

POOLED INVESTMENT VEHICLE 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 Administration

- 1. Assess the planning and risk analysis of any new pooled investment vehicles that have begun operations since the last examination.**
- 2. If any pooled investment vehicles were terminated or became inactive since the last examination, evaluate management’s plans and risk analysis supporting such actions.**
- 3. Evaluate the adequacy of all policies and procedures for administering pooled investment vehicles.**
- 4. Determine whether the institution maintains a copy of the governing plans for pooled investment vehicles, together with any revisions or amendments.**
- 5. Determine whether each pooled investment vehicle had a periodic and independent investment and administrative review.**
- 6. Determine whether accurate and complete subsidiary and control ledgers are maintained for assets and participants.**

7. Determine whether periodic court accountings are prepared when necessary.
8. Determine whether an IRS determination letter is maintained for pooled investment vehicles exempt from federal taxation.
9. If the institution serves as an investment adviser to any mutual fund, including a mutual fund sponsored by the institution, determine whether the institution registered with the SEC as an investment adviser pursuant to the Investment Advisers Act of 1940. ¹
PERFORMANCE
10. Determine whether management periodically evaluates, at appropriate intervals, the performance of pooled investment vehicles and compares performance to representative benchmarks.
11. Determine whether management initiates action(s) to correct poor performance.
12. Determine whether pooled investment vehicles are managed consistent with their stated investment objectives.
13. Determine whether pooled investment vehicles are managed to meet their liquidity needs.
14. Determine whether the expenses of operating pooled investment vehicles are reasonable, authorized, and within any applicable limitations imposed by a governing plan document.
Common Trust Funds (CTFs)

¹ Institutions can choose to register a Separately Identifiable Division or Department (SIDD) of the institution as an investment adviser, rather than the institution as a whole.

IRC SECTION 584 – EXEMPTION FROM FEDERAL INCOME TAX²
15. Determine whether only accounts in which the trust department acts in the capacity of trustee, executor, administrator, or guardian are permitted to invest in CTFs.
OCC REGULATION 9.18 – AUDIT
16. Determine whether CTFs are audited at least once during each 12-month period. [OCC 9.18(b)(6)(i)]
17. Determine whether auditors are accountable only to the institution’s board of directors. [OCC 9.18(b)(6)(i)]
18. Determine whether at least once during each 12-month period financial reports based on audits are prepared. [OCC 9.18(b)(6)(ii)]
19. Determine whether financial reports contain the following: [OCC 9.18(b)(6)(ii), (A), (B), (C), and (D)]
<ul style="list-style-type: none"> • Fees and expenses in a manner consistent with state law • A list of investments showing cost and current market value of each investment • Investment changes for the period reflecting purchases (with costs) and sales (with profit or loss) • Income and disbursements since the last report • Notation of any defaulted securities
20. Determine whether financial reports refrain from making predictions or representations as to the future performance of funds. [OCC 9.18(b)(6)(iii)]
21. Determine whether financial reports refrain from publishing the performance of funds not administered by the institution or its affiliates. [OCC 9.18(b)(6)(iii)]

² IRC Section 584 requires compliance with OCC Regulation 9.18 (12 CFR 9.18) to qualify for tax-exempt status, including with respect to state-chartered institutions.

<p>22. Determine whether financial reports are made available at no charge to persons participating in CTFs.³ [OCC 9.18(b)(6)(iv)]</p>
<p>OCC REGULATION 9.18 – GOVERNING DOCUMENT</p>
<p>23. Determine whether funds are governed by a written trust agreement, plan, declaration of trust, or group trust.⁴ [OCC 9.18(b)(1)]</p>
<p>24. Determine whether funds are established in accordance with a written plan approved by the institution’s board of directors or designated committee. [OCC 9.18(b)(1)]</p>
<p>25. Determine whether governing plans contain the following provisions: [OCC 9.18(b)(1)(i) through (xi)]</p> <ul style="list-style-type: none"> • Investment powers and policies with respect to the fund • Allocation of income, profits, and losses • Fees and expenses that will be charged to the fund and to participating accounts • Terms and conditions governing the admission and withdrawal of participating accounts • Audits of participating accounts • Basis and method of valuing assets in the fund • Expected frequency for income distribution to participating accounts • Minimum frequency for valuation of fund assets⁵ • Amount of time following a valuation date during which the valuation must be made • Conditions under which the institution may terminate the fund • Any other matters necessary to define clearly the rights of participating accounts
<p>26. Determine whether a copy of the governing plan is made available to any person for inspection at the main office of the institution during banking hours or on its website, and whether the institution provides a written or electronic copy of the plan to any person who requests it. [OCC 9.18(b)(1)]</p>
<p>OCC REGULATION 9.18 – OPERATIONAL RULES</p>

³ Management may provide a copy of the report to any other person for a reasonable fee.

