PERSONAL TRUST REFERENCE

Core Analysis Procedures

Examiners are to consider these procedures but are not expected to perform every procedure at every institution. Examiners should complete only the procedures relevant for the institution's activities, business model, risk profile, and complexity. If needed, based on other identified risks, examiners can complete additional procedures not included below. References to laws, regulations, supervisory guidance, and other resources are not all-inclusive.

Findings and Conclusions

Document findings and conclusions here, and include a summary of these findings and conclusions in the appropriate Primary or Supplemental modules.

General Administrative

1. Determine whether management complies with applicable state laws, such as the Prudent Investor Act, Principal and Income Act, and the Uniform Trust Code.

2. Determine whether tickler systems are adequate, considering the following time-sensitive events:

- **Income remittances to beneficiaries**
- **Income receipts**
- **Principal distributions**
- **Payments for insurance and taxes**
- **Fee collections**
- **UCC expirations**
- **Other time-sensitive administrative duties (e.g. court filings for estates)**

3. Determine whether significant principal withdrawals are authorized and well-documented.

4. Determine whether significant discretionary distributions are authorized and well-documented.

5. Determine whether management distributes income in accordance with the terms of the governing instrument.

6. Determine whether management assesses fees in compliance with the governing instruments or fee schedules.
7. Determine whether personal trust accounts receive adequate annual administrative and investment reviews.
8. Evaluate conflicts of interest that affected, or could affect, the institution's duty of loyalty.[1]
9. Determine whether the receipt of fees from other sources, such as 12b-1 and other mutual fund related fees, is disclosed as required by state law.[2]
10. Assess the adequacy of account documentation by considering the following: • **Will, trust agreement, or evidence of appointment** • **Birth and death certificates** • **Mortgages and promissory notes** • **Property insurance** • **Title insurance** • **Co-fiduciary approvals** • **Appraisals and valuations** • **Leases** • **Partnership agreements** • **Management agreements** • **Stock certificates and bonds** • **Receipts for expenditures** • **Tax returns** • **Trade order tickets and confirmations**
11. Determine whether the institution acts impartially in investing, managing, and distributing the trust property when the governing instrument creates more than one beneficiary or class of beneficiaries. (For instance, some states allow trustee discretion in the use of "Uni-Trust" powers to establish

[1] **No breach of the duty of loyalty exists if a transaction is expressly authorized by the governing instrument or is approved by the court.**

[2] **FRB: Further guidance is included in SR 99-7 Supervisory Guidance Regarding the Investment of Fiduciary Assets in Mutual Funds and Potential Conflicts of Interest.**

distribution percentages for different beneficiary classes under the principal and income provisions of the Uniform Trust Code.)
12. Determine whether account administrators are knowledgeable of the objectives, administrative requirements, and circumstances of the beneficiaries of the individual accounts they administer.
13. Determine whether synoptic records or other electronic account information adequately summarizes provisions of the governing instruments, including: • **Names, birth dates, and addresses of beneficiaries** • **Names of the grantor's attorney and accountant** • **Full description of investment powers, restrictions, limitations or mandatory investments** • **Provisions for income distributions** • **Provisions for discretionary distributions and principal withdrawals** • **Provisions for termination of the trust and final distribution of assets** • **Frequency of customer statements** • **Any other matters requiring special attention**
ESTATES
14. Determine whether management has or obtains the necessary expertise and sufficient knowledge of probate laws to administer estates.
15. Determine whether appropriate controls for estate assets are implemented and address accounting and physical access.
16. Assess practices for settling estates. Estates are governed by state probate law, which generally includes the following duties: • **Initiating probate proceedings** • **Marshalling and inventorying the decedent's assets promptly after acceptance of appointment** • **Notifying various parties of the decedent's death** • **Appraising the decedent's assets** • **Making claims on behalf of the estate** • **Publishing a general notice to all creditors** • **Paying claims against the estate** • **Locating and notifying beneficiaries and heirs** • **Liquidating assets**

