
Employee Benefit Accounts Examination Program

Examination Objectives

To determine the adequacy and/or effectiveness of the trust department's provision of products and services to employee benefit accounts. Consider whether:

- effective policies, procedures and internal controls have been established;
- there is adequate expertise to effectively support the provision of products and services to employee benefit accounts;
- the legitimate needs of plan participants, beneficiaries and other interested parties are provided for in a professional and timely manner;
- policies and procedures ensure compliance with governing instruments, applicable law and accepted fiduciary principles; and
- deficiencies are identified and corrective action promptly initiated.

Examination Procedures

Wkp. Ref.

Level I

Level I procedures first focus on a review of the examination scoping materials. The next step consists of interviews with trust department personnel to confirm their qualifications and levels of expertise; to determine if the trust department's practices conform to written guidelines; to establish whether any significant changes in personnel, operations or business practices have occurred; or whether new products or services have been introduced. If items of concern are uncovered during Level I procedures, or if problems are identified during the preexamination monitoring and scoping, the examiner may need to perform certain Level II procedures.

1. Review examination scoping materials related to the provision of products and services to employee benefit accounts. Scoping material should include:
 - Risk profile
 - Relevant PERK documents
 - Previous trust and asset administration examination report

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Page 1 of 18

Employee Benefit Accounts Examination Program

Wkp. Ref.

- Workpapers from the previous examination
- Copies of any prototype plans used by the savings association
- Board and other appropriate committee minutes
- Examination reports of subordinate, functionally regulated entities

2. Assess whether management and staff have the expertise to effectively support the provision of products and services to employee benefit accounts. Note any significant changes in personnel since the previous examination.

3. Note the types, capacity and volumes of employee benefit accounts currently found in the trust department. Identify any significant changes as well as any changes in product or service offerings since the previous examination.

4. Review policies, procedures and practices related to the provision of products and/or services to employee benefit accounts and note any changes since the previous examination. Determine their adequacy relating to:

- Preacceptance reviews;
- Acceptance of accounts, including successor appointments;
- Administration of accounts (including acceptance of contributions, payment of plan expenses and distributions to participants and beneficiaries);
- Periodic account reviews;
- Identifying, preventing, correcting and reporting prohibited transactions;
- The filing of Form 5500 as a service to plans or the provision of information for inclusion on the plan's Form 5500;

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Employee Benefit Accounts Examination Program

Wkp. Ref.

- Compliance with DOL guidelines in connection with the acceptance of 12b-1 or other fees from proprietary or third-party mutual funds;
- Termination of accounts or of plans;
- Use of proprietary products in discretionary accounts;
- Providing plan participant investment educational material, voice response units or internet capabilities for plans and plan participants; and
- Compliance with applicable law and accepted standards of fiduciary conduct.

5. If administrative or investment functions have been outsourced to third parties, assess the selection and oversight process. Review the servicing contracts to ensure that all activities are covered including the fee arrangements.

6. If a bundled product is offered and participant recordkeeping is outsourced, review the servicing contract and determine if management monitors the vendor's performance.

7. Determine if the trust department provides services for the savings association's own employee benefit plan. Are policies and procedures adequate to comply with Department of Labor and ERISA requirements regarding the savings association's fiduciary responsibilities to the plan and what the trust department may charge for the services being provided?

8. Assess the adequacy of policies and procedures for participant loans, particularly as they relate to IRS, ERISA and (if applicable) Regulation Z's Truth in Lending requirements.

Exam Date: _____

Prepared By: _____

Reviewed By: _____

Docket #: _____

Page 3 of 18

Employee Benefit Accounts Examination Program

Wkp. Ref.

9. Determine if effective policies and procedures have been adopted for identifying fiduciaries, parties in interest and prohibited transactions in qualified plans.

10. Determine if policies and procedures are in place regarding investment allocation instructions for plans directed by individual participants or plan appointed investment managers.

11. Do policies and procedures address IRS determination letters and plan funding?

12. Consider whether the following risk contributors (if applicable) have been addressed:

- Management fully understands all aspects of risk associated with employee benefit accounts
 - Adequate policies, procedures, practices and internal controls are confirmed for administrative practices
 - Administrative policies, procedures and practices are consistently applied
 - Comprehensive risk management, audit and compliance systems are established and utilized effectively
 - Management reports are generated and utilized appropriately
 - Management and administrative personnel are familiar with account details
 - Sufficient documentation is maintained
 - Significant employee benefit account issues that were noted in audit, compliance or examination reports are resolved timely
-

Exam Date: _____

Prepared By: _____

Reviewed By: _____

Docket #: _____

Page 4 of 18

Employee Benefit Accounts Examination Program

Wkp. Ref.

