

# PASSERELLE PERSPECTIVES



## *URGENT PLANNING ALERT: CONGRESS COULD ELIMINATE FUTURE GRANTOR TRUST BENEFITS & IMPACT EXISTING AND NEW TRUST-OWNED LIFE INSURANCE*

On September 13, the House Ways & Means Committee proposed new tax provisions as part of the Build Back Better Act (the “Act”). The proposal includes many substantial tax changes that would affect new and existing estate tax planning structures. Two specific proposals of the Act would have a significant impact on estate planning, including gifting to irrevocable trusts:

1. The Act cuts the per-spouse gift/estate tax exemption in half, effective January 1, 2022. The exemption is currently \$11,700,000 and scheduled to rise to \$12,060,000 for next year. Under the proposed plan, the exemption would be approximately \$6,000,000, after adjustment for inflation.
2. The Act drastically changes the treatment of grantor trusts, including irrevocable life insurance trusts (“ILITs”), spousal lifetime access trusts (“SLATs”), grantor retained annuity trusts (“GRATs”) and grantor charitable lead annuity trusts (“CLATs”). Grantor trusts funded with initial or additional gifts after the bill’s enactment date would become subject to estate tax in whole or in part.

For individuals who have opted to hedge future estate liabilities via the purchase of life insurance policies in ILITs, the Act’s proposed changes have a direct impact on how to fund new policies or continue to fund future premium payments. If the bill becomes law, gifts made to ILITs will cause a proportional part of the policy proceeds and any other trust assets to be taxable at the grantor’s death. This is precisely the outcome that insurance trusts were created to avoid.

Under the proposed change, if you want to ensure the trust’s assets avoid estate taxes, you should not make any new or additional gifts to the trust on or after the date this provision is enacted into law.

Joshua E. Husbands is a Partner in the Portland, Oregon office of Holland & Knight and a member of the firm’s Private Wealth and Life Insurance Practice. “Those with life insurance policies in grantor trusts that either require

“THOSE WITH LIFE  
INSURANCE POLICIES IN  
GRANTOR TRUSTS THAT  
EITHER REQUIRE FUTURE  
PREMIUMS OR INTEREST  
PAYMENTS ON FINANCED  
PREMIUMS SHOULD  
IMMEDIATELY DEVELOP A  
PLAN TO MEET THESE  
PAYMENT OBLIGATIONS.”

*JOSHUA E. HUSBANDS  
PARTNER.  
HOLLAND & KNIGHT*

future premiums or interest payments on financed premiums should immediately develop a plan to meet these payment obligations. One solution is to make a gift of income-producing assets to the grantor trust prior to enactment so that the income can be used for this purpose.”

The ability to make such gifts depends upon the amount of your remaining lifetime gift exemption. If your lifetime exemption is exhausted or insufficient to make a gift whose income is sufficient to meet policy commitments, an alternative is to consider private or commercial financing options to help fund future premiums.

“The grantor has several private and commercial financing options,” Husbands explained. “They can make a private loan to the trust, making sure the trust can pay the interest with income generated from trust assets. They can make a private loan that is grossed up so there is money left from the loan to pay interest. Another option is to make a private loan to the trust and have the interest accrue until the death of the grantor when the value of the loan and accrued interest are pulled back into the grantor’s estate for transfer tax calculations.”

This last option, common in private split-dollar transactions, may be viewed as a loophole in the Act and addressed at a later time. “It could be that this, or future legislation, looks at what the definition of a contribution to a grantor trust is and an accrual of interest falls into the definition,” Husbands added. “Then, as the legislation is written today, a proportionate part of the trust’s assets will be included in the grantor’s estate.”

The trustee can also access a commercial loan provided by a bank to purchase a policy, securing the loan with trust assets. This would not create a receivable in the Grantor’s estate and avoid or limit additional gifts to be made to the trust to service a policy. Loan interest can be paid by income generated within the trust or accrued. Commercial loans of this nature can be extremely effective for purchasing life insurance within trusts. Trust capital is preserved to be deployed more efficiently in either appreciating or income-producing assets.

Unfortunately, time is not on your side. If you are considering creating a new grantor trust or adding assets to an existing grantor trust, you should make sure to complete that before the Act becomes law. Those with a non-grantor trust may have more time – perhaps several weeks – to use up their current lifetime gift and estate tax exemption since the Act reduces the amount at the end of 2021 and not at enactment. Although we are unsure of exactly what the Act will look like when enacted, it is likely to be less client-friendly than what is available today.



If you have a life insurance policy in your grantor trust or are considering purchasing additional life insurance, Passerelle Partners can help you develop a plan to make sure premium or loan interest payments are made in a tax-efficient matter. Fernando Pou and Chris Daniels are Managing Principals of Passerelle Partners who regularly evaluate trust-owned life insurance. "There are a number of strategies to consider before the final version of the Act becomes law," says Daniels. "In addition to maximizing the current exemption amounts by immediate gifting, looking at all loan options to the grantor trust, and reviewing existing policies is important. These policies could be restructured so future premiums are optimized from a cash flow and tax perspective."

One innovative planning technique Passerelle Partners employs is arranging commercial financing for policy premiums of trust-owned policies. "Commercial financing often results in a lower need for additional cash going into the Trust and sometimes can be eliminated if interest is accrued," explains Pou. "It is also more efficient on a client's balance sheet versus private financing."

The final version of the Act has not yet been released. Planning implications vary for clients that have previously funded grantor trusts and clients that are now considering this as an estate planning tool. On the latter, some clients are moving forward with the assumption that the legislative impacts will have negative implications. Others are taking a wait-and-see approach to understand the final version of the Act before making planning decisions. Passerelle Partners can assist you and your advisory team in navigating this environment and optimizing your insurance-based solutions.

---

## ABOUT PASSERELLE PARTNERS

Passerelle Partners is a boutique insurance advisory firm keenly focused on asset diversification, wealth preservation, and liability management solutions for U.S. and International families.

Our open-source platform allows clients to benefit from comprehensive solutions, developed with the full breadth of Passerelle Partners' internal capabilities, as well as with the support from an external network of reliable partners and specialists.

### MIAMI

1441 BRICKELL AVENUE, SUITE 1520  
MIAMI, FLORIDA 33131  
T: +1.305.359.3559

### CHARLOTTE

3315 SPRINGBANK LANE, SUITE 309  
CHARLOTTE, NC 28226  
T: +1.704.369.2194



PASSERELLE  
P A R T N E R S