

# **Fiduciary Powers**

**Expansionary Activities**

## **Comptroller's Licensing Manual**

**Washington, DC  
June 2002**

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# Introduction

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A national bank that wishes to commence fiduciary powers must obtain approval from the Comptroller of the Currency (OCC). This booklet addresses the policies and procedures to guide a national bank in submitting a request to exercise these fiduciary powers or a notice that a bank is exercising fiduciary powers in a new state.

The corporate filing requirement that describes procedures for fiduciary powers, 12 CFR 5.26(e), clarifies the circumstances under which the OCC requires a bank to obtain approval to exercise those powers. It also states that approval of a fiduciary (trust) powers application constitutes a permit under 12 USC 92a to conduct such activities. Accordingly, the OCC will not issue a separate permit document.

This booklet also addresses the procedures for a national bank to surrender its fiduciary powers and for the OCC to revoke those powers.

## Applicability

When a national bank decides to expand its business by offering fiduciary services, the OCC requires it to seek prior approval before offering such services to the public. A state bank or a federal or state savings association with fiduciary powers that converts to a national bank or merges into a national bank not previously authorized to exercise fiduciary powers also must seek OCC approval.

The OCC requires a national bank with OCC-approved fiduciary powers to file an after-the-fact notice when it begins fiduciary activities in a new state.

A separate application for fiduciary powers is **not** required when:

- One or more national banks merge or consolidate with a national bank that has fiduciary powers.
- A national bank with fiduciary powers is the resulting bank in a merger or consolidation with a state bank.
- An applicant applies to organize a special-purpose charter for a national bank limited to fiduciary or trust activities using 12 CFR 5.20.
- An operating subsidiary exercises fiduciary powers if its parent bank has been authorized to exercise them.
- A national bank authorized to engage in trust activities under 12 USC 92a establishes a trust office.

- A national bank authorized to engage in trust activities under 12 USC 92a establishes a trust representative office for the convenience of its customers.

## Definitions

The **applicable law** means the law of a state or other jurisdiction governing a national bank's fiduciary relationships, any applicable federal law governing those relationships, the terms of instruments governing fiduciary relationships, or court orders pertaining to those relationships.

An **eligible bank** is a national bank that:

- Has a composite CAMELS rating of 1 or 2.
- Has a satisfactory or better Community Reinvestment Act (CRA) rating. (This factor does not apply to an uninsured bank or branch or a special purpose bank covered by 12 CFR 25.11(c)(3).)
- Is well capitalized as defined at 12 CFR 6.4(b)(1).
- Is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive or, if subject to any such order, agreement or directive, is informed in writing by the OCC that the bank may be treated as an "eligible bank."

A **fiduciary account** means an account administered by a national bank acting in a fiduciary capacity.

**Fiduciary capacity** means a trustee, executor, administrator; registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gifts to minors act; investment adviser, if the bank receives a fee for its investment advice; any capacity in which the bank possesses investment discretion on behalf of another; or any other similar capacity that the OCC authorizes pursuant to 12 USC 92a.

**Fiduciary powers** mean the authority the OCC permits a bank to exercise pursuant to 12 USC 92a. The extent of fiduciary powers is the same for out-of-state national banks as for in-state national banks and that extent depends upon what powers the state grants to the fiduciaries in the state with which national banks compete.

A **trust representative office** means an office of a national bank, other than a main office, branch or trust office, at which the bank performs activities ancillary to its fiduciary business, but does not engage in any of the activities specified in 12 CFR 9.7(d). A trust representative office is not a "branch" for purposes of 12 USC 36, unless it is also an office at which deposits are received, or checks paid, or money lent.

A **trust office** means an office of a national bank, other than a main office, branch, or trust representative office, at which the bank engages in one or more of the activities specified in 12 CFR 9.7(d). Pursuant to 12 USC 36(j), a trust office is not a "branch" for purposes of 12 USC 36, unless it is also an office at which deposits are received, or checks paid, or money lent.

## Key Policies

### General

Fiduciary or trust powers allow a bank to act in a fiduciary capacity. The OCC views the exercise of fiduciary powers primarily as a management decision of the national bank. Normally, the OCC grants only full fiduciary powers authorized under 12 USC 92a. In unusual cases, it may grant limited powers.

The OCC generally grants permission to exercise fiduciary powers to a bank operating in a satisfactory manner, if:

- The proposed fiduciary activities comply with applicable laws, including state, federal, and local statutes.
- The bank retains qualified trust management.

