

§ 550.50

12 CFR Ch. V (1–1–10 Edition)

a fiduciary account, the sole or shared authority to determine what securities or other assets to purchase or sell on behalf of that account. It does not matter whether you have exercised this authority.

(b) *Delegations.* You retain investment discretion if you delegate investment discretion to another. You also have investment discretion if you receive delegated authority to exercise investment discretion from another.

§ 550.50 What is a fiduciary account?

A fiduciary account is an account that you administer acting in a fiduciary capacity.

§ 550.60 What other definitions apply to this part?

Activities ancillary to your fiduciary business include advertising, marketing, or soliciting fiduciary business, contacting existing or potential customers, answering questions and providing information to customers related to their accounts, acting as liaison between you and your customer (for example, forwarding requests for distribution, changes in investment objectives, forms, or funds received from the customer), and inspecting or maintaining custody of fiduciary assets or holding title to real property. This list is illustrative and not comprehensive.

Other activities may also be “ancillary activities” for purposes of this definition.

Affiliate has the same meaning as in 12 U.S.C. 221a(b). For purposes of this part, substitute the term “Federal savings association” for the term “member bank” whenever it appears in 12 U.S.C. 221a(b).

Applicable law means the law of a State or other jurisdiction governing your fiduciary relationships, any Federal law governing those relationships, the terms of the instrument governing a fiduciary relationship, and any court order pertaining to the relationship.

Fiduciary activities include accepting a fiduciary appointment, executing fiduciary-related documents, providing investment advice for a fee regarding fiduciary assets, or making discretionary decisions regarding investment or distribution of assets.

Fiduciary officers and employees means the officers and employees of a Federal savings association to whom the board of directors or its designee has assigned functions involving the exercise of the association’s fiduciary powers.

[62 FR 67703, Dec. 30, 1997, as amended at 67 FR 76298, Dec. 12, 2002]

Subpart A—Obtaining Fiduciary Powers

§ 550.70 Must I obtain OTS approval or file a notice before I exercise fiduciary powers?

You should refer to the following chart to determine if you must obtain OTS approval or file a notice with OTS before you exercise fiduciary powers. This chart does not apply to activities that are exempt under subpart E of this part.

If you will conduct . . .	Then . . .
(a) Fiduciary activities for the first time and OTS has not previously approved an application that you submitted under this part.	You must obtain prior approval from OTS under §§ 550.80 through 550.120 before you conduct the activities
(b) Fiduciary activities that are materially different from the activities that OTS has previously approved for you, including fiduciary activities that OTS has previously approved for you that you have not exercised for at least five years.	You must obtain prior approval from OTS under §§ 550.80 through 550.120 before you conduct the activities
(c) Fiduciary activities that are not materially different from the activities that OTS has previously approved for you.	You must file a written notice described at § 550.125 if you commence the activities in a new State. You do not need to file a written notice if you commence the activities at a new location in a State where you already conduct these activities.
(d) Activities that are ancillary to your fiduciary business	You do not have to obtain prior OTS approval or file a notice with OTS.

[67 FR 76298, Dec. 12, 2002; 68 FR 2108, Jan. 15, 2003, as amended at 68 FR 75109, Dec. 30, 2003]