• **Distributing assets in accordance with the will or state intestacy laws** • **Filing state and federal estate tax returns** • **Obtaining receipts for distributions** • **Obtaining court approval for final distribution and settlement of the estate**
17. Determine whether management maintains adequate file documentation by considering the following: • **Letters of Administration or Letters Testamentary evidencing court appointment of the institution as administrator or executor, respectively** • **Certified copies of the death certificate** • **Court orders for discretionary actions not specifically authorized by statute** • **Accountings filed with the court** • **Receipts for expenses and distributions** • **Proof of creditor notifications** • **Appraisals and valuations of property** • **Tax returns**
18. Determine whether delayed administration of estates has occurred, and if so, whether it resulted from the institution's administration practices.
GUARDIANSHIPS AND CONSERVATORSHIPS
19. Determine whether management limits guardianship appointments to those where the institution is appointed as the guardian of an estate, rather than guardian of individuals.[3]
20. Review account correspondence to determine whether management confers with the guardian of the individual to ensure that the institution is aware of any individual needs that may affect administration of the account.
21. Determine whether management obtains court orders for discretionary actions not specifically authorized by statute.
22. Determine whether accountings have been filed with the court within required timeframes.

[3] State law may prohibit a financial institution from serving in the capacity of guardian of an individual.

AGENCY ACCOUNTS
23. Review the type and general characteristics of agency accounts that the department administers, e.g., investment management agencies, investment advisory accounts, custodial accounts, etc.
24. Determine whether agency agreements clearly define the institution's responsibilities.
25. Review for suitability purposes investments in agency accounts that grant the department investment discretion or for which the department provides investment advice.
26. For directed agency accounts, assess management's procedures for obtaining written directives and notifications.
27. Determine whether the department engages in the sale of nondeposit investment products. If so, determine whether activities are adequately mitigated and controlled.[4]
CHARITABLE TRUSTS
28. Determine whether charitable trusts are administered in compliance with state laws and the Internal Revenue Code (IRC).[5]
29. Determine whether internal procedures require legal counsel to review charitable trust documents before acceptance.
30. Determine whether the charity has filed an Application for Recognition of Exemption (Form 1023 series) with the IRS.

[4] Refer to the Interagency Statement on Retail Sales of Nondeposit Investment Products for further discussion.

[5] Charitable trusts are governed by specific state laws, in addition to state fiduciary laws, and are generally subject to the jurisdiction of the state attorney general. Further, because charitable trusts involve specialized tax treatment, numerous sections of the IRC also apply as outlined in the Internal Revenue Service (IRS) Publication 557.

31. When the institution acts as trustee for a private foundation, consider whether management may have engaged in any acts of self-dealing that may subject the trust to taxes and penalties. [IRC Section 4941 and Treasury Regulation 53.4941(d)]. Self-dealing includes the following transactions:

- **Sale, exchange, or leasing of property between a private foundation and a disqualified person**
- **Lending of money or other extensions of credit between a private foundation and a disqualified person**
- **Furnishing of goods, services, or facilities between a private foundation and a disqualified person**
- **Payment of compensation (or payment/reimbursement of expenses) by a private foundation to a disqualified person**
- **Transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation**

32. When the institution acts as trustee for a private foundation, consider whether the trust could be subject to excise taxes under the following sections of the IRC:

- **Failure to distribute income [IRC 4942]**
- **Excess business holdings [IRC 4943]**
- **Holding investments that jeopardize the tax-exempt purposes of the foundation [IRC 4944]**
- **Making taxable expenditures [IRC 4945]**

33. Review a sample of income distributions for compliance with the terms of the governing instrument.

34. Determine whether charitable accounts invested in pooled investment funds comply with Office of the Comptroller of the Currency (OCC) Regulation 9.18. OCC requirements unique to charitable trusts include the following:

- **Pooled funds must obtain tax-exempt status through IRC Section 584, not Revenue Ruling 81-100**
- **Participation must be limited to charitable trust accounts that are exempt from income taxes pursuant to IRC Section 501**
- **Participation must be limited to accounts for which the institution acts as trustee or co-trustee, and not as agent**

INSURANCE TRUSTS (aka “Crummey Trusts”)

