



Hot Fiduciary Compliance Topics for Trustees



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Today's HOT
Topics



Vendor Management Update

Pre-Acceptance Review
Process

Unique Assets – Focus on
Valuation

Beneficial Owner
Requirements for Entities

Vendor Management

"Third-party relationship as a business arrangement between a bank/trust company and another entity (by contract or otherwise)". Examples are:

- Outsourced Services
- Network arrangements
- Use of independent consultants/contractors
- Services provide by affiliates/subsidiaries
- Other business relationships (ongoing)

➤ **Regulators want a more defined risk-based approach**

➤ **Adhere to Risk Management Life Cycle**



Vendor Management

OCC Bulletin 2023-17 | June 6, 2023

Third-Party Relationships: Interagency Guidance on Risk Management

Summary

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) today issued the "Interagency Guidance on Third-Party Relationships: Risk Management."

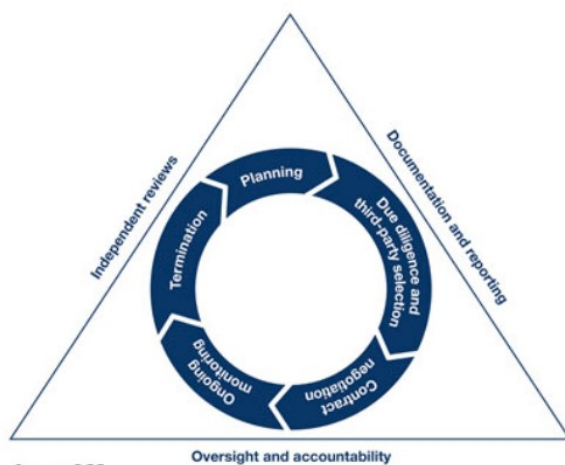
Note for Community Banks

This guidance applies to all banks with third-party relationships.²



Third Party Relationship Guidance

- Interagency – OCC, FDIC, Federal Reserve System, Community Banks *"Banks" refers collectively to national banks, federal savings associations, covered savings associations, and federal branches and agencies of foreign banking organizations."*
- Objective – Consistency in supervisory approach
- Outlines third-party risk management life cycle; Identifies principles applicable to each life cycle stage
- Clarification that not all third-party relationship have same risk
- Describes "things to consider" when developing and implementing third-party risk management practices



Risk
Management
Life Cycle

Vendor Management – Critical Vendors

- Banks/Trust Companies need to identify and define “critical” vendors – additional due diligence for higher risk providers
 - What level of disruption would occur if provider services cease? Impact to staff? Clients?
 - What type of data is being accessed and stored?
 - Do you have a backup plan? Any Plan B in place?
 - Does the vendor significantly impact operations and revenue?
- Solution – Rate your vendors and define “Critical/high risk” vendors
 - Conduct more extensive due diligence (Disaster recovery and business continuity)
 - Develop a “Plan B” (backup plan)
 - Meet regularly with them (assign point person); Establish meetings



Vendor Management – Ongoing Vendor Reviews

Do you review an ongoing vendor the same as a new vendor?

- “Ongoing” review of vendor process
- Identifying if anything has changed.....Are you checking?
- What can happen?
 - Mergers or acquisitions
 - Loss of key employees
 - Data breach issues – significant system changes
 - Use of foreign contractors
 - Data storage provider changes or moves
- May apply to independent contractors you use – Attorneys, CPA’s Valuation experts, etc. (who else is accessing client information)
- Have you reviewed vendors contracts? Any vendors’ services “not being utilized”?