If a bank intends to establish a trust office limited solely to exercising fiduciary powers, the OCC does not require a branch application.

The OCC requires that banks chartered for less than two years submit a business plan for the trust department or fiduciary operation. The OCC may request various types and amounts of information depending upon the bank's condition. The sample Fiduciary Business Plan outlines the type of information that may be requested.

A bank with existing fiduciary powers may offer services in multiple states through branches, trust offices, or trust representative offices in such states. Such a bank may exercise any of the fiduciary powers granted in 12 USC 92a(a) in any state, unless that state prohibits both national banks and competing institutions in its own state from exercising that fiduciary power.

The trust officers and staff should become thoroughly familiar with "Fiduciary Activities of National Banks" at 12 CFR 9 and other applicable laws, such as the Employee Retirement Income Security Act of 1974 (ERISA).

### Decision Criteria

When deciding whether to approve, conditionally approve, or deny a bank's application for fiduciary or trust services, the OCC will consider:

- The adequacy of bank capital and surplus (that is, whether capital and surplus are sufficient under the circumstances and not less than the capital and surplus required by state law of state banks, trust companies, or other corporations exercising fiduciary powers under state law).
- The character and ability of proposed trust management, including qualifications, experience, and competency. The OCC must approve any trust management change the bank makes prior to commencing trust activities.
- Whether the proposed activity contravenes applicable law.
- The adequacy of the proposed business plan, if applicable.
- The needs of the customers to be served.

The OCC may deny the application if the bank's activities do not comply with any of these decision criteria.

## Special Conditions

The OCC may conditionally approve a filing, including one accorded expedited processing, after reviewing the application and considering the relevant factors. The OCC may apply conditions to ensure that approval is consistent with applicable law, to protect the safety and soundness of the bank, to protect customers, to prevent or control conflicts of interest, or to further other supervisory or policy considerations.

The OCC may apply those conditions as "conditions imposed in writing" within the meaning of 12 USC 1818. The conditions remain in effect after the effective date or consummation date of an approved transaction or activity and continue until the OCC removes them.

## Summary of Process

When a bank wishes to offer fiduciary services, it submits an application in letter form, providing specific information for review (see Procedures section of this booklet) and the appropriate filing fee. In addition to the standard review process, the OCC has an expedited review process and an after-the-fact notice. Only an eligible bank may apply under the expedited process. For banks that do not qualify, the standard review process must be followed. A bank that is ineligible for expedited processing may not exercise fiduciary powers until the OCC grants permission or informs the bank in writing of its decision.

OCC approval of an application constitutes a permit to conduct the fiduciary powers requested.

## Expedited Review

To qualify for the expedited review process, the bank must meet the definition of an eligible bank. Also the filing must qualify for expedited processing (that is, the filing is reviewed to ensure that all information has been submitted and contains no significant or novel policy issues). A sample application and procedures are provided outlining the information to be submitted for review (see Procedures: Filing the Application in this booklet).

The OCC reviews an eligible bank's application under the expedited review process, unless it notifies the bank prior to the 30th day after receipt that it is not eligible for expedited review under the decision standards of 12 CFR 5.13(a)(2).

Procedurally, the OCC sends the bank a letter prior to the 30th day approving the bank's request to exercise fiduciary powers. If the OCC does not send such a letter, the application is deemed approved automatically 30 calendar days after the OCC receives the application.

An eligible bank may omit the opinion of bank's counsel required for the standard review. If circumstances warrant, however, the OCC may require an opinion, indicating that the proposed fiduciary activities do not violate applicable law. The applicant must submit this opinion prior to commencing the activity.

## After-the-Fact Notice

If a bank has obtained OCC approval to provide fiduciary services and wishes to expand its business into additional states, it must provide written notice to the OCC within 10 days after commencing fiduciary activities in the new state.

A sample application and procedures are provided that outline the information to be submitted for review (see Procedures—After-the-Fact Notice in this booklet).

## Commencement of Activity

The bank must begin exercising trust activities within 18 months of approval, unless the OCC grants an extension. A bank should notify the OCC in writing (see Application forms) within 10 days of beginning those activities.

