

AUDIT REQUIREMENTS

§ 550.440 When do I have to audit my fiduciary activities?

(a) *Annual Audit.* If you do not use a continuous audit system described in paragraph (b) of this section, then you must arrange for a suitable audit of all significant fiduciary activities at least once during each calendar year.

(b) *Continuous audit.* Instead of an annual audit, you may adopt a continuous audit system. Under a continuous audit system, you must arrange for a discrete audit of each significant fiduciary activity (*i.e.*, on an activity-by-activity basis) at an interval commensurate with the nature and risk of that activity. Some fiduciary activities may receive audits at intervals greater or less than one year, as appropriate.

§ 550.450 What standards govern the conduct of the audit?

Auditors must follow generally accepted standards for attestation engagements and other standards established by the OTS. An audit must ascertain whether your internal control policies and procedures provide reasonable assurance of three things:

(a) You are administering fiduciary activities in accordance with applicable law.

(b) You are properly safeguarding fiduciary assets.

(c) You are accurately recording transactions in appropriate accounts in a timely manner.

§ 550.460 Who may conduct an audit?

Internal auditors, external auditors, or other qualified persons who are responsible only to the board of directors, may conduct an audit.

§ 550.470 Who directs the conduct of the audit?

Your fiduciary audit committee directs the conduct of the audit. Your fiduciary audit committee may consist of a committee of your directors or an audit committee of an affiliate. There are two restrictions on who may serve on the committee:

(a) Your officers and officers of an affiliate who participate significantly in administering your fiduciary activities may not serve on the audit committee.

(b) 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 your fiduciary activities.

§ 550.480 How do I report the results of the audit?

(a) *Annual audit.* If you conduct an annual audit, you must note the results of the audit (including significant actions taken as a result of the audit) in the minutes of the board of directors.

(b) *Continuous audit.* If you adopt a continuous audit system, you must note the results of all discrete audits conducted since the last audit report (including significant actions taken as a result of the audits) in the minutes of the board of directors at least once during each calendar year.

Subpart C—Depositing Securities With State Authorities**§ 550.490 When must I deposit securities with State authorities?**

You must deposit securities with a State's authorities or, if applicable, a Federal Home Loan Bank under § 550.510, if you meet all of the following:

(a) You are located in the State.

(b) You act as a private or court-appointed trustee.

(c) The law of the State requires corporations acting in a fiduciary capacity to deposit securities with State authorities for the protection of private or court trusts.

§ 550.500 How much must I deposit if I administer fiduciary assets in more than one State?

If you administer fiduciary assets in more than one State, you must compute the amount of deposit required for each State on the basis of fiduciary assets that you administer primarily from offices located in that State.

§ 550.510 What must I do if State authorities refuse my deposit?

If State authorities refuse to accept your deposit under § 550.490, you must deposit the securities with the Federal Home Loan Bank of which you are a member. The Federal Home Loan Bank

will hold the securities for the protection of private or court trusts to the same extent as if the securities had been deposited with State authorities.

Subpart D—Terminating Fiduciary Activities

RECEIVERSHIP OR LIQUIDATION

§ 550.520 What happens if I am placed in receivership or voluntary liquidation?

If the OTS appoints a conservator or receiver for you under part 558 of this chapter, or if you place yourself in voluntary liquidation, the receiver, conservator, or liquidating agent must promptly close or transfer all fiduciary accounts to a substitute fiduciary, in accordance with OTS instructions and the orders of the court having jurisdiction.

SURRENDER OF FIDUCIARY POWERS

§ 550.530 How do I surrender fiduciary powers?

If you want to surrender your fiduciary powers, you must file a certified copy of a resolution of your board of directors evidencing that intent. You must file the resolution with the OTS under § 516.1 of this chapter.

§ 550.540 When will the OTS terminate my fiduciary powers?

If, after appropriate investigation, the Regional Director is satisfied that you have been discharged from all fiduciary duties, the Regional Director will issue a written notice indicating that you are no longer authorized to exercise fiduciary powers.

§ 550.550 May I recover my deposit from State authorities?

Upon issuance of the OTS written notice under § 550.540, you may recover any securities deposited with State authorities, or a Federal Home Loan Bank, under subpart C of this part.

REVOCATION OF FIDUCIARY POWERS

§ 550.560 When may the OTS revoke my fiduciary powers?

The OTS may revoke your fiduciary powers if it determines that you have done any of the following:

- (a) Exercised those fiduciary powers unlawfully or unsoundly.
- (b) Failed to exercise those fiduciary powers for five consecutive years.
- (c) Otherwise failed to follow the requirements of this part.

§ 550.570 What procedures govern the revocation?

The procedures for revocation of fiduciary powers are set forth in 12 U.S.C. 1464(n)(10). The OTS will conduct the hearing required under 12 U.S.C. 1464(n)(10)(B) under part 509 of this chapter.

Subpart E—Activities Exempt From This Part

§ 550.580 When may I act in a fiduciary capacity without obtaining OTS approval?

You do not need OTS approval under subpart B if you act in one of the following fiduciary capacities:

- (a) Trustee of a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan qualifying for specific tax treatment under section 401(d) of the Internal Revenue Code of 1954 (26 U.S.C. 401(d)).
- (b) Trustee or custodian of a Individual Retirement Account within the meaning of section 408(a) of the Internal Revenue Code of 1954 (26 U.S.C. 408(a)).
- (c) Trustee of a fiduciary account that involves no active fiduciary duties provided that the applicable law authorizes the savings association to act in this capacity.

§ 550.590 What standards must I observe when acting in exempt fiduciary capacities?

You must observe principles of sound fiduciary administration, including those related to recordkeeping and segregation of assets.

§ 550.600 How may I invest funds when acting in exempt fiduciary capacities?

If you act in an exempt fiduciary capacity under § 550.580, you may invest the funds of the fiduciary account in only the following: