

Department of the Treasury

## Thrift Bulletin

**TB 76-1a**Handbooks: **Trust and Asset Management**Subject: **Conflicts of Interest****Section: 710****Paying Fees for the Referral of Trust Business**

**Summary:** The guidelines expressed in this bulletin are intended to assist a savings association in structuring a referral fee program that will meet its fiduciary duty of loyalty and avoid conflicts of interest.<sup>1</sup> Unless otherwise stated, the guidelines apply whether or not the referring persons or entities are affiliated with the savings association. The guidelines rescind Thrift Bulletin 76-1.

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OTS permits savings associations to pay referral fees to persons or entities that refer trust business to the institution<sup>2</sup>. OTS does not arbitrarily impose limitations on the size of referral fees paid. However, savings associations should be aware that OTS will assess the impact of the referral fee payments on the trust department's income and the savings association's overall financial condition.

Trust account customers<sup>3</sup> impacted by the referral fee program should receive a referral fee disclosure from the savings association prior to payment of the referral fee. The referral fee disclosure must be in writing and at a minimum contain the following information:

- The name of the referring party and the savings association;
- The nature of the relationship, including any affiliation, between the referring party and the savings association;
- The terms of the referral arrangements, including a description of the compensation paid or to be paid to the referring party;
- A statement that the referral fee will not result in any increased charge to the customer;

<sup>1</sup> Savings associations that are registered investment advisers must also comply with SEC regulation 17 C.F.R. 275.206(4)-3 – Cash payments for client solicitations.

<sup>2</sup> OTS Chief Counsel Opinion P-98-14 (December 21, 1998) (Payment of Finders' Fees for Referral of Trust Business).

<sup>3</sup> The term "trust account customer" is defined for purposes of this thrift bulletin as those persons or entities under applicable state law that are entitled to receive trust account statements or for employee benefit accounts it is defined as the plan sponsor.

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- A statement indicating that only the savings association will provide fiduciary services; and
- The extent of any support services the referring party will perform<sup>4</sup>.

When establishing a referral fee program, a savings association should determine that:

- The referral fee agreement is in writing and includes: (a) a description of any support services the referring party will perform for the savings association; (b) a statement that those support services will be performed in a manner consistent with the instructions of the savings association and in accordance with provisions of law; and (c) the compensation to be paid to the referring party.
- The referral fee program is approved by the board of directors and annually reviewed by senior management;
- The referral fees are reasonable under the circumstances and do not result in the customer paying any additional amount for trust services;
- The customer is provided with a written referral fee disclosure;
- Fee arrangements are terminated when the account closes;
- Fee arrangements with affiliates or subsidiaries are in compliance with the restrictions with affiliates or subsidiaries set forth in 12 U.S.C. 1468 and OTS's transactions with affiliates regulations at 12 C.F.R. 563.41.
- Fee arrangements for employee benefit plans subject to the Employee Retirement Income Security Act of 1974 ("ERISA") do not violate any ERISA provisions, particularly as addressed in ERISA Section 406 – Prohibited Transactions; and
- A copy of the master referral fee agreement and referral fee disclosure is maintained.

Savings associations with existing trust customer accounts that are generating on-going referral fee payments (i.e., the referring party is continuing to receive a periodic referral fee for the existing account) should make a good faith effort to meet the oversight and disclosure conditions with regard to those customer accounts if the on-going fee payment will be affected by a new or revised referral fee program.

Referral programs affecting new trust customers or accounts should meet the conditions immediately.



—Grovetta Gardineer

**Managing Director  
Examinations and Supervision Policy**

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<sup>4</sup> Examples of permissible support services are: performing administrative and record-keeping functions, transmitting documents, obtaining customer signatures, scheduling sales calls, performing market research, distributing brochures, and conducting seminars.