
Conflicts of Interest Examination Program

Examination Objectives

To determine management's effectiveness in identifying and monitoring conflicts of interest or self dealing in the trust department. Consider whether:

- the institution has adopted satisfactory policies and procedures to prevent or resolve self-dealing or other conflict of interest situations;
- effective systems and controls are in place to identify actual and potential conflicts of interest;
- policies and procedures and applicable law are followed when the savings association is faced with conflict of interest situations;
- the purchases, sales and holdings of the savings association's (and its subsidiaries or affiliates) own securities or other obligations are conducted in accordance with applicable law, provisions of the governing instrument and established policies and procedures;
- the purchases, sales and holdings of securities or other obligations of entities in which directors or principal officers of the savings institution or its affiliates have an interest are conducted in accordance with applicable law, provisions of the governing instrument and established policies and procedures;
- the purchases or holdings of deposits in the savings association or its affiliates are conducted in accordance with applicable law, provisions of the governing instrument and established policies and procedures;
- services provided by other departments of the savings association or its affiliates are proper and authorized;
- adequate practices are in effect to prohibit the use of material inside information by trust department personnel; and
- there is adequate documentation to support discretionary investment decisions.

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Page 1 of 11

Conflicts of Interest Examination Program

Wkp. Ref.

Examination Procedures

Level I

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 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 conflicts of interest. Scoping material should include:

- Risk profile
- PERK documents
- ECEF reports
- The most recent ADV filing and any amendments
- Previous trust and asset management examination report
- Previous safety and soundness examination report
- Workpapers from the previous examination
- Management's conflict of interest monitoring reports
- Board and committee minutes

2. Review policies and procedures regarding conflicts of interest for adequacy. Consider whether they address:

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Page 2 of 11

Conflicts of Interest Examination Program

Wkp. Ref.

- Trust department employee code of ethics
- Prevention and use of material inside information
- Use of proprietary products and services
- The receipt of 12b-1 or other fees from proprietary or third party mutual funds
- Soft dollar arrangements and best execution
- Securities trading practices related to the allocation of brokerage business
- The extent and permissibility of transactions with related parties
- The disclosure of affiliated relationships
- Transactions between accounts

3. Evaluate the effectiveness of the trust department's internal systems to monitor compliance with its policies and procedures and to otherwise identify potential conflict of interest situations.

4. Determine whether any new trust or asset management products or services are being offered and whether they present any potential or actual conflicts of interest.

5. Review the trust department's information concerning entities in which the institution has a substantial interest. Ensure that this information is complete, accurate and available to the appropriate parties.

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Page 3 of 11

Conflicts of Interest Examination Program

Wkp. Ref.

6. Determine if the saving association's policies and procedures adequately address fee concessions to officers, directors and employees.

7. Consider whether the following risk contributors have been addressed:

- The quality of written policies and procedures
- The level and effectiveness of management oversight
- The effectiveness of the audit, risk management and compliance programs
- The ability and willingness to identify, monitor and address potential conflicts of interest
- The nature of products and services offered
- The use of affiliated products or services for which the savings association receives a fee or other benefit
- The quality and effectiveness of educational programs for personnel

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.

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Page 4 of 11

Conflicts of Interest Examination Program

Wkp. Ref.

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 list of assets held in discretionary accounts, paying particular attention to securities or other obligations of the savings association, its affiliates or related interests.

2. Review new or amended soft-dollar arrangements to determine whether they fall within the 28(e) safe harbor provisions.

3. Review the savings association's brokerage placement practices. Consider whether:

- brokerage fees are monitored;
- best execution is being achieved from designated brokers; and
- trading opportunities are equitably allocated to all accounts.

4. If the trust department uses an affiliated broker to effect securities transactions for fiduciary accounts, determine that:

- applicable law allows the use of an affiliate;
- adequate disclosure is being made of the affiliated relationship; and
- best execution is being achieved.

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Page 5 of 11

Conflicts of Interest Examination Program

Wkp. Ref.

