

When OTS reviews an initial application for fiduciary powers, it analyzes a number of factors including, among others, the federal savings association's financial and managerial resources, its history of regulatory compliance, and level of fiduciary expertise [citation omitted]. In light of this initial review, OTS believes that a new application is not always necessary to ensure safe and sound fiduciary operations when a federal savings association with existing trust powers expands its operations. * * * Application and notice requirements under the proposed rule would distinguish between new activities that materially differ from previously approved fiduciary activities and other types of activities. * * * [T]he proposed rule would require a federal savings association with previously approved trust powers to submit a complete trust application and obtain prior OTS approval before it may conduct fiduciary activities that are materially different from activities approved in the initial trust application. * * * OTS does not believe that a federal savings association engages in materially different activities when it merely expands the geographic scope of previously approved activities. Accordingly, the proposed rule would not require a new application before the federal savings association commences such activities.

The same reasoning applies even when the association creates a new agency office to conduct previously approved fiduciary activities or activities ancillary to its fiduciary business.

Accordingly, OTS believes that it does not need to approve an agency office that a federal savings association creates to conduct these activities. OTS therefore is amending 12 CFR 545.96 to add fiduciary activities to subparagraph (a). Under the new rule, a federal savings association may, without OTS approval, establish and maintain an agency office that engages only in one or more of the following activities: (1) Servicing or originating (but not approving) loans and contracts; (2) managing or selling real estate owned by the federal savings association; or (3) conducting fiduciary activities or activities ancillary to the association's fiduciary business. Under 12 CFR 550.70, of course, when an association establishes an agency office to conduct fiduciary activities in a new state, the association must file, within ten days after commencing those activities, a written notice containing the information required under 12 CFR 550.125.² Moreover, for clarification purposes, we are amending § 545.96 to change all references in the regulation from "agency" and "agencies" to

"agency office" and "Agency offices," respectively.

OTS is also amending 12 CFR 550.136 to remove an incorrect reference to state law. Section 550.136 did not appear in the proposed rule, published on June 11, 2002, but was adopted in response to comments on different language that had been proposed. It was published for the first time on December 12, 2002 and became effective January 1, 2003. Since the effective date, it has come to OTS's attention that one of the parenthetical descriptions in that section is incorrect.

Specifically, in the list of state laws that apply to the fiduciary operations of federal savings associations by virtue of 12 U.S.C. 1464(n), OTS included a reference to "State laws regarding * * * investments in state trust companies." Section 1464(n), however, contains no reference to state laws regarding thrift investments in state trust companies. Accordingly, we are amending § 550.136(a) to remove the reference to state laws regarding investments in state trust companies.

II. Need for an Immediately Effective Final Rule

OTS finds that there is good cause to dispense with prior notice and comment on this final rule and with the 30-day delay of effective date mandated by the Administrative Procedure Act.³ OTS believes that following those procedures in today's rulemaking would be unnecessary and contrary to public interest because the rule achieves regulatory consistency, minimizes potential confusion, and reduces regulatory burden. There is no reason to delay these results. Under the clarified rule, a federal savings association that wants to establish an agency office to conduct previously approved fiduciary activities, or activities ancillary to the association's fiduciary business, must follow only the procedures in 12 CFR part 550. The amendment to § 550.136 merely conforms the regulatory provisions to the parallel statutory provisions. These changes will not detrimentally affect savings associations or others.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 provides that regulations that impose additional reporting, disclosure, or other new requirements may not take effect before the first day of the quarter following publication.⁴ This section does not apply because this final rule imposes no additional requirements and results in

consistency between existing regulations.

III. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required only when an agency must publish a notice of proposed rulemaking.⁵ As already noted, OTS has determined that publication of a notice of proposed rulemaking is not necessary for this final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, OTS has considered the likely impact of the rule on small entities and, pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS Director certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

IV. Executive Order 12866

OTS has determined that this final rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

V. Unfunded Mandates Act

OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 550

Savings associations, Trusts and trustees.

■ Accordingly, OTS amends chapter V, title 12, Code of Federal Regulations as set forth below.

PART 545—[AMENDED]

■ 1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

■ 2. Amend § 545.96, including the section heading, as follows:

■ a. Remove the words "agency" and "agencies" and add, in their place, the words "agency office" and "agency offices," respectively.

■ b. Revise paragraph (a) of § 545.96 as follows:

² Section 550.125 requires that the notice identify the new state, describe the fiduciary activities that the association will conduct in that state, and provide sufficient information supporting a conclusion that the activities are permissible in that state.

³ 5 U.S.C. 553.

⁴ Pub. L. 103-325, 12 U.S.C. 4802.

⁵ 5 U.S.C. 603.