The completion of the Level I procedures may provide sufficient information to make a determination that no further examination procedures are necessary. If no determination can be made, proceed to Level II.

Level II

Level II procedures focus on an analysis of trust department documents, such as reports and outsourcing contracts. The examiner should complete the appropriate Level II procedures when the completion of Level I procedures does not reveal adequate information on which to base a conclusion that the trust department meets the examination objectives. Neither the Level I nor the Level II procedures involve significant verification.

1. Determine if procedures require that necessary approvals, notifications or registrations are filed for new service or product offerings.

2. Review new business development reports (including both accepted and rejected accounts). Determine whether the savings association performs a preacceptance review of accounts prior to their approval.

3. If the savings association administers Keogh and IRA accounts and has not been granted trust powers, review policies and procedures for compliance with 12 CFR §545.102 and other applicable OTS and IRS regulations.

4. Does the savings association have a policy and procedure for identifying and making a reasonable effort at remedying any breach by cofiduciaries?

5. Ensure that the savings association has a policy for ensuring that all nonsavings association parties who handle funds or other property under the control of the savings association are bonded.

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Page 5 of 18

Employee Benefit Accounts Examination Program

Wkp. Ref.

6. Ensure that the savings association has a policy and procedure for prohibiting any person from serving in a fiduciary capacity if that individual has been convicted of specific crimes.

7. Review and verify the accuracy of any applicable management exception reports. Evaluate management's expediency in handling exceptions.

8. Review the process for certifying the information required by the plan administrator to file a Form 5500 or to publish an annual report.

9. Does the saving association's ensure that loans made to participants are in compliance with applicable provisions of ERISA and the Internal Revenue Code? Consider if:

- loan balances and repayment are limited;
- level amortization is required;
- loans are available to all participants and beneficiaries;
- loans are made according to specific provisions in the plan;
- loans bear a reasonable rate of interest; and
- delinquencies are monitored.

10. If the savings association provides services to its own employee benefit plan, is there a process in place to readily identify any prohibited transactions?

Exam Date: _____

Prepared By: _____

Reviewed By: _____

Docket #: _____

Page 6 of 18

Employee Benefit Accounts Examination Program

Wkp. Ref.

- | | | |
|-------|--|--|
| 11. | If there are unresolved exceptions from internal or external audit reports, compliance reports or examination reports, discuss corrective action with management. | |
| <hr/> | | |
| 12. | If the savings association services its own or affiliated plans, determine if the use of proprietary or affiliated products is done in the best interest of the participants. | |
| <hr/> | | |
| 13. | Determine if plan fiduciaries and parties in interest are identified and their activities regarding plan assets are adequately monitored. | |
| <hr/> | | |
| 14. | For plans covered by ERISA 404(c) determine that at least three investment choices are made available and that plan participants are given sufficient information to make informed investment decisions. | |
| <hr/> | | |
| 15. | Determine if plans are timely and adequately funded. | |
| <hr/> | | |
| 16. | If necessary to validate an assertion, finding or concern arising from the completion of the Level I and II procedures, judgmentally select a limited number of accounts for review considering the degree of risk to the institution. Not all types of accounts need to be reviewed to arrive at a well-founded conclusion. | |
| <hr/> | | |

If the examiner cannot rely on the trust and asset management Level I and Level II procedures or data contained in department records or internal or external audit reports to form a conclusion, proceed to Level III.

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Page 7 of 18

Employee Benefit Accounts Examination Program

Wkp. Ref.

Level III

Level III procedures include verification procedures that auditors usually perform. Although certain situations may require that Level III procedures be completed, it is not the standard practice of the Office of Thrift Supervision (OTS) examination staff to duplicate or substitute for the testing performed by auditors.

1. Select a sample of accounts for review. A suggested sample might include a selection of new, seasoned and closed accounts that has coverage from all administrative personnel and all business locations. Also consider in the sample:

- accounts in which litigation is pending or has been threatened;
- accounts for which complaints have been lodged with the savings association; and
- accounts that exhibit identifiable concerns.

-
2. Determine whether the trust department has exclusive authority and discretion to control and manage the assets of the sampled plans/accounts. If it does not, ensure that the plan/account expressly:

- states that the trustee is subject to the proper direction of a named fiduciary who is not the trustee; or
- provides for the naming of a qualified investment manager pursuant to provisions of the plan/account.