Vendor Management Tips

- Understand applicability to your organization
- Review and enhance process for ONGOING vendors
- Create (revisit) definition of critical or high-risk vendors
 - Align enhanced due diligence
 - Schedule recurring meetings
 - Develop “Plan B” or backup
- Ensure vendor contracts with “no current and future usage” are properly terminated

Pre-Acceptance Review

12 CFR 9.6 (a) 12 CFR 150.200

- Screening the account and assets **before** account is accepted – prompts to ensure for proper notification
 - Understand fiduciary responsibility (capacity), and identify risks
 - Evaluating assets and other key indicators
 - Do you have expertise to take on risk (or have access)?
 - Is it operationally possible?
- **Set stage** for strategy – fiduciary and client expectations
- Account acceptance ratification (exceptions should be noted)



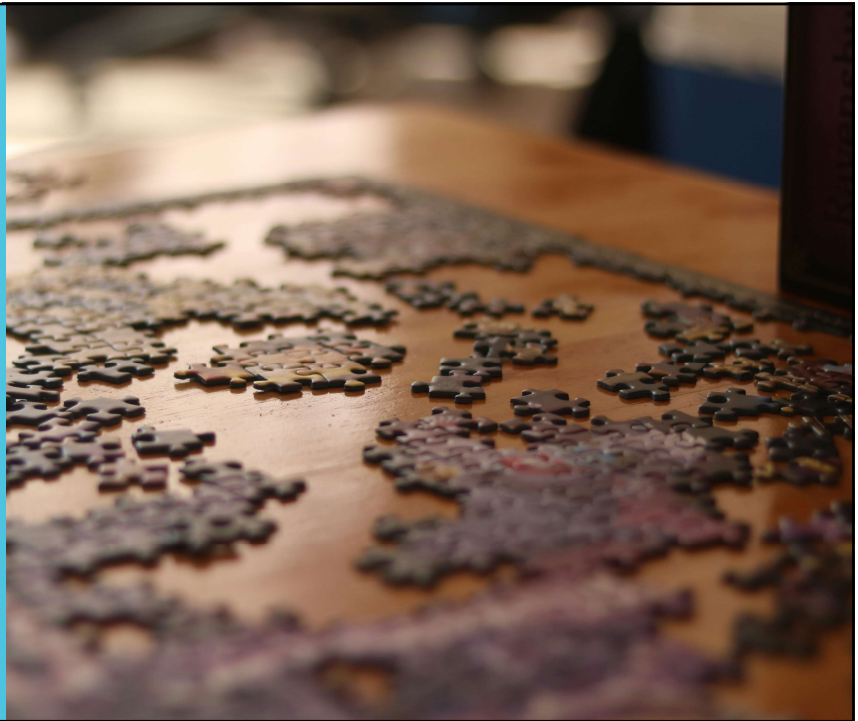
*“Management should have a **well-defined process** for evaluating and inspecting **an account before acceptance**” OCC*

It is what the regulators expect!!!

