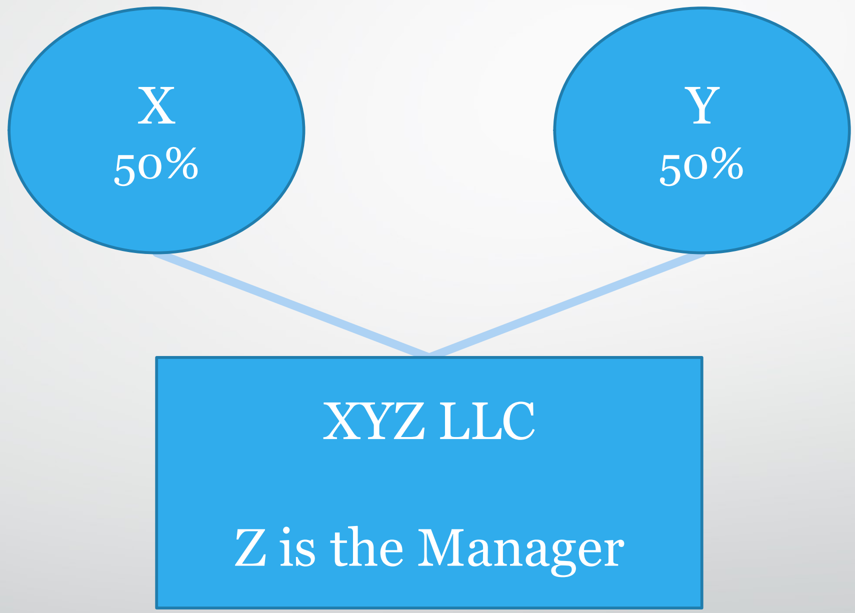
Example 1
Who Are the Beneficial Owners?



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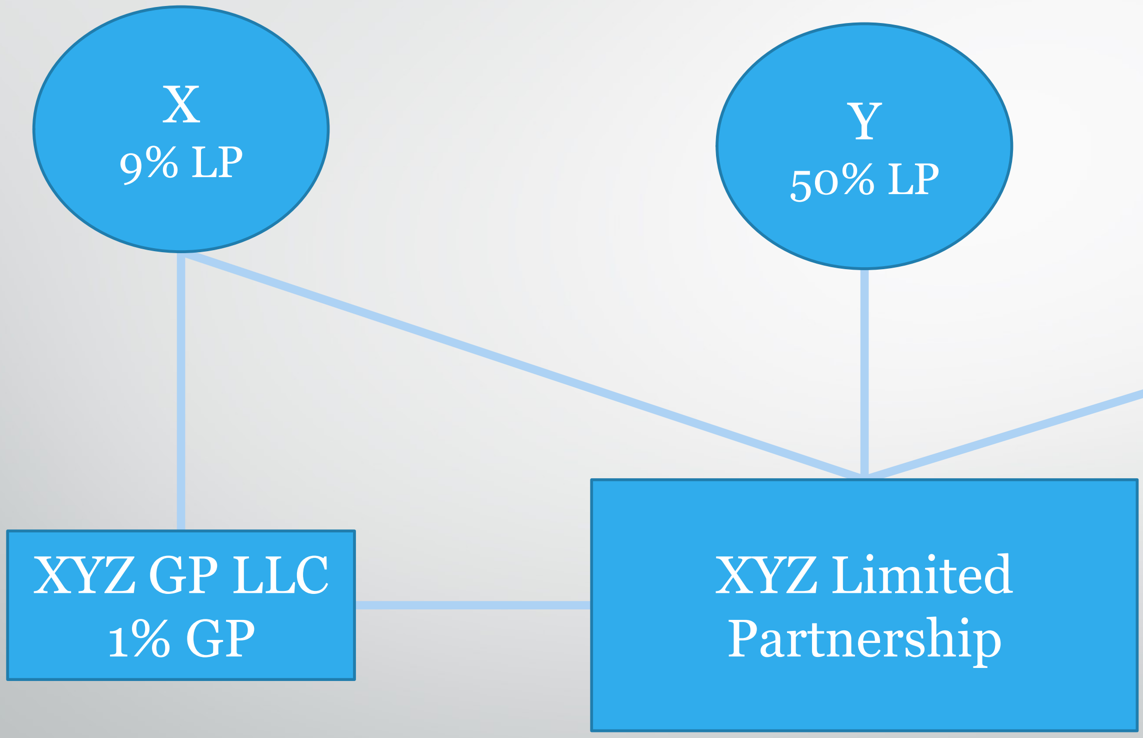
Example 2
Who Are the Beneficial Owners?



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Example 3
Who Are the Beneficial Owners?

X
1% Voting

Y
50% NV

Z
49% NV

XYZ LLC
Taxed as an
S Corporation

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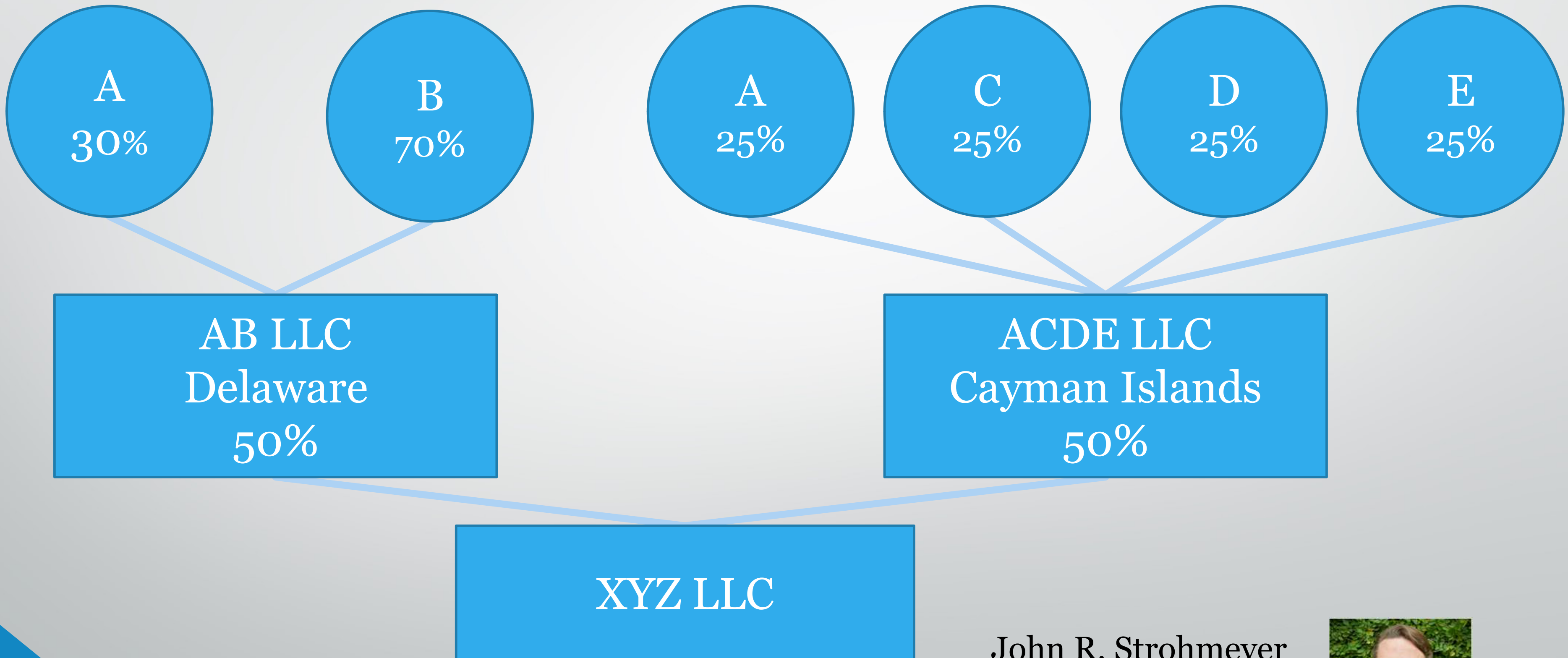
Example 4
Who Are the Beneficial Owners?



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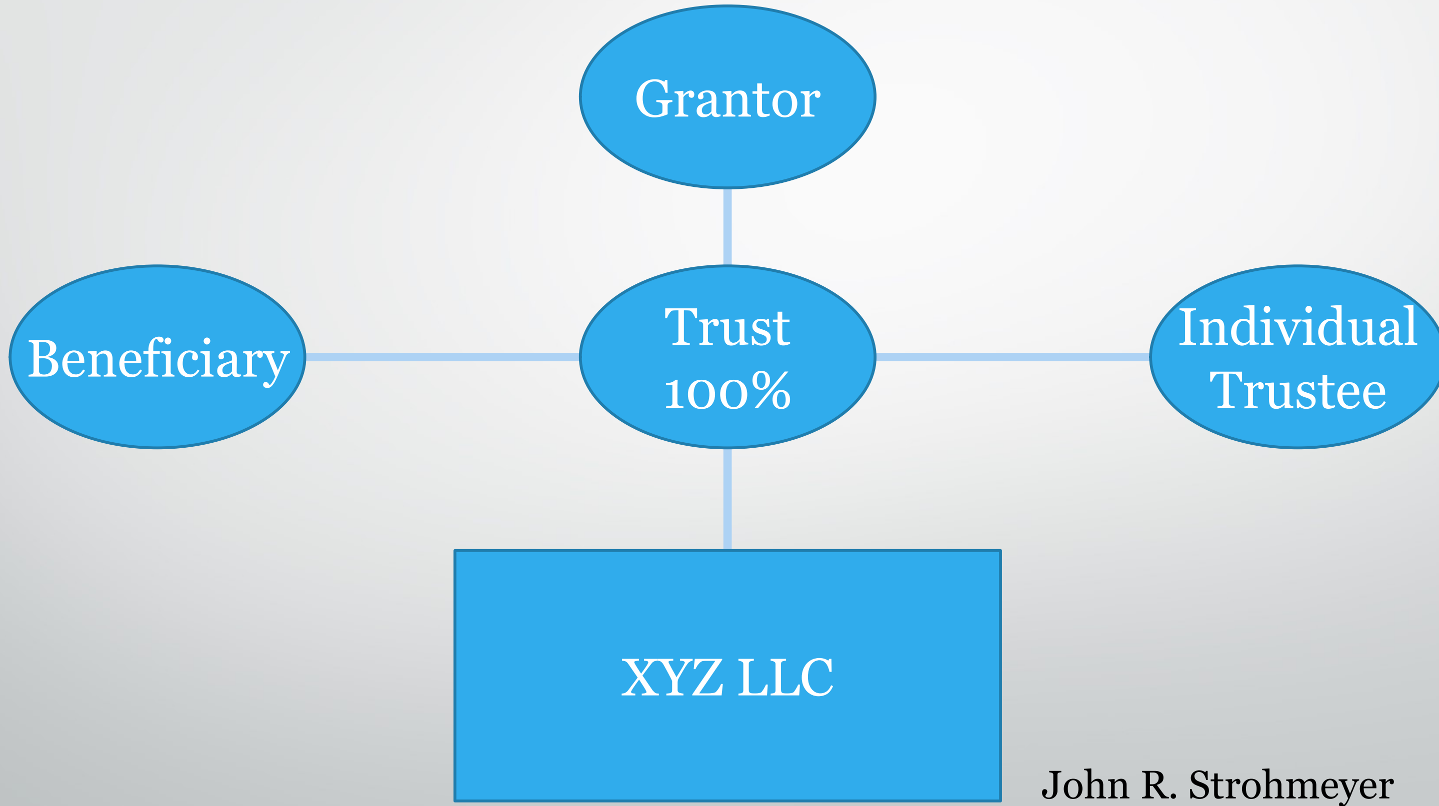
Example 5
Who Are the Beneficial Owners?



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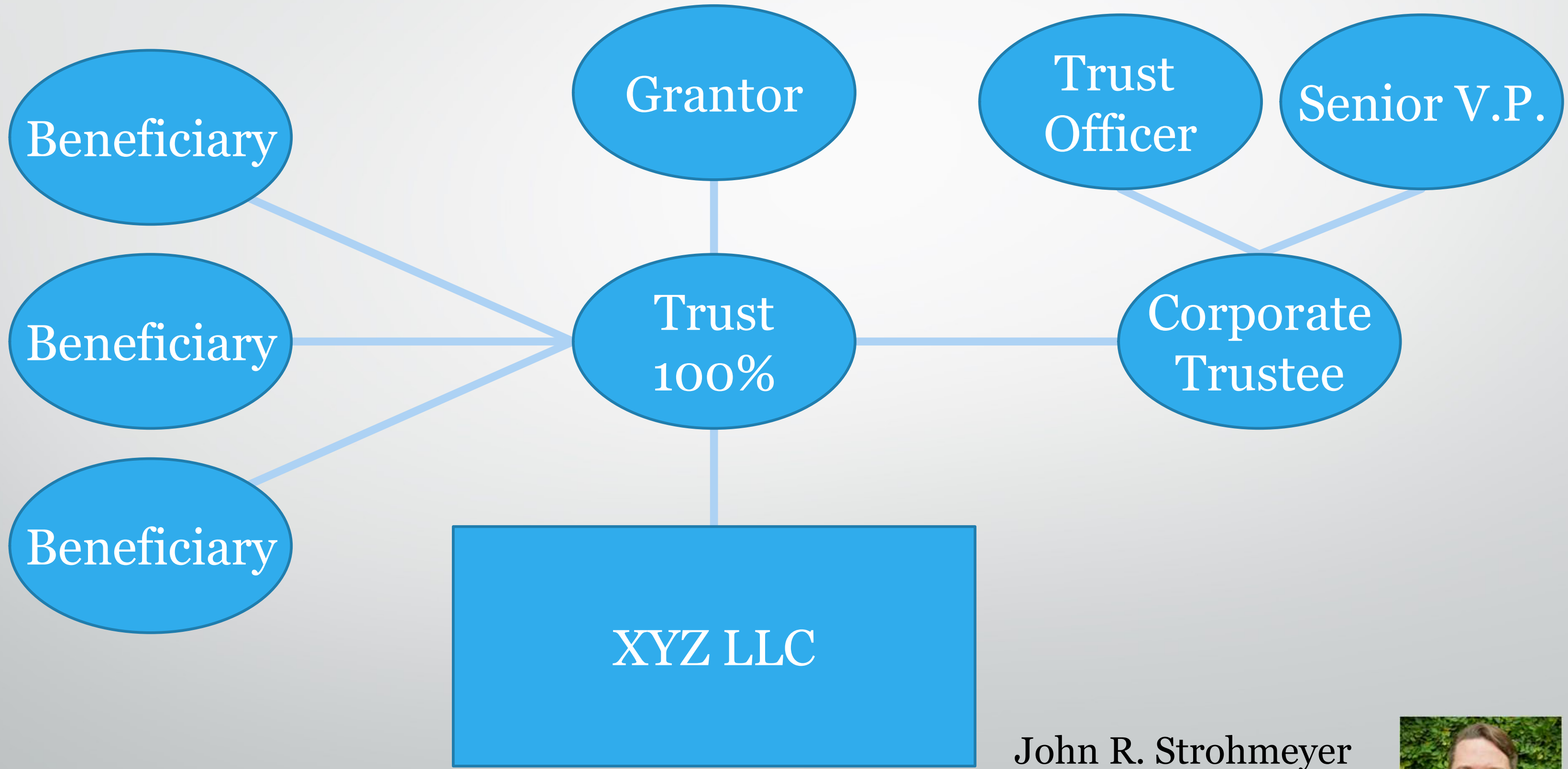
Example 6
Who Are the Beneficial Owners?



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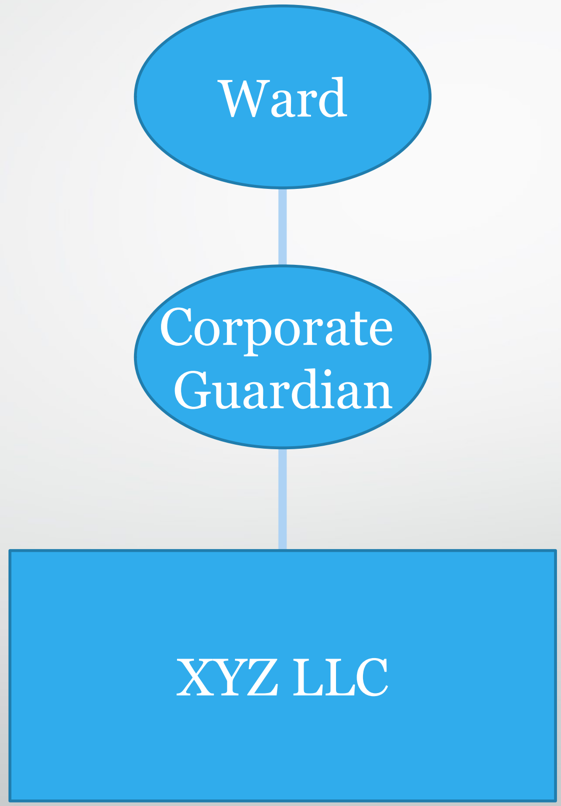
Example 7
Who Are the Beneficial Owners?



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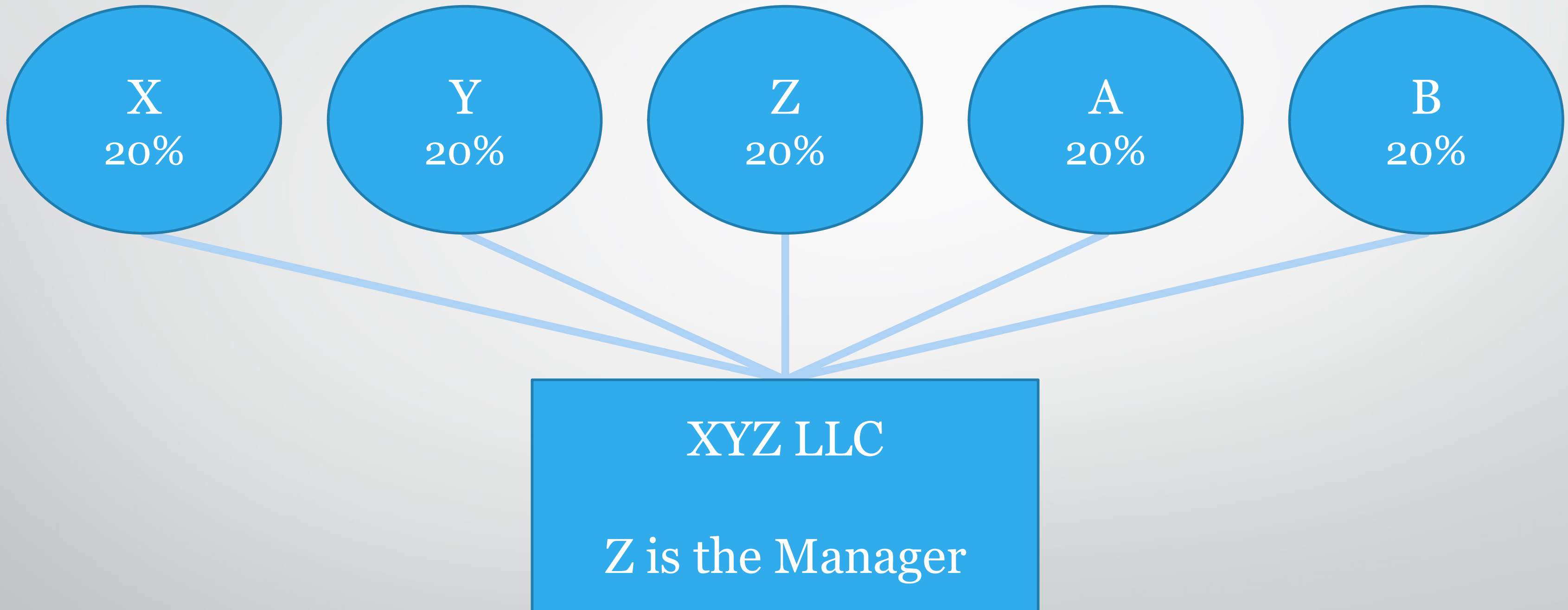
Example 8
Who Are the Beneficial Owners?



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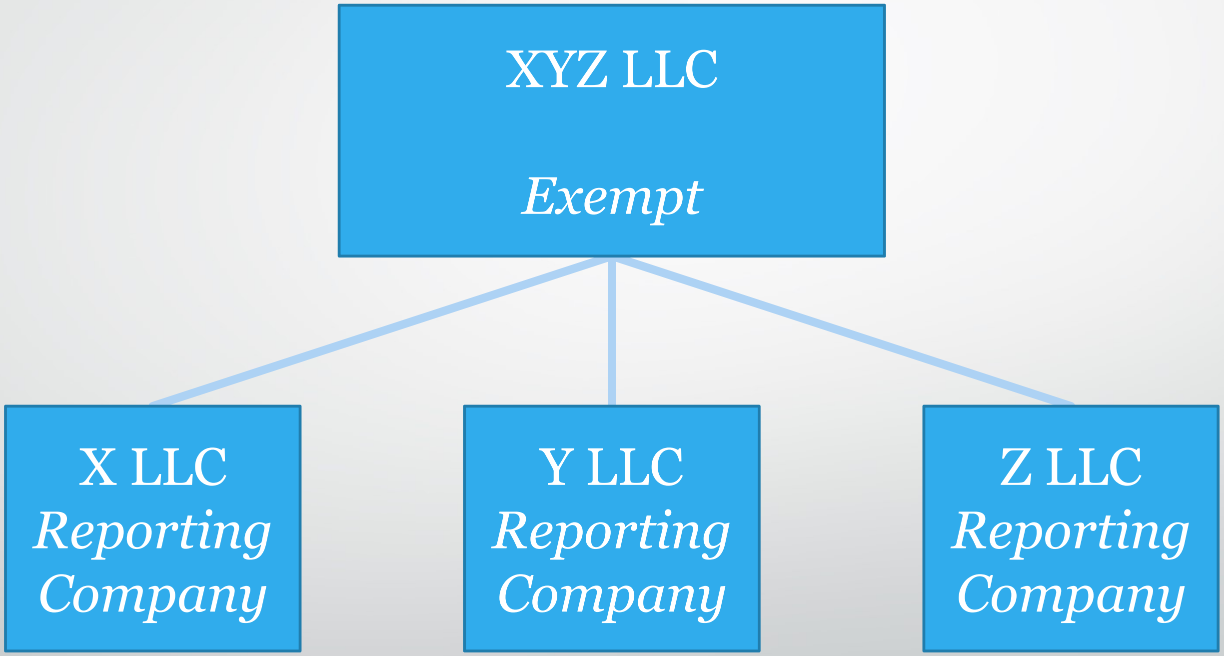
Example 9
Who Are the Beneficial Owners?



