

## Introduction

This document and any attachments are superseded by Comptroller's Handbook - Community Bank Supervision.

This section contains instructions for preparing and issuing a trust and asset management examination report (Report).

The report is furnished to the savings association for its confidential use and is written primarily for the benefit of the board of directors and senior management. Its overall tone should therefore be consultative and its content designed to educate. The report format is narrative and follows the trust rating system (see Section 060). However, its specific content is tailored to each individual trust department.

## Objectives and Overall Guidelines

A comprehensive reporting system is utilized to communicate significant findings revealed during the trust and asset management examination. This system provides an objective assessment of a trust department's operations, identifies major strengths and weaknesses and identifies the source of any problems. The objectives of the report and the report preparation process are:

- to inform OTS personnel, the savings association's directors and trust department management of the trust department's overall condition and its major strengths and weaknesses;
- to effect correction of any adverse matters in a manner consistent with the best interests of account beneficiaries and other interested parties; and
- to provide OTS personnel with a complete and accurate assessment of the savings association's administration of its fiduciary powers.

The report should be accurate, concise and reasonably uniform. Accurate reporting is essential to the proper understanding and, in turn, the proper correction, of adverse matters contained in the report. All conclusions must be logical extensions of facts that are documented in the report and workpapers. Concise reporting aids the reader in understanding and interpreting report comments. Therefore, care should be taken to provide all essential data in a concise, logical and readily understandable manner. There should only be enough detail to enable the reader to understand the regulator's concerns. The reasonably uniform preparation of the report will enable OTS personnel to properly and quickly understand the condition of a trust department and provide a reasonable and consistent basis to compare trust departments both within a particular regional office and nationwide.

The report presents the significant findings of an examination. The examiner may exercise discretion in determining what specific matters are of sufficient importance to require comment in the report and, if so, their location in the report (i.e., summary vs. body). In so doing, however, the examiner must keep in mind the purpose and objectives of the report. In addition, the facts and circumstances in a specific savings association will dictate what items are considered significant or substantive. Within those parameters, the following guidelines are provided.

Significant violations of laws, regulations, rulings or sound fiduciary principles should be reported.

The absence of, or major weaknesses in, trust department policies, practices and controls should be reported. Such matters are likely to adversely affect a large number of accounts.

Actions or practices that have resulted in a significant liability to the savings association, or that could result in liability if left uncorrected, should be reported. Similarly, significant pending or threatened litigation, settlements or compromise actions should be reported. Isolated exceptions that impact an individual account(s) should only be reported if the account(s) has or is likely to sustain a significant loss.

Any recurring items of criticism should be reported, regardless of their significance. In such a case the significance lies in management's lack of correction rather than the item itself. One result of this treatment may be that a comment contained in the body of the first report (i.e., significant enough to warrant inclusion in the report but not significant enough for the summary page) may be included on the summary page in a subsequent report.

Violations that are isolated, technical, minor, inadvertent or that indicate an overall department practices should not be reported, unless management is unable or unwilling to correct these items during the examination, they are repeated from a previous examination or they are symptomatic of an overall weakness. These violations should, however, be discussed with management and documented in the workpapers, as appropriate.

Similarly, the report should not contain extensive schedules of detailed information or lists of individual exceptions. Instead, these items should be furnished to trust department management and/or documented in the workpapers, depending upon their significance. Report comments can then be limited to a more general description of the underlying cause of the problem, with a reference to any detailed lists or schedules furnished to management.

As noted in Section 040, Examination Planning and Control, examination findings and conclusions should always be discussed with trust department management and other appropriate personnel prior to inclusion in the report.

## Structure and Content

### Examination Overview

The purpose of this section is to explain the examination methodology, detail the scope of the examination, summarize significant findings in regard to the savings association's management of its trust and asset management responsibilities and offer recommendations for improvement. This section contains subsections as explained below.

#### *Scope*

The scope subsection identifies the type of examination (regular, targeted or special). It should state the purpose of the examination, which is to evaluate how well the savings association manages its trust and asset management responsibilities and to gain an overview of the general condition of the trust department. An examination should not consist of a detailed review of compliance with all laws and regulations in order to identify violations. It should describe the overall areas reviewed but not provide details as to the precise depth of that coverage. Those details are to be presented in the workpapers. To illustrate, an appropriate comment in regard to account administration would be: "We reviewed individual accounts to determine if the department's policies are followed and to determine whether necessary documentation was present." Conversely, an inappropriate comment would be: "We reviewed seven personal trust accounts, six employee benefit accounts...".

In order to avoid the impression that a wider coverage was made than was actually undertaken, an examiner may wish to note those areas that received either limited or no coverage. Similarly, if the scope of the examination was influenced by any special factors, such as the prior trust or audit reports, comments to that effect would be appropriate. For example, an appropriate comment would be: "Since the audit report completed just prior to this examination included a verification of assets and since no major weaknesses were noted, we did not perform asset verification procedures during this examination."

Finally, this subsection should describe the closing meeting with management. It should indicate that examination findings were presented to management and with whom those findings were discussed.

#### *Executive Summary*

This subsection should be the focal point to report overall conclusions, both positive and negative, that result from an examination. This subsection should address the following:

- matters of particular significance contained elsewhere in the report (e.g., a brief description of the most significant or critical problems, deficiencies or violations);
- overall improvement or decline since the last examination; and
- composite rating assigned to the savings association's trust and asset management activities under the Uniform Interagency Trust Rating System.