⁴ A plan may cover multiple funds.

⁵ The value of a fund’s readily marketable assets should be valued at least once every three months, the value of a fund’s assets that are not readily marketable should be valued at least once a year [OCC 9.18(b)(4)(i)].

27. If management of a fund was delegated to an outside investment adviser, assess whether the delegation is prudent. Consider the following:

- Delegation is permitted under governing law
- The arrangement is governed by a written agreement
- The advisor performs only the functions the institution could perform
- The trustee institution establishes specific investment guidelines to be followed by the investment advisor
- The trustee institution timely reviews the investment advisor’s activities
- The trustee institution can terminate the contractual relationship upon reasonable terms

28. Determine whether each account participating in a fund represents a proportionate interest in the fund’s assets. [OCC 9.18(b)(3)]

OCC REGULATION 9.18 – ADMISSIONS AND WITHDRAWALS

29. Determine whether investments are valued at market value whenever admissions or withdrawals to a CTF take place. [OCC 9.18(b)(5)]

30. Determine whether admissions and withdrawals of units are allowed only on or before the valuation date on which the admission or withdrawal is based and only after receiving appropriate approval. [OCC 9.18(b)(5)(i) and (ii)]

31. Determine whether the prior notification period for withdrawals from a fund with assets that are not readily marketable does not exceed one year. [OCC 9.18(b)(5)(iii)]

32. Determine whether distributions to accounts withdrawing from CTFs are made in cash, ratably in kind, or a combination of cash and ratably in kind or in any other manner consistent with state law. [OCC 9.18(b)(5)(iv)]

33. Determine whether short-term investment funds valued at cost for admissions and withdrawals:

- Operate with a stable net asset value of \$1.00 per participating interest as a primary fund objective [OCC 9.18(b)(4)(iii)(A)]
- Maintain a dollar weighted average portfolio maturity of 60 days or less, and a dollar-weighted average portfolio life maturity of 120 days or less as determined in the same manner as is required

<p>by the U.S. Securities and Exchange Commission pursuant to Rule 2a-7 for money market mutual funds [OCC 9.18(b)(4)(iii)(B)]</p> <ul style="list-style-type: none"> • Accrue on a straight-line or amortized basis the difference between cost and anticipated principal receipt at maturity, and [OCC 9.18(b)(4)(iii)(C)] • Hold assets until maturity under usual circumstances [OCC 9.18(b)(4)(iii)(D)]
<p>34. Verify that, where market values are not readily ascertainable and the valuation method for short-term investment funds is inapplicable, management uses fair values determined in good faith. [OCC 9.18(b)(4)(ii)]</p>
<p>OCC REGULATION 9.18 – ADVERTISING</p>
<p>35. Determine whether the institution refrains from advertising CTFs, except in connection with the advertisement of general fiduciary services. [OCC 9.18(b)(7)]</p>
<p>OCC REGULATION 9.18 – SELF-DEALING AND CONFLICTS OF INTEREST</p>
<p>36. Determine whether the institution has any interest in a fund that it is administering other than in its fiduciary capacity.⁶ [OCC 9.18(b)(8)(i)]</p>
<p>37. Determine whether the institution makes any loans secured by the participant's interest in the fund. [OCC 9.18(b)(8)(ii)]</p>
<p>38. If the institution purchases an investment in default from a fund, determine whether the purchase is at market value or the sum of cost and accrued unpaid interest, whichever is greater. [OCC 9.18(b)(8)(iii)]</p>
<p>39. Determine whether fund fees and disclosures comply with state law. [OCC 9.18(b)(9)(i)]</p>

⁶ An institution may invest assets that it holds as fiduciary for its own employees in a collective investment fund. If the institution acquires an interest because of a creditor relationship, the participating account must be withdrawn at the next withdrawal date.