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Who is a Company Applicant?

- An individual who is responsible for the creation of a reporting company through the filing of formation documents, and the individual who directly submits the formation documents.
  - Any individual who files the document creating a domestic Reporting Company
  - Any individual who registers a foreign Reporting Company
  - Any individual who "directs or controls" the filing of such documents by another (i.e., you, the person listening to me right now).
- Only applies to Reporting Companies formed after December 31, 2023

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Who is a Company Applicant?

- Two Tests
  - Any individual who files the document creating the Reporting Company or registering a foreign Reporting Company
  - Any individual who "directs or controls" the filing of such documents by another
- There can be one or two Company Applicants for any company
- The exemptions for Reporting Companies don't apply to Company Applicants
- Consequences
  - The Company Applicants will be permanently associated with this entity.

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Who is a Company Applicant?

- Two Tests
  - Any individual who files the document creating the Reporting Company or registering a foreign Reporting Company
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Who is a Company Applicant?

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- Consequences
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Who is a Company Applicant?

- Assume the clients in all four examples used Strohmeyer Law PLLC to form the entities.
- Strohmeyer Law PLLC doesn't qualify for a Reporting Company exemption.
- John directs associate Ginna to create the formation paperwork, and operations manager Brad files the paperwork with the Texas Secretary of State. Bookkeeper Bill obtains the EIN for XYZ LLC.
  - Strohmeyer Law PLLC must report as a Reporting Company
  - John and Brad must report individually as Company Applicants.
  - Bill and Ginna do not need to report as a Company Applicant.

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When is a Report Due?

- "Existing Reporting Companies" Formed Before January 1, 2024
  - Initial Report is due by January 1, 2025.
  - Updated reports due within 30 days after the Initial Report has been filed.
  - Company Applicant information is not required.
  - Exempt companies should consider filing to claim the exemption.
- "New Reporting Companies" Formed After December 31, 2023
  - For entities formed in 2024, the Initial Report is due 90 days after formation.
  - For entities formed after 2024, the Initial Report is due 30 days after formation.
  - Updated reports due within 30 days after the Initial Report has been filed.
  - Company Applicant information is required.

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How Do You File a Report?

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What If Something Changes?

If something changes, tell FinCEN.

A Reporting Company must file an updated report within 30 days after any change to any information previously submitted to FinCEN, including a change of address or name change, about the Reporting Company, a Beneficial Owner, or a Company Applicant.

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The Reporting Company Must Report These Changes (Not an exhaustive list)

- An addition or removal of a Beneficial Owner
- An addition or removal of a person with Substantial Influence
- A change in the residential address of a Beneficial Owner
- A change in the business address of a Company Applicant
- A Large Operating Company no longer qualifies as exempt
- An executor with the power to dispose of the entity is appointed

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The Reporting Company Doesn't Need to Report These Changes (Not an exhaustive list)

- A change in the business address of a Beneficial Owner
- A change in the residential address of a Company Applicant
- An exempt entity qualifies for an additional exemption
- An exempt company qualifies as a Large Operating Company
- If a Beneficial Owner dies, the change probably doesn't occur until the "future interest" becomes a "present interest."

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What If Something Was Wrong?

If a Reporting Company becomes aware “or has reason to know” that information contained in a report is inaccurate they have 30 days from that date to file a corrected report.

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Life Cycle of an Entity

- Existing Entities
  - File initial Beneficial Owner report before January 1, 2025.
  - Reach out to clients now.
- New Entities
  - File initial Beneficial Owner report within 30 days of formation or registration
  - Don't form the entity until you have all Beneficial Owner information.
- M&A or Change in Beneficial Owners
  - File updated Beneficial Owner report within 30 days of change
  - Don't close the deal until you have all Beneficial Owner information.
- Termination
  - Unclear. ¯_(ツ)_/¯

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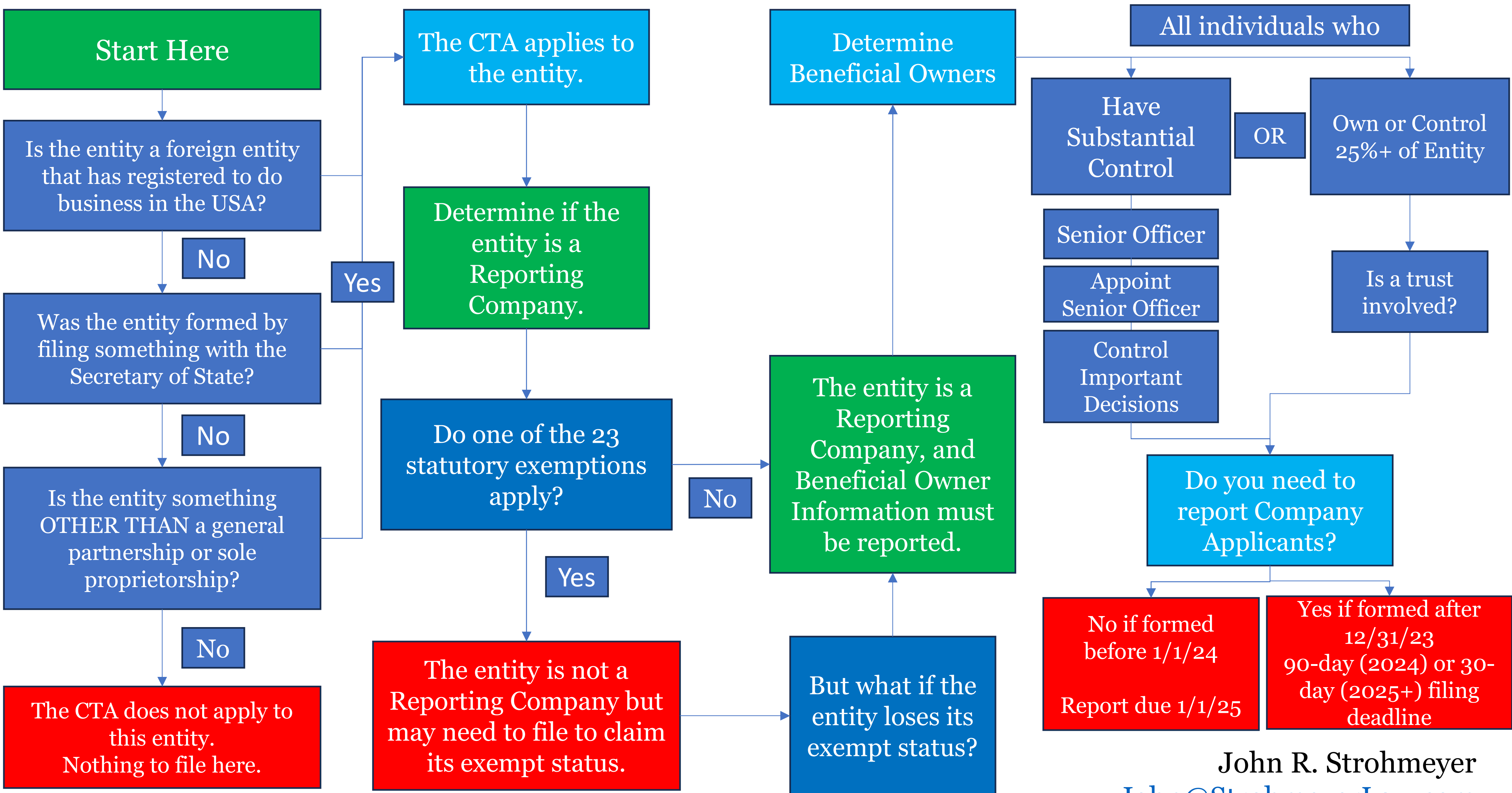

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Language for Company Agreements

1. Is this entity a Reporting Company?
    1. If not, what exemption does it qualify for?
2. Who are the Beneficial Owners as of formation?
    1. How do they qualify as Beneficial Owners?
    2. When does this information need to be filed?
3. Who are the Company Applicants?

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What Is Your Obligation as an Advisor?

- Yes, you're probably the Company Applicant.
- What level of due diligence will you do on information provided by clients about their Beneficial Owners?
- Will you contact old clients?
- Will you review existing structures to determine Beneficial Owners?

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Language for Engagement Letters
No Responsibility 1 of 3

- **Corporate Transparency Act Compliance.** Beginning on January 1, 2024, the Corporate Transparency Act will require that certain entities that are formed or registered to do business in the United States report Beneficial Owner Information to the Financial Crimes Enforcement Network.

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Language for Engagement Letters
No Responsibility 2 of 3

- During our representation of you, we may discuss your obligations under the Corporate Transparency Act, but Strohmeyer Law will not be responsible for determining or reporting any Beneficial Owner Information for any entity unless we have been specifically retained to report Beneficial Owner Information for any entity. In other words, any verbal discussions with you will not create an obligation on our part to report or determine Beneficial Owner Information for any entity or to report Beneficial Owner Information to the Financial Crimes Enforcement Network.

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Language for Engagement Letters
No Responsibility 3 of 3

- The obligation to determine and report Beneficial Owner Information to the Financial Crimes Enforcement Network will be an obligation of each respective entity.

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Language for Engagement Letters
Taking Responsibility 1 of 3

- **Corporate Transparency Act Compliance.** Beginning on January 1, 2024, the Corporate Transparency Act will require that certain entities that are formed or registered to do business in the United States report Beneficial Owner Information to the Financial Crimes Enforcement Network. We are being retained to assist you with [the formation of *New Business LLC*/the acquisition of *Target Entity*]. We will work with you to determine the Beneficial Owner Information of *Entity* as required by the Corporate Transparency Act.

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Language for Engagement Letters
Taking Responsibility 2 of 3

- OPTION: We will not form *Entity* with the Secretary of State of Texas until we have all information needed to report the Beneficial Owners Information for all Beneficial Owners as required by the Corporate Transparency Act (i.e., full legal name, birth date, residential address, and an image of their identifying document, such as a driver license or passport).
- OPTION: We will obtain a FinCEN Id for each Beneficial Owner as part of our representation.
- OPTION: We will report the initial Beneficial Owner Information on your behalf to the Financial Crimes Enforcement Network. After we have filed that initial report, we will not have any ongoing duty to file updated reports to reflect changes in the Beneficial Owners of *Entity*. We will rely upon information provided by you to determine the Beneficial Owners of *Entity*.

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Language for Engagement Letters
Taking Responsibility 3 of 3

- OPTION: As part of obtaining a FinCEN ID, we will not accept emailed images of any identifying document, such as a driver license or passport, for any person we have not met in person. We will only accept copies that have been scanned in our office by our staff.
- OPTION: It will be your obligation, as representative of *Entity*, to confirm that the Beneficial Owners and Company Applicants are reported correctly on an ongoing basis.
- OPTION: We will work with you to determine the existing Beneficial Owners of *Entity* as part of the acquisition of *Target Entity*.

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What should you be doing now?

- Let clients and referral sources know this is coming.
- Update engagement letters to address how you'll assist with the CTA.
- Update company agreements to require compliance with the CTA.
- When the forms are released, add them to your document preparation.
- If you form entities for clients, formalize your internal process so you know who your Company Applicants will be.
- Register for a FinCEN ID when you can.
- Remind your clients and referral sources that this is coming!

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TIFFANY DOWELL LASHMET

CONSIDERATIONS IN FARM AND RANCH ESTATE PLANNING

9:15 a.m. – 10:00 a.m.

Considerations in Farm and Ranch Estate Planning

Amarillo Area Estate Planning Council
May 2024

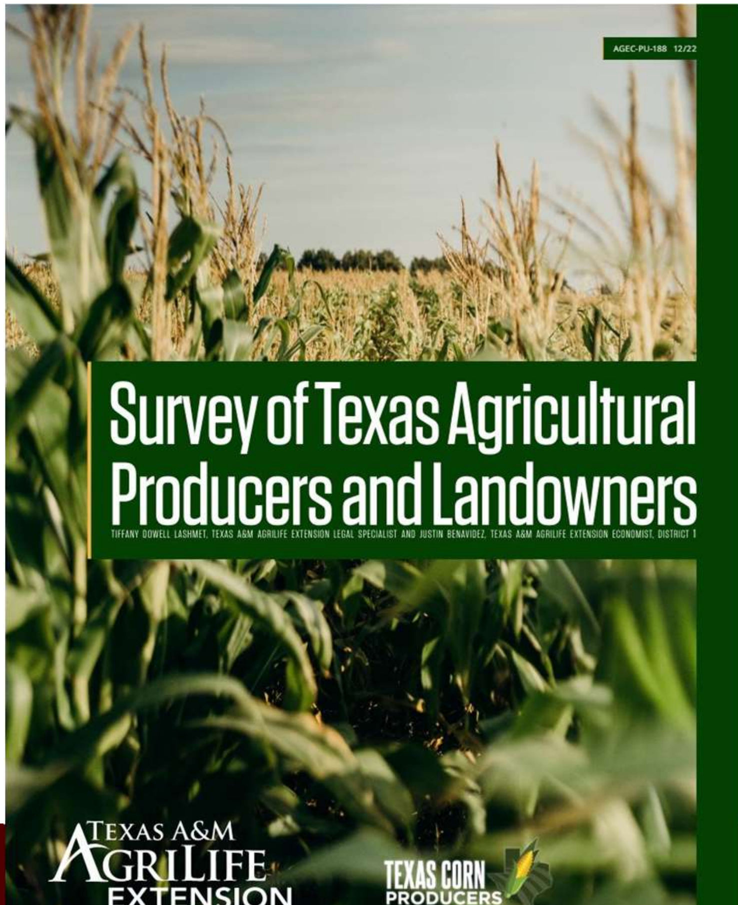
Tiffany Dowell Lashmet
Texas A&M AgriLife Extension

TEXAS A&M AGRILIFE EXTENSION

Some Statistics

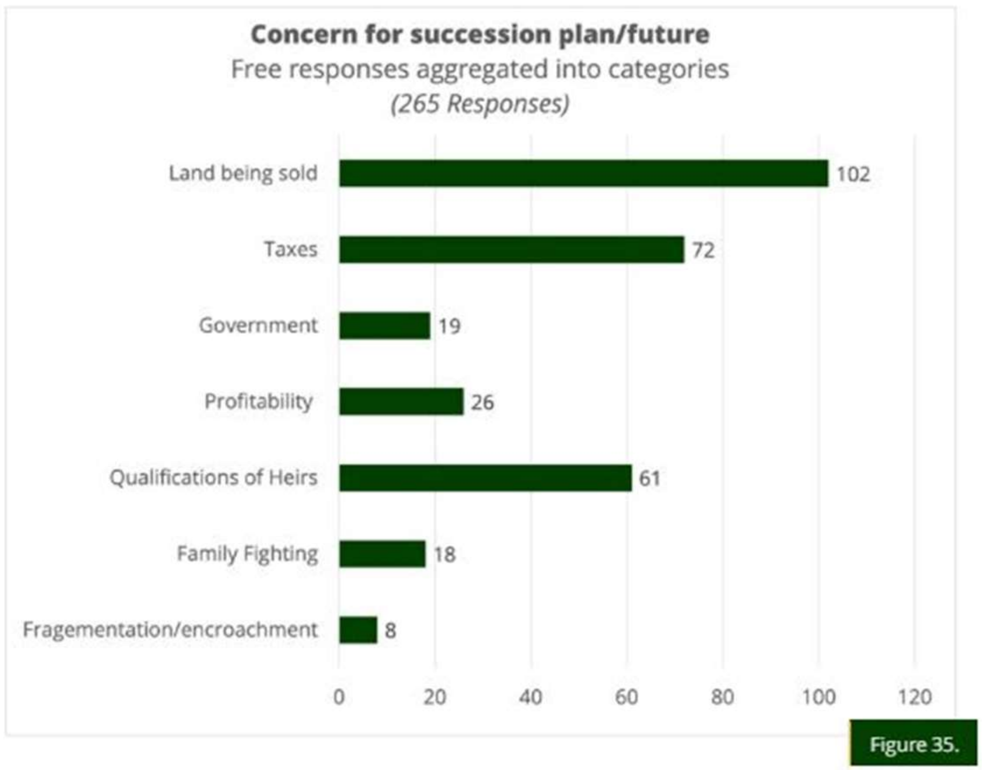
- Average age of US farmers was 58.1 in 2022
- Increase of almost 2 years since 2012
- Only 9% of farmers are 35 or younger
- 96% of farms are family farms
- 70% of US farmland will change hands in next 20 yrs

Survey Results



- 548 survey respondents
- All Texas rural landowners and/or ag producers
- https://agrilife.org/texasaglaw/files/2023/02/Survey-of-Texas-Agricultural-Producers-and-Land-Owners.pdf

Biggest concern about a succession plan/future of operation



Agricultural Specific Estate Planning Considerations

- USDA payment limit concerns
- Off-farm/on-farm heir situation
- Older generation usually resistant to giving up control
- Lack of long-term care planning
- Capital gains taxes and generational land transfer
- Potentially unnecessary concern about the estate tax (for now)
- Ensure understanding of tools
- Building Flight Plan
- The legacy factor

USDA Payment Limit Concerns

- For many USDA programs (Title I, NAP, LFP) limit is $125,000/person actively engaged in farming/year.

Table 1 to Paragraph (f)

Payment or benefit	Limitation per person or legal entity ($)
(1) Price Loss Coverage, Agriculture Risk Coverage payments (other than Peanuts)	125,000 per program year.
(2) Price Loss Coverage and Agriculture Risk Coverage payments for Peanuts	125,000 per program year.
(3) CRP annual rental payments	50,000 per program year.
(4) NAP payments	
(i) basic 50/55 NAP coverage	125,000 per crop year.
(ii) Buy-up NAP coverage	300,000 per crop year.
(5) LFP	125,000 per program year.
(6) CSP[1]	200,000.
(7) EQIP[2]	450,000.
(8) AMA program	50,000 per fiscal year.
(9) ECP	500,000 per disaster event.
(10) EFRP	500,000 per disaster event.

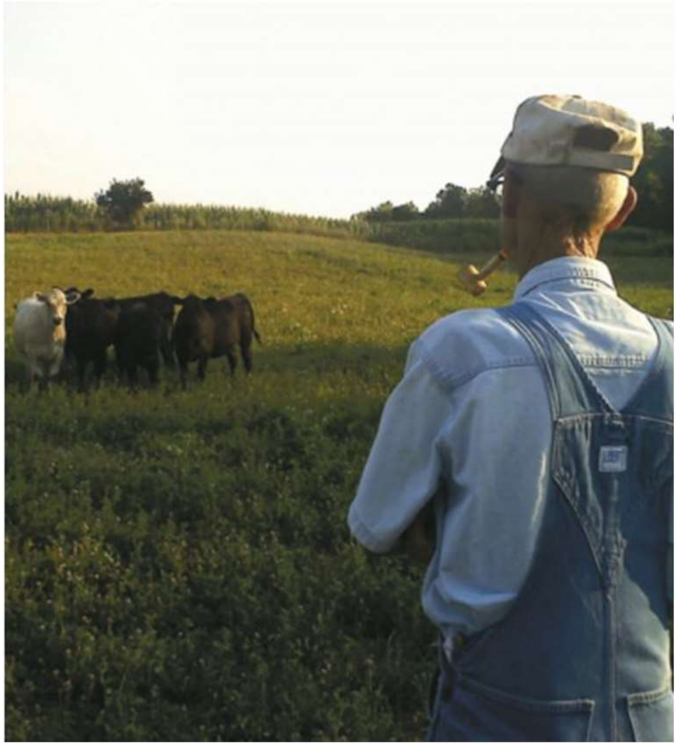
USDA Payment Limits Concern

- USDA considers entities (LLC, corporation, LP) as one entity for payment limit purposes.
- Because of this, some producers may need to structure as a general partnership to qualify for full payments.
- Results is choosing sub-optimal structure with no limited liability, or having to create more complex, expensive structure than would otherwise be necessary.
- Recently published law review article on this topic: 28:3 Drake J. Agric. L. 327

On Farm/Off Farm Heir Situation

- Reality for many farm and ranch families.
- No right or wrong answer—but can make it impossible for operation to survive.
- Critical to understand goal in order to help determine right approach.
- S Lazy H by Corb Lund
- Podcast episode: https://aglaw.libsyn.com/episode-69-shannon-ferrell-transition-planning-lessons-from-the-s-lazy-h

Resistant to Give Up Control



Lack of Long-Term Care Planning

- "The biggest threat to continuing the farm today is likely Long-Term Care costs."