The subsection should not be used as an index to all comments contained in the body of the report, nor should it contain minor comments. Matters of particular significance should be addressed in order of their importance regardless of the order in which they appear in the body of the report. The rating assigned should be justified by specific language tailored to the savings association. While the language in the Uniform Interagency Trust Rating System can be used for guidance, it should not be quoted verbatim. Any pertinent background information can also be summarized in this subsection, such as the size, location, nature of the trust and asset management activities or other similar descriptive data, but it should be brief. For example, in de novo trust and asset management examinations, this subsection might contain the following comment: "ABC was chartered by the OTS in January 2000 and this is the institution's first trust and asset management examination. As such, we placed significant emphasis on reviewing the organizational structure, management reporting and written policies and procedures."

#### *Matters Requiring Board or Management Attention*

This section should contain any recommendations for correction of adverse findings or suggestions for future improvement. All matters requiring board or management attention should be bulleted and listed in descending order of importance under each MOECA heading. Matters of primary importance should be briefly discussed within the context of the particular comments contained in the summary subsection. Significant issues should then be fully discussed in the significant regulatory findings section, depending upon the nature and extent of the findings and recommendations and the examiner's opinion as to how best to present those items. If formal corrective action is recommended, completion dates for implementation of the corrective action should be included.

#### *Significant Regulatory Findings*

The purpose of this section is to identify significant regulatory issues and violations that warrant specific corrective action. All substantive findings should be identified (refer to discussion of substantive findings

under “Objectives and General Guidelines” above). The discussion of each finding should be concise and indicate the underlying cause(s) of the finding. Consistent with other sections of the report, the overall tone should be positive and constructive and the objective should be to lead the reader to agree that correction of cited deficiencies is not only possible but in the best interest of the savings association.

The body of the report is organized to correlate with the trust rating system. As such, it contains five major divisions: management; operations, internal controls and auditing; earnings; compliance and asset management (MOECA). The factors noted under “coverage” in each of those subject areas in the Uniform Interagency Trust Rating System (and similar factors) comprise the subsections.

Each of the five major divisions should begin with an overview of the department’s compliance with that topic. Individual violations or other deficiencies should then be briefly discussed, beginning with the most critical or substantive item. The discussion of a particular violation or other adverse matter should include (as applicable):

- a description of the problem, including how it occurred and the exact citation if it involves any statutory or regulatory violation;
- the extent of the problem, including a projection of the violation’s anticipated frequency of occurrence throughout the department based on the examination sample;
- an estimate of the financial or other risk to the department/institution created by the problem;
- the underlying cause of the problem, if it can be determined;
- the examiner’s recommendation(s) for corrective action; and
- management’s response (whether it agrees or disagrees and any assurances given).

If the comment involves an individual account, pertinent information relating to that account should be contained in the comment. However, if as a result of individual account comments there are suggestions for overall improvements, these should be addressed in the summary rather than repeated numerous times in the body of the report.

### **Issuance of the Trust and Asset Management Examination Report**

The trust and asset management examination report should be issued to the savings association’s board of directors as soon as practicable after the completion of the on-site portion of the examination, since the overall impact and usefulness of the report can be directly correlated to the timing of its issuance. The passage of an unreasonable length of time between completion of the on-site examination and issuance of the report may give the impression to the savings association that any problems noted during the examination and contained in the report must not be as serious as management was led to believe.

In order to achieve the maximum utility from an examination report and to enhance its impact, it is suggested that regional offices develop internal procedures to process trust and asset management examination reports so their issuance can occur in a timely manner, generally within 45 calendar days after completion of the on-site examination. This time period is designed to assure that the information contained in the report reaches the board of directors promptly. If the report contains serious violations of laws, regulations or standards of fiduciary conduct, the regional office should consider expediting its internal processing to enable the report to be issued in a shorter time period. In instances where the safety and soundness and trust and asset management examinations are performed concurrently, the regional office may opt to transmit both completed reports simultaneously.

### Transmittal Letters

The examination report includes a letter to a savings association's board of directors that officially transmits the report. In addition to the formal act of transmitting the report, this letter serves an important and substantive function in terms of the overall regulatory process. It is one of the primary communication tools used by OTS to bring to the attention of a savings association's senior management and its board of directors the significant findings and recommendations that result from the examination process. The letter can also serve as an important enforcement tool in that it should make an institution's management acutely aware of the severity of any problems and impose reasonable timeframes for taking, or reporting on the progress of, corrective actions.

Naturally, the examination findings dictate the tone of this letter. For example, in a problem-free department, the transmittal letter would simply transmit the report. On the other hand, where the report contains significant matters for the directors' and management's attention, the transmittal letter should convey the seriousness of the regulatory findings and express the regional office's concern about the condition of the trust department. The letter should ask that the board of directors formally acknowledge receipt of the examination report and set forth a time limit for the board to respond to the examination findings, usually no longer than 30 days. At a minimum, a specific response should be requested for matters commented on in the report. Transmittal letters should be prepared and submitted for review within the draft report.

The board's response should contain a detailed explanation of the actions it will initiate to bring about corrective action. Copies of any pertinent information, if requested in the transmittal letter, should also be included in the response. For example, policies, procedures, internal memoranda, and legal opinions which management has prepared to address the concerns contained in the report. The response should be closely reviewed upon its receipt. The regional office should address any inadequate, unclear or otherwise unresolved matters in follow-up correspondence. Close attention to this process will accomplish several objectives; management's response will provide proposed or already-taken corrective action and both parties will have their concerns documented in writing. The writings will, in turn, foster more open and effective communications. Review of the response, including any necessary follow-up, will allow the supervision and regulation of the savings association to continue on an ongoing basis. As a result, outstanding items should not remain unresolved until the next examination.