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# Personal and Court Accounts Examination Program

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## Examination Objectives

To determine the adequacy and effectiveness of the trust department's administration of personal and court accounts. Consider whether:

- Effective policies, procedures and internal controls have been established;
- Expertise is available to administer the accounts;
- There is adequate documentation regarding administrative and investment decisions. The documentation should include all communication between the trust department, the beneficiaries and other interested parties;
- Policies and procedures have been established to ensure compliance with governing instruments, applicable law and accepted fiduciary principles; and
- Deficiencies are identified and corrective action promptly initiated.

## Examination Procedures

Wkp. Ref.

### 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; 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 certain Level II procedures.

1. Review examination scoping materials related to the administration of personal and court accounts. Scoping material should include:
  - Risk profile
  - Relevant PERK documents
  - Previous trust and asset management examination report

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- Workpapers from the previous examination
- Examination reports of subordinate, functionally regulated entities
- Board of director and other applicable committee minutes
- Complaint and litigation files

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2. Review the master list or account ledger(s) to determine account types and volumes being administered. Determine any changes in product offerings since the previous examination. Determine whether required approvals, notifications or registrations have been filed.

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3. Review policies, procedures and internal controls related to the administration of personal and court accounts, noting any changes since the last examination. Determine the adequacy of policies and procedures, given the number and size of personal and court accounts, including:

- acceptance of accounts;
- administration of accounts (including cofiduciary and directed accounts); and
- termination of accounts.

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4. Is there sufficient expertise to carry out administrative functions in accordance with existing policies and procedures? Identify and note any changes in personnel responsible for the administration of personal and court accounts.

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5. Consider whether the following risk contributors have been appropriately addressed:
- Has the board implemented appropriate policies, procedures and internal controls covering all facets of account administration?
  - Have comprehensive and effective audit, compliance and risk management processes been established?
  - Does management exhibit the appropriate level of expertise to ensure compliance with applicable law and accepted fiduciary principles?
  - Are appropriate management reporting systems in place?
  - Does the trust department exhibit consistency in account administrative practices?
  - Are standards in place governing account documentation?

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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 new business production (including both accepted and rejected accounts). Determine whether policies require that the trust department perform a preacceptance review of accounts prior to acceptance. Interview management to ensure the actual practice is consistent with stated policies.

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2. Interview management to determine whether account approval procedures are used, committee approvals are obtained, necessary documents are acquired and synoptic records are prepared consistent with policies and procedures.

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3. Review successor appointment policies and procedures to determine whether acts of prior fiduciaries are reviewed, assets are properly received and appropriate documentation is obtained.

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4. Review cofiduciary, directed and escrow account policies and procedures to determine whether necessary authorizations or directions are obtained and on file.

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5. Review closed account policies and procedures to determine if there are established procedures for closing accounts and if reasons for closing are noted. Determine if the policies ensure that assets are transferred in a timely manner.

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6. Review committee minutes to ensure that initial, annual and closing account reviews are adequately performed and documented in a timely manner consistent with internal policies and procedures and OTS regulations.

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7. Review policies and procedures for estates to ensure that state probate laws are followed as appropriate. Also ensure that the policies address the timely filing of tax returns.

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8. Are procedures in place to gain immediate physical control over the decedent's real and personal property? Are dual control procedures followed with respect to negotiable items, collectibles, safe deposit contents and other valuable property?

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9. Are procedures in place to ensure that all items in the estate inventory are promptly recorded on the books of the account?

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10. 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.

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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.**

### 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. Select a sample of personal and court accounts for review. Ensure that the sample contains all types of accounts, including a selection of new, seasoned and closed accounts and provides coverage of all administrative personnel and all business locations. If necessary, select additional accounts considering:
    - accounts in which litigation is pending or has been threatened, and accounts for which complaints have been lodged with the institution;
    - accounts reviewed internally which exhibit identifiable concerns; and
    - accounts holding large investments in illiquid or unusual assets.
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2. From the sample, review account administration practices to determine compliance with terms of the governing instruments, applicable law, accepted fiduciary principles as well as conformance with policies and procedures.  