Regulators look for adherence to policies, proper approvals, and consistency

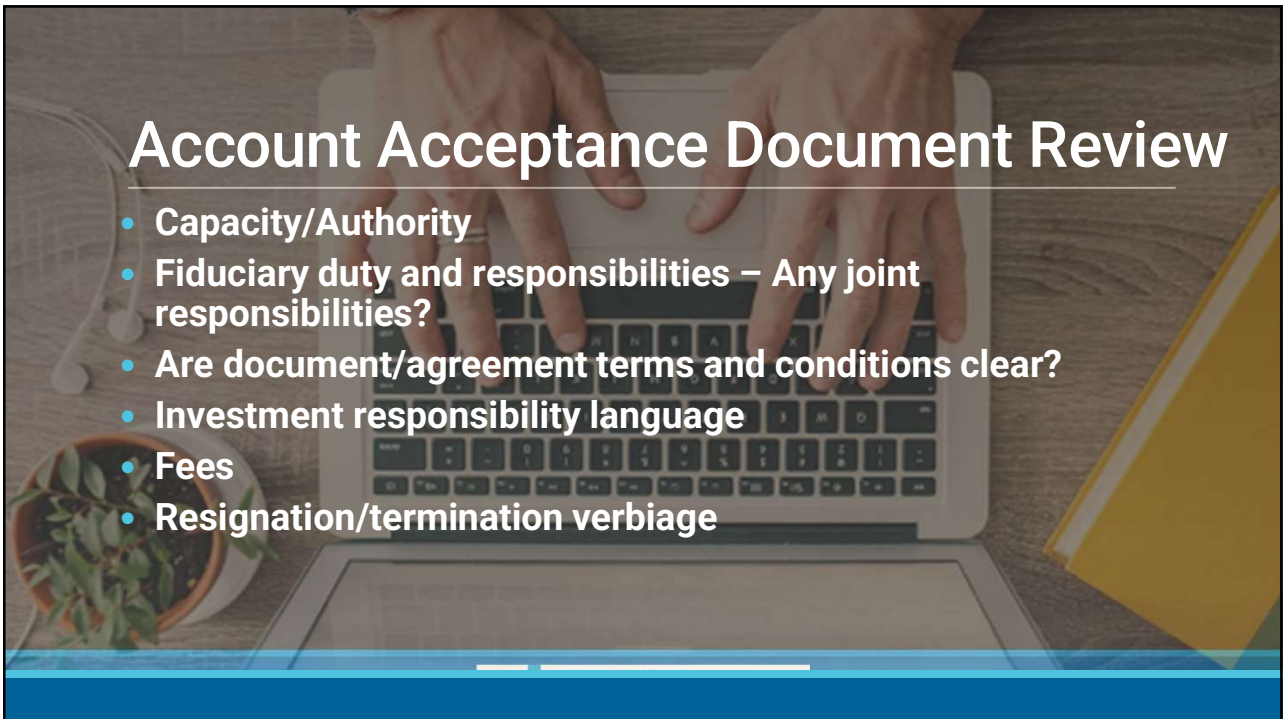
Client Introduction

- Purpose (intent) of relationship
- Gain “understanding” of fiduciary duty and responsibilities to be performed
- Account stakeholders
- Client Expectations
- **Why is account coming??????**



Account Acceptance Document Review

- Capacity/Authority
- Fiduciary duty and responsibilities – Any joint responsibilities?
- Are document/agreement terms and conditions clear?
- Investment responsibility language
- Fees
- Resignation/termination verbiage





Other Acceptance Items

- Account asset composition
 - Source of funds
 - Unique assets – More to come!
- Evaluation of risks
- Are all stakeholders reviewing?
- Identify conflicts
- Family dynamics & client Expectations
- Situs – Taxes. Legal

State Situs Chart for Irrevocable Returns

10th Annual Non-Grantor Trust State Income Tax Chart - Page 1 of 2			
State (alphabetical)	Taxing Statute	Top 2024 Tax Rate	Under What Conditions does the State Tax a Non-Grantor Trust?
Alabama	Ala. 148-18-1(3)	5.00%	If the trust is set up by the Will of an AL resident or settlor was an AL resident at time trust became irrevocable, and an AL resident is a beneficiary or trustee for more than seven months during the tax year
Alaska	***No tax***	0%	***No tax***
Arizona	Ariz. Rev. Stat. 43-1201(5)	2.50%	If there is at least one AZ trustee
Arkansas	Ark. Code Ann. 26-51-201(a)(4)	4.40%	If the trust is set up by the Will of an AR resident or settlor was an AR resident, and there is an AR trustee
California	Cal. Rev. & Tax. Code 417742	13.30%	If the trust has either a CA trustee or a CA non-contingent beneficiary, tax apportioned based on CA vs. non-CA trustees and CA non-contingent beneficiaries vs. CA contingent beneficiaries and non-CA beneficiaries; no more Incomplete Gift Non-Grantor Trusts retroactive to 1/1/2023; Top 2024 tax rate is 14.4% including payroll tax
Colorado	Colo. Rev. Stat. 39-22-103(10)	4.40%	If the trust is administered in CO
Connecticut	Conn. Gen. Stat. 38-407a(a)(4)(C), (D), (a)(5), (a)(6)	6.99%	If the trust is set up by the Will of a CT resident or settlor was a CT resident at time property transferred to an irrevocable trust or at the time property transferred to revocable trust that later became irrevocable --- other than for Will transfer, tax is modified fractionally to the extent there are nonresident non-contingent beneficiaries
Delaware	20 Del. C. 3160(a)(2), 30 Del. C. 31636	6.60%	If the trust is set up by the Will of a DE resident, or settlor of trust was a DE resident, trustees are DE residents for more than 1/2 the year; in all of such cases only if t
Florida	***No tax***	0%	***No tax***
Georgia	O.C.G.A. 44-2-22	5.49%	If there is trust property located in GA or if the trustee is "managing funds for the" (but Sup. Ct. of U.S. says statute is unconstitutional to tax just because of residen