5. Determine that uninvested trust funds are managed properly. Consider whether:
- uninvested funds are awaiting investment or distribution;
 - funds remain uninvested no longer than is reasonably necessary;
 - funds held uninvested for more than a temporary period are held in accordance with applicable law; and
 - rate of return for uninvested funds is consistent with applicable law.
-
6. Determine that fees are charged in compliance with 12 CFR §550.380 or other applicable law. Consider whether:
- fees are either set in accordance with applicable law or are reasonable given the nature of the services being provided;
 - revisions or changes in fees are appropriate and done in accordance with applicable law or policies and procedures; and
 - fee concessions for officers, directors and other employees are granted under a general policy that is uniformly applied and approved by the board.
-
7. Determine that the investment policies, procedures and practices require:
- fair and equitable allocation of prices, securities and trading opportunities; and
 - buy and sell orders between fiduciary accounts to be conducted only where applicable law allows and on a fair and equitable basis.
-

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Page 6 of 11

Conflicts of Interest Examination Program

Wkp. Ref.

8. Determine that the savings association conducts educational programs for personnel to foster awareness of the importance of avoiding both the appearance of conflicts of interest and actual abuses.

9. If necessary to validate an assertion, finding or concern arising from the completion of the Level I and II procedures, judgmentally select a limited number of accounts for review considering the degree of risk to the institution. Not all types of accounts need to be reviewed to arrive at a well-founded conclusion.

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.

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 the Office of Thrift Supervision (OTS) examination staff to duplicate or substitute for the testing performed by auditors.

1. Review a sample of directed accounts holding savings association or affiliate securities. Determine if proper authorization for such investment exists. Also determine if the authorizations are updated periodically.

2. Review a sample of accounts holding proprietary products. Determine if the transactions involving those assets were conducted in accordance with applicable law and proper procedures. Determine if the assets meet the prudent law standard. Determine whether fees received from mutual funds are in accordance with applicable law.

Exam Date: _____

Prepared By: _____

Reviewed By: _____

Docket #: _____

Page 7 of 11

Conflicts of Interest Examination Program

Wkp. Ref.

3. Review a sample of transactions involving cross-trading between fiduciary accounts and transactions between an account and the savings association or its affiliates. Determine if applicable law and proper procedures were followed.

4. Determine whether the trust department or an affiliate has been a member of a syndicate that sold debt securities or whether the trust department or an affiliate advised a party in a private placement or assisted in the placement. Using this list of syndicates or private placements, determine whether:

- trust department personnel were notified of the participation in such securities activities; and
 - any such securities were purchased by a fiduciary account.
-

5. Determine whether the savings association, when acting as corporate bond trustee, performs an adequate check for conflicts of interest as required by the Trust Indenture Act of 1939.

6. Review conflict of interest situations involving corporate trust accounts under administration. Consider potential conflicts when corporate trust clients have borrowings with the commercial side of the savings association or have letters of credit from the commercial side supporting a bond issue.

7. Review proxies or lists of shares voted to determine whether the savings association has complied with its policies and procedures when voting its own stock and its holding company stock, particularly with respect to the election of directors. Determine that its policies require that it vote shares in the best interest of each account.

Exam Date: _____

Prepared By: _____

Reviewed By: _____

Docket #: _____

Page 8 of 11

Conflicts of Interest Examination Program

Wkp. Ref.

8. Obtain a list of all companies or individuals to whom money is loaned by accounts in which the savings association exercises investment discretion. Determine whether the loan proceeds were used to pay any loan to the savings association.

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

References - 710P

Laws

Securities Exchange Act of 1934 Section 28(e), Soft Dollars

Code of Federal Regulations

12 CFR 550	Trust Powers of Federal Associations (General)
12 CFR 550.140	Policies and Procedures
12 CFR 550.200-220	Annual Review of Trust Assets
12 CFR 550.290 – 320	Funds Awaiting Investment or Distribution
12 CFR 550.330 – 370	Restrictions on Self Dealing
12 CFR 550.380 – 400	Regulation Governing Gifts, Compensation, and Bequests

Office of Thrift Supervision Publications

TB 76-2 Conflicts of Interest Relating to Fiduciary Accounts

Other

PTE 77-4	Investment of Qualified Plan Assets in Proprietary Mutual Funds
DOL Advisory Opinions	93-12A, 93-13A, 97-15, 97-16
12 CFR 270.12b-1(a)(2)	12b-1 Fees

Workpaper Attachments - 710P

Exam Date:	_____
Prepared By:	_____
Reviewed By:	_____
Docket #:	_____

Page 9 of 11

Conflicts of Interest Examination Program

Optional Topic Questions

The following list of questions is offered merely as a tool and reference for the examiner and is not a required part of the examination process.