40. Determine whether fund fees exceed an amount commensurate with the value of legitimate services of tangible benefit to the participating accounts that would not have been provided to the accounts were they not invested in the fund. [OCC 9.18(b)(9)(ii)]

41. Determine whether expenses charged to funds are reasonable and allowable under state law. [OCC 9.18(b)(10)]

42. Determine whether management refrains from issuing any certificate or other document to evidence a direct or indirect interest in a fund, except to provide a withdrawing account an interest in a segregated investment. [OCC 9.18(b)(11)]

EXEMPTION FROM SECURITIES LAWS

43. Review funds for ineligible participants. Consider the following:

- Only accounts in which the trust department acts in the capacity of trustee, executor, administrator, or guardian are permitted to invest in CTFs
- Agency and IRA accounts are prohibited from investing in funds⁷ [Securities Act of 1933, Section 5 Prohibitions relating to interstate commerce and mails and Investment Company Act of 1940, Section 7 - Transactions by unregistered investment companies]

44. Determine whether management prohibits commingling personal trust and employee-benefit accounts in CTFs. [Investment Company Act of 1940, Section 3(c)(11) and IRC 401]

REPORTING REQUIREMENTS

45. Determine whether management complies with U.S. Treasury Regulation Section 1.6032.1T and IRC 6032. Consider the following requirements:

- Annual informational returns should be filed with the IRS⁸
- Annual informational filings for each fund should contain information on fund participants, including name, address, and proportional share of taxable income or losses and capital gains or losses
- A full copy of the declaration of trust, group trust, trust agreement, or plan should be submitted to the IRS at least once

⁷ For Keogh plans, refer to the procedures under the Collective Investment Fund section.

⁸ Although not required, Schedule K-1 of Form 1065 is typically used to satisfy this reporting requirement.

Collective Investment Funds (CIFs)
IRS REVENUE RULING 81-100 – EXEMPTION FROM FEDERAL INCOME TAX
46. Determine whether employee benefit trusts or agency accounts afforded tax-exempt status through IRC 401 or 408 are the sole participants in the funds.
47. Determine whether charitable trust or agency accounts are prohibited from investing in CIFs.
48. Determine whether group trusts are adopted as part of each participating employee-benefit plan.
49. Determine whether group trusts prohibit assets from being diverted to any purpose other than the exclusive benefit of participating plan beneficiaries. Consider whether:
<ul style="list-style-type: none"> • Group trusts prohibit assignment of any asset by any of the participating plans • Group trusts are established and maintained as domestic U.S. trusts
EXEMPTION FROM SECURITIES LAWS
50. Review funds for ineligible participants. Determine whether employee benefit trust and agency accounts afforded tax-exempt status through IRC 401 are the sole investors in the funds.⁹
51. Determine whether management prohibits commingling personal trust and employee-benefit accounts in funds.
KEOGH ACCOUNTS
52. If Keogh accounts are permitted to invest in a CIF, determine whether:
<ul style="list-style-type: none"> • Only Keogh and other accounts receiving tax exemption under IRC Section 401 are permitted to invest in the CIF • CIFs that permit investments by Keogh accounts qualify for the exemption from securities registration because they are offered and sold only to residents within a single state or territory and

⁹ This precludes Individual Retirement Accounts granted tax-exempt status under IRC 408 from investing in the funds.

<p>are issued by an institution doing business within such state or territory (Intrastate Exemption) (Section 3(a) (11) of the Securities Act of 1933 Act and Section 3(c)(11)(A) of the Investment Company Act of 1940)</p> <ul style="list-style-type: none"> • Plan sponsors qualify as sophisticated investors as defined in SEC Rule 180
<p>53. If government employee benefit plans are invested in CIFs, determine whether the funds are exempt from registration as a security and as an investment company under the following:</p> <ul style="list-style-type: none"> • Internal Revenue Code sections 401, 403, 414(d), or 457 • Securities Act of 1933 Act section 3(a)(2)(C) • Securities Exchange Act of 1934 Act section 3(a)(12)(C)(iii) • Investment Company Act of 1940 Act sections 3(c)(11)(A) and (B)
<p>OCC REGULATION 9.18</p>
<p>54. Determine whether collective investment funds are operated in accordance with OCC 9.18(b) or comparable standards.¹⁰</p>
<p>Common Trust Funds and Collective Investment Funds of Other Institutions</p>
<p>55. Determine whether the institution invests in the CTFs or CIFs of other affiliated institutions. (Refer to 1989 SEC No-Action Letter to Old Kent Financial Corporation.)</p>
<p>56. Determine whether investments in funds of affiliated institutions are permitted under state law.</p>
<p>57. Determine whether the plan or governing document authorizes investment in funds of affiliates.</p>
<p>58. Determine whether the board of the affiliated institution has authorized the use of the originating institution's plan.</p>

