

§ 550.20

follow the standards for the exercise of fiduciary powers in this part.

(2) The OTS will monitor the fiduciary operations of State-chartered savings associations and their subsidiaries to ensure that those operations are conducted in a safe and sound manner. The OTS may object to practices that deviate materially from the practices described in this part, and may restrict or prohibit activities that threaten the safety and soundness of a State-chartered savings association.

§ 550.20 What are fiduciary powers?

Fiduciary powers are the authority that OTS permits you to exercise under 12 U.S.C. 1464(n).

[67 FR 76298, Dec. 12, 2002]

§ 550.30 What fiduciary capacities does this part cover?

You are subject to this part if you act in a fiduciary capacity, except as described in subpart E of this part. You act in a fiduciary capacity when you act in any of the following capacities:

- (a) Trustee.
- (b) Executor.
- (c) Administrator.
- (d) Registrar of stocks and bonds.
- (e) Transfer agent.
- (f) Assignee.
- (g) Receiver.
- (h) Guardian or conservator of the estate of a minor, an incompetent person, an absent person, or a person over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.
- (i) A fiduciary in a relationship established under a State law that is substantially similar to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act as published by the American Law Institute.
- (j) Investment adviser, if you receive a fee for your investment advice.
- (k) Any capacity in which you have investment discretion on behalf of another.
- (l) Any other similar capacity that the OTS may authorize under 12 U.S.C. 1464(n).

§ 550.40 When do I have investment discretion?

(a) *General.* You have investment discretion when you have, with respect to

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a fiduciary account, the sole or shared authority to determine what securities or other assets to purchase or sell on behalf of that account. It does not matter whether you have exercised this authority.

(b) *Delegations.* You retain investment discretion if you delegate investment discretion to another. You also have investment discretion if you receive delegated authority to exercise investment discretion from another.

§ 550.50 What is a fiduciary account?

A fiduciary account is an account that you administer acting in a fiduciary capacity.

§ 550.60 What other definitions apply to this part?

Activities ancillary to your fiduciary business include advertising, marketing, or soliciting fiduciary business, contacting existing or potential customers, answering questions and providing information to customers related to their accounts, acting as liaison between you and your customer (for example, forwarding requests for distribution, changes in investment objectives, forms, or funds received from the customer), and inspecting or maintaining custody of fiduciary assets or holding title to real property. This list is illustrative and not comprehensive. Other activities may also be “ancillary activities” for purposes of this definition.

Affiliate has the same meaning as in 12 U.S.C. 221a(b). For purposes of this part, substitute the term “Federal savings association” for the term “member bank” whenever it appears in 12 U.S.C. 221a(b).

Applicable law means the law of a State or other jurisdiction governing your fiduciary relationships, any Federal law governing those relationships, the terms of the instrument governing a fiduciary relationship, and any court order pertaining to the relationship.

Fiduciary activities include accepting a fiduciary appointment, executing fiduciary-related documents, providing investment advice for a fee regarding fiduciary assets, or making discretionary decisions regarding investment or distribution of assets.

Fiduciary officers and employees means the officers and employees of a Federal savings association to whom the board of directors or its designee has assigned functions involving the exercise of the association's fiduciary powers.

[62 FR 67703, Dec. 30, 1997, as amended at 67 FR 76298, Dec. 12, 2002]

Subpart A—Obtaining Fiduciary Powers

§ 550.70 Must I obtain OTS approval or file a notice before I exercise fiduciary powers?

You should refer to the following chart to determine if you must obtain OTS approval or file a notice with OTS before you exercise fiduciary powers. This chart does not apply to activities that are exempt under subpart E of this part.

If you will conduct . . .	Then . . .
(a) Fiduciary activities for the first time and OTS has not previously approved an application that you submitted under this part.	You must obtain prior approval from OTS under §§ 550.80 through 550.120 before you conduct the activities
(b) Fiduciary activities that are materially different from the activities that OTS has previously approved for you, including fiduciary activities that OTS has previously approved for you that you have not exercised for at least five years.	You must obtain prior approval from OTS under §§ 550.80 through 550.120 before you conduct the activities
(c) Fiduciary activities that are not materially different from the activities that OTS has previously approved for you.	You must file a written notice described at § 550.125 if you commence the activities in a new State. You do not need to file a written notice if you commence the activities at a new location in a State where you already conduct these activities.
(d) Activities that are ancillary to your fiduciary business	You do not have to obtain prior OTS approval or file a notice with OTS.

[67 FR 76298, Dec. 12, 2002; 68 FR 2108, Jan. 15, 2003, as amended at 68 FR 75109, Dec. 30, 2003]

§ 550.80 How do I obtain OTS approval?

You must file an application under part 516, subparts A and E of this chapter.

[66 FR 13006, Mar. 2, 2001]

§ 550.90 What information must I include in my application?

You must describe the fiduciary powers that you or your affiliate will exercise. You must also include information necessary to enable the OTS to make the determinations described in § 550.100.

§ 550.100 What factors may the OTS consider in its review of my application?

The OTS may consider the following factors when reviewing your application:

- (a) Your financial condition.
- (b) Your capital and whether that capital is sufficient under the circumstances.
- (c) Your overall performance.

- (d) The fiduciary powers you propose to exercise.
- (e) Your proposed supervision of those powers.
- (f) The availability of legal counsel.
- (g) The needs of the community to be served.
- (h) Any other facts or circumstances that the OTS considers proper.

§ 550.110 Who will act on my application?

The Director of OTS may act on any application. The Regional Director may act on an application if it does not raise any significant issues of law or policy on which the OTS has not taken a formal position.

§ 550.120 What action will the OTS take on my application?

The OTS may approve or deny your application. If your application is approved, the OTS may impose conditions to ensure that the requirements of this part are met.