Form **1041** Department of the Treasury—Internal Revenue Service
U.S. Income Tax Return for Estates and Trusts
 Go to www.irs.gov/forms/1041 for instructions and the latest information.

A Check all that apply:

☐ Decedent's estate

☐ Simple trust

☐ Complex trust

☐ Qualified disability trust

☐ ESBT (S portion only)

☐ Grantor type trust

☐ Bankruptcy estate—Ch. 7

☐ Bankruptcy estate—Ch. 11

For calendar year 2022 or fiscal year beginning _____, 2022

Name of estate or trust (if a grantor type trust, see the instructions.) _____

Name and title of fiduciary _____

Number, street, and room or suite no. (if a P.O. box, see the instructions.) _____

City or town, state or province, country, and ZIP or foreign postal code _____

Pre-Acceptance Process for Unique Assets

Validation of ownership, verification of property (tax returns/K-1's, Deeds, Sec of State, Certificates)

Value - Recent appraisal/valuation, if real estate - location, property condition, etc. Where located?

Trustee responsibilities/authority, specific language pertaining to unique assets (retention language)

Supporting documents - leases, tax returns (K-1's), income and expense reports, capital improvements; Beneficial owner information (ownership and control)

Supplemental Info – Insurance, taxes, environmental, other agreements, etc.



Asking...vs “what you actually get”!



What can go Wrong during Account Opening?

A “few” examples are:

- Disagreement with Co-Trustee
- Vague language in agreement (retention of assets)
- Unique assets!
- Unforeseen tax impacts
- Controversial beneficiaries
- Unproductive property
- Concentrated positions
- “Misjudged” fee (more time and effort than you thought)



Consequence examples:

- Create operational and reputational risks
- Violate UPIA and Prudent Investor Rule
- Liabilities for Trustee
- Non-compliance

Can turn into:

- Losses and lawsuits
- Regulatory issues
- EXTRA TIME - effort vacuum



Account Acceptance Tips

A few best practices to minimize mistakes



Rotate Account
Acceptance
Committee Members



Make sure all
stakeholders weigh
in (tax, unique
assets, etc.)



Evaluate
your account
opening
checklist(s)



Expand unique
asset review to
include specific
types



Validate asset
ownership early!
Obtain "values"



Get more
information
on
Successor
Trustees

Always strive to get as much information as **EARLY AS** possible!



Challenges Managing Unique Assets

- Specialized expertise is required
 - Internal or outsourced
 - Processes for each asset class held
- **Determining values (fair market value) - appraisals**
- Pre (and Post) Acceptance – Issues common here!
- Estate settlement – Maintaining, disposing/selling
- Operational – transaction processing (P & I)
- Investment Issues
 - Underproductive property
 - Asset retention language in document
- IRA's – Prohibited transactions, values on Form 5498
- Digital asset risks "new... and coming (especially in estates)!"
- Tax reporting - Valuation
 - Estate tax (discounts), "qualified appraisers"

"A bank's failure to properly manage unique assets prudently and legally can increase the bank's risks, particularly its operational, compliance, reputation, and strategic risks."