-
3. Review new accounts to determine whether adequate account acceptance procedures are utilized, committee approvals are obtained, necessary documents are acquired and synoptic information sheets are prepared.
-

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Page 8 of 18

Employee Benefit Accounts Examination Program

Wkp. Ref.

4. Review successor appointments to determine whether acts of prior fiduciaries are reviewed, assets are properly received and other appropriate documentation is obtained.

5. Review accounts that utilize third-party administrators or are directed by other named fiduciaries or investment managers. Determine whether necessary authorizations or directions are obtained and on file, that they are proper according to the terms of the plan and not contrary to the provisions of ERISA.

6. For plans/accounts which own assets outside the jurisdiction of the United States, determine if the trust department ascertains that the indicia of ownership of such assets is in accordance with DOL regulations (20 CFR §2550.404b-1).

7. Review committee minutes and file documentation to ensure that initial, annual and closing account reviews are complete, adequately documented and performed in a timely manner.

8. Review account administration practices for employee benefit accounts to determine compliance with the terms of governing instruments, applicable law and accepted principles of fiduciary conduct.

9. Review asset holdings and account activities for prohibited transactions. If prohibited transactions are identified, determine if an exemption exists and procedures are in effect to assure compliance with the exemptions. If no exemption exists, assess management's efforts to remedy the situation.

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Page 9 of 18

Employee Benefit Accounts Examination Program

Wkp. Ref.

- | | | |
|-------|---|--|
| 10. | Review a sample of employee stock ownership plans (ESOPs) to determine compliance with internal policies and procedures as well as ERISA §§407 and 408. Include loans to ESOPs made or guaranteed by a party-in-interest if any exist. | |
| <hr/> | | |
| 11. | Review a sample of plans that invest in employer securities and real property to determine compliance with internal policies and procedures as well as ERISA §§407 and 408. | |
| <hr/> | | |
| 12. | Review closed accounts or plans to determine whether accounts were closed in accordance with established procedures and supported by documentation. Ensure that appropriate documentation of IRS and PBGC notification and approval is received prior to making a distribution of plan assets. (See IRS Publication 1048). Ensure that assets have been transferred in a timely manner. | |
| <hr/> | | |
| 13. | During the account review, determine if investments support the plan's funding policy (§402(b)(1)). Also determine if there is diversification of fund investments (§404(a)(1)(c)). | |
| <hr/> | | |
| 14. | Select a sample of employee benefit accounts holding qualified employer securities and real property and test the saving association's process for monitoring and controlling the purchase or retention of these assets. | |
| <hr/> | | |
| 15. | Select a sample of accounts and review for impermissible assets. | |
| <hr/> | | |

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Employee Benefit Accounts Examination Program

DOL Technical Bulletin 86-1

Workpaper Attachments - 730P

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Page 12 of 18

Employee Benefit Accounts Examination Program

Optional Topic Questions

The following list of questions is offered merely as a tool and reference for the examiner and is not a required part of the examination process.

Preacceptance Review

| |
|---|
| <ul style="list-style-type: none">• Do policies and procedures require that specific documents be obtained in order for an account to be opened? |
| <ul style="list-style-type: none">• Is the nature and complexity of the account considered, including the ability of trust personnel to properly administer it? |
| <ul style="list-style-type: none">• Are real or potential conflicts of interest considered? |
| <ul style="list-style-type: none">• Is the potential profitability of the account considered? |
| <ul style="list-style-type: none">• Is an account opening checklist used? |
| <ul style="list-style-type: none">• When appropriate, are potential environmental issues considered? |
| <ul style="list-style-type: none">• Is an IRS determination letter obtained? |

Account Acceptance

| |
|---|
| <ul style="list-style-type: none">• Have guidelines for account acceptance been established? |
| <ul style="list-style-type: none">• Are the assets of all new accounts reviewed within 60 days of acceptance? |
| <ul style="list-style-type: none">• Does the board of directors or its designated committee approve all new accounts? |
| <ul style="list-style-type: none">• Is the approval documented in the appropriate minutes? |
| <ul style="list-style-type: none">• Are original or certified copies of governing instruments obtained? |
| <ul style="list-style-type: none">• Are other supporting documents obtained as necessary? |

Successor Appointments

| |
|---|
| <ul style="list-style-type: none">• Is proof obtained of the prior trustee's removal or resignation? |
| <ul style="list-style-type: none">• Are the prior trustee's activities reviewed? |
| <ul style="list-style-type: none">• Are procedures in place to ensure that all assets have been received? |
| <ul style="list-style-type: none">• Does the department obtain indemnification from the prior trustee and/or the account beneficiaries for activities of the prior trustee? |
| <ul style="list-style-type: none">• Is an account statement obtained from the prior trustee indicating a zero balance in the account? |