- Info from Robert Moore at Ohio State:
  - Handbook: https://farmoffice.osu.edu/sites/aglaw/files/site-library/LawBulletins/Long_term_care_and_the_Farm.pdf
  - Calculator: https://farmoffice.osu.edu/news/what-your-long-term-care-risk
  - Podcast episode: https://aglaw.libsyn.com/episode-169-robert-moore-long-term-care-considerations-for-farm-ranch-families

Lack of Long-Term Care Planning

Table 2. Average costs of LTC services

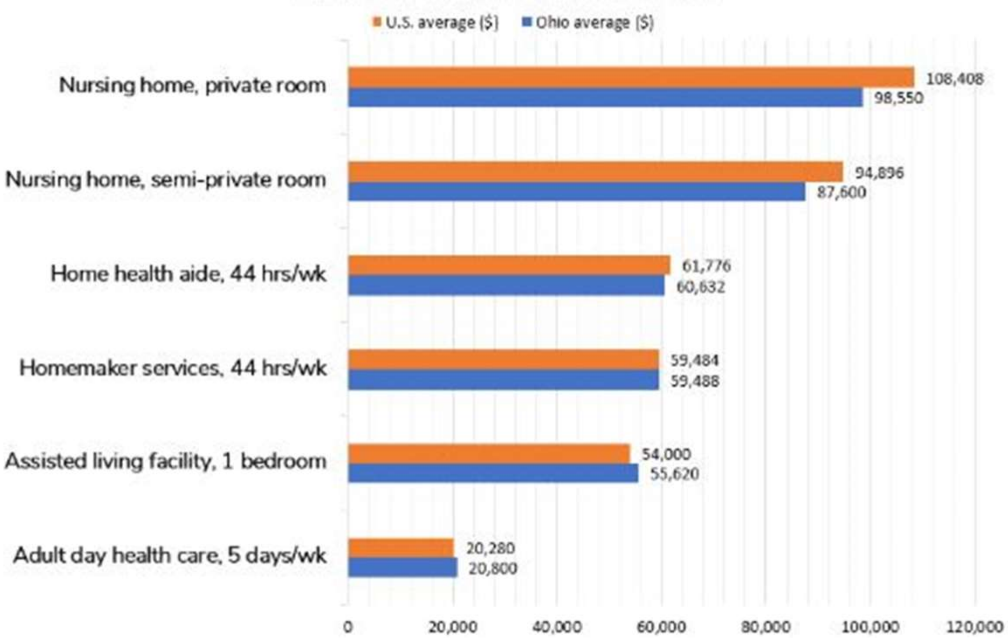
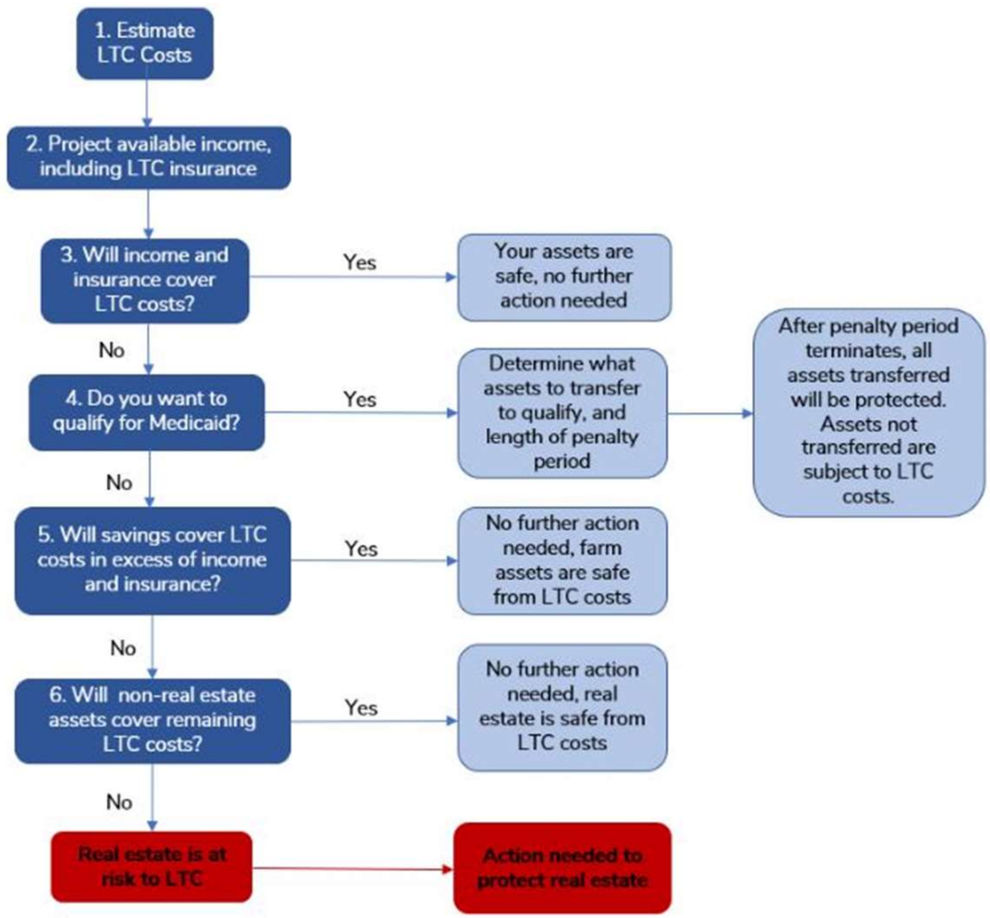


Table 3. Estimated LTC needs for a 65-year-old farmer

Chance of needing LTC	69%
Expected length of LTC	3 years
One year of unpaid home-based care	$0
One year of paid home-based care	$60,000
One year of facility-based care	$90,000
Total cost of 3 years of LTC	$150,000
Chance of more than 5 years of LTC needed	20%

TEXAS A&M AGRILIFE EXTENSION

Figure 1. Long-Term Care Strategy Analysis



TEXAS A&M AGRILIFE EXTENSION

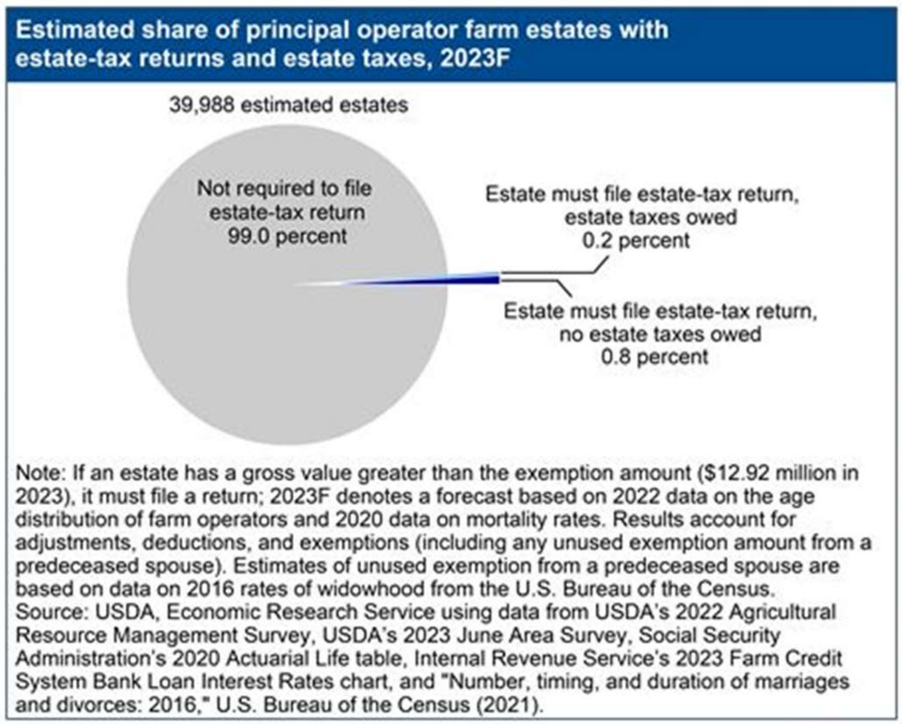
Capital Gains Taxes

- Capital gains tax threat major to many farm and ranch families who have had land in the family for generations.
- Many clients have no idea this is an issue.
- Not as well covered (politicized…) as estate taxes.
- Help clients think through ***when*** to transfer the property.

Texas A&M AgriLife Extension

Estate Taxes

- At current level (understanding this changes in 2026), vast majority of farm families not impacted by estate tax.



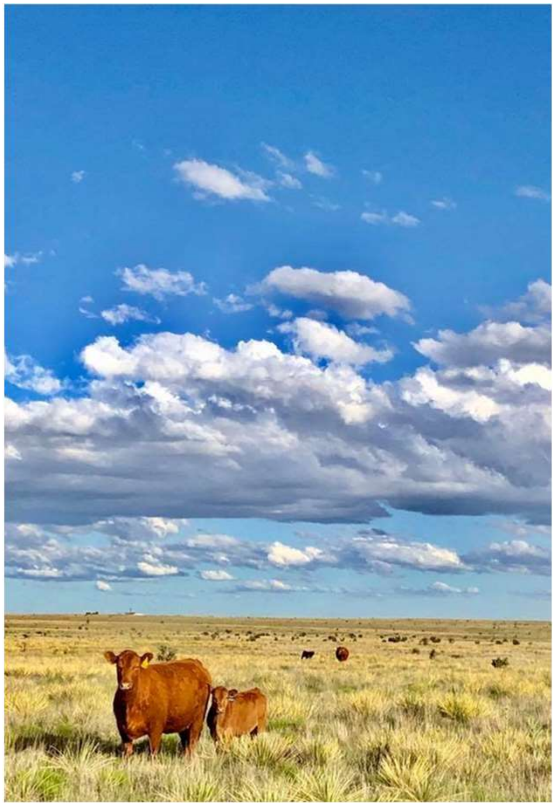
Ensure Understanding of Tools

- Shocking number of clients do not understand the tools they created in estate/succession plan.

- Before they leave your office, make sure they understand how the entities/plan will function!

Flight Plan

- Estate planning documents
- IRA/401(k)/Pension/Retirement Plan
- Life insurance policies
- Bank account info
- Safety deposit box info
- Debt info and pay schedules
- Health insurance policies
- Burial plot location and funeral instructions



Flight Plan

- Email and computer passwords
- Deeds, titles, registrations, leases, royalty documents, water permits, surveys
- Birth certificate, marriage licenses, social security cards, military discharge papers
- List of personal property, farm assets (structures, equipment, vehicles, land, livestock)
- Crop insurance policies and FSA contracts
- List of business relationships (attorney, accountant, banker, insurance agent, investment manager, livestock buyers or haulers)
- Combinations to gun safes, other safes/locks

The Legacy Factor

- Farms and ranches are not like other businesses.
- They are a lifestyle.
- The pressure that clients feel to keep alive the legacy that Dad and Grandpa and Great Grandpa created cannot be overstated.
- Keep this in mind when discussing and developing an estate plan.

There Is Hope…

- Ag Law in the Field Podcast Episodes
- 988 - Suicide Crisis Lifeline

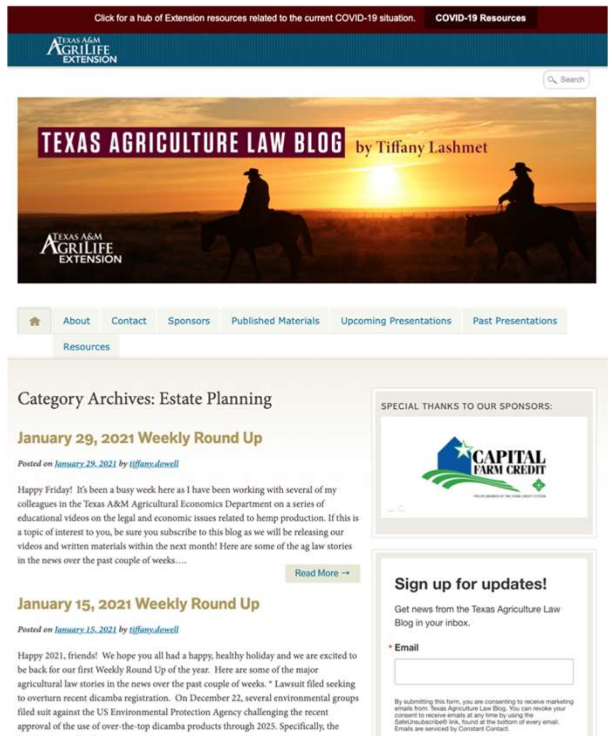
http://extension.okstate.edu/farmstress

Mental Health FIRST AID

from NATIONAL COUNCIL FOR MENTAL WELLBEING

TEXAS A&M AGRILIFE EXTENSION

AgriLife.org/TexasAgLaw



Aglaw.Libsyn.com

Thank you!

Tiffany Dowell Lashmet

806.677.5681 | tdowell@tamu.edu

Twitter: @TiffDowell

Facebook: Texas Agriculture Law

AgriLife.org/TexasAgLaw

AgLaw.Libsyn.com

BREAK: 10:00 a.m – 10:20 a.m

Platinum

WT Foundation
WEST TEXAS A&M UNIVERSITY™

Gold

AMARILLO AREA FOUNDATION

S. SPROUSE SHRADER SMITH
ATTORNEYS AT LAW

Amarillo National Bank
Awesome Service No BS.

MORGAN WILLIAMSON
LLP • ATTORNEYS AT LAW

HAPPY STATE BANK
HAPPY TRUST COMPANY
A DIVISION OF CENTENNIAL BANK

AMY FLORIAN

UNDERSTANDING AND COMMUNICATION THROUGH LOSS, AGING, ILLNESS, & DEMENTIA

10:20 a.m. – 12:20 p.m.

LUNCH 12:20 p.m. – 1:20 p.m.
Hosted by:

WT Foundation
WEST TEXAS A&M UNIVERSITY™

Remember to SIGN IN before the afternoon session

MELANIE SMOOT

PHILANTHROPIC APPROACHES TO PREPARING FOR THE UNPREPARABLE IN DISASTERS

1:20 p.m. – 1:50 p.m.

Philanthropic Approaches to Preparing for the Unpreparable in Disasters

AMARILLO AREA
FOUNDATION

Disasters throughout the Texas Panhandle

Wind

Hail

Tornadoes

Flooding

Earthquakes

Wildfires

Pandemics

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FOUNDATION

Phases of a Disaster

Mitigation: Efforts in this phase include risk analysis for future events and applying strategies to reduce the negative effects of natural disasters.

Preparedness: The phase immediately before a disaster.

Response: Most disaster giving takes place during the response phase, where the focus is on saving lives and minimizing damage in the immediate aftermath of an emergency.

Recovery: To return a community to its pre-disaster state, donors may wish to help address and repair the social and physical infrastructure that may have compounded the effects of the disaster.

AMARILLO AREA
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Emergency Toolkit

Deploy an already established plan for disaster relief:

Communications Plan

Fundraising Plan

Engagement with all impacted areas

Plan for first two weeks of the disaster

Plan for long-term response and recovery

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FOUNDATION

Working with Impacted Communities

Know your community leaders! Having deep connections in each community means you can act quickly to determine needs and partners for relief efforts.

Judges

Mayors

Extension Agents

Emergency Management Personnel

Community and City Leaders

School Districts

Local Nonprofits

AMARILLO AREA FOUNDATION

Vetting the Disaster Responders

Visiting the communities firsthand to see the impact of the situation

Talking to several key voices within the communities for feedback

Staying alerted to fraudulent activity and scams

Knowing what role to play in the disaster

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FOUNDATION

Connecting with Experts

Rebuild Texas Fund by OneStar Foundation

The Center for Disaster Philanthropy

Leveraging existing relationships

Always work with partners! Having local organization on the ground in each community helps add credibility to your process and gives another avenue for assessing needs and resources in the impacted areas.

AMARILLO AREA FOUNDATION

Partnerships and Collaboration

Effective disaster response often requires coordination between various entities, including nonprofits, government agencies, and local communities. Philanthropic organizations can facilitate and fund partnerships that strengthen these networks.

Importance: Collaborations can leverage diverse resources and expertise, ensuring that efforts are not duplicated and that responses are comprehensive and cohesive.

AMARILLO AREA FOUNDATION

Stay Informed

Stay current on the most up-to-date information through reliable news sources and authorized personnel.

The pace of the disaster changes rapidly, so information must be sought after on a regular basis.

After the first two weeks of the disaster, the pace changes.

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Monetary Giving

Avoidance of the second disaster

Maximizing collective giving

Establishing a channel for long-term support of impacted regions

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Flexible Funding

Flexible funding allows recipient organizations to allocate resources where they are most needed, especially during crises that evolve rapidly. This type of funding avoids the typical restrictions of grants which may limit how money is spent. Having funds available before a disaster occurs allows for quick deployment. Fundraising is unpredictable and having a surplus is a key to getting aid out quickly.

Importance: In disaster scenarios, needs can change unexpectedly. Flexible funding empowers local organizations to make decisions in real-time, addressing the most pressing issues without delays.

AMARILLO AREA
FOUNDATION

Investment in Resilience

Flexible funding allows recipient organizations to allocate resources where they are most needed, especially during crises that evolve rapidly. This type of funding avoids the typical restrictions of grants which may limit how money is spent.

Importance: In disaster scenarios, needs can change unexpectedly. Flexible funding empowers local organizations to make decisions in real-time, addressing the most pressing issues without delays.

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FOUNDATION

Rapid Response Funds

These are pools of money that can be quickly accessed and deployed in the immediate aftermath of a disaster. They provide an immediate influx of financial resources necessary for urgent response activities.

Importance: Speed is crucial in disaster response. Rapid response funds help ensure that financial delays do not impede critical early-stage operations such as search and rescue, emergency medical care, and temporary shelter.

AMARILLO AREA
FOUNDATION

Capacity Building

This involves enhancing the skills and capabilities of organizations and communities to manage disasters. Philanthropies might fund programs, support the development of strategic plans, or sponsor the acquisition of critical equipment.

Importance: Strengthened capacities ensure that organizations are not only ready to act in the face of a disaster but can also operate effectively under stress, manage resources wisely, and navigate complex recovery phases.

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FOUNDATION

Long-term Commitment

Philanthropic efforts often focus on immediate disaster relief, but long-term recovery is equally important. This approach includes funding for rebuilding homes, restoring services, and psychological support for affected populations.

Importance: Recovery from a disaster can take years. A sustained commitment ensures that communities can fully recover and thrive, rather than just returning to pre-disaster conditions.

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FOUNDATION

Learning and Sharing Knowledge

After a disaster, it's important to gather data and insights about what worked and what didn't. Philanthropic organizations can support efforts to document these lessons and disseminate them widely.

Importance: Sharing knowledge helps improve disaster response strategies, fosters innovation, and prevents the repetition of past mistakes, making future responses more effective and efficient.

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FOUNDATION

Giving to Help Disasters

Creating funds designated for specific communities

Panhandle Disaster Relief Fund

Donor-Advised Fund Gifts for disasters

Stock Gifts

AMARILLO AREA FOUNDATION

Giving to Help Disasters

Long-term Support:

Establishing a fund for first responder needs

Case management, grant writing, and project management needs

Nonprofit needs: salaries, building costs, and infrastructure impacted by the disaster

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Giving to Help Disasters

Creating an endowment

Providing a gift in will

Providing a percentage of an estate for disaster relief

AMARILLO AREA
FOUNDATION

Relying on Expertise

It is our role to be the experts in philanthropic giving and convening of leaders.

A community foundation has a pulse on what the needs are in the communities we serve, especially during disasters.

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Importance of Transparency

Ensure the reporting out to donors and the general public on an ongoing basis so that it is clear where funds are being distributed.

Fraud can be more prevalent during a disaster. Stewardship of gifts becomes paramount.

Sharing impact is a best practice in disaster giving and philanthropy in general. Donors want to know issues are being addressed with urgency and integrity.

AMARILLO AREA
FOUNDATION

Melanie Smoot
Vice President of Development
806.350.4519
melanie@aaf-hf.org

AMARILLO AREA
FOUNDATION

JESUS CANAS

TEXAS ECONOMIC UPDATE

1:50 p.m. – 2:50 p.m.