Unique and Hard-to-Value Assets
Comptroller's Handbook P. 2



Valuation - Fair Market Value

Standard of value:

- Common standards of value
 - Fair value
 - Intrinsic value
 - Investment/fundamental value
- The standard of value applied to all estate, gift, and income tax matters concerning the IRS is “**Fair Market Value (FMV)**”.
 - The most widely recognized & accepted standard of value
 - Applies to federal/state tax filings such as Estate & Gift taxes (Form 706/709), ESOPs, charitable contributions, and other inheritance/ income taxes
 - IRS Rev Ruling 59-60 – approach, methods & factors for valuations

FMV Definition

“The price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm’s length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts.”

– AICPA SSVS1



Valuations/Pricing

Considerations

- Type of unique asset
- Account type and capacity
- Valuation **purpose** (gift, estate, compliance)
- Current economic state and impacts
- Appropriate discounts if applicable



Who is performing the valuation and are they “qualified”?

- CPA who has been involved for 25 years
- Business owner or family member
- Company CFO... other?



Valuations/Pricing

Must be a "Qualified Appraiser" under IRS rules

- Verifiable education and experience in valuing specific asset type
- Can be applicable coursework or recognized **designation (ASA, etc.)**
- Otherwise, the valuation could be disallowed

12 / December 2023

Tax Court Backs IRS on Qualified Appraiser Rules and Related Matters

Posted in: [Business Valuation Law News](#) | Written by: [Jim Alerding](#)



March 27, 2024

The Importance of Certified Business Valuation Professionals

[BUSINESS VALUATION - TAX](#)
BY [ALYSSA BRUNATTI](#)

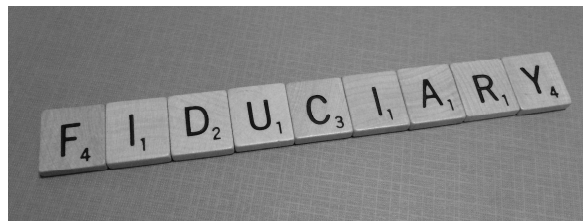
Procedural Missteps Lead to Loss of Tax Deductions for Charitable Gifts

November 10, 2022



Best Practices for Managing Unique Assets

- ✓ How is your PreAcceptance process working (more education needed)?
- ✓ Establish expertise you may need in the future – collectibles, closely held, timber
- ✓ Review valuation/pricing policies and are they 'qualified'
- ✓ Tighten up Reg 9 review and have more coordination
- ✓ Re-evaluate vendors as needed
- ✓ Make sure client expectations are set with proper communications!



Beneficial Owner Requirements for Entities



Code of Federal Regulations

A point in time eCFR system



Title

Displaying title 31, up to date as of 3/27/2025. Title 31 was last amended 3/26/2025. [view historical versions](#)

Enter a search term or CFR reference (eg. fishing or 1 CFR 1.1)

Title 31 / Subtitle B / Chapter X / Part 1010 / Subpart B / § 1010.230

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ECFR CONTENT

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§ 1010.230 Beneficial ownership requirements for legal entity customers.

- (a) **In general.** Covered financial institutions are required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of legal entity customers and to include such procedures in their anti-money laundering compliance program required under 31 U.S.C. 5318(h) and its implementing regulations.
- (b) **Identification and verification.** With respect to legal entity customers, the covered financial institution's customer due diligence procedures shall enable the institution to:
 - (1) Identify the beneficial owner(s) of each legal entity customer at the time a new account is opened, unless the customer is otherwise excluded pursuant to paragraph (e) of this section or the account is exempted pursuant to paragraph (h) of this section. A covered financial institution may accomplish this either by obtaining a certification in the form of appendix of this section from the individual opening the account on behalf of the legal entity customer, or by obtaining from the individual the information required by the form by another means, provided the individual certifies, to the best of the individual's knowledge, the accuracy of the information; and

Entity Beneficial Owner Requirements

Corporate Transparency Act:

Beneficial information is **REPORTED** by a Reporting Company

Beneficial Owner Requirements for Legal Entity Customers:

Trustee IDENTIFIES and VERIFIES beneficial owner

Beneficial Ownership Requirements

Financial organizations under 31 CFR 1010.230 are required to **identify and verify** Beneficial Owners. Requirements for Legal Entity Customers (LLC, Corp, etc.)