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Employee Benefit Accounts Examination Program

Account Administration

| |
|--|
| <ul style="list-style-type: none"> • Does the trust department, when acting as trustee, ensure that each account is established and maintained pursuant to a governing instrument which: <ul style="list-style-type: none"> • Designates or provides for one or more named fiduciaries? • Describes how the plan will be funded? • Details how fiduciary responsibilities will be allocated? • Contains procedures for amending the plan? • Provides that all assets of a plan/account are to be held in trust by one or more trustees? |
| <ul style="list-style-type: none"> • Do procedures require that proxies are voted solely in the best interests of account beneficiaries? |
| <ul style="list-style-type: none"> • Is a system in place to assure required deadlines are met? |
| <ul style="list-style-type: none"> • Does the trust department certify within 120 days after the end of a plan's fiscal year end the information required in order to publish an annual report, including: <ul style="list-style-type: none"> • Information pertaining to any party-in-interest transactions? • Reportable transactions in excess of 3 percent of the current value of plan assets? • Past due leases and loans? |
| <ul style="list-style-type: none"> • Are adequate recordkeeping procedures and controls in place? |
| <ul style="list-style-type: none"> • When required, are directions or approval from cofiduciaries timely received in writing? |
| <ul style="list-style-type: none"> • Are appropriate approvals by the board of directors or its designated committee obtained and documented? |
| <ul style="list-style-type: none"> • Are procedures in place designed to ensure updated account documents are timely received? |
| <ul style="list-style-type: none"> • Are closed accounts timely removed from the accounting system? |
| <ul style="list-style-type: none"> • Are informational returns timely and accurately filed? |
| <ul style="list-style-type: none"> • Are procedures in place to ensure contributions are timely received? |

Cofiduciaries

| |
|--|
| <ul style="list-style-type: none"> • Are the acts of cofiduciaries reviewed for appropriateness? |
| <ul style="list-style-type: none"> • Are appropriate controls in place to ensure inappropriate acts by cofiduciaries are not concealed? |
| <ul style="list-style-type: none"> • Do procedures in place to correct a known breach by a cofiduciary? |
| <ul style="list-style-type: none"> • Do policies require that all plan assets be under the control of the trust department? |

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Employee Benefit Accounts Examination Program

Account Reviews

- | |
|---|
| <ul style="list-style-type: none">• When applicable, are procedures in place to ensure that annual account reviews are timely performed? |
| <ul style="list-style-type: none">• Are closed accounts timely reviewed and ratified by the board of directors or a designated committee? |
| <ul style="list-style-type: none">• Are account reviews sufficiently documented and approved? |

Terminations

- | |
|--|
| <ul style="list-style-type: none">• Is proper documentation obtained at the time an account is closed? |
| <ul style="list-style-type: none">• Do procedures require that assets be timely distributed? |
| <ul style="list-style-type: none">• Are receipts obtained and maintained when assets are transferred? |
| <ul style="list-style-type: none">• Are account closings reviewed and termination approvals recorded in appropriate committee minutes? |
| <ul style="list-style-type: none">• Are closed accounts promptly removed from the trust accounting system? |

Employee Stock Ownership Plans

- | |
|---|
| <ul style="list-style-type: none">• Does the governing instrument formally designate the account as an ESOP? |
| <ul style="list-style-type: none">• Does the plan specifically state that it is designed to invest primarily in qualifying employer securities? |
| <ul style="list-style-type: none">• When appropriate, does the plan provide for put options? |
| <ul style="list-style-type: none">• Are distributions made only in stock of the employer or cash? |
| <ul style="list-style-type: none">• When transactions involve qualifying employer securities which are not publicly traded, is a good faith determination of fair market value made:<ul style="list-style-type: none">• By an experienced and independent appraiser?• At least annually and as of the transaction date, if the transaction involves a party-in-interest?• By considering other relevant factors, if the transaction involves a party-in-interest? |

Loans to ESOPs

- | |
|--|
| <ul style="list-style-type: none">• Is the loan primarily for the benefit of participants and beneficiaries? |
| <ul style="list-style-type: none">• Is the interest rate reasonable? |
| <ul style="list-style-type: none">• Does collateral consist solely of qualifying employer securities? |
| <ul style="list-style-type: none">• Are the terms of the loan at least as favorable as the terms of comparable loans resulting from arm's length negotiations between independent parties? |
| <ul style="list-style-type: none">• Are loan proceeds used only to acquire qualifying employer securities or to repay an outstanding loan of the ESOP? |
| <ul style="list-style-type: none">• As the loan balance declines, is an appropriate amount of collateral released? |