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3. Review accounts to determine that receipts and disbursements are received and processed appropriately.  

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4. Review accounts to determine conformance with policies and procedures relating to discretionary distributions.  

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5. Review accounts to determine that appropriate documentation is maintained supporting all account transactions. Determine accuracy of customer account statements.  

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6. Review accounts for conflicts of interest or preferential treatment to insiders or affiliates.  

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7. Review estates to determine whether any have remained in the process of settlement for an extended period of time, and if so, determine why.  

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8. Review discretionary account investments with regard to adherence to approved lists, diversification and the meeting of account objectives. Also review accounts with restricted investment clauses to determine compliance with the terms of the governing instruments.  

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9. Review a selection of closed accounts to determine if the accounts were closed in accordance with established procedures and the assets transferred in a timely manner.

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10. Review successor trusteeships to ensure that acts of prior fiduciaries are adequately reviewed and indemnification is obtained from the prior trustee or account beneficiaries.

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

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#### References - 720P

##### Laws

HOLA                                      Section 5(n), Trusts

##### Code of Federal Regulations

12 CFR 550                                Trust Powers (General)  
12 CFR 550.200-220                    Review of Fiduciary Accounts  
12 CFR 550.410                         Recordkeeping

##### Office of Thrift Supervision Publications

##### Other

Prudent Person Rule  
Prudent Investor Rule

#### Workpaper Attachments - 720P

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## 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.

### ***Preacceptance Review***

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| <ul style="list-style-type: none"><li>• Do policies and procedures identify documentation requirements for the preacceptance account review?</li></ul>  |
| <ul style="list-style-type: none"><li>• Does the preacceptance process consider the type and character of account assets relative to administrative complexity and the institution's expertise?</li></ul>                 |
| <ul style="list-style-type: none"><li>• Does the preacceptance review consider provisions of the governing instrument, relative to legal sufficiency, administrative complexity and any unusual duties imposed?</li></ul> |
| <ul style="list-style-type: none"><li>• Does the preacceptance review consider whether the account can be administered to achieve the purpose for which it was established?</li></ul>                                     |
| <ul style="list-style-type: none"><li>• Does the review identify any real or potential conflicts?</li></ul>   |
| <ul style="list-style-type: none"><li>• Is the potential profitability of the account considered?</li></ul>   |
| <ul style="list-style-type: none"><li>• Are environmental risks and other liabilities for assets such as real property and closely held business interests identified?</li></ul>  |

### ***Account Approval***

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| <ul style="list-style-type: none"><li>• Does the board of directors approve all new accounts?</li></ul>   |
| <ul style="list-style-type: none"><li>• If the board of directors does not approve all new accounts, has there been proper delegation of acceptance authority to a committee or individual officers, with guidelines established for decision-making?</li></ul> |
| <ul style="list-style-type: none"><li>• Is there documentation of approvals in appropriate minutes, reports or files?</li></ul>   |
| <ul style="list-style-type: none"><li>• Has the trust department obtained the appropriate executed account documents?</li></ul>   |

### ***Successor Appointments***

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| <ul style="list-style-type: none"><li>• Is proof obtained of the prior trustee's removal or resignation?</li></ul>  |
| <ul style="list-style-type: none"><li>• Are original or certified copies of governing instruments obtained?</li></ul>   |
| <ul style="list-style-type: none"><li>• Does the trust department verify that all governing documents and essential supporting documentation have been received?</li></ul>                  |
| <ul style="list-style-type: none"><li>• Do trust department personnel obtain and review accountings by prior trustee(s)?</li></ul>  |
| <ul style="list-style-type: none"><li>• Is a reconciliation performed to ensure that all assets, as well as any income, have been received?</li></ul>                                       |
| <ul style="list-style-type: none"><li>• Does the trust department obtain indemnification from the prior trustee or the account beneficiaries for activities of the prior trustee?</li></ul> |