Regional Economic Update

Texas eyes soft landing as growth slows

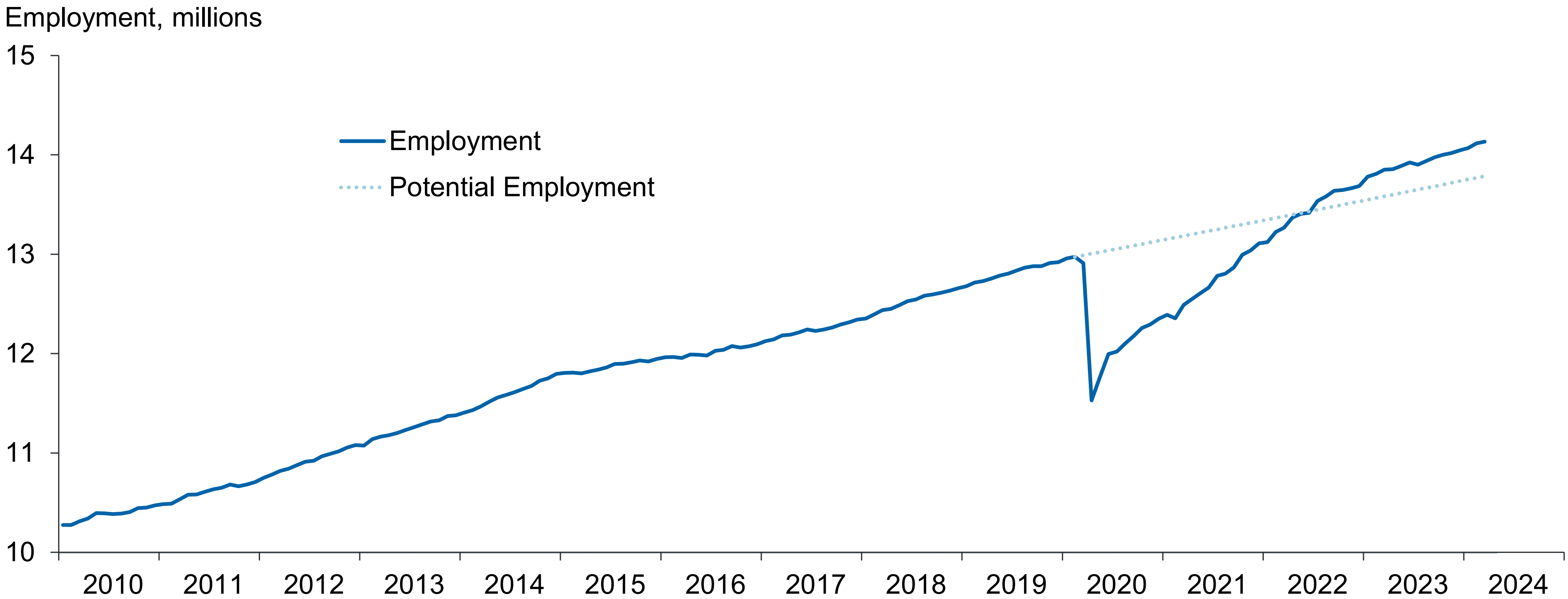
Federal Reserve Bank of Dallas

Jesus Canas
Sr. Business Economist
May 7, 2024

Regional Economy Overview

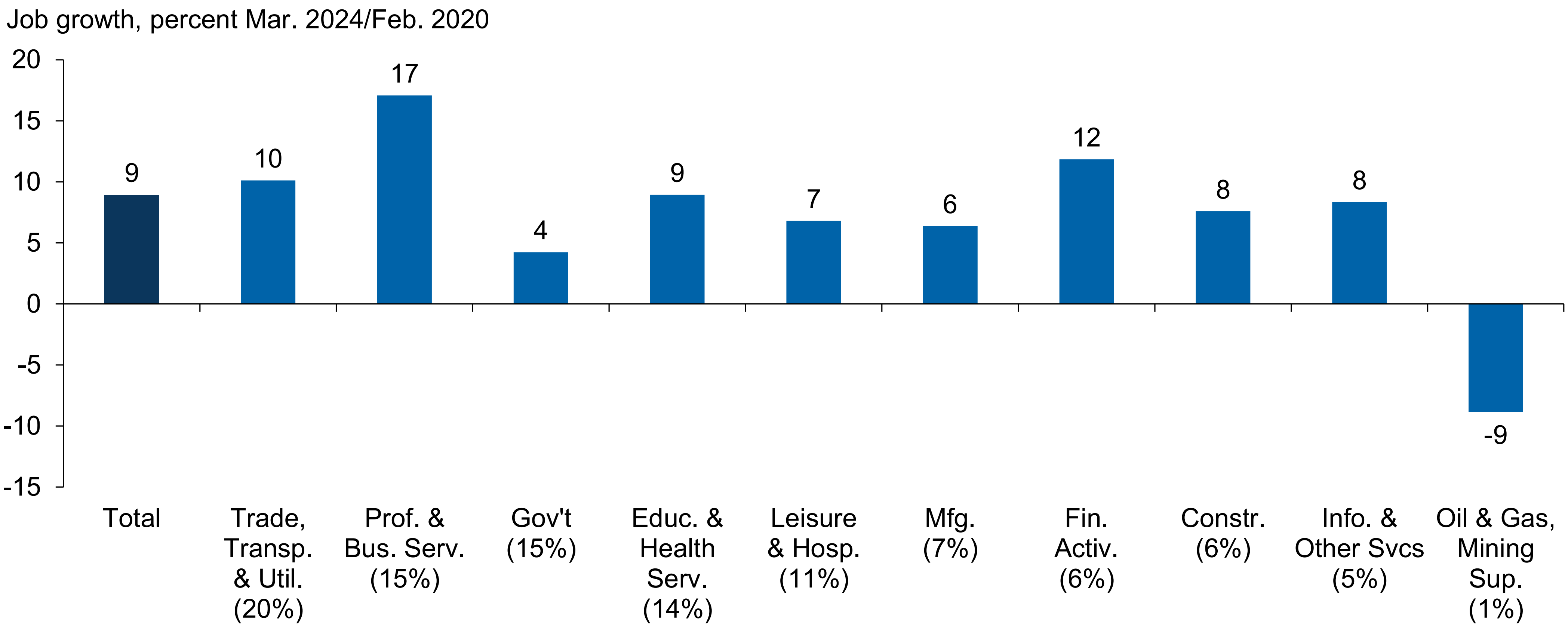
- Growth in the regional economy has slowed but is still healthy
- Texas continues to outperform the nation
  - Texas employment was up 3.1 in 2023, above the nation
  - Job growth forecasted to slow to about 2 percent this year, in line with normal
- Risks to the outlook are mixed…
  - Elevated inflation, ebbing consumer resilience
  - Geopolitical risk, election uncertainty on the rise
  - On the upside, labor force growth and particularly migration are high, and economic growth has been surprisingly strong

Texas has not only recovered from recession job losses, it is above expected trajectory sans recession



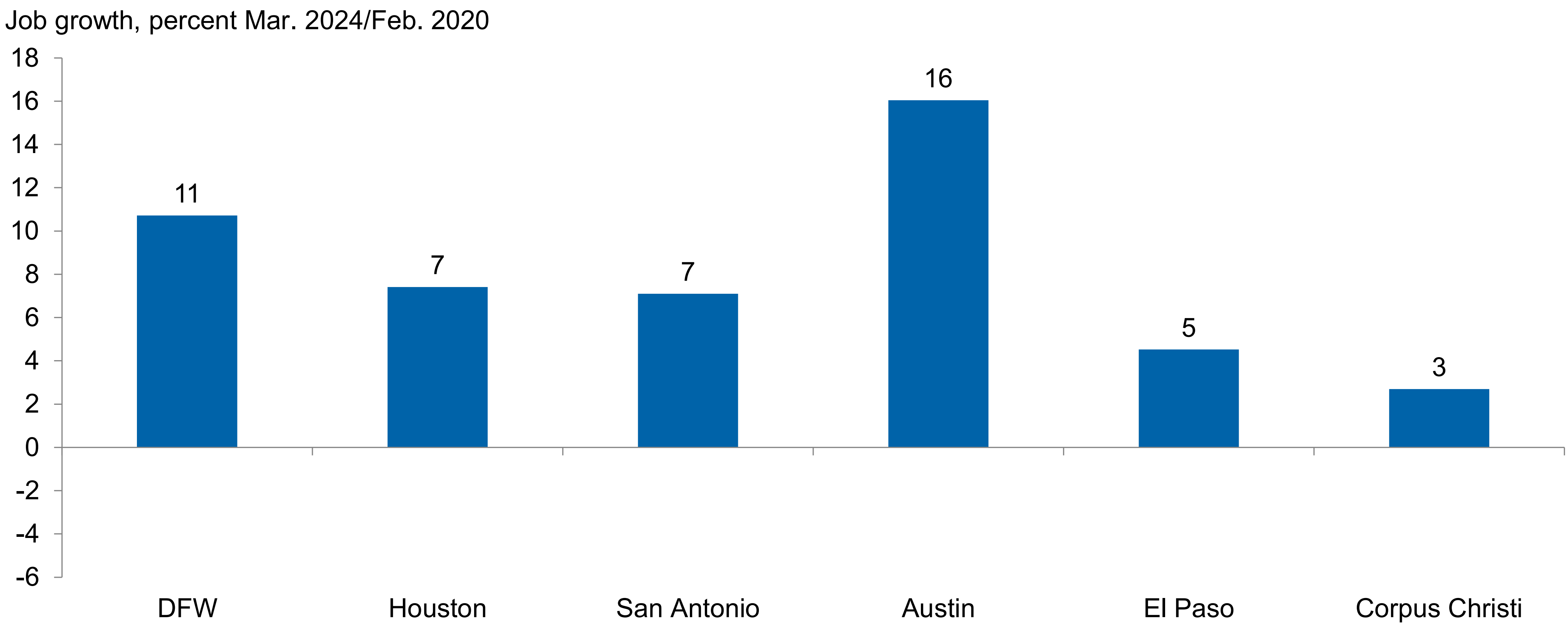
NOTES: Potential employment assumes 1.5% annual growth beginning February 2020. Data through March 2024.
SOURCES: Bureau of Labor Statistics; National Bureau of Economic Research; author's calculations.

Recovery has not been uniform; energy lags behind



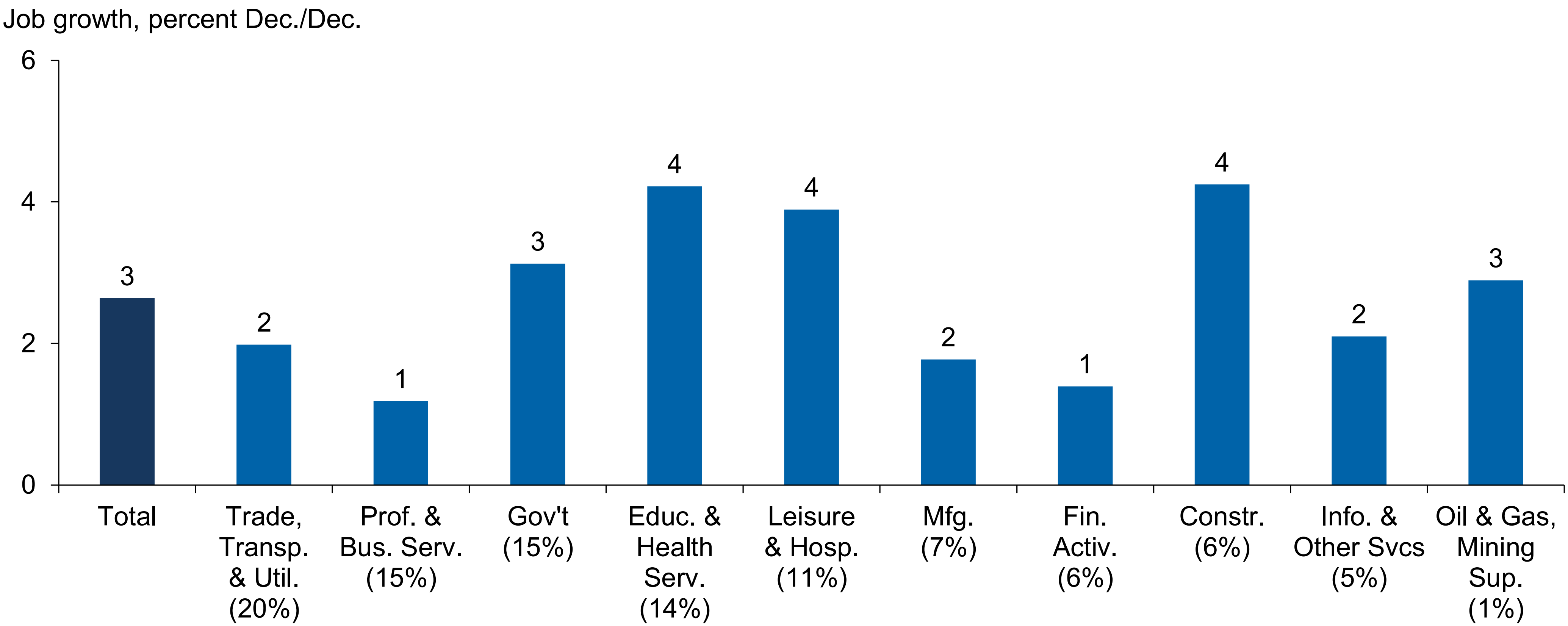
NOTES: Data show Mar. 2024/Feb. 2020 non-annualized job growth. Numbers in parenthesis indicate share of total state employment in March.
SOURCES: Texas Workforce Commission; FRB Dallas.

Recovery has been uneven across metros as well



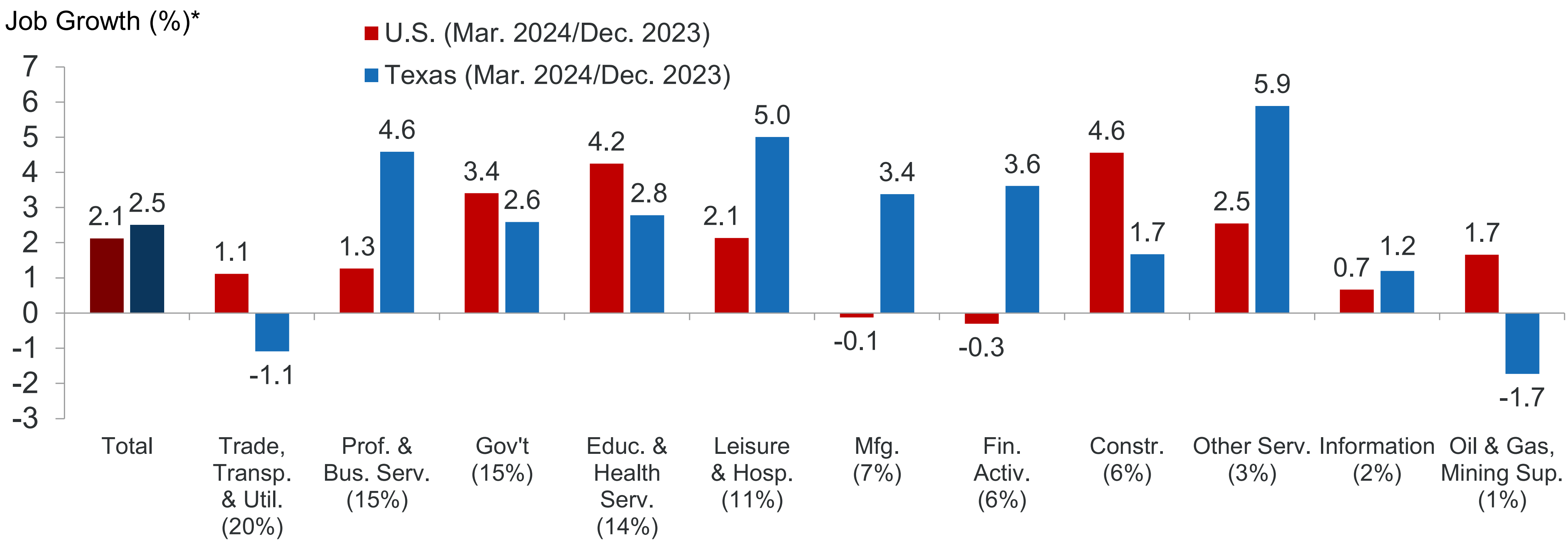
NOTES: Data refer to Mar. 2024/Feb. 2020 non-annualized job growth.
SOURCES: Bureau of Labor Statistics; Texas Workforce Commission; seasonal and other adjustments by FRB Dallas.

Texas job growth was broad based last year



NOTES: Data show job growth in Dec. 2022–Dec. 2023, seasonally adjusted. Numbers in parentheses indicate share of total state employment in Dec. 2023.
SOURCES: Bureau of Labor Statistics; Texas Workforce Commission; FRB Dallas.

YTD Texas employment growth led by other services, leisure and hospitality and professional & business services



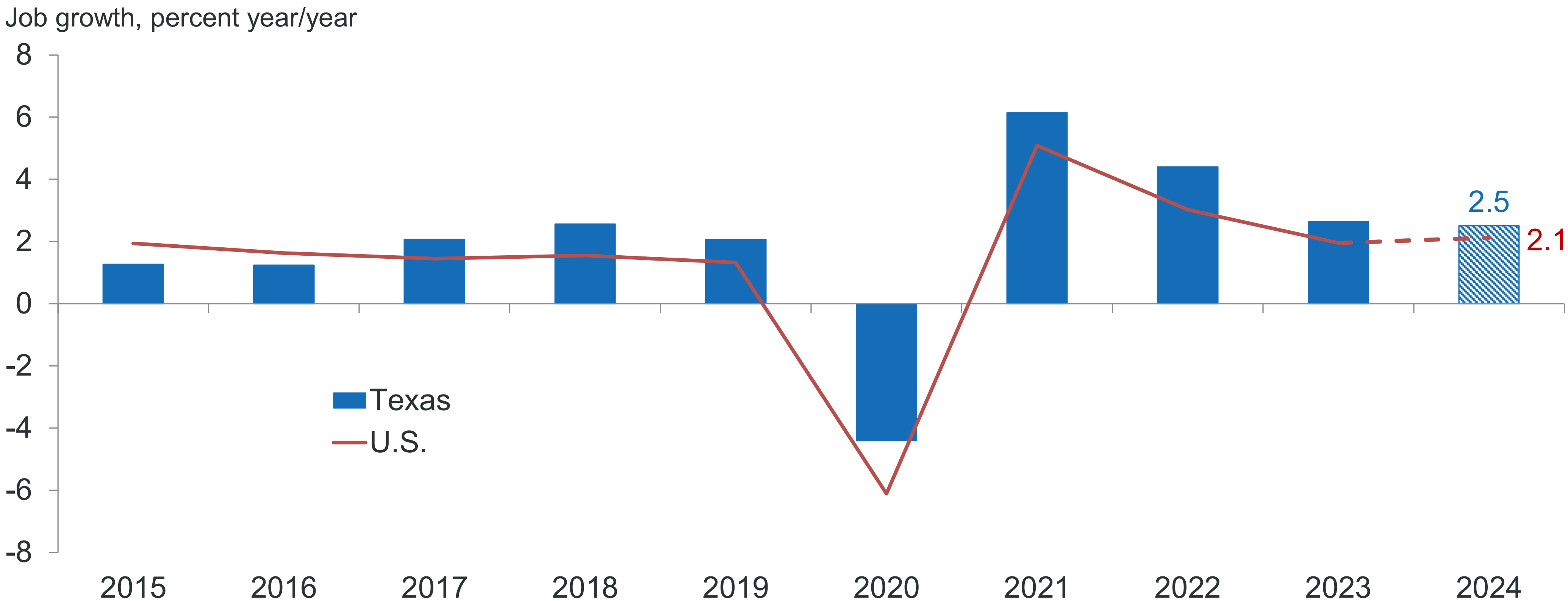
*Seasonally adjusted, annualized rate.

NOTE: Numbers in parentheses indicate share of total state employment for March 2024.

SOURCES: Bureau of Labor Statistics; Texas Workforce Commission; seasonal and other adjustments by Federal Reserve Bank of Dallas.

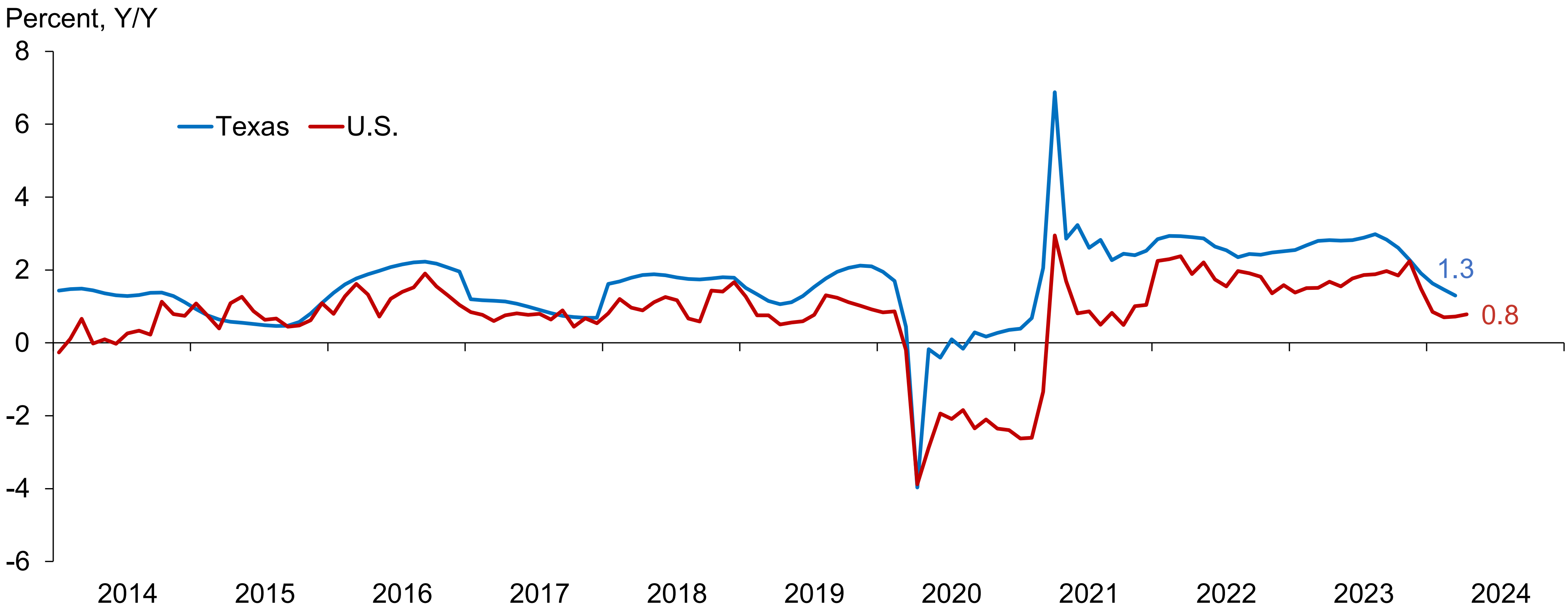
DATA: Texas Employment by Industry - Dallasfed.org

Texas' 2024 job growth on track to exceed the nation's



NOTES: Last data points are annualized job growth for March. 2024/Dec. 2023. Yearly growth is Dec/Dec.
SOURCES: Bureau of Labor Statistics; Texas Workforce Commission; seasonal and other adjustments by Federal Reserve Bank of Dallas.