## **Surrender or Revocation of Fiduciary Powers**

### **Surrender**

A bank that wishes to discontinue and surrender voluntarily its authority to exercise fiduciary powers must file with the OCC a certified copy of a board of directors' resolution that signifies its desire to do so in accordance with 12 CFR 9.17(a). It also must return or destroy any trust permit previously issued.

The bank may be classified either as inactive or it may surrender its fiduciary powers altogether. In either case, the board of directors must arrange for a final audit of the fiduciary accounts. In addition, the OCC may conduct a closing investigation to determine if the bank has been discharged completely from its fiduciary obligations (that is, all accounts have been properly closed and distributed or transferred to substitute fiduciaries). The district office will decide whether to conduct a closing investigation.

After the OCC is assured that the bank has been relieved of all fiduciary duties according to applicable law, it will issue to the bank a written notice that the bank is no longer authorized to exercise the fiduciary powers previously granted.

### **Revocation**

Pursuant to 12 USC 92a(k) and 12 CFR 9.17(b), the OCC may notify a national bank of its intent to revoke the authority to exercise fiduciary powers. If the OCC determines that the bank has exercised its fiduciary powers unlawfully or unsoundly, the OCC may revoke those powers. At that time, the bank must return or destroy any trust permit previously issued.

The OCC also may revoke a bank's fiduciary powers if the bank has failed to exercise the powers granted for a period of five consecutive years. However, the OCC does not revoke such powers or initiate such actions to revoke merely because of inactivity.



# Procedures: Filing the Application

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## Licensing Staff

1. Refers a bank that requests instructions to the "General Policies and Procedures" (GPP) booklet and this booklet of the *Comptroller's Licensing Manual*.

## Bank

2. Submits to the appropriate licensing manager an application to exercise fiduciary powers (see Application Forms).

An expedited application must contain:

- A statement requesting full or limited powers. (Limited powers must be specified.)
- A description of the location(s) in which the services will be offered.
- A statement that the capital and surplus of the bank are not less than that required by state law for state banks, trust companies, and other corporations chartered by that state that exercise comparable fiduciary powers.
- Sufficient biographical information on the proposed trust management personnel, including educational and professional credentials and a five-year employment history, emphasizing their trust experience and discussing their ability to perform the proposed activities.
- The prescribed filing fee (see OCC Bulletin – Notice of the Comptroller of the Currency Fees).

For a standard application, the following additional items are required:

- An opinion of bank's counsel that the proposed fiduciary activities do not violate applicable law, including citations.
- (For banks chartered less than two years) a business plan for the trust department that contains, at a minimum, its projected earnings, size, services, and target market (see Application Forms).

## **Review**

### Licensing Staff

3. Sends an acknowledgment letter within five business days of receipt, if applicable.
4. Forwards the correct filing fee and the deposit memorandum (Form 6043-01) to the Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60671-7150. Retains a copy of the memorandum in the official file.
5. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
6. Establishes an official file to maintain all original documents.
7. Contacts the Congressional Liaison in Washington whenever written or telephone inquiries are received from congressional members or their staff. All congressional inquiries must be documented in the official file.
8. Reviews the application and any other relevant information about the bank and determines if the bank is an eligible bank.
9. Within five business days of receipt notifies the appropriate portfolio manager and Assistant Deputy Comptroller (ADC) of the filing and solicits comments from other OCC divisions, as appropriate, with a preliminary response required within 15 days.
10. Requests clarification or additional information, as necessary.

## **Decision**

11. Prepares a confidential memorandum and decision letter recommending a decision to the delegated official.
12. Decides application under delegated authority or forwards the official file to Headquarters Licensing (HQ LIC), Washington, DC, for decision. If referred to HQ LIC, go to step 17.
13. If delegated, notifies the bank of the decision and sends a decision letter.
14. If the application is conditionally approved or denied, forwards a copy of the confidential memorandum and decision letter to the HQ LIC.
15. Makes appropriate CAIS entries. Notifies the appropriate portfolio manager and Assistant Deputy Comptroller (ADC) of the decision by forwarding updated CAIS comments and, if warranted, advises of any written conditions or supervisory concerns in the decision.