35. Determine whether the institution makes premium payments when due (when it is responsible for making such payments).

36. Determine whether the institution sends the annual Crummey Notice when required.
37. Determine whether management periodically and independently assesses the financial condition of insurance companies that underwrite policies held as trust assets.[6]
38. Determine whether the trust department holds or has held insurance policies issued by companies that have changed their corporate structure from a mutual form of ownership to a stock form of ownership, (demutualization). Consider the following: • **The trustee voted the demutualization proxy in the best interest of the beneficiaries** • **The trustee's decision to retain assets received because of the demutualization or to sell such assets for cash was appropriate in light of the tax consequences to the beneficiaries and the diversification needs of the trust**
CEMETERY TRUSTS
39. Determine whether management administers cemetery trusts in compliance with state law.[7] State laws may address the following areas: • **Requirements that perpetual care funds be held in trust** • **Requirements for expenditures related to perpetual care** • **Requirements that principal withdrawals be approved by a representative of the state** • **Allocations of principal and income** • **Limitations on investments**
PRE-NEED FUNERAL TRUSTS
40. Determine whether management administers pre-need funeral trusts in compliance with state law.[8] State laws may address the following areas: • **Requirements that funds be held in trust** • **Limitations on investments** • **Distributions of principal and income**

[6] Management may also review related ratings, e.g., A.M. Best.

[7] Cemetery trusts are governed by specific state laws, in addition to state fiduciary laws, and are typically under the jurisdiction of a state agency.

[8] Pre-need funeral trusts are typically governed by specific state laws, in addition to state fiduciary laws, and are under the jurisdiction of a state agency.

LAND TRUSTS

41. Determine whether there is a deed in trust, properly recorded per local law, for properties in the trust.

42. Determine whether documentation is maintained specifying the persons authorized to provide direction to the trustee.

43. Determine whether, for all account transactions, written direction is obtained from all persons authorized to direct the trust.

44. Determine whether all encumbrances on properties held in the trust, such as real estate mortgages or assignments of beneficial interests, are documented and recorded as required by local law.

Account Administration Review Process for Specific Trust Assets

The extent of review of the following types of assets should be commensurate with the institution's discretionary responsibilities for the account being reviewed.

CLOSELY HELD BUSINESS INTERESTS

45. Assess the suitability of investments in closely held businesses. Consider whether:

- **The investment was received in kind**
- **A grantor or other third party directed the investment**
- **The investment is authorized by the governing instrument**

46. Determine whether the board considers the following items prior to accepting closely held business interests as trust assets:

- **Financial condition**
- **Management**
- **Earnings**
- **Growth**
- **Marketability**
- **Product lines or services**
- **Competition**
- **Valuation of the business**
- **Representation by bank personnel on the board of directors**
- **Ability to exercise adequate control over the closely held business**

47. Evaluate management's plans to retain or dispose of closely held businesses held in accounts.

48. If, in its discretion, the department invested trust assets in a minority interest in a closely held business, evaluate the analysis supporting the prudence of such investments.

49. If the institution is responsible for or involved in the day-to-day operations of closely held businesses, determine whether it adequately performs such duties, including attendance at stockholder meetings.

50. Evaluate the institution's procedures for selecting and retaining any third-party agents, including relatives of the grantor, for administration of the business.

51. Determine whether lending relationships with closely held businesses pose potential conflicts of interest.

52. Determine whether the institution periodically evaluates the financial condition of closely held businesses.

53. Evaluate management's expertise and knowledge of the nature of the product(s) or service(s) that closely held businesses provide.

54. Assess the valuations of closely held businesses.

REAL ESTATE

55. Evaluate the institution's decision to invest trust assets in real estate. Consider whether:

- **The investment was received in kind**
- **A grantor or other third party directed the investment**
- **The investment is authorized by the governing instrument**
- **The governing instrument requires retention of the investment**

56. Evaluate management's plans to retain or dispose of real estate held in accounts.

57. Assess the institution's procedures for administering real estate, including:

- **Perfecting title to the property**
- **Performing annual inspections**
- **Evaluating potential environmental liability**
- **Appraising income producing property**
- **Appraising grantor-occupied residences and vacant land periodically**
- **Obtaining adequate insurance that shows the trustee as loss payee**
- **Paying real estate taxes**
- **Maintaining the property**
- **Collecting rental income**

58. Determine whether the institution obtains written agreements specifying its responsibilities for holding the grantor's residence, including making payments for taxes, insurance and maintenance.

59. Assess the institution's procedures for selecting and retaining third-party agents.

60. Assess written agreements with third-party agents. Consider whether:

- **Duties and responsibilities of the agent are clearly defined**
- **Commission arrangements are clearly defined**
- **The terms of the agreement are appropriate**

AGRICULTURAL REAL ESTATE AND PRODUCTS

In addition to the examination procedures noted above for all real estate, examiners should consider the following additional examination procedures for agricultural real estate.