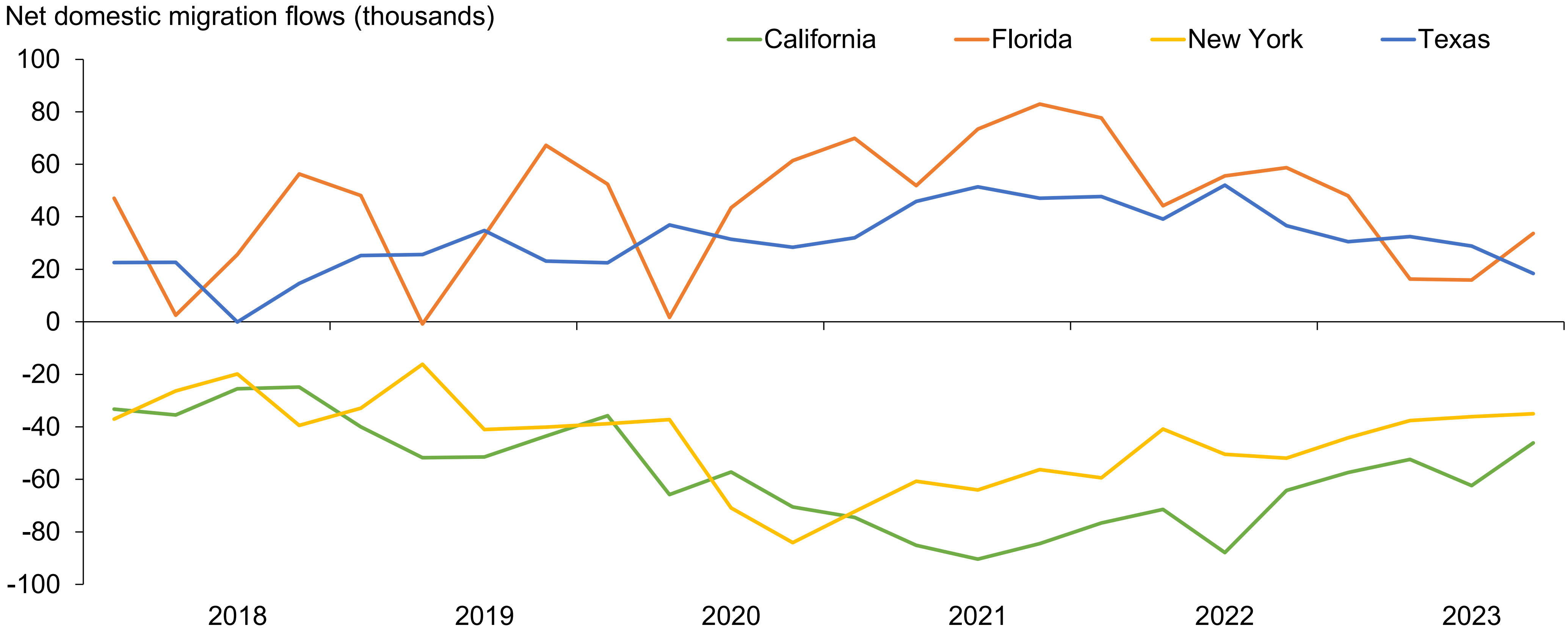
Faster labor force growth in Texas than the nation



NOTES: Texas data are monthly through March 2024; U.S. data through April 2024. End labels are latest values.
SOURCES: Bureau of Labor Statistics; Texas Workforce Commission; seasonal and other adjustments by Federal Reserve Bank of Dallas.

Federal Reserve Bank of Dallas

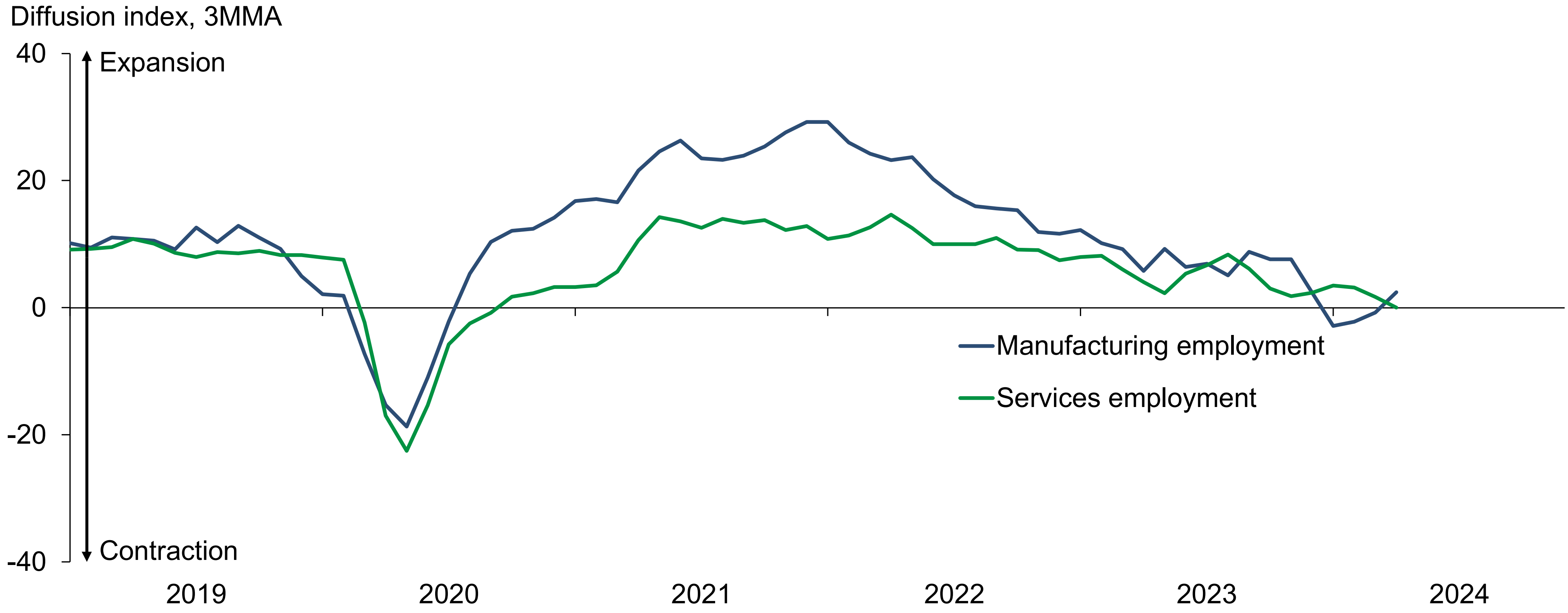
Texas is a leader in domestic migration



NOTE: Data is quarterly through Q4 2023.
SOURCE: Equifax Consumer Credit Panel.

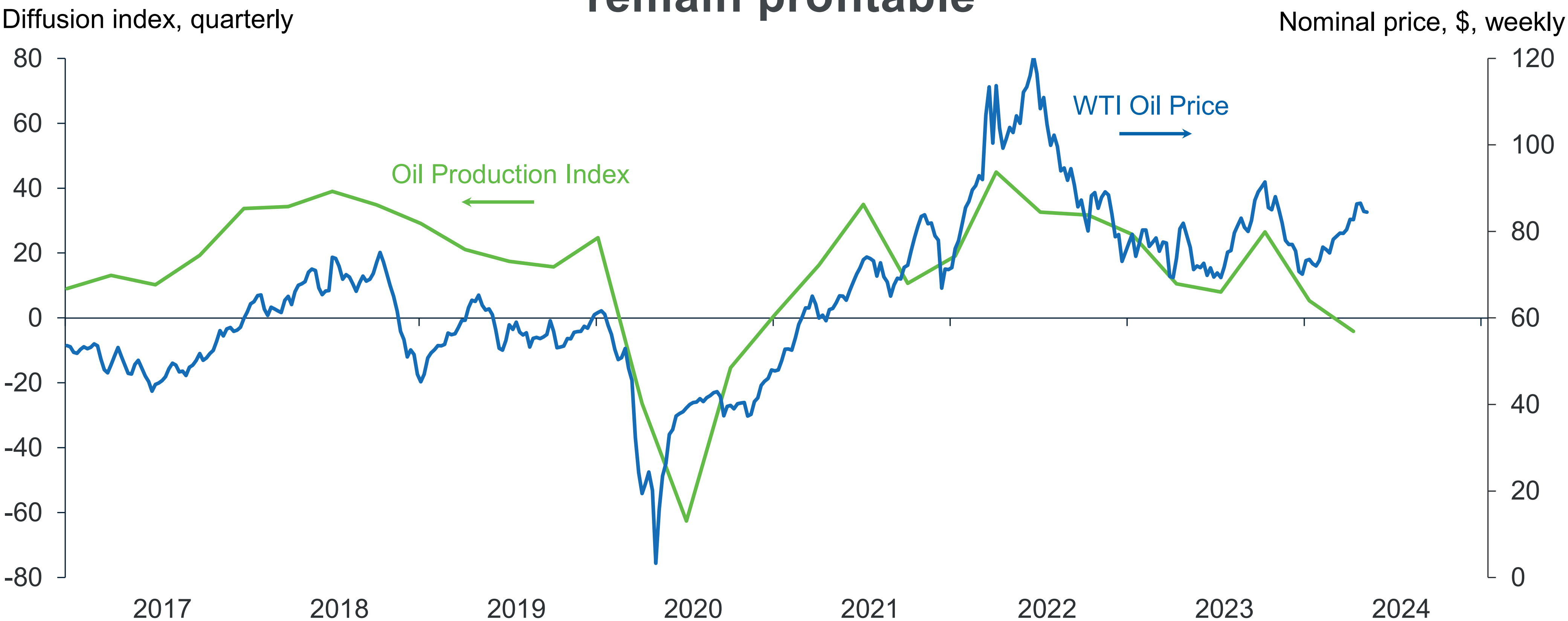
Federal Reserve Bank of Dallas

Dallas Fed surveys show recent weakness in manufacturing, while service sector holding up better



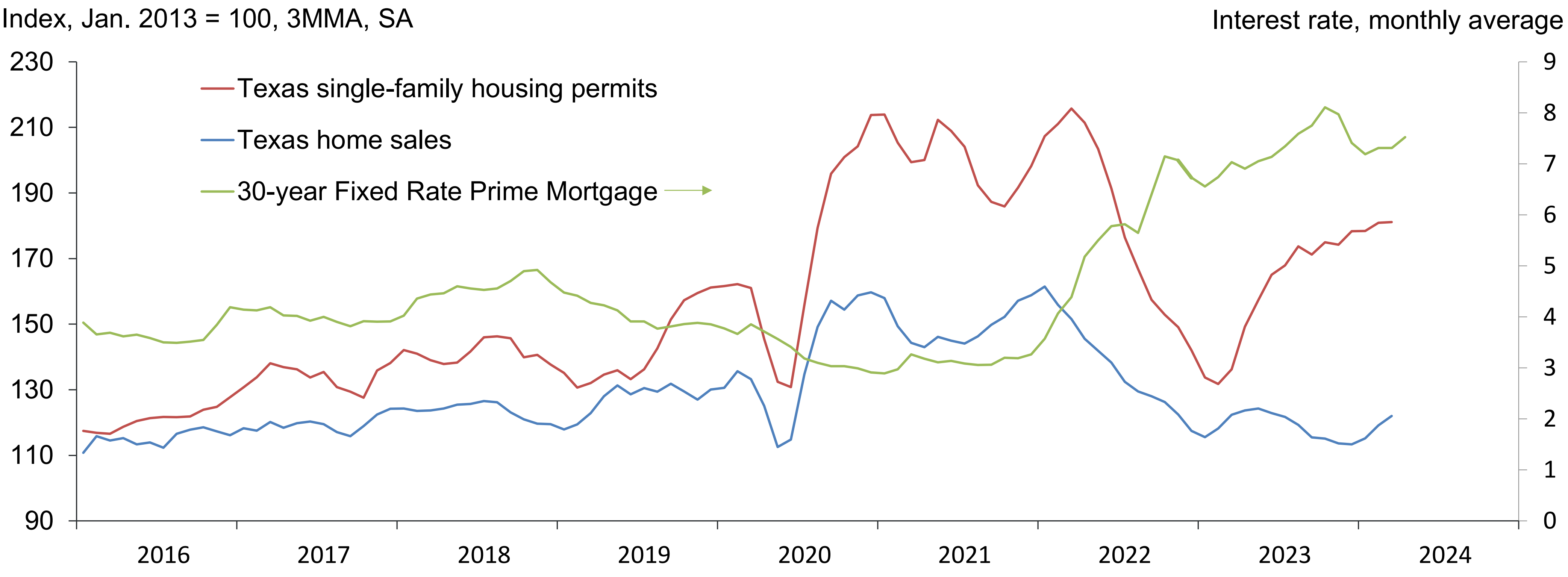
NOTE: Data through April 2024.
SOURCE: Texas Business Outlook Surveys, Federal Reserve Bank of Dallas.

Energy activity likely to continue expanding as oil prices remain profitable



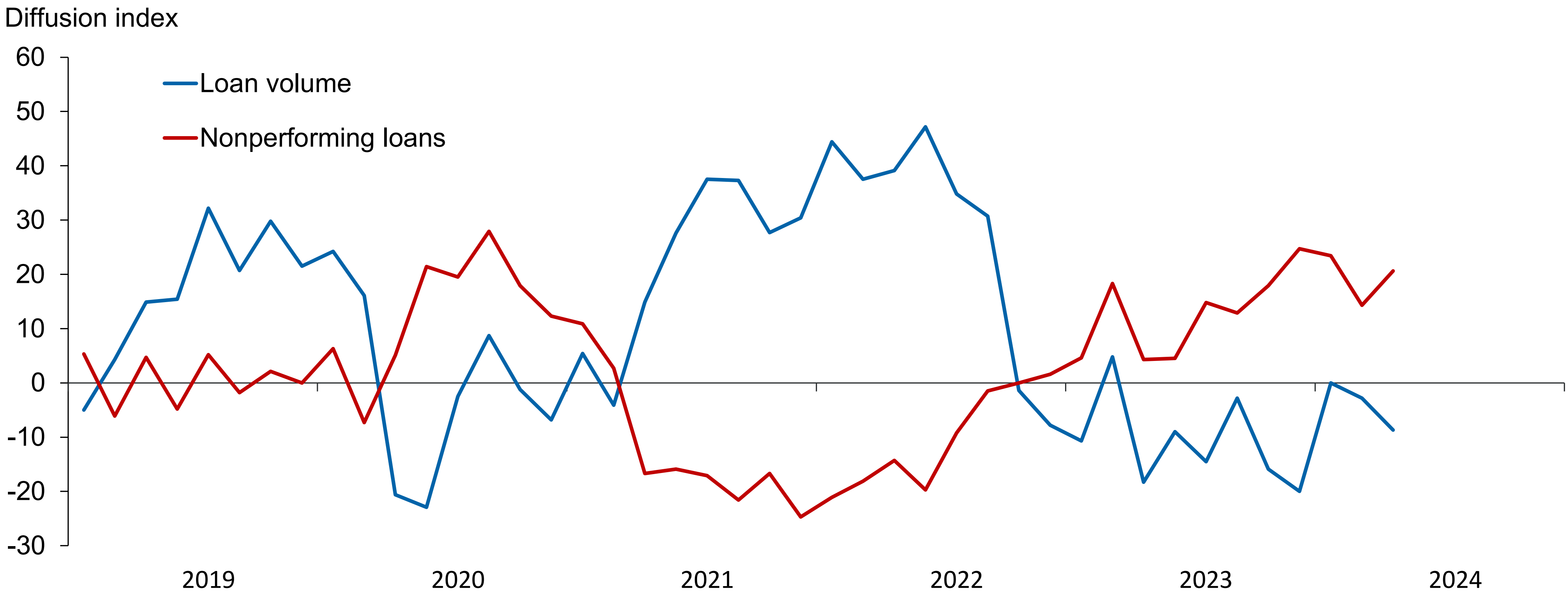
NOTES: Oil production index is a diffusion index asked of E&P firms and is quarterly through Q1 2024. WTI oil price is weekly through the week of April 26th, 2024.
SOURCES: Energy Information Administration; Federal Reserve Bank of Dallas' Dallas Fed Energy Survey.

Home sales ticking up, homebuilding strong



NOTES: Permits and sales through March 2024; interest rate through April.
SOURCES: MLS; A&M Real Estate Center; Freddie Mac Primary Mortgage Market Survey; U.S. Census.

But loan volumes falling again after stabilizing according to 11th District bankers

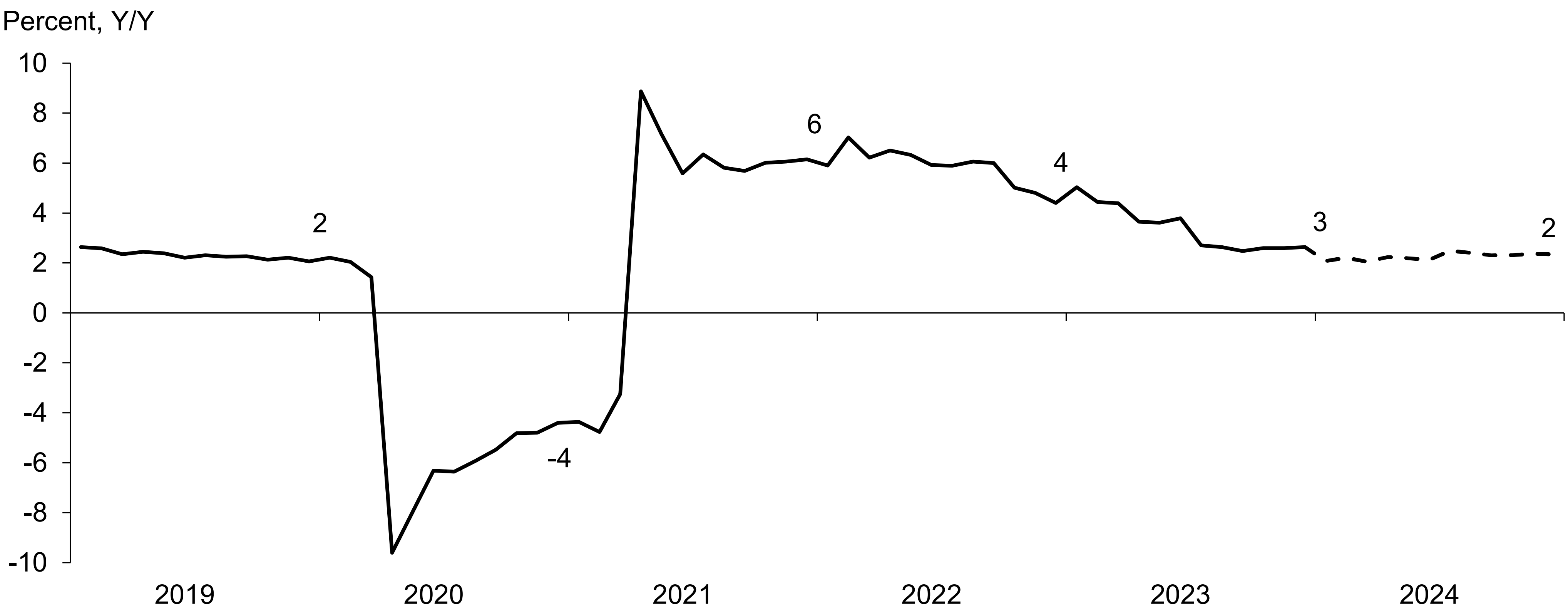


NOTE: Data through March 2024.
SOURCE: Federal Reserve Bank of Dallas, Banking Conditions Survey.

2024 Outlook

Federal Reserve Bank of Dallas

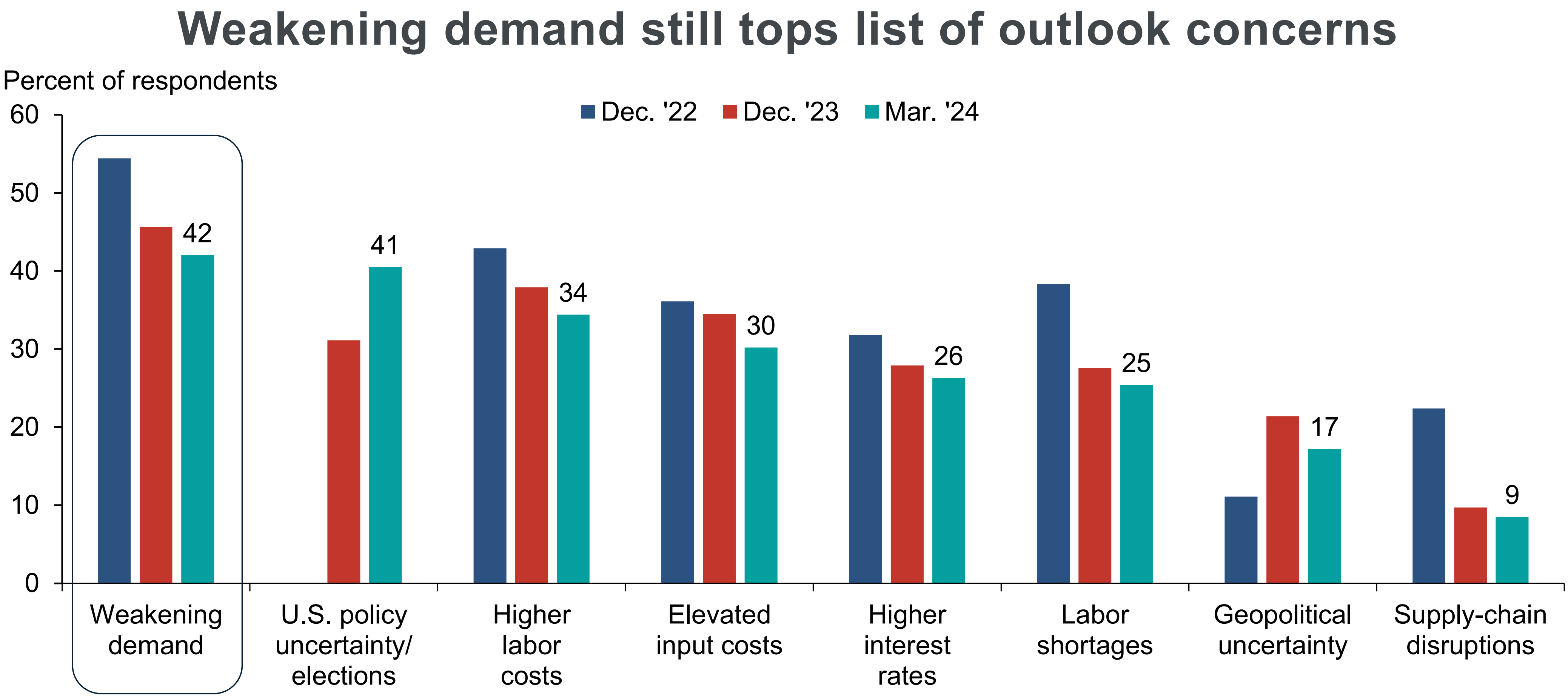
Texas employment forecast indicates 2 percent growth in 2024



NOTES: Solid line reflects actual monthly values for Texas employment growth. Dashed line reflects predicted Texas employment growth. Actual data is monthly through March 2024. Predicted data is monthly from April through December 2024.

SOURCE: Federal Reserve Bank of Dallas' Texas Employment Forecast.