¹⁰ Unless state law requires compliance with OCC 9.18, failure to operate CIFs in accordance with OCC 9.18(b) or comparable standards should not be cited by examiners as apparent violations, but, instead, should be discussed as appropriate in examination comments.

<p>59. Determine whether the affiliated institution maintains documentation for all admission and withdrawal decisions for each fiduciary account invested in the originating institution’s fund.</p>
<p>60. Determine whether the originating institution is notified on or before the fund valuation date, and that the appropriate committee of the originating institution approves all admissions to and withdrawals from funds operated by affiliated institutions.</p>
<p>61. Determine whether the originating institution furnishes the annual financial report of the affiliated institution's fund(s), or notice of its availability, to each fiduciary account invested in its fund.</p>
<p>62. Determine whether the institution refrains from investing the assets of fiduciary accounts in CTFs or CIFs of non-affiliated institutions.</p>
<p>Conversions to Proprietary Mutual Funds</p>
<p>63. Determine whether any conversions since the previous examination complied with applicable state and federal laws.</p>
<p>64. Determine whether management provided adequate disclosures and obtained positive written consents from account holders or beneficiaries.</p>
<p>65. Determine whether management obtained the advice of legal counsel.</p>
<p>66. Determine whether the institution notified state regulatory authorities prior to conversion, if applicable.</p>
<p>67. Determine whether management adequately documented that the decision to convert was in the best interest of the account holders.</p>

68. Determine whether management performed a comprehensive risk analysis. Consider the following:

- Legal risk
- Tax consequences (for CTFs tax-free conversions must comply with IRC 584(h))
- Potential benefits and costs
- Conflicts of interest
- Suitability
- Permissibility under the governing instruments
- Conversion mechanics (cash or in-kind transfer)
- Client communication
- Account treatment for customers that do not provide consent or are disallowed under the governing instrument from investing in the mutual fund
- Fund selection
- Post conversion operations including proxy voting and ongoing investment reviews
- Fee arrangements, including any offsets and rebates

69. Determine whether the basis for mutual fund shares distributed to participant accounts was equal to the basis of the CTF or CIF interest exchanged.

70. Determine whether fiduciary fees and mutual fund servicing fees are reasonable and consistent with industry standards, governing instruments, and applicable law.

71. Determine whether management provided a copy of the newly established mutual funds' prospectus to participating accounts prior to conversion.

72. Determine whether the board of directors approved the conversion.

73. Determine whether transactions involving the conversion of CTFs or CIFs to proprietary mutual funds were exempt from the prohibited transaction restrictions of Section 406 of ERISA and the taxes imposed by IRC 4975. Consider the following requirements:

- For in-kind transfers, determine whether the requirements of PTE 97-41 were satisfied:
 - The plan did not pay a sales commission in connection with the transaction
 - Transferred assets consisted solely of securities for which market quotations were readily available
 - An independent fiduciary was given advance comprehensive information on the transaction, including the following:

<ul style="list-style-type: none"> - A current prospectus for each mutual fund to which the CIF's assets were transferred - A description of any fee arrangements between the institution, the mutual fund and the plan - The reasons why the exchange of investment was appropriate for the plan <ul style="list-style-type: none"> • An independent fiduciary gave prior written approval of the transaction • In cash-to-cash conversions, determine whether management complied with PTE 77-4 (Refer to procedures in Proprietary Mutual Funds section of this module.)
Mutual Funds
74. Evaluate management's due diligence in selecting mutual funds and mutual fund companies.
75. Determine whether management periodically reviews mutual fund performance and compares the performance to representative indices or other mutual funds with similar objectives.
SERVICING AND FEE ARRANGEMENTS
76. Review service contracts between the institution and the investment companies. Determine whether management's practices comply with the contract.
77. Determine whether management, prior to entering into any fee sharing arrangement with a mutual fund company:¹¹ <ul style="list-style-type: none"> • Obtains a legal opinion on the permissibility of the investment and compensation • Establishes policies and procedures governing fee sharing arrangements • Documents decisions regarding the suitability and prudence of the arrangement
78. Determine whether any fees collected from mutual funds are: <ul style="list-style-type: none"> • In compliance with state law • Reasonable • Sufficiently disclosed¹²

¹¹ FRB: SR 99-7

¹² Disclosures may be detailed in the fund's prospectus.

