

This document and any attachments are superseded by Comptroller's Handbook - Community Bank Supervision.

Organizational Structure

An effective system of supervision is essential if the savings association is to properly discharge its duties and responsibilities. A necessary prerequisite to an effective system of supervision is an effective and efficient system of organization. Organization includes both administrative personnel and the executive structure of the trust department. It also includes other board committees relating to trust and asset management and the assigned responsibilities of all pertinent entities through which adequate supervision is achieved.

The organizational structure of the trust department should be clearly spelled out in the savings association's written records (e.g., bylaws, board resolutions and management plans). These records must clearly define organizational relationships and responsibilities. They must delineate not only a system for the orderly functioning of the trust department but also an internal system of accountability. The organizational structure should be designed to accommodate the volume and type of business administered and should be reviewed periodically by the board to ensure that it continues to ensure proper administration of the savings association's trust and asset management business. Any system of organization is acceptable so long as it is tailored to meet the institution's responsibilities, is workable for the institution and the directors are fulfilling their responsibilities. Nonetheless, there are several principles common to an effective organizational structure, including:

- the structure should be designed to promote an orderly flow of daily work;
- committee and individual functions, including lines of authority, duties and responsibilities, should be clearly defined and communicated to all personnel;
- organizational plans should include procedures for personnel recruitment, training, evaluation and salary administration;
- staff should be sufficient in numbers to handle the volume of work, including provision for peak workloads;
- strategic and business planning should be ongoing and continuous; and
- compliance and risk management oversight should be implemented throughout the organization

Management appraisal involves the evaluation of the quality of supervision of the trust and asset management activities by the directors, officers, employees and committees of the savings association. The examiner's purpose in reviewing the supervisory function is to evaluate the adequacy of the existing management system and organization framework as they relate to meeting the savings association's stated responsibilities, as well as generally accepted standards of fiduciary conduct.

The appraisal of management is accomplished through a combination of observation and information, involving both objective and subjective judgments made during the examination. The assessment of management's effectiveness is also measured against the size and complexity of the trust department. In assessing the competence of management, their qualifications and performance should be evaluated relative to duties and responsibilities assigned to them. For example, a department manager may possess limited knowledge of fiduciary matters yet possess effective managerial skills; but if middle-level employees have sufficient fiduciary knowledge, which senior management follows, management can be considered satisfactory. As another example, the knowledge and skills necessary to effectively manage a small

department with relatively uncomplicated accounts is different from that required to effectively manage a large and diverse department; management's competence should be measured against its activity and not necessarily compared to that of another person or institution.

The appraisal of management therefore covers the full range of functions and activities related to the operation of the trust department. It includes review and evaluation of the:

- duties and responsibilities of directors;
- organizational structure and its effectiveness;
- extent and effectiveness of direct supervision, both directly and through committees;
- competence, leadership and administrative ability of senior management;
- competence and adequacy of supporting staff;
- attention paid to monitoring litigation, charge-offs and other losses, to determine their causes and to initiate a course of action to prevent or minimize their recurrence;
- responsiveness to audit and examination reports;
- short and long-range business plans for the trust department;
- financial performance of the trust department;
- availability of and reliance upon competent legal counsel; and
- sufficiency of liability insurance coverage.

In evaluating the competence of senior and supporting personnel the examiner should consider: education (level of academic achievement and its relationship to the position held), training (level of professional training, schools, seminars), experience (nature of fiduciary experience, prior history) and character (personality, reputation, reliability, work ethics).

Trust Committees

The board of directors may authorize the establishment of a fiduciary audit committee. The purpose of the fiduciary audit committee is to direct the conduct of the audit required under OTS regulations at §550.440. The fiduciary audit committee may be a committee made up of members of the board of directors or an audit committee of an affiliate. There are two restrictions in OTS regulation §550.470 on who may serve on the audit committee. The first restriction is that officers of the savings association and officers of an affiliate that participate significantly in administering the fiduciary activities of the savings association may not serve on the audit committee. The second restriction is that a majority of the members of the audit committee may not serve on any committee to which the board of directors has delegated power to manage and control the fiduciary activities of the savings association.

Dual Employees

Many trust departments have determined that, for efficiency purposes, certain officers and employees will be employed as "dual employees," whereby their responsibilities are split between the trust department and other affiliated entities. While this is an allowable practice, management should establish specific guidelines governing the employee's obligation to the savings associations' trust department, as well as his/her duty of loyalty to the department's fiduciary customers.

Management Examination Program

Examination Objectives

To assess the level and quality of oversight of trust and asset management activities by the board of directors and management. Consider whether the oversight:

- ensures compliance with applicable law and sound fiduciary principles;
- assures the accuracy, timeliness and effectiveness of management information and risk monitoring systems that are appropriate for the savings association's size, complexity and trust and asset management risk profile;
- is responsive to recommendations from auditors and regulatory authorities;
- assures sound strategic planning for trust and asset management products and services;
- addresses issues relating to turnover and succession planning;
- maintains adequate insurance coverage and the availability of competent legal counsel; and
- addresses pending litigation associated with trust and asset management activities in regards to the potential impact on earnings, capital and the savings association's reputation.

Examination Procedures

Level I

Wkp. Ref.

Level I procedures first focus on a review of the examination scoping materials. The next step consists of interviews with trust department personnel to confirm their qualifications and levels of expertise; to determine if the trust department's practices conform to written guidelines; to establish whether any significant changes in personnel, operations or business practices have occurred; or whether new products and/or services have been introduced. If items of concern are uncovered during Level I procedures or if problems are identified during the preexamination monitoring and scoping; the examiner may need to perform particular Level II procedures.