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## ***Closed Accounts***

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| <ul style="list-style-type: none"><li>• Are proper account documents, such as death certificates, final accountings, court discharges, directions to terminate and trustee releases on file?</li></ul> |
| <ul style="list-style-type: none"><li>• Are there procedures requiring the timely distribution of assets?</li></ul>  |
| <ul style="list-style-type: none"><li>• Are receipts obtained and maintained for the delivery of account assets?</li></ul>   |
| <ul style="list-style-type: none"><li>• Are account closing reviews and termination approvals recorded in appropriate committee minutes?</li></ul>   |
| <ul style="list-style-type: none"><li>• Are closed accounts promptly removed from the trust accounting system?</li></ul>   |

## ***Account Reviews***

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| <ul style="list-style-type: none"><li>• For new accounts, are procedures in place to ensure that an initial review is performed within 60 days of receipt of assets?</li></ul> |
| <ul style="list-style-type: none"><li>• Are procedures in place to ensure that annual account reviews are performed in a timely and orderly manner?</li></ul>                  |
| <ul style="list-style-type: none"><li>• Are annual reviews documented and reviewed by senior management and the board of directors (or their designated committee)?</li></ul>  |
| <ul style="list-style-type: none"><li>• During the annual review, are investment objectives updated?</li></ul>   |

## ***Account Administration***

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| <ul style="list-style-type: none"><li>• Do procedures employ documentation checklists for opening and closing accounts?</li></ul>   |
| <ul style="list-style-type: none"><li>• Do procedures ensure that proxies are voted solely in the best interests of account beneficiaries?</li></ul>  |
| <ul style="list-style-type: none"><li>• Are tickler files maintained relating to the preparation and timely execution of future duties?</li></ul>   |
| <ul style="list-style-type: none"><li>• Are adequate controls in place to ensure the timely recording of assets and liabilities received?</li></ul>   |
| <ul style="list-style-type: none"><li>• Is evidence of appointment, such as trust or agency agreements, wills, letters of office from the court or similar documentation, maintained?</li></ul>                                 |
| <ul style="list-style-type: none"><li>• Are proper and timely written authorizations from cofiduciaries or others whose approval or direction may be required for various actions, maintained?</li></ul>                        |
| <ul style="list-style-type: none"><li>• Do procedures ensure accuracy of income and principal allocation, as appropriate?</li></ul>   |
| <ul style="list-style-type: none"><li>• Are timely filings of accountings with the court, principals, grantors, trustees or beneficiaries made?</li></ul>   |
| <ul style="list-style-type: none"><li>• Are appropriate approvals by the board of directors or its designated committee obtained and documented?</li></ul>  |
| <ul style="list-style-type: none"><li>• Do procedures require obtaining appropriate executed account documents?</li></ul>   |
| <ul style="list-style-type: none"><li>• Are procedures and controls in place to identify and review tax filing requirements for accounts and is the tax information entered into the trust systems on a timely basis?</li></ul> |
| <ul style="list-style-type: none"><li>• Are closed accounts removed from the tax accounting system on a timely basis?</li></ul>   |
| <ul style="list-style-type: none"><li>• Has the savings association established the proper amount of quarterly taxes due and are they being filed on a timely basis?</li></ul>  |

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| <ul style="list-style-type: none"><li>• Are federal and state estate taxes paid within the time limits required by the Internal Revenue Code and state law?</li></ul>    |
| <ul style="list-style-type: none"><li>• For estates, are fair market values of the estate assets obtained?</li></ul>   |
| <ul style="list-style-type: none"><li>• Are the effects of the Generation Skipping Tax on distributions to younger generations being taken into consideration?</li></ul> |
| <ul style="list-style-type: none"><li>• Do policies and procedures address the handling of late taxes and the penalties and interest assessed to them?</li></ul>         |
| <ul style="list-style-type: none"><li>• Does management review tax returns prepared by an outside service provider prior to actual filing?</li></ul>                     |
| <ul style="list-style-type: none"><li>• Are potentially escheatable assets properly identified and controlled?</li></ul>   |

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