79. Determine whether the institution, in its capacity as fiduciary for employee-benefit accounts, refrains from collecting 12b-1, shareholder servicing or other similar fees from mutual fund companies [ERISA 406(b)(1) and (b)(3), and IRC 4975 (prohibited transactions)] unless:

- The fees are offset or rebated back to the account [AO 97-15A (Frost)]
- The institution has no investment discretion [AO 97-16A (Aetna)]
- The institution, as a plan fiduciary, does not cause itself to be paid such fees [AO 2003-09A (ABN AMRO)]

PROPRIETARY MUTUAL FUNDS

80. Determine whether investments in the institution's proprietary mutual fund(s) comply with applicable federal and state laws such as Federal Reserve Act Sections 23A and 23B.

81. Determine whether employee benefit plans that invest in proprietary mutual funds comply with the following requirements: [ERISA 406, ERISA 408, and PTE 77-4]

- The plans do not pay a sales commission in connection with the transaction
- The plans do not pay a redemption fee unless:
 - The fee is paid only to the investment company
 - The fee is disclosed in the prospectus
- The institution does not collect investment management or investment advisory fees at both the fund level and the plan level, which would be considered “double dipping”
- An independent fiduciary is given advance comprehensive information on the transaction including the following:
 - A current prospectus for each fund to which the CIF’s assets may be transferred
 - A description of any fee arrangements between the institution, the fund and the plan
 - The reasons why the investment is appropriate to the plan
- An independent fiduciary gives prior written approval of the transaction

82. Determine whether policies and procedures adequately address investments in proprietary mutual funds and include guidelines on applicable law, investment authority, conflicts of interest, documentation, and disclosures.

83. Determine whether proprietary mutual funds earn returns comparable to other non-proprietary funds with similar risk characteristics. If returns are not competitive, determine whether management adequately documents the prudence of any decision to continue investing in the proprietary mutual fund.

<p>84. Determine whether a copy of the CIF or CTF's annual report, together with the requisite certification, has been provided to the plan administrator(s) of the participating accounts. [DOL 2520.103-5(c)(2)(i) and (d)]</p>
<p>85. Determine whether any transactions between participating plans and the funds are exempt from the prohibitions of ERISA 406. [ERISA 408(b)(8) and IRC 4975(d)(8)] Consider the following requirements:</p> <ul style="list-style-type: none"> • The transaction is a sale or purchase of an interest in the fund • The institution receives not more than reasonable compensation • The plan or an independent fiduciary expressly permits the transactions
<p>86. Determine whether any transactions between the fund and a party-in-interest are exempt from the prohibitions of ERISA Section 406(a). Refer to the PTE 91-38.¹³</p>
<p>87. If the institution has provided financial support (e.g. cash infusions, credit extensions, asset purchases or becoming a shareholder) to any mutual funds that the institution advises, determine whether such support:</p> <ul style="list-style-type: none"> • Is consistent with safe and sound banking practices (e.g. does not threaten the capital adequacy or liquidity position of the institution) • Has been approved by the board of directors and appropriately documented • Is in compliance with applicable laws and regulations, (e.g. Federal Reserve Act 23A and 23B, Federal Securities Laws, and State Laws) • Has been reported by the institution to the appropriate FDIC Regional Office or Federal Reserve Bank¹⁴
<p>Other Pooling Arrangements</p>
<p>88. If the institution operates any pooled investment funds that are exempt from securities registration under the SEC's Regulation D, determine whether all requirements for the exemption have been and continue to be satisfied.</p>

¹³ Transactions between the fund and a fiduciary are not exempt and must comply with ERISA Section 406(b).

¹⁴ See the Interagency Statement of Policy on Providing Financial Support to Advised Funds, issued January 5, 2004 (FDIC: FIL-1-2004).

End of Core Analysis.