1. Review examination scoping materials related to the management of the trust department.
Scoping material should include:
 - Risk profile

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- Relevant PERK documents
- Approval letter
- ECEF reports
- Previous trust and asset management examination report
- Work papers from the previous examination
- Board and committee minutes, by-laws and organization chart
- ADV report and any amendments
- Previous safety and soundness examination report
- Examination reports of subordinate functionally regulated entities

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2. Review and evaluate minutes of the board of directors, trust, audit and any other committee overseeing trust and asset management activities to determine:
- the powers, duties and responsibilities of the various committees and officers within the savings association;
 - the decision-making process for overall policies, procedures and controls;
 - management responsiveness to internal audit and examination review findings;
 - risk monitoring information systems;
 - the quality of the risk management process; and
 - authorization levels for account acceptance and distributions
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3. Evaluate the trust department's policies and procedures. Determine whether significant revisions were made to keep pace with changes in trust and asset management activities or for other reasons. Consider the process for monitoring adherence to these policies and procedures.

4. Assess the compliance program. Review and assess compliance reports submitted to management. Determine whether the compliance program is adequate for the size and complexity of the savings association.

5. Review the periodic reports submitted to executive management and the board. Determine their usefulness in monitoring the condition and operations of the trust department.

6. Determine whether management has complied with conditions of approval, orders or directives from regulatory authorities.

7. Obtain or update biographical information on key personnel. Determine any significant personnel and/or organizational changes and evaluate whether management has the expertise necessary to carry out trust and asset management activities. Review management succession and any replacement of personnel.

8. Note whether the trust department uses dual employees.

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9. Review and evaluate current and long-range strategic and/or business plans. Consider:
- management's willingness and ability to adjust strategies based on regulatory changes, market disruptions, product changes or legal losses;
 - management information systems for new or expanded products;
 - the adequacy and independence of controls used to monitor business plan implementation;
 - whether the plan is consistent with stated risk tolerance, management expertise and technological capabilities;
 - reports on plan implementation for its financial performance, adherence (or variance) to the savings association's risk profile and capital adequacy; and
 - how the risk management program is integrated into the business planning process.

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10. Consider whether the following risks contributors (if applicable) have been addressed:
- Board's knowledge and understanding of its duties and responsibilities
 - Extent and effectiveness of director supervision, both directly and through committees
 - Competence, leadership and administrative ability of senior management
 - Monitoring litigation, consumer complaints, charge-offs and other losses to determine their causes and to initiate a course of action to prevent or minimize their reoccurrence
 - Compliance with applicable law and fiduciary principles
 - Scope and reasonableness of short and long-range business plans for the trust department

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- Availability of and reliance upon competent legal counsel
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The completion of the Level I procedures may provide sufficient information to make a determination that no further examination procedures are necessary. If no determination can be made, proceed to Level II.

Level II

Level II procedures focus on an analysis of trust department documents such as reports and outsourcing contracts. The examiner should complete the appropriate Level II procedures when the completion of Level I procedures does not reveal adequate information on which to base a conclusion that the trust department meets the examination objectives. Neither the Level I nor the Level II procedures include any significant verification procedures.

1. Review the savings association's overall insurance coverage. Determine if management reviews the liability insurance annually and considers the current coverage adequate based on the trust department activities.

2. Ascertain if senior management is aware of their responsibilities relating to any regulatory reporting, registration and/or compliance requirements.

3. Determine whether the savings association has established a referral fee or other business incentive plans. If so, determine if the fees being paid could lead to adverse profitability and/or other consequences to the trust department.

4. Evaluate the promptness with which management recognizes and addresses customer account problems. Assure that customer complaints are resolved in an equitable and expeditious manner.

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5. Evaluate the board and management's oversight of the activities of dual employees when they are performing services for the trust department.
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6. Review records and reports that summarize employee turnover. Interview management and other personnel to determine the reasons for any excessive turnover, if applicable.
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7. Determine whether management uses legal counsel appropriately and effectively. Consider:
- the level and status of current and pending litigation;
 - if counsel is used when the language in the governing instruments is unclear or ambiguous or presents complex points of law;
 - if counsel is used to review transactions involving conflicts of interest; and
 - if counsel is utilized to review the offering of new products and services for compliance with applicable law.
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If the examiner cannot rely on the trust and asset management Level I or Level II procedures, or data contained in department records or internal or external audit reports; proceed to Level III.

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Level III

Level III procedures include verification procedures that auditors usually perform. Although certain situations may require that Level III procedures be completed, it is not the standard practice of Office of Thrift Supervision (OTS) examination staff to duplicate or substitute for the testing performed by auditors.

1. Assess the workload of key personnel in the trust and asset management business lines. Consider the degree of turnover of critical staff given the business volume, complexity and risk profile. Also consider the impact of cost cutting programs on workload assignments.

2. Evaluate internal training and employee development programs.

3. Consider whether problems and significant risks identified in the trust department threaten the continued viability of the savings association and pose a threat to the trust and asset management accounts.

4. Consider whether replacing or strengthening management or the board of directors is necessary.

Examiner's UITRS Rating, Summary, Conclusions and Recommendations:

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Reference - 210P

Laws

Code of Federal Regulations

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12 CFR 550	Trust Powers of Federal Associations (General)
12 CFR 550.140	Policies and Procedures
12 CFR 550.150	Responsibility for Fiduciary Powers
12 CFR 563.42(b)	Standards Applicable to Transactions with Affiliates and Subsidiaries

Office of Thrift Supervision Publications

Section 300	Thrift Activities Handbook Director Information Guide
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Other

TB 76-1	Paying Finders or Referral Fees for Trust Business
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Workpaper Attachments - 210P

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