Policies

<ul style="list-style-type: none">• Does the policy establish standards of business ethics?
<ul style="list-style-type: none">• Does the policy define a conflict of interest?
<ul style="list-style-type: none">• Does the policy set forth procedures for screening transactions to determine the existence of conflicts and provide a system of compliance?
<ul style="list-style-type: none">• Does the policy address trust department employees serving as a cofiduciary?
<ul style="list-style-type: none">• Does the policy address loans to fiduciary clients?
<ul style="list-style-type: none">• Does the policy address trust department employees accepting gifts and bequests from fiduciary clients?
<ul style="list-style-type: none">• Does the policy prevent employees from unauthorized trading?
<ul style="list-style-type: none">• Does the policy prohibit personal trading based on information gained as an employee of the savings association?
<ul style="list-style-type: none">• Are procedures in place for the reporting of personal securities transactions?
<ul style="list-style-type: none">• Does the policy define material inside information?
<ul style="list-style-type: none">• Does the policy suspend trading activity in affected securities until such information is made public?
<ul style="list-style-type: none">• Are procedures in place to prohibit front running?

Own-bank Products and Services

<ul style="list-style-type: none">• For own-institution deposits:<ul style="list-style-type: none">• Is the investment allowable under local law and authorized by the governing instrument?• Are rates and services comparable to competing financial institutions?
<ul style="list-style-type: none">• For proprietary mutual funds:<ul style="list-style-type: none">• Is the investment allowable under applicable law?• Are appropriate disclosure procedures in place?• Has documentation been made that this is a prudent investment?
<ul style="list-style-type: none">• For own-institution or affiliate securities:<ul style="list-style-type: none">• Is the investment permitted under applicable law?• Has documentation been made that this is a prudent investment?• Are appropriate disclosure procedures in place?

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Conflicts of Interest Examination Program

<ul style="list-style-type: none"> • Are appropriate procedures in place governing the proxy voting of such securities?
<ul style="list-style-type: none"> • For affiliated brokerage, insurance or other services: <ul style="list-style-type: none"> • Does applicable law permit the use of these products and services? • Were proper disclosures made to the appropriate account holders?

Transactions With Accounts

Are policies and procedures in place governing:
<ul style="list-style-type: none"> • The sale of assets to itself from an account for which the savings association is a fiduciary?
<ul style="list-style-type: none"> • The making of a loan to an account that is secured by an interest in the assets of the account?
<ul style="list-style-type: none"> • The making of loans between fiduciary accounts?
<ul style="list-style-type: none"> • The sale of assets between fiduciary accounts?

Entities that savings associations may have an interest in

Information on entities in which the savings association has an interest should include:
<ul style="list-style-type: none"> • Names of directors and principal officers and their outside business affiliations.
<ul style="list-style-type: none"> • Names of affiliates, their directors and principal officers.
<ul style="list-style-type: none"> • Names of entities in which the savings association may have an interest, such as other financial institutions that have common directors or a degree of common ownership.
<ul style="list-style-type: none"> • Names of principal shareholders (5 percent and over) of the savings association and its affiliates, excluding directors and principal officers.
<ul style="list-style-type: none"> • The institution's large commercial customers.
<ul style="list-style-type: none"> • Names of other individuals with whom the savings association has a relationship that may affect the exercise of its best judgment, such as advisory or honorary directors and director's emeriti.
<ul style="list-style-type: none"> • Persons with whom the savings association conducts significant amounts of business, such as real estate brokers, agents and appraisers, securities brokers, legal and investment advisors, insurance agents and brokers and the companies with which such individuals are affiliated.
<ul style="list-style-type: none"> • Any syndication with which the savings association or an affiliate has engaged in the sale of securities or has advised or assisted in a private placement.

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____