61. Assess crop sharing agreements or cash rental agreements for crop land.

62. Evaluate the amount of farm commodities stored in elevators.

63. Evaluate the institution's procedures for protecting and safekeeping livestock, including inspections.

MINERAL INTERESTS

64. Determine whether management has sufficient expertise and knowledge to administer mineral interests.

65. Evaluate the institution's decision to invest trust assets in mineral interests. Consider whether:
- **The investment was received in kind**
- **A grantor or other third party directed the investment**
- **The investment is authorized by the governing instrument**
- **The governing instrument requires retention of the investment**

66. Evaluate management's plans to retain or dispose of mineral interests held in accounts.

67. Assess the institution's procedures for administering mineral interests, including:
- **Obtaining operating agreements**
- **Obtaining evidence of title**
- **Reviewing working interests for profitability**
- **Reviewing working interests for potential environmental liability**
- **Reviewing expenditures prior to approving payment**
- **Taking action when payments are not received timely**
- **Maintaining liability insurance where appropriate**
- **Establishing ticklers that identify lease expirations or other important information**
- **Allocating mineral interest receipts in accordance with state laws and governing instruments.**

DERIVATIVES AND OTHER COMPLEX INSTRUMENTS

68. Determine whether the governing instrument allows, or does not prohibit, investments in derivatives. (FDIC: discuss with the Capital Markets Branch; FRB: refer to the FRB Trading and Capital Markets Activity Manual.)

69. Determine whether investments in derivatives are allowed, or in any way restricted, under state fiduciary laws.

70. When governing instruments prohibit the use of derivatives, determine whether discretionary accounts invest in mutual funds that hold derivatives as an underlying investment.

71. Determine whether management obtains legal opinions regarding the appropriateness of using derivatives as fiduciary investments.

72. Evaluate the board's oversight of all risks associated with derivatives.

73. Determine whether the board has adopted formal policies and procedures regarding the use of derivatives and other complex investments. Policies and procedures generally address:

- **Analyzing the instrument's cash flow under different scenarios, including stress tests, and the resulting effects on price and interest rate risk. Risk analysis of individual instruments being independent of the investment function**
- **Establishing timely and accurate risk measurement and monitoring systems**
- **Reporting policy exceptions**
- **Establishing price and credit risk approval processes and limits**
- **Obtaining accurate valuations independent of the broker/dealer**
- **Reporting risk exposures**
- **Assessing liquidity risks against the needs of the account**
- **Analyzing compliance, business, and strategic risks**
- **Adopting an effective audit program that verifies the integrity of risk measurement and control programs, compliance with internal policies and risk limits, and valuations**

74. Review disclosures given to account holders and presented in common and collective fund agreements.

MORTGAGES AND NOTES

75. Consider the suitability of investments in mortgages and notes. Consider the following:

- **Whether the investment was received in kind**
- **Whether a grantor or other third party directed the investment**
- **Whether the investment is authorized by the governing instrument**
- **Whether the governing instrument requires retention of the investment**

76. Evaluate plans to retain or dispose of mortgages and notes held in accounts.
77. Evaluate procedures for evaluating and monitoring credit risk and determining interest rates.
78. Evaluate practices for maintaining appropriate loan documentation.
79. Evaluate management's practices for enforcing claims. Consider the following: • **Monitoring timely payments,** • **Perfecting collateral,** • **Sending past due and default notices, and** • **Initiating foreclosure on behalf of the account.**
PERSONAL PROPERTY
80. Determine whether management has control over personal property.
81. Determine whether the governing instrument authorizes or requires retention of personal property.
82. Determine whether the grantor directs the retention of personal property.
83. Determine whether management has plans to dispose of personal property.
84. Determine whether management has obtained adequate valuations where necessary.
PERSONAL PROPERTY NOT IN POSSESSION OF THE INSTITUTION
85. Determine whether the governing document authorizes or directs any trust property to be under the control of anyone other than the trustee.

86. Determine whether management has obtained a release of liability for such property.
87. Determine whether such assets are titled in the name of the institution in its fiduciary capacity.
88. Evaluate management's procedures to protect and safeguard assets that are not in their possession.
ACCOUNT LIABILITIES
89. Determine the underlying reasons for account liabilities in discretionary accounts.
90. Determine whether the governing instrument authorizes the account to incur liabilities.
91. Determine whether management maintains proper controls and accountings of liabilities.
End of Core Analysis.