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Employee Benefit Accounts Examination Program

Employer Securities and Real Property

| |
|--|
| <ul style="list-style-type: none">• Does the plan acquire or hold employer securities or real property? |
| <ul style="list-style-type: none">• Does the aggregate holding of a defined benefit plan exceed 10 percent of the fair market value of the plan's assets? |
| <ul style="list-style-type: none">• If an eligible individual account plan holds employer securities or real property in an amount that exceeds 10 percent of the fair market value of the assets of the plan, is there language in the plan permitting this? |
| <ul style="list-style-type: none">• Are transactions involving the acquisition or sale of qualifying employer securities and real property (including the lease thereof) entered into:<ul style="list-style-type: none">• For adequate consideration?• Without charging a commission? |
| <ul style="list-style-type: none">• Are purchases of qualifying employer securities or real property considered prudent? |

Prohibited Transactions

| |
|---|
| <ul style="list-style-type: none">• Does the trust department have procedures to identify persons or entities that are parties-in-interest as defined by ERISA? |
| <ul style="list-style-type: none">• Did transactions with a party-in-interest involved the:<ul style="list-style-type: none">• Sale, exchange or lease of property?• Lending of money or other extension of credit?• Furnishing of goods, services or facilities?• Transfer to, or use of assets by or for the benefit of such party? |
| <ul style="list-style-type: none">• Did the trust department:<ul style="list-style-type: none">• Deal with plan assets for its own account or in its own interest?• Act in any capacity involving a plan on behalf of a party whose interests are adverse to those of the plan, its participants or beneficiaries?• Identify and monitor fiduciaries and parties in interest? |

Exemptions From Prohibited Transactions

| |
|--|
| <ul style="list-style-type: none">• Are participant loans:<ul style="list-style-type: none">• Available to all participants and beneficiaries on a reasonably equivalent basis?• Not made available to highly compensated employees, officers or shareholders in an amount greater than the amount made available to other employees?• Specifically authorized in the governing instrument?• Made at a reasonable rate of interest?• Adequately secured? |
|--|

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Employee Benefit Accounts Examination Program

| |
|---|
| <ul style="list-style-type: none"> • In amounts not in excess of established limits? • Subject to level amortization and repayment at least quarterly over no more than five years (unless when used to acquire a principal residence)? • Subject to a written loan agreement? • Treated as a distribution if delinquent, including the issuance of a 1099R? • If applicable, in compliance with Reg. Z? |
| <ul style="list-style-type: none"> • If parties in interest provide ancillary services, is the amount paid for these services reasonable? |
| <ul style="list-style-type: none"> • If plan assets are invested in interest bearing deposits of the savings association or an affiliate: <ul style="list-style-type: none"> • Is a reasonable and competitive rate of interest paid? • Are the deposits specifically authorized by the plan or directed by an authorized individual? |
| <ul style="list-style-type: none"> • If any ancillary services are provided by the savings association: <ul style="list-style-type: none"> • Is the service provided in the best interests of the participants? • Are the costs for such services reasonable? |
| <ul style="list-style-type: none"> • If plans/accounts participate in the trust department's common or collective funds or pooled investment funds: <ul style="list-style-type: none"> • Are associated fees reasonable? • Is the participation specifically authorized by the plan or directed by an authorized individual? • Does the fund permit investment by these accounts? |
| <ul style="list-style-type: none"> • Are hardship withdrawals permitted only under the terms of the plan? |
| <ul style="list-style-type: none"> • Are hardship withdrawals permitted only after the ability to use participant loans is exhausted? |

Keogh and IRA Accounts

| |
|---|
| <ul style="list-style-type: none"> • If the trust department is performing any services greater than a custodian, are they authorized to act in that capacity? |
| <ul style="list-style-type: none"> • Are only permitted investments held by the accounts? |
| <ul style="list-style-type: none"> • If the savings association offers premiums, "finders fees," or related incentives to third parties in connection with establishing IRA accounts, does it conform to conditions specified by the OTS, DOL and IRS for such payments? |

Qualified Investment Manager

| |
|--|
| <ul style="list-style-type: none"> • Did the appropriate fiduciary name the qualified investment manager in accordance with the provisions of the plan? |
| <ul style="list-style-type: none"> • Was a statement obtained appointing the specific investment manager? |

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Employee Benefit Accounts Examination Program

- Was a statement obtained from the specific investment manager acknowledging its status as a fiduciary?

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Page 18 of 18