- Organizations must verify and document the identity of each beneficial owner (control person) for legal entity customers (*Name, DOB, Address, ID*)
- May accomplish this either by obtaining equivalent information from the legal entity customer's representative and may rely on such information, provided that it has no knowledge of facts that would reasonably call into question the reliability of such information.
- At a minimum, procedures must contain the elements required for verifying the identity of customers under the bank's CIP. The bank may rely on the information supplied by the legal entity customer regarding the identity of its beneficial owner or owners, provided that it has no knowledge of facts that would reasonably call into question the reliability of such information.
- Capture at the account level; need to understand nature and purpose of relationship



Beneficial Owner Requirement Details

Must have written procedures (usually included in AML/BSA Program - CIP)

Objective – to identify and verify beneficial owners of legal entity customers

Two tiers – Ownership (directly or indirectly) of 25%+ of equity interests

Two tiers – Control where owner with “significant responsibility” to control, manage, or direct entity

Recordkeeping & Retention Requirements

Exclusions and exemptions



Beneficial Owner – Documenting Information (Form)



Why? Purpose of Form (Why is information needed?)

Who? Criteria for person to complete form

What? Details – Ownership and Control Parameters

Information Gathering (EDD)

Verification (U.S. vs Foreign)

Beneficial Owner Resources

- **FinCEN – FIN-2018 G001**
- **FFIEC**
- <https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/03>
- [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ffiec.gov/press/pdf/Beneficial%20Ownership%20Requirements%20for%20Legal%20Entity%20CustomersOverview-FINAL.pdf](https://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ffiec.gov/press/pdf/Beneficial%20Ownership%20Requirements%20for%20Legal%20Entity%20CustomersOverview-FINAL.pdf)

BSA/AML MANUAL

BSA/AML Manual / Introduction / Assessing Compliance with BSA Regulatory Requirements / Beneficial Ownership Requirements for Legal Entity Customers

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Beneficial Ownership
Customer Due Diligence
Ongoing Monitoring

ASSESSING COMPLIANCE WITH BSA REGULATORY REQUIREMENTS

Beneficial Ownership Requirements for Legal Entity Customers—Overview

Objective. Assess the bank's written procedures and overall compliance with regulatory requirements for identifying and verifying beneficial owner(s) of legal entity customers.

Under the Beneficial Ownership Rule,¹ a bank must establish and maintain written procedures that are reasonably designed to identify and verify beneficial owner(s) of legal entity customers and to include such procedures in its anti-money laundering compliance program.

Legal entities, whether domestic or foreign, can be used to facilitate money laundering and other crimes because their true

BSA/AML MANUAL

BSA/AML Manual / Introduction / Appendix 1: Beneficial Ownership

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APPENDIX 1: Beneficial Ownership

Exclusions from the definition of Legal Entity Customer

Under 31 CFR 1010.230(a)(2) a legal entity customer does not include:

- A financial institution regulated by a federal functional regulator² or a bank regulated by a state bank regulator;
- A person described in 31 CFR 1010.230(b)(2) through (5):
 - A department or agency of the United States, of any state, or of any political subdivision of any state;
 - Any entity established under the laws of the United States, of any state, or of any political subdivision of any state, or under an interstate compact between two or more states, that exercises governmental authority on behalf of the United States or any such state or political subdivision;
 - Any entity other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange (currently known as the NYSE American) or have been designated as a NASDAQ National Market Security listed on the NASDAQ stock exchange (with some exceptions);
 - Any subsidiary (other than a bank or any "financial institution") that is organized under the laws of the United States or of any state and at least 55 percent of whose common stock or analogous equity interest is owned by the listed entity, provided that a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;