

BILLING CODE: 6720-01 P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 550 and 563e

[No. 97-68]

RIN 1550-AB09

Fiduciary Powers of Federal Savings Associations;

Community Reinvestment Act

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to revise 12 CFR Part 550 and 12 CFR 545.102 in order to promote the more efficient operation and supervision of Federal savings associations' fiduciary activities. The proposed changes are intended to update, clarify, and streamline OTS regulations, to incorporate significant interpretive guidance, and to eliminate unnecessary regulatory burden. OTS proposes these revisions pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review (Reinvention Initiative) and section 303 of

the Community Development and Regulatory Improvement Act of 1994 (CDRIA).

OTS also proposes to amend its Community Reinvestment Act (CRA) regulations at 12 CFR Part 563e. The proposed change would bring the scope of OTS's CRA regulation into accord with the CRA regulations of the other federal banking agencies. It would exempt from the CRA regulations savings associations that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business.

DATES: Comments must be received on or before [insert date 60 days from date of publication in the Federal Register].

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention Docket No. 97-___. These submissions may also be hand-delivered to 1700 G Street, N.W., from 9:00 A.M. to 5:00 P.M. on business days; sent by facsimile transmission to FAX Number (202) 906-7755; or sent by e-mail to public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, N.W., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Larry Clark, Senior Manager, Compliance and Trust Programs, Compliance Policy, (202) 906-5628; Timothy Leary,

Counsel (Banking and Finance), (202) 906-7170, or Karen Osterloh, Assistant Chief Counsel, (202) 906-6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

In 1995, pursuant to the Reinvention Initiative and section 303 of CDRIA, OTS conducted a comprehensive review of its rules and regulations. As part of that review, OTS identified its trust regulations at 12 CFR Part 550 for updating and streamlining.

Part 550 is promulgated under Section 5(n) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1464(n), which authorizes the Director of OTS to authorize a Federal savings association to exercise fiduciary powers. Congress enacted section 5(n) in order to give Federal savings associations the "ability to offer trust services on the same basis as national banks" and to "enhance the ability of thrifts to offer complete financial service to the consumer."¹

As originally enacted, section 5(n) of the HOLA empowered the Federal Home Loan Bank Board (FHLBB), the predecessor agency to OTS, to issue regulations

¹ S. Rep. 96-368 at 13 (1980), *reprinted in* 1980 U.S.C.C.A.N. 248. Congress further amended § 5(n) in the Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA") of 1989. Pub. L. 101-73.

regarding the proper exercise of Federal association trust powers.² Pursuant to that authority, the FHLBB issued the current part 550 in December, 1980.³ These regulations have not been substantially changed since their promulgation.

Since 1980, however, much about Federal savings associations' fiduciary business has changed. These changes have affected the nature and scope of the fiduciary services that associations offer, and the structures and operational methods that associations use to deliver those services. OTS's primary goals in revising part 550 are to accommodate these changes, remove unnecessary regulatory burden, and facilitate the continued development of Federal savings associations' fiduciary business consistent with safe and sound banking practices.

Today's proposal has several themes. First, the proposal recognizes that the geographic and organizational structure of many Federal savings associations' fiduciary operations has changed considerably over the years. Consequently, OTS proposes to adjust part 550 so that its requirements are workable for both large, multi-state fiduciary organizations and small institutions that conduct fiduciary activities primarily on a local basis.

² 12 U.S.C. 1464(n)(10)(D)(1980).

³ 45 FR 82162 (December 15, 1980).

Second, Federal savings associations' fiduciary activities, in several respects, are subject to State law. In some cases, OTS has the flexibility to prescribe a uniform Federal standard or to direct Federal savings associations to follow State law. In the proposal, OTS has attempted to strike an appropriate balance between Federal and State law.

Third, over the years, part 550 has been interpreted to apply to investment advisory activities and related services which do not involve the association's exercise of investment discretion. In some cases, savings associations engaged in these activities operate under different standards than other financial service providers that conduct the same business.

Finally, consistent with section 303 of CDRIA, the proposal conforms OTS rules more closely to those rules of other Federal banking agencies, specifically the rules issued by the Office of the Comptroller of the Currency (OCC) at 12 CFR Part 9. Section 5(n) of the HOLA closely resembles 12 U.S.C. 92a, which authorizes the OCC to grant fiduciary powers to national banks. In December 1996, the OCC comprehensively revised its rules governing national banks' fiduciary operations. 61 FR 68543 (December 30, 1996). To promote continuity and reasonable consistency in the exercise of fiduciary powers by Federally-chartered financial institutions, OTS's proposal draws extensively on the OCC's final rule and the comments the OCC

received on its proposed rule. As a consequence, today's proposal more accurately reflects current legal, regulatory, and business developments in the area of fiduciary services and activities.

II. Section-by-Section Description of the Proposal

Proposed § 550.1 (Authority and scope)

Proposed § 550.1 is a new provision. It explicitly states the statutory authority for, and the purpose and scope of, part 550.

Proposed § 550.2 (Definitions)

The proposal moves the definitions currently found at § 550.1 to proposed § 550.2. Some definitions are removed and others are added. Significant changes are highlighted below.

Affiliate

The proposal adds a definition of "affiliate" to part 550. The proposed definition follows the OCC's fiduciary powers regulation by cross referencing the definition in the Federal Reserve Act at 12 U.S.C. 221a(b). That definition varies from

ATTACHMENT IS AVAILABLE UPON REQUEST

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