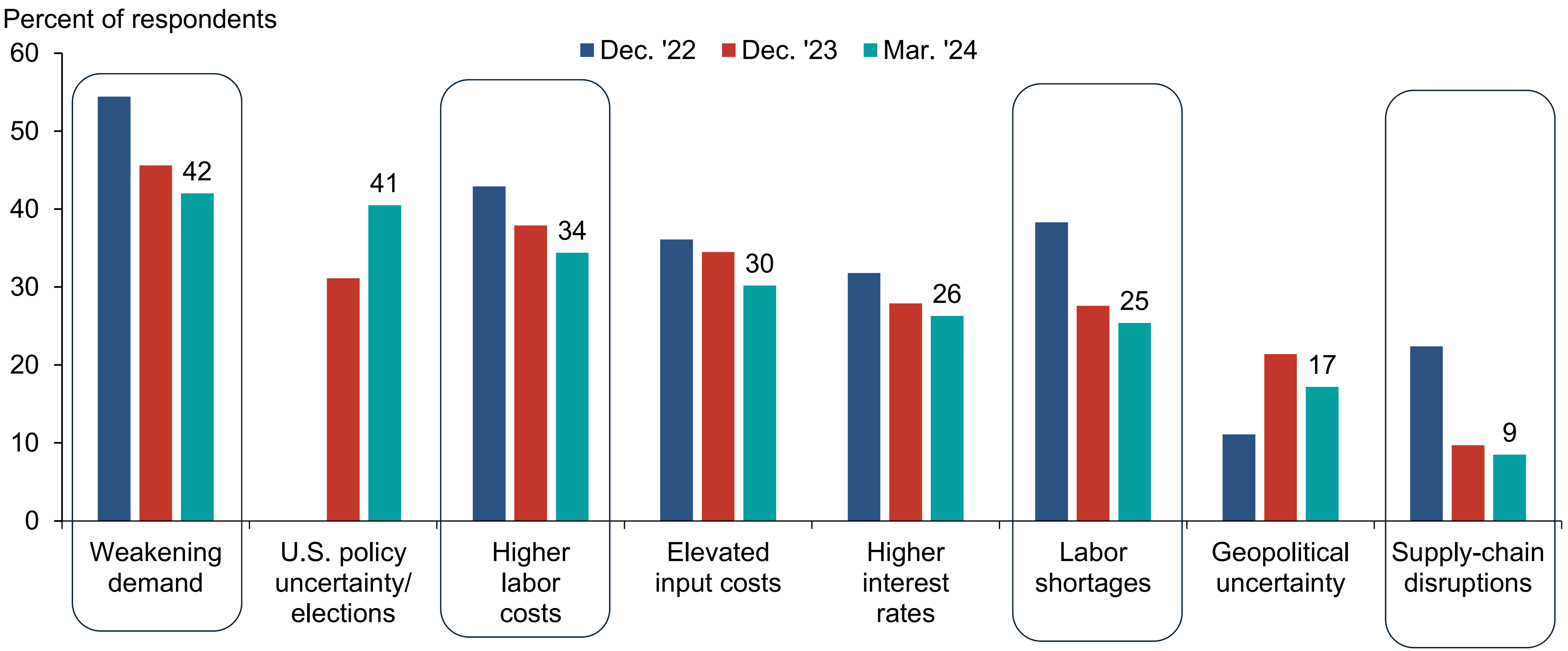
Risks to the outlook are mixed



NOTES: Firms were asked, "What are the primary concerns around your firm's outlook over the next six months, if any?" and could select up to three concerns. N = 331 in March 2024, and not all possible responses are shown. "U.S. policy uncertainty/elections" was added as a response choice in December 2023.
SOURCE: Dallas Fed's Texas Business Outlook Surveys.

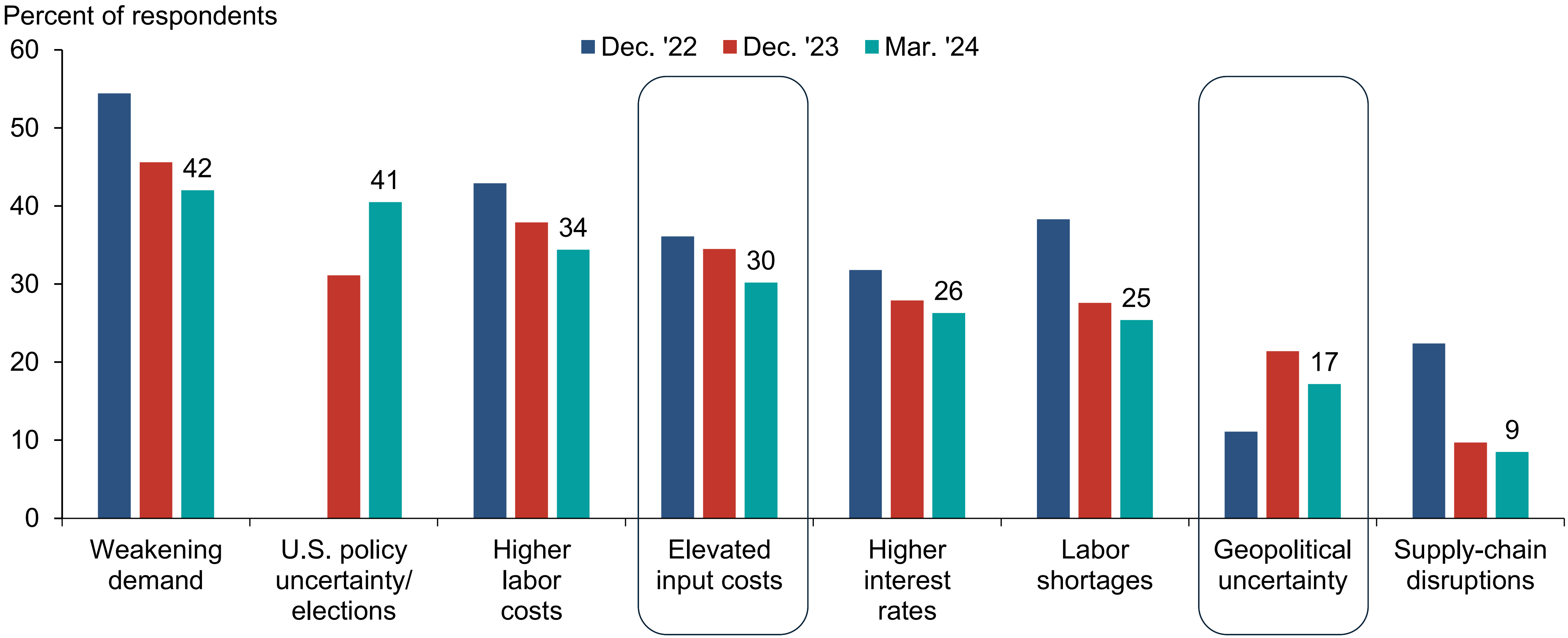
Federal Reserve Bank of Dallas

Some factors are retreating concerns…



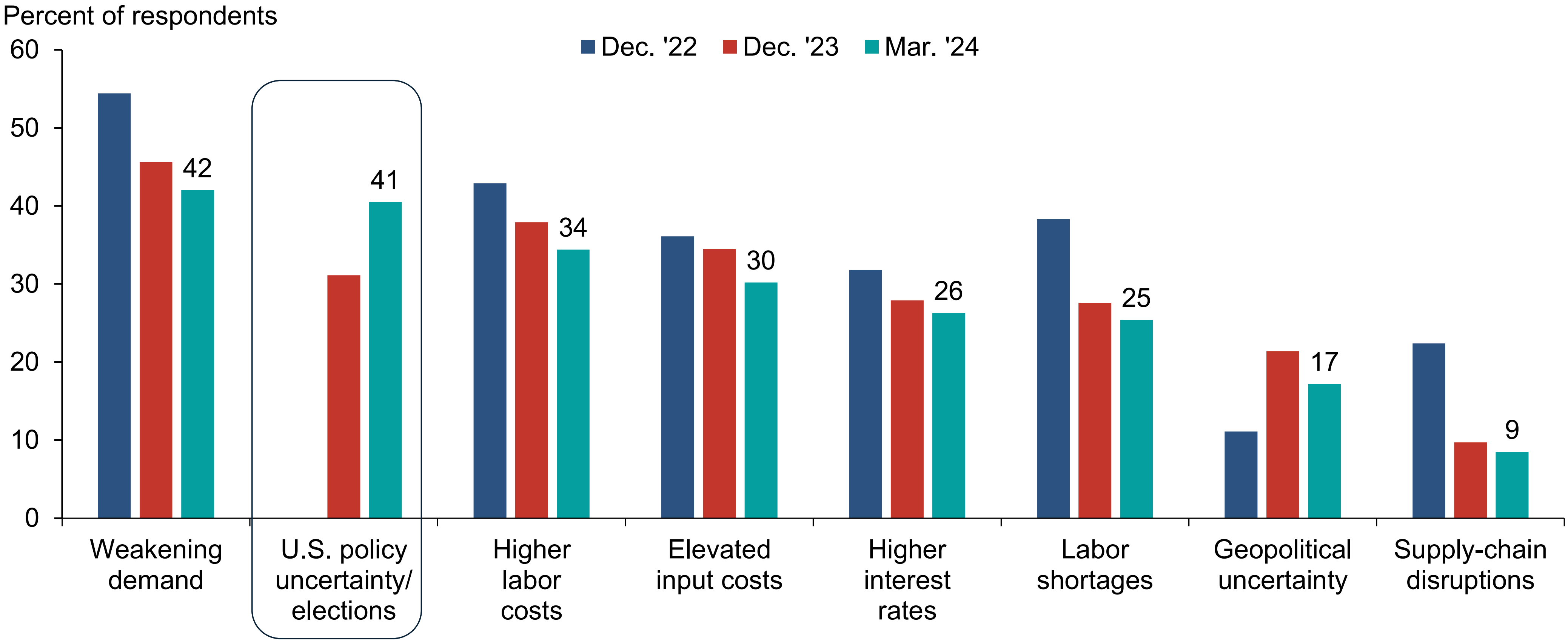
NOTES: Firms were asked, "What are the primary concerns around your firm's outlook over the next six months, if any?" and could select up to three concerns. N = 331 in March 2024, and not all possible responses are shown. "U.S. policy uncertainty/elections" was added as a response choice in December 2023.
SOURCE: Dallas Fed's Texas Business Outlook Surveys.

…while others are more stubborn…



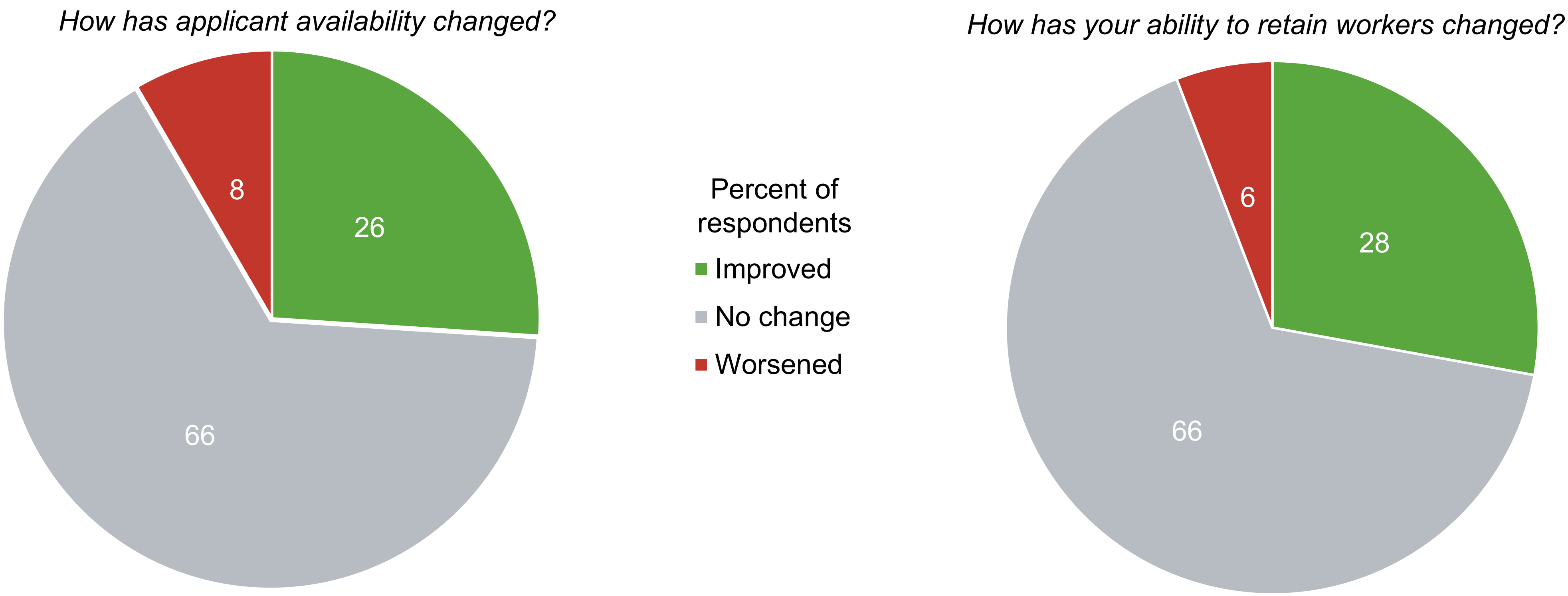
NOTES: Firms were asked, "What are the primary concerns around your firm's outlook over the next six months, if any?" and could select up to three concerns. N = 331 in March 2024, and not all possible responses are shown. "U.S. policy uncertainty/elections" was added as a response choice in December 2023.
SOURCE: Dallas Fed's Texas Business Outlook Surveys.

...and some are gaining steam



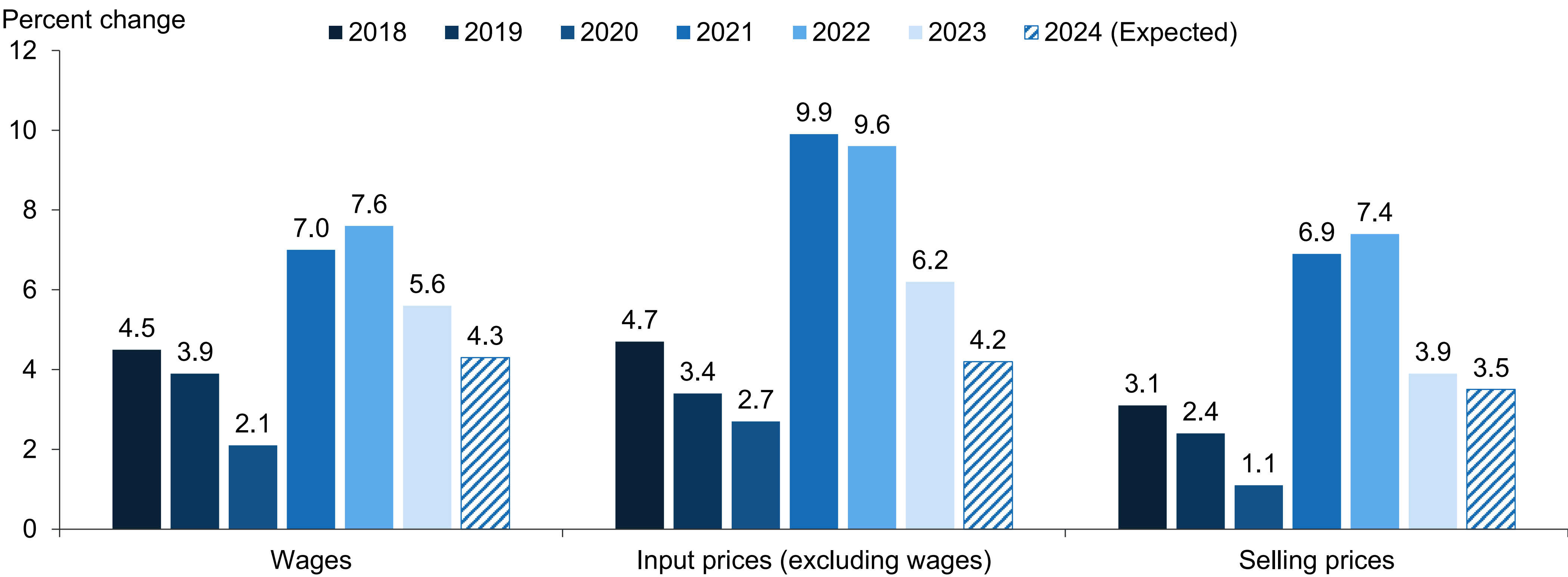
NOTES: Firms were asked, "What are the primary concerns around your firm's outlook over the next six months, if any?" and could select up to three concerns. N = 331 in March 2024, and not all possible responses are shown. "U.S. policy uncertainty/elections" was added as a response choice in December 2023.
SOURCE: Dallas Fed's Texas Business Outlook Surveys.

Applicant availability improving, as is ability to retain workers



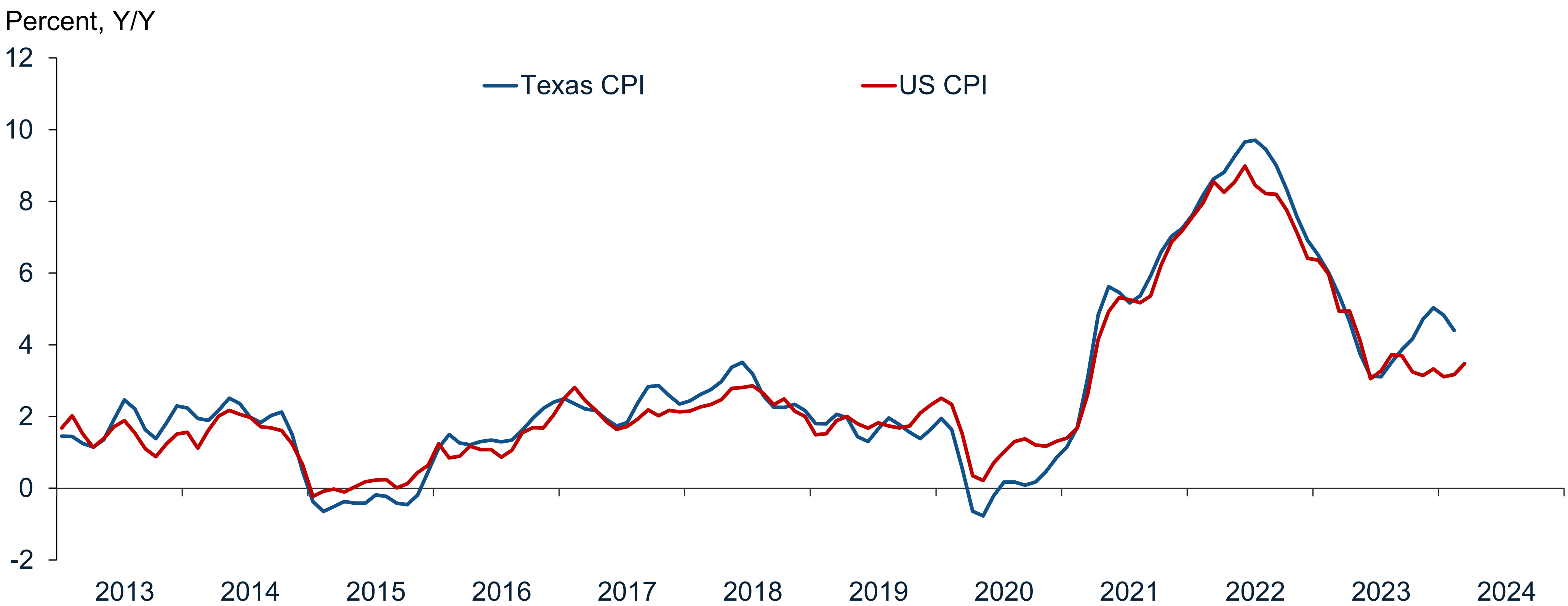
NOTES: Respondents were asked, "How has the availability of applicants changed over the past month?" and "How has your ability to retain workers changed over the past month?" Data are from January 2024.
SOURCE: Dallas Fed's Texas Business Outlook Surveys.

Texas firms: selling price growth remaining elevated



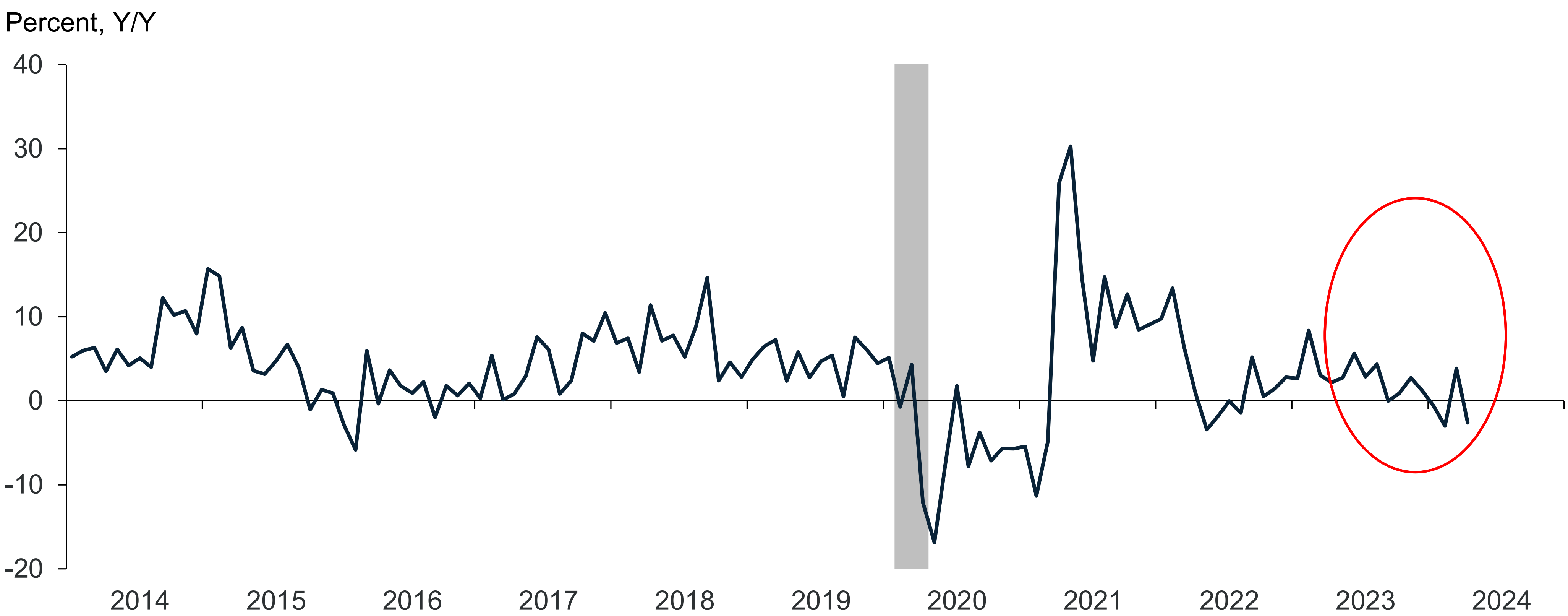
NOTES: Shown are the trimmed mean actual percent changes in wages, input prices, and selling prices reported by TBOS respondents in Dec. of each year. Shaded bars indicate forecasted changes in prices for 2024, as of December 2023.
SOURCE: Federal Reserve Bank of Dallas' Texas Business Outlook Surveys.