16. Goes to step 27.

## HQ LIC

17. Makes appropriate CAIS entries.
18. Solicits comments from other OCC divisions, as appropriate.
19. Reviews the file and all relevant information, makes a recommendation, and forwards the official file to the appropriate Washington delegated official for decision.
20. Decides the filing.
21. Notifies the bank and licensing manager of the decision by telephone and letter, giving the reasons for the action when necessary.
22. If the application is conditionally approved or denied, forwards a copy of the confidential memorandum, decision document, and transmittal letter to Licensing Policy and Systems.
23. Makes appropriate CAIS entries. Notifies the appropriate portfolio manager and Assistant Deputy Comptroller (ADC) of the decision by forwarding updated CAIS comments and, if warranted, advises of any written conditions or supervisory concerns in the decision.
24. If denied, goes to step 27.
25. Returns the official file to the district for additional processing (for example, conditional approval).

## Bank

26. Notifies the OCC no later than 10 days after commencement of fiduciary activities.

## Close Out

### Licensing Staff/HQ LIC

27. Reviews the bank's notice of commencing activities and the file for completeness and forwards it to Central Records.
28. Reviews CAIS entries for completeness and accuracy. Makes appropriate CAIS entries to indicate that fiduciary powers are effective and that the filing is closed out.

## **Procedures: After-the-Fact Notice**

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### Licensing Staff

1. Refers a bank that requests instructions to the "General Policies and Procedures" (GPP) and this booklet of the *Comptroller's Licensing Manual*.

### Bank

2. Submits to the appropriate licensing manager a notice that it is exercising fiduciary powers in another state. The notice contains:
  - The identity of the state(s) involved.
  - A description of the activities to be conducted to the extent that they differ materially from those previously authorized.
  - A discussion of any contact with the state authority and any impediment to the exercise of such powers.

### **Review**

#### Licensing Staff

3. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
4. Reviews the notice and verifies that:
  - The bank provided the notice within 10 days after commencing the fiduciary activities in another state.
  - The notice contains the required criteria in step 2.
5. If the notice is sufficient, sends an acknowledgment letter and skips to step 10.
6. If the notice is insufficient or filed incorrectly, contacts the bank for clarification or missing information.
7. Reviews any additional information and makes appropriate CAIS entries.
8. Sends an acknowledgment letter.

## **Close Out**

9. Reviews CAIS entries for completeness and accuracy. Forwards the notice to Central Records.

# **Procedures: Surrender of Fiduciary Powers**

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## **Bank**

1. Arranges for a final audit of the fiduciary accounts.
2. Submits to the appropriate licensing manager a certified copy of a board of directors' resolution that it desires to surrender its fiduciary powers.
3. Returns to the licensing staff or destroys the OCC's original trust permit, if issued.

## **Review**

### **Licensing Staff**

4. Decides whether to conduct a closing investigation to determine if the bank has been discharged completely from its fiduciary obligations.
5. After assuring that the bank is relieved of all fiduciary duties, prepares and issues a written notice that the bank is no longer authorized to exercise fiduciary powers.
6. Makes appropriate CAIS entries to indicate that fiduciary powers are no longer authorized.

## **Close Out**

7. Reviews the file for completeness and forwards it to Central Records.

## References

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<b>Activities</b>	
Bulletins	OCC 96-25, 97-22
<b>Civil Money Penalties</b>	
Laws	12 USC 504, 1818(l) 18 USC 1001, 1007
Issuance	PPM-5000-7 (Rev.)
<b>Computation of Time</b>	
Regulation	12 CFR 5.12
<b>Daily Fee Rate for Special Examinations</b>	
Regulation	12 CFR 8.6
<b>Decisions</b>	
Regulation	12 CFR 5.13
<b>Definitions</b>	
Regulation	12 CFR 5.26 and 9.2
<b>Employee Retirement Income Security Act of 1974</b>	
Law	29 USC 1001
<b>Environmental Liability</b>	
Laws	42 USC 9601-9675
<b>Fiduciary Income</b>	
Bulletin	OCC 96-12
<b>Fiduciary Powers</b>	
Law	12 USC 92a
Regulations	12 CFR 5.26, 9
<b>Filing Fees</b>	
Regulation	12 CFR 5.5
<b>Filing Forms</b>	
Regulation	12 CFR 5.4
<b>Glass-Steagall Act</b>	
Laws	12 USC 78, 377
<b>Investigations</b>	
Regulation	12 CFR 5.7

**Recordkeeping and Confirmation Requirements for Securities Transactions**  
Regulation 12 CFR 12

**Rules of General Applicability**  
Regulation 12 CFR 5.2

**Surrender or Revocation of Powers**  
Regulation 12 CFR 9.17

**Time Limit**  
Law 12 USC 4807