Texas CPI too high but in the right direction



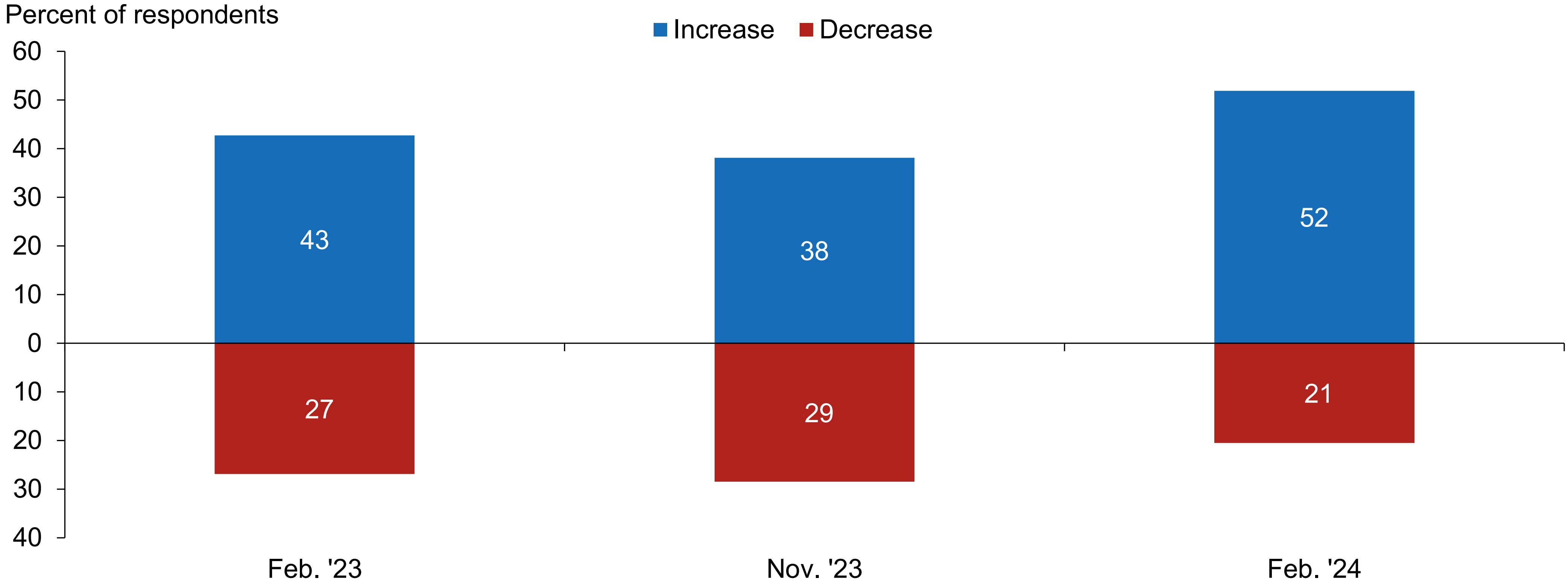
NOTES: Texas CPI data through February 2023; U.S. CPI through March 2024.
SOURCE: Bureau of Labor Statistics.

Sales tax revenue points to falling consumption growth



NOTES: Real, seasonally adjusted data through April 2024. Gray shading indicates pandemic recession.
SOURCES: Texas Comptroller of Public Accounts; Federal Reserve Bank of Dallas.

Demand expected to pick up in 1H:2024



NOTE: Respondents were asked, "How do you expect demand for your firm's goods and/or services over the next six months to compare with the past six months, aside from normal seasonal variation?" N = 357 in Feb. 2024.
SOURCE: Dallas Fed's Texas Business Outlook Surveys.

Summary

- Economy had a surprisingly strong year in 2023
- Forecast indicates Texas ‘landing’ at trend growth this year
- There are some signs of weakness, but overall growth remains healthy
- There are both downside and upside risks to the outlook

Thank you!

Questions?

We need your input!

Be part of a survey that gauges regional business activity and informs monetary policy making.

Texas **Manufacturing** Outlook Survey

Texas **Service Sector** Outlook Survey

Texas **Retail** Outlook Survey

BREAK 2:50 p.m – 3:10 p.m

Platinum

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ATTORNEYS AT LAW

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Amarillo National Bank
Awesome Service
No BS.

REPRESENTATIVE FOUR PRICE

TEXAS LEGISLATIVE SESSION

3:10 p.m. – 3:55 p.m.

88th Session(s) of the Texas Legislature

Rep. Four Price, Amarillo
Texas House of Representatives, District 87

Amarillo Area Estate Planning Council
May 8, 2024

"Politics is the art of looking for trouble, finding it everywhere, diagnosing it incorrectly, and applying the wrong remedies."

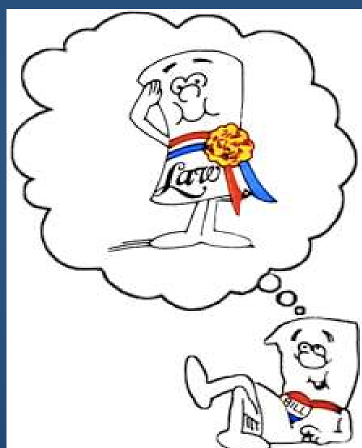
Groucho Marx

88th Legislative Sessions

- Regular: 1/10 – 5/29 (140 days)
- 1st Called: 5/29 – 6/27 (30 days)
- 2nd Called: 6/27 – 7/13 (17 days)
- 3rd Called: 10/09 – 11/07 (30 days)
- 4th Called: 11/07 – 12/05 (29 days)

246 Days Total

88 th Lege - Bill Statistics (Regular Session)



Filed: 8,046 bills & 11,807 total measures

- 87th Legislature (2021): 6,927
- 86th Legislature (2019): 7,324

Passed: 1,246 bills (Approximately 15%)

***** 77 Bills Vetoed by Governor Abbott***

- 87th Legislature (2021): 1,073
- 86th Legislature (2019): 1,429

88th Lege Demographics

- 181 seats
  - House – 150 (86 R / 64 D) (104 M / 46 F)
  - Senate – 31 (19 R / 12 D) (23 M / 8 F)
- 58 licensed attorneys
  - 48 – House
  - 10 – Senate

Selected High & Low Points

- * Started with $32.7 Billion Surplus (left $10B unspent)
- * Expelled a Sitting House Member
- * Impeachment of Statewide Elected Official
- * $5 Billion Border Security Appropriation
- * Significant Infrastructure Investments Statewide
- * TRS & Municipal Retiree COLA bills passed
- * Secured Appropriation for new Amarillo State Hospital
- * Passed Texas' Largest Property Tax Relief Package

Selected Bills that Passed

Property Tax Reform

Property Tax Reform Package

- $18 Billion Total Tax Relief to Texans & Texas Businesses
- $12 Billion Compression of School Property Tax Rates
- $100,000 Homestead Exemption
- 20% Circuit Breaker; 3-Year Pilot Project ($5MM & under)
- Created New Elected Positions on Local Appraisal Boards
- Doubled Franchise Tax Exemption & Removed the Requirement to file No-Tax-Due Returns

Retirees

- Delivered a Cost-of-living adjustment for Texas retired teachers while maintaining the actuarial soundness of the TRS pension fund

- HB2464 – Providing a window of opportunity for cities like Amarillo to “catch up” and provide COLAs without paying the associated penalty

More AAEPC Relevant Bills

SB 801 – Permissible Conveyances To A Trust

- Adds Section 114.087 to the Trust Code, providing that the trustee of a trust is considered for all purposes to be the named party to an instrument that names the trust as a party, unless the trust is a legal entity under state law.
- Applies to instruments executed before, on or after September 1, 2023
- A correction instrument identifying the trustee may be filed but is not required

Disclaimer by Agent Under Power of Attorney

- SB 1650 amends Property Code Section 240.008 to permit an agent under a durable power of attorney which authorizes disclaimers to disclaim property without court approval, even if the disclaimer results in property being paid to the agent.

New Statutory Probate Courts

- *The legislature authorized new statutory probate courts in Bexar, Cameron, Montgomery, Harris and Travis Counties.*

New Specialized Business Court & 15th Court of Appeals

HB 19 establishes specialized trial courts for complex business cases. The new court has jurisdiction over business governance disputes in which the amount in controversy exceeds $5 million and involves certain enumerated factors. The business courts will also have jurisdiction over commercial disputes in which the amount in controversy exceeds $10 million and meets certain elements. The courts will also have jurisdiction for suits seeking declaratory or injunctive relief for the above-mentioned types of cases.

Appeals from cases in the business courts will go to the newly created 15th Court of Appeals (SB 1045). While the effective date of the bill is September 1, 2023, the courts will not be operational until September 1, 2024.

Certified Mail No Longer Required

- **SB 1373 (probate) and SB 1457 (guardianships) allows most notices which previously required certified mail to be sent by a "qualified delivery method."**

- **Qualified delivery method is defined in new Section 22.0295 of the Estates Code to mean delivery by (1) hand delivery by courier, with courier's proof of delivery receipt, (2) certified or registered mail, return receipt requested, with return receipt, or (3) a private delivery service designated as a designated delivery service by the U. S. Treasury for delivery of tax documentation, with proof of delivery receipt.**

Certified Mail No Longer Required Continued…

- Permits using courier services for local delivery and designated delivery services like United Parcel Service and Federal Express for out-of-town delivery of virtually all notices previously required to be sent by certified mail, such as notices to beneficiaries under Chapter 308 of the Estates Code.

- The new methods are available for cases filed on or after September 1, 2023. Notices for cases filed prior to September 1, 2023, will have to be done under the former statute.

Felon May Serve As A Personal Representative

- SB 1373 changes previous law by providing that in limited circumstances a convicted felon may serve as personal representative. Section 304.003 is amended to provide that a convicted felon is not disqualified from serving as executor if (1) the person is named as executor in the will, (2) the person is not otherwise disqualified from serving and (3) the court approves.

- It is limited to cases in which there is a will naming the person, so a convicted felon <u>still</u> will not be eligible to serve in an intestate administration or in testate estates where he or she is not named.

- This change applies to applications for letters testamentary filed on or after September 1, 2023.

Purpose Trusts

In the past, noncharitable trusts had to have an identifiable beneficiary in order to be effective. HB changed this by adding Section 112.121 – 123 to the Trust Code to permit trusts "created for a noncharitable purpose without a definite or definitely ascertainable beneficiary." A purpose trust may include seeking economic or noneconomic benefits.

A purpose trust is enforced by one or more trust enforcers named in the trust instrument. Trust enforcers are fiduciaries required to enforce the purpose and terms of the trust. They have the same rights as beneficiaries provided under the Trust Code and common law, but they are not beneficiaries of the trust.

The Uniform Trust Code has a provision allowing purpose trusts, and under the UTC the duration of the trust was limited to 21 years. The Texas version has no such limitation, so presumably one may create a purpose trust lasting until the expiration of the perpetuities period in 300 years.

Brokerage Accounts Can Be Multiple Party Accounts

- Previously Chapter 113 of the Estates Code, with its rules about ownership of multiple party accounts, applied only to accounts with cash deposits. Many practitioners and some courts applied the same rules to accounts holding securities, but the statute didn't support this. Now SB 1373 has amended Estates Code Section 113.001 to provide that accounts holding securities, including stocks, bonds, and mutual funds are "accounts" for Chapter 113 purposes.

Affidavit of Heirship as Proof in Heirship Proceeding

- SB 1373 amends Estates Code Section 202.151 to permit proof at an heirship proceeding to be provided by an affidavit of heirship meeting the requirements of Estates Code Section 203.001 instead of by live testimony or deposition testimony. It remains to be seen if individual courts will accept this alternative method of proof.

Homesteads Owned By Trusts

Homesteads Owned By Trusts Continued…

- Under prior law, Tax Code Section 11.13(j) permitted the ad valorem homestead tax exemption if a trust beneficiary has a right to use the residence "rent free and without charge except for taxes and other costs and expenses," while Property Code Section 41.0021 provided homestead creditor protection if a trust beneficiary has a right to use the residence "at no cost … other than payment of taxes and other costs and expenses." These now have been harmonized by making Section 41.0021 read "at no cost or rent free and without charge."

Declaration Under Penalties of Perjury Instead of Notarized Oaths

- Oaths of personal representatives under the Estates Code had to be sworn before a notary or other officer authorized to take oaths. Throughout the Covid pandemic, we learned that, while many documents which previously had to be notarized could be signed with unsworn declarations, oaths of personal representatives were not permitted as unsworn declarations. Now SB 1373 has amended Estates Code Sections 305.051 – 305.053 to permit "oaths" of personal representatives to be made by unnotarized declarations under penalty of perjury.

The new procedure is available for proceedings commenced on or after September 1, 2023.

Guardianships

SB 1624 includes a number of changes, including clarity regarding who can serve as guardian ad litem (it can't be an interested person and usually can't be the attorney ad litem), clarity of the role of the attorney ad litem, and what happens when a proposed ward or ward hires their own attorney, allowing a psychologist to perform a capacity exam for certain guardianships, updating the requirements for the guardian of the person's annual report, requiring a court investigator or visitor in counties with statutory probate courts to do a report every three years, and it provides what is required for a restoration proceeding. The bill further increases training requirements for judges and court investigators dealing with guardianships and the ward's bill of rights is updated to permit a ward to have private communications with a medical professional unless a court, after a hearing, orders such communications limited due to a risk of substantial harm to the ward or unduly burdening the medical professional.

Guardianships Continued …

In **HB 3009**, advanced practice registered nurses acting under a physician's supervision can now prepare a Physician's Certificate of Medical Examination, or PCME, that is signed by a supervising physician.

RAP

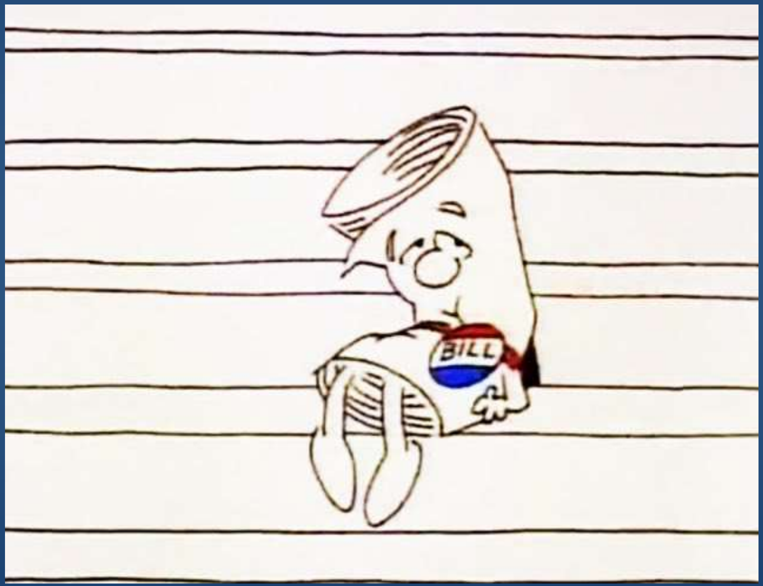
HB 2196 - Rule Against Perpetuities Cleanup

In 2021, Section 112.036 of the Trust Code was amended to adopt a 300-year perpetuities period for trusts. This legislation created confusion on a few points, so HB 2196 was a clean-up bill. First, instead of referring to the effective date of the trust, the statute now refers to the effective date of the trust instrument, which is the date it becomes irrevocable. Second, if the interest of one trust is distributed to another trust with a different effective date, the effective date of that interest in the second trust becomes the earlier of the effective date of the two trusts.

New Laws of Note Affecting Everyday Life

- SB 379 – eliminates the sales tax on menstrual products, adult & children's diapers, baby wipes, breast milk pumping products, baby bottles, maternity clothes and wound care dressings. Effective 9/1/23
- HB 3297 – eliminates annual safety inspections for non-commercial vehicles, effective January 1, 2025. Emissions tests still required in 17 highly populated counties.
- HB 4183 – JP's can now waive 72 Hour Waiting Period for marriages following the issuance of a license

Bills that Failed



Judiciary

Casino Gambling & Mobile Sports Betting

Daylight Savings Time

* Despite multiple attempts to establish a uniform time, the measure failed once again….

Recreational Use or Decriminalization

Other Headscratchers….

- Super Bowl Monday
- District of Austin/Secession
- Property Tax Reduction Based Upon Nos. of Children
- Duty to Substitute Teach (1X/Year) (Lists Made Public)

What's Next?

We Have A Lot Of It…..

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Odds & Ends

- Elimination of Property Taxes – Senate Interim Charges
- Vouchers – Public Education Reform More Likely
- Where Can I Find More Info?
  - You can find information about any of the bills mentioned in this paper (whether or not they passed), including text, lists of witnesses and analyses (if available), and actions on the bill, at the Texas Legislature Online website: www.legis.state.tx.us.
- Interim Charges…

Interim Charges

House & Senate Interim Charges – Reports will be finalized within 6 months

- Senate's just came out and House's are expected any time now….
- All committees meeting now in preparation for the 89th.

Optimism

- 8th Largest Economy
- $27B Parked in our "Rainy Day" ESF
- TX Ranked Best State For Business for 20th Straight Year
- Gov Cup Winner Again (12th Year In A Row)
- TX Economy Just Recorded its 36th Successive Month of Growth – Performing Better Than The US Economy As a Whole

Questions

Thank you!

BREAK 3:55 p.m – 4:00 p.m

Platinum

WT Foundation
WEST TEXAS A&M UNIVERSITY™

Gold

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Morgan Williamson
LLP • Attorneys at Law

Happy State Bank
Happy Trust Company
A Division of Centennial Bank

KIT MAC NEE

529 PLANNING: TRANSFERRING MILLIONS OF DOLLARS TO YOUR FAMILY

4:00 p.m. – 5:00 p.m.

NAEPC
NATIONAL ASSOCIATION OF ESTATE PLANNERS & COUNCILS
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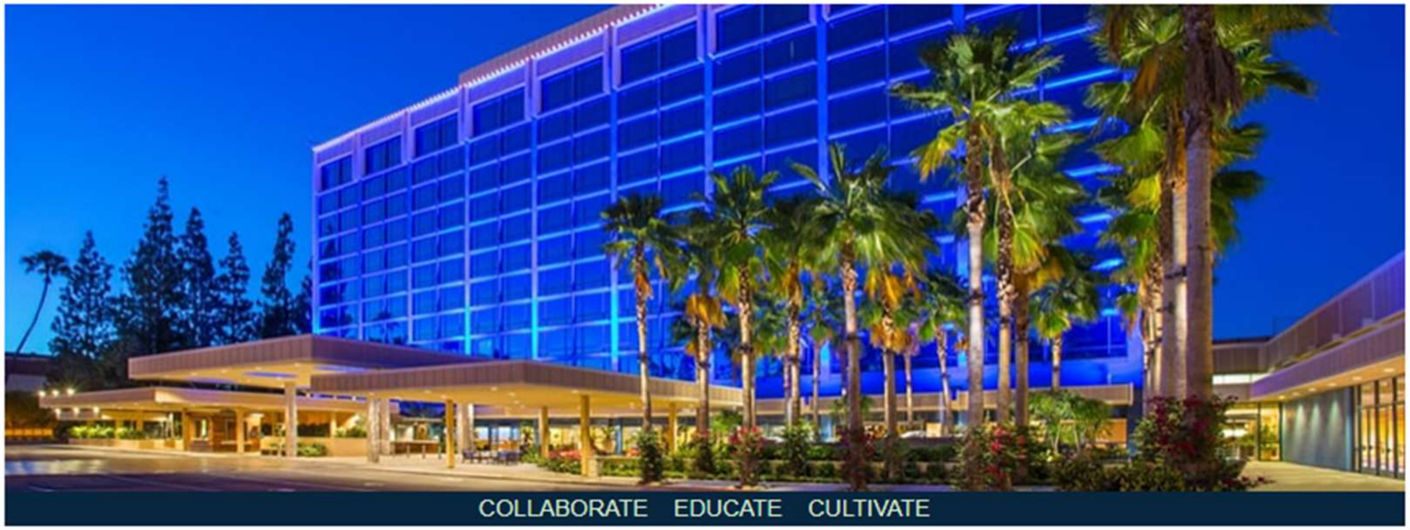

Collaboration Designation

Accredited Estate Planner® Designation

Administered by the National Association of Estate Planners & Councils, the Accredited Estate Planner® designation means "I believe in the team concept of estate planning" and attainment allows designees to distinguish themselves to clients and among peers as a true member of the team.

It is awarded only to estate planning professionals who meet special requirements of education, experience, knowledge, professional reputation, and character. This page of our website offers an overview of the program requirements and additional information can be obtained by downloading an application below or by reviewing the "Frequently Asked Questions."

"As I focused more and more on estate planning in my practice, I began to realize the importance of finding another professional credential that spoke to my commitment to estate planning and need to collaborate successfully with other professionals in the estate planning team. No one professional can do it all and by earning the Accredited Estate Planner, AEP® designation I communicate to my clients and peers that I am actively engaged in building relationships with like-minded professionals who are aligned with my passion for excellence in estate planning. This collaborative approach brings out the best in me and my team in service to our clients. I highly recommend this designation so that you, too, can take your practice to the next level."
- Paul S. Viren, CLU®, ChFC®, AEP®, designee since 2011

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529 PLAN MYTHS DEBUNKED:

The Facts About the Estate Planning Benefits of 529s

Kit Mac Nee, CFP®, CRPC®, CSPG ®, AEP®, QPFC®
Financial Advisor
Envision Legacy Group at Morgan Stanley

Morgan Stanley

MYTH 1

529 Plans are inflexible, and must be used to pay for college expenses.

Morgan Stanley

FACT 1

529 Plans were designed by Congress for maximum flexibility, with unique gifting, estate planning, control and tax savings benefits

Morgan Stanley

EXPLAIN HOW TO:

- Reduce Current and future tax liability
- Pass wealth onto children, grandchildren and future generations
- Fully control assets even though assets are outside of the estate
- Reduce expenses associated with trusts
- Protect assets from creditors

Morgan Stanley

WHAT IS A 529 PLAN?

A gift from Congress

- Created by Congress in 1996, 529 Qualified State Tuition Plans” are tax advantaged programs with special estate planning, gifting and creditor protection provisions
- Many Congressional leaders, staff and tax experts view Section 529 as one of the most generous tax provisions ever passed by Congress for the benefit of American families

WHAT IS A 529 PLAN?

Even IRS Acknowledges Speciate Treatment

"In addition, the estate planning and gift tax treatment of contributions to a Qualified State Tuition Plan (QSTP) and interests in a QSTP is generally different from the treatment that would otherwise apply under generally applicable estate and gift tax principles."

Preamble to Proposed IRS 529 Regulations

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MYTH 2

The money in a 529 Plan account must be used to pay for college expenses for the benefit of the designated beneficiary.

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FACT 2

The account owner maintains full control of the assets in a 529 Plan account at all times.

ACCOUNT OWNER CONTROL

The Owner retains full control and has the ability to:

- Change investment options(twice per calendar year)
- Change the Beneficiary (unlimited times)
- Transfer account ownership
- Rollover assets to another 529 plan (1x per 12 months) or into a Roth IRA for the same beneficiary
- Decide when and even whether to distribute assets
- Make withdrawals – Qualified or nonqualified

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MYTH 3

The Beneficiary of a 529 Plan account may only be changed to a blood relative in the same generation.

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FACT 3

The Beneficiary of a 529 Plan account may be changed to anyone related by blood, marriage or adoption of any age in any generation.

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FLEXIBILITY

Beneficiary Changes: Member of the Family Defined

The prior Beneficiary's:

- Son or daughter or descendent of either
- Stepson or stepdaughter
- Brother, sister, stepbrother or stepsister
- Father or mother or ancestor of either
- Stepfather or Stepmother
- Niece or nephew

FLEXIBILITY

The prior Beneficiary's con't:

- Aunt or uncle
- Son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law or sister-in-law
- Spouse of any of the above
- First cousin
- Child includes a legally-adopted child
- Brother or sister includes brother or sister by half-blood

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MYTH 4

The money in a 529 Plan account must be distributed before the Beneficiary reaches age 30.

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FACT 4

529 Plans have no time or age restriction*

MYTH 5

529 plans have income limits.

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FACT 5

529 Plans have no income limits

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MYTH 6

A withdrawal from a 529 Plan account must be used for college expenses or will be subject to penalty.

FACT 6

Only the earnings portion of a Non-Qualified withdrawal from a 529 Plan account is subject to tax and penalty.

TREATMENT OF WITHDRAWALS

The Owner may take two types of withdrawals:

- Qualified withdrawals – in which the money is used for Higher Educational Expenses
  - Free from federal and state income tax

- Non-Qualified withdrawals – in which the money is not used for Higher Educational Expenses
  - Subject to ordinary income tax, plus a 10% federal penalty – on the earnings portion of the withdrawal only.

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MYTH 7

When making a Non-Qualified withdrawal from a 529 Plan account, earnings come out first.

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FACT 7

Withdrawals from a 529 Plan account come out Pro-Rata

EXAMPLE

Tax treatment of Non-Qualified withdrawals

- Withdrawal amount is $30,000
- From an account which grew to $150,000 on contributions of $100,000
- The earnings portion of the withdrawal would be 1/3 or $10,000
  - Account Owner is in the highest tax bracket
  - If the Beneficiary's income tax rate is 10% federal tax would be $1,000 and the 10% federal penalty would be an additional $1,000, for a total of $2,000*

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MYTH 8

A Non-Qualified withdrawal, such as one used for medical expenses, is always subject to tax penalty.

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FACT 8

A 529 Plan account withdrawal, used to pay medical expenses of a disabled Beneficiary, is exempt from the normal 10% federal penalty.

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MYTH 9

All 529 Plans have balance limits

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FACT 9

No 529 Plans have balance limits; an account can grow in perpetuity to any amount.

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EXAMPLE

Setting up a Legacy College Fund

Clients can fund a 529 Plan Account that can benefit multiple generations

- Step 1: Fund a single account with $400,000 for a grandchild.[1] In 18 years, the account may grow to approximately $1,077,109[2].
- Step 2: In years 19-22, Account Owner withdraws $433,191 for college tuition and expenses for the grandchild – the original Beneficiary.[3]
- Step 3: In subsequent years, Account Owner changes the Beneficiary to great g1. grandchildren and future generations

1. Contributions in excess of the annual Gift Tax Exclusion ($17,000 for individuals, $34,000 for joint clients) or the Section 529 5 year "Forward Gifting" provision limits ($85,000 for individual or $170,000 for joint filers) – would be deducted from the Giftors lifetime Unified Credit.
2. For illustration purposes only, assumes an average annual growth rate of 6%, does not represent the returns of any 529 Plan portfolio.
3. The Cost of Attendance in year 18 r=represents the national average of a 4-year degree from a public (out-of-state) college of $45,240, adjusted for hypothetical 5% rate of tuition inflation over 18 years, Source: Ma, Jennifer and Matea Pender (2022), Trends in College Pricing and Student Aid 2022, New York: College Board. © 2022 College Board.

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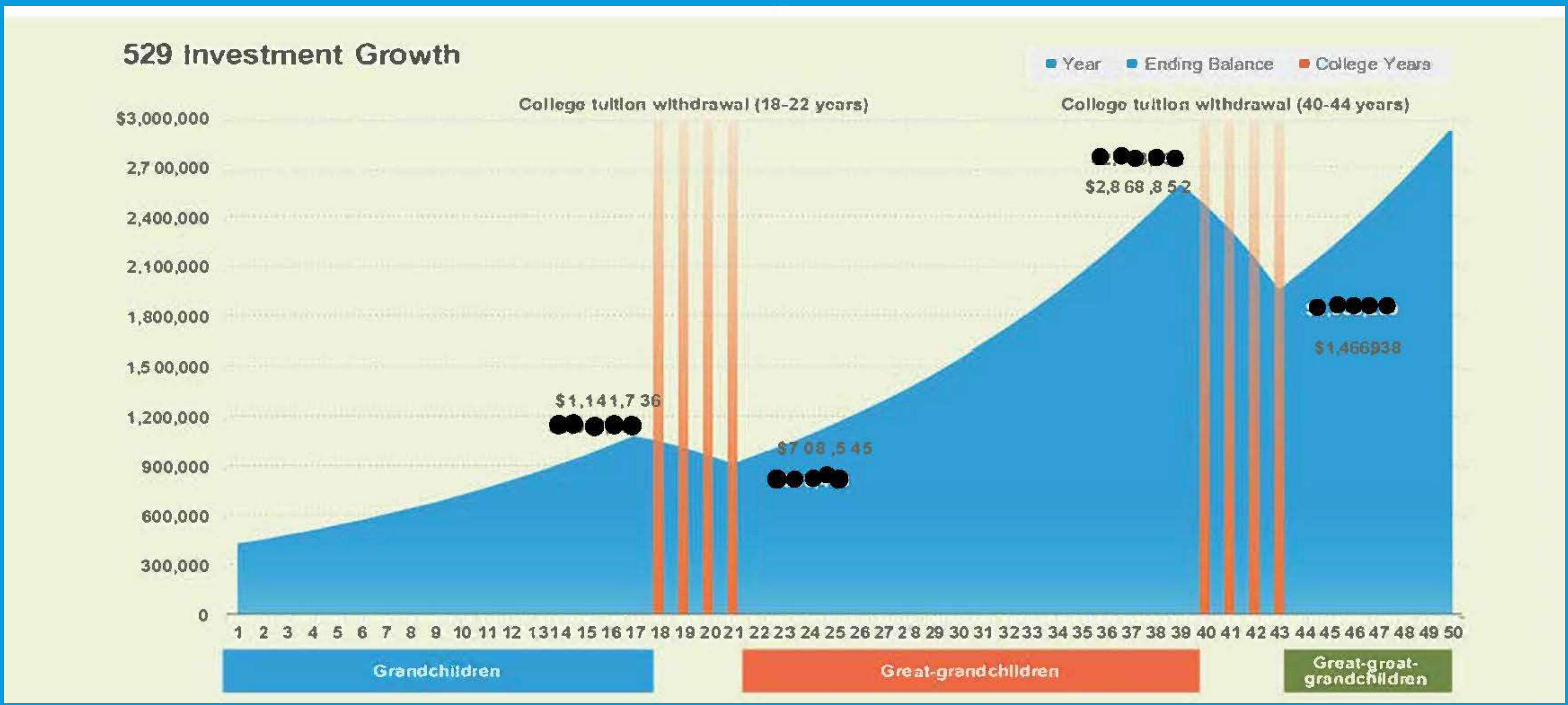
EXAMPLE



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MYTH 10

A 529 Plan Account Owner can only gift $18,000 per year - $36,000 if filing jointly 2024

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GIFT TAX EXCLUSION

- Annual Exclusion – Any individual may give up to $17,000 per year per beneficiary – without paying federal gift tax or using their Unified Gift Credit; $36,000 per year for joint filers(2024).*
- "Accelerated or Forward Gifting" – Through a special 529 provision, Owners may effectively use five years of their annual gift tax exclusion all at once:
  - $90,000 for individual filers (2024)
  - $180,000 for joint filers (2024)**

*The current (2023) Annual Gift Tax Exclusion amount is $17,000.

** In any year during which your 529 contributions for a particular beneficiary exceed the Annual Gift Tax Exclusion amount, you may make an election on Form 709 to spread the contributions ratably over five years (20% per year) for gift-tax purposes. This permits frontloading of up to $85,000 (in2023) per beneficiary or $170,000 for a married couple into a 529 plan without generating a taxable gift, assuming no other gifts to that beneficiary are made during the five =calendar –year period. If you make the five=year election and die before the fifth calendar year, the contributions allocated to the years after your death are included in your taxable estate.

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GIFT TAX: CAVEAT

"Accelerated" or "Forward-Gifted contributions are outside the Owner's taxable estate, unless:

- The Contributor passes away within the **5-year** timeframe, in which case Forward-Gifted contributions amounts – excluding any earnings- will be added back to the taxable estate.*
- Beneficiary still has no access to the monies; Ownership is dictated by a previously designated Successor Owner or the Executor of the Owner's Estate.

* Source Internal Revenue Code 529(c)(2) (B).

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MYTH 10

Using one's 529 5-year forward gifting provision will reduce the Lifetime Unified Credit

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FACT 10

Investors can take advantage of the 529 5-year forward-gifting provision and keep their Unified Credit intact.

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EXAMPLE

Gifting After a Liquidity Event

Irving and Rhonda: 81 years old – who have 7 children (some married), 15 grandchildren (some married), and 6 great-grandchildren – sold their business for $30 million.

- They contribute $170,000 to a 529 account for each child, grandchild, great-grandchild – and the spouses of each, if married - - 34 accounts for a total of $5,780,000.
- They remove $5,780,000 from their estate using the 5-year forward-gifting provision.
- They keep their Unified Credit intact
- No gift tax consequence for Irving and Rhonda, so long as they do not make additional gifts to the same beneficiaries over the 5-year period and live into the fifth year.

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MYTH 11

The maximum a 529 Plan Account Owner can gift to a single Beneficiary is $190,000 2024

FACT 11

A 529 Plan Account Owner can make unlimited gifts.

*There is no maximum ScholarShare 529 contribution limit. However, there is an overall maximum account balance limit of $529,000, which applies to all ScholarShare 529 accounts opened for a beneficiary. Accounts that have reached the maximum account balance limit may continue to accrue earnings.

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ESTATE TAX: 2018 RULE CHANGE

Lifetime exemption ("Unified Credit") was increased

- Lifetime exemption is now
  - $13.6 million 2024
  - $27.22 million joint 2024
- Note: An annual gift tax exclusion does not count against an individual's Lifetime Unified Credit.

EXAMPLE

Ideal Prospects:
- ❑ Clients whose adult Children have not saved Their children's education.
- ❑ Clients with a net worth under $20 million

Using the Lifetime Unified Credit

George and Helen, a married couple with three adult children contribute $529,000 to a 529 Plan for each of their six grandchildren – soon to attend college.

- They immediately remove $3.420 million from the taxable estate.
- Their account makes a "Note to File" that their Unified Credit is to be reduced by $3.42 million
- George and Helen – while they are still alive – get to see their grandchildren benefit from their gift.

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MYTH 12

Transferring Ownership of a 529 Plan is a taxable event

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MYTH 12

Transferring Ownership of a 529 Plan is not a taxable event.

Note: Federal law does not specifically address the tax treatment of a transfer of ownership of a 529 account. You need to consult your tax advisor to fully understand any consequences.

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MYTH 13

An Account Owner is bound by the Contribution Limit of the 529 Plan.

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FACT 13

The Contribution Limits aggregated by Beneficiary applies only to accounts sponsored by the same state.

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CONTRIBUTION LIMITS

- All states have maximum contribution limits, the lowest of which are Mississippi and Georgia, at $235,000 per beneficiary. North Dakota is the next lowest, with a maximum of $269,000.7
- On the high end, states such as Idaho, Louisiana, Michigan, and Washington, as well as the District of Columbia, have maximum limits of $500,000. Pennsylvania's limit is $511,758, New York's is $520,000, and California's is $529,000.7
- Once the limit is reached, any contributions made to the account are not accepted and will be returned to the investor.

- College Savings Plans Network. "Find My State's 529 Plan."

EXAMPLE

Multiple Accounts for the Same Beneficiary

Clients can exceed the Contribution Limit of a single funding 529 Plan accounts – for the same multiple states:

- Account #1/ State A. Fund an account with $400,000 - - the Contribution Limit for State A – for a grandchild.*
- Account #2/State B. Fund a second account with $300,000 – the Contribution Limit State B – for the same grandchild.*

*Contributions in excess of the annual Gift Tax Exclusion o the Section 529 "Forward-Gifting" provision limits – would be deducted from the Giftor's Lifetime Unified Credit.

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MYTH 14

529 Plan Accounts can not be owned by Entities such as Trusts.

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FACT 14

529 Plan Accounts can be owned by Entities such as Trusts.

TRUST OWNED 529 PLANS

Leveraging a 529's tax advantage

- Eliminates any year-over-year taxes on earnings
- Maximizes the after-tax return on assets in Trust education
- Potentially simplifies the Trust's investment policy
- Potentially helps offset expenses of the Trust (administrative fees, accounting costs, attorney fees, custody charges, court fees, etc.)
- Helps to ensure assets are ultimately used for higher education or for the benefit of the child who receives the tax-deferred growth

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MYTH 15

Assets in a 529 Plan account can be seized by Creditors

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FACT 15

529 Plan accounts assets are protected from Creditors and Bankruptcy.*

*For contributions made more than a year, but less than two years, the first $5,000 contributed is kept out of the estate, and any contributions made during the last year will be included in the estate. Exclusions also depend on the beneficiary having specific familial relationships for the settlor and the contributions being within the allowed 529 limits.

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CREDITOR AND BANKRUPTCY PROTECTION

Two forms of protection:

If the contributions were made more than two years prior – and neither Account Owner or the Account Owner's spouse are not the named beneficiary – all assets in the 529 accounts are protected from creditors:

- At the state level, for Colorado residents the law does not exempt Accounts and Account assets from tax levy, garnishment, attachment or similar orders from the IRS.
- For all – regardless of residency – under the Federal Bankruptcy Protection Act of 2005. Contributions made more than a year but less than two years, the first $5,000 contributed is kept out of the estate, and any contributions made during the last year will be included in the estate. The exclusion also depend on the beneficiary having specific familial relationships to the settlor and the contributions being within the allowed 529 limits.

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EXAMPLE

Bankruptcy Protection

- When a married couple, Peter and Cynthia, who are real estate developers, contributed $150,000 to a 529 plan for each of their 5 young children – a total of $750,000 from their estate.
- Unfortunately, two years later, one of their developments failed and they were sued and were forced into bankruptcy.
- Under the Federal Bankruptcy Protection Act, all the assets in their children's 529 Plan Accounts were protected from creditors.

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MYTH 16

A 529 Plan account hurts the Beneficiary’s chances of receiving federal student aid.

FACT 15

Only the assets and income of the Parent and the Student are expected to be contributed to the cost of attendance.

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FINANCIAL AID IMPACT OF 529 PLANS

FAFSA's Expected Family Contribution (EFC) calculation

	Assets[1]	Income[2]
Student	20%	50%
Parents	Up to 5.6%	22% - 47%

1. Total cash balance of cash, savings and checking accounts; net worth of investments, excluding the home in which parents and student live; net worth of parent and student businesses and/or investment farms, excluding family farms or businesses with 100 or fewer full-time or full-time equivalent employees. Net worth means current value minus debt. Source FAFSA, 2019
2. Income includes the adjusted gross income from the parents' and students' Forms 1040 along with certain other items representing untaxed income and benefits(e.g. untaxed portions of IRA distributions and veteran on-education benefits, such as disability. Source FAFSA 2019

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FINANCIAL AID IMPACT OF 529 PLANS

- Third-party-owned 529 plans(e.g. grandparents) are treated differently:
  - Assets are not considered at all in the EFC calculation
  - Distributions are considered the income of the student

	Assets[1]	Income[2]
Parent	Up to 5.6%	0%
Third Party	0%	50%

1. Total cash balance of cash, savings and checking accounts; net worth of investments, excluding the home in which parents and student live; net worth of parent and student businesses and/or investment farms, excluding family farms or businesses with 100 or fewer full-time or full-time equivalent employees. Net worth means current value minus debt. Source FAFSA, 2019
2. Income includes the adjusted gross income from the parents' and students' Forms 1040 along with certain other items representing untaxed income and benefits (e.g. untaxed portions of IRA distributions and veteran on-education benefits, such as disability.) Source FAFSA 2019

FINANCIAL AID IMPACT OF 529 PLANS

- https://thecollegeinvestor.com/38170/529-plan-affect-fafsa-financial-aid/

Account Owner (Current Rules)	Reporting As An Asset	Qualified Distributions
Dependent Student (Custodial 529 Plan)	Parent Asset	Not Reported
Dependent Student's Parent	Parent Asset	Not Reported
Independent Student	Student Asset	Not Reported
Anyone Else (Grandparent, Aunt, Uncle, Cousin, Non-Custodial Parent)	Not Reported	Not Reported

NONQUALIFIED DISTRIBUTIONS

- The earnings portion of a non=qualified distribution will be included in the recipients adjusted gross inome on their 1040, regardless of who owns the account.
- Income may or may not be reported on the FAFSA depending on who receives it :
  - If the non-qualified distribution is paid to the student or paid directly to the college, it's included in the student income.
  - If the non-qualified distribution is paid to the account owner, it's included in the account owner's income.

So if a dependent student's parent is the account owner, the non-qualified distribution will be reported in the parent income on the FAFSA. But is the account owner is anyone else, it will not be reported as income on the FAFSA.

https://thecollegeinvestor.com/38170/529-plan-affect-fafsa-financial-aid/

SECURE ACT 2 & 529 PLANS

- Beginning January 2024, 529 plans may be used to fund a Roth IRA for the same beneficiary.
  - 529 plan must be in existence for at least 15 years (2009)
  - The beneficiary of both the 529 and the Roth IRA must be the same person
  - The amount of the rollover is limited
    - Annual contributions are limited to IRA contribution amounts, minus any IRA contributions already made
    - There is a lifetime aggregate rollover limit of $35,000
    - Rollovers may not include contributions (or earnings on those contributions made in the last 5 years

https://my529.org/secure-2-0-and-529s-what-we-know/

ESTATE PLANNING BENEFITS OF 529 PLANS

- Reduce exposure to Estate Tax
  - Contributions are considered completed gifts – not subject to estate tax
- Retain control
  - Ensure assets are spent on education as distributions are controlled by the Account Owner, not the Beneficiary – even once 18 and/or in school.
  - Changes in Beneficiary – including to self – can be easily made without tax consequences
  - Daily access and liquidity – can take the money back if needed (e.g. for unforeseen medical expenses).
  - Similar benefits of a revocable trust.
- No Expiration Date
  - In most 529 Plans, there is no distribution requirement date, so accounts can grow tax-deferred for generations

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ESTATE PLANNING BENEFITS OF 529 PLANS

- Substantial contributions can be made at any time
  - Can use not only annual exclusion – also Forward-Gifting and Unified Credit
  - Non need to wait until the child is in college – or even born yet – thus, removes mortality risk, generate tax-free/deferred income
- Money can be used to pay medical expenses
  - No subject to 10% federal penalty in the event beneficiary is disabled
- Wealth can be transferred
  - Change of ownership and subsequent withdrawals can be done in a manner resulting in little or no tax penalty
- Mitigate tax paid by trust
  - Make the trust an owner of a 529 Plan to lower or eliminate taxes

ESTATE PLANNING BENEFITS OF 529 PLANS

- Money can be protected from Creditors
  - All assets in the account for two years or more are protected
- Tax-deferred growth
  - Regardless of the eventual use of the funds
  - No cap gains tax, net investment income tax or AMT
- No income limit
  - Useful for clients of all net worth values
- No age limit
  - In all but Virginia sponsored 529 Plans
  - Never a required minimum distribution (RMD)

QUESTIONS?

Thank you for allowing me to speak. I look forward to seeing you at Disneyland October 20-24th for our

61st Annual Advanced Strategies in

Estate Planning Conference

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