

information unless it displays a currently valid OMB control number.

The collection of information requirements contained in this proposal have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557-AB12), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division (1557-AB12), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The collection of information requirements in this proposed rule are found in 12 CFR 9.8, 9.9, 9.17, and 9.18. The OCC requires this information for the proper supervision of national banks' fiduciary activities. The likely respondents/recordkeepers are national banks.

Estimated average annual burden hours per respondent/recordkeeper: 15.01 hours.

Estimated number of respondents and/or recordkeepers: 1,000.

Estimated total annual reporting and recordkeeping burden: 15,010 hours.

Start-up costs to respondents: None.

Unfunded Mandates Act of 1995

The OCC has determined that this proposal will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

List of Subjects

12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

12 CFR Part 19

Administrative practice and procedure, Crime, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 9 is revised to read as follows:

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

Sec.

9.1 Authority, purpose, and scope.

9.2 Definitions.

9.3 Approval requirements.

9.4 Administration of fiduciary powers.

9.5 Policies and procedures.

9.6 Review of assets of fiduciary accounts.

9.8 Recordkeeping.

9.9 Audit of fiduciary activities.

9.10 Fiduciary funds awaiting investment or distribution.

9.11 Investment of fiduciary funds.

9.12 Self-dealing and conflicts of interest.

9.13 Custody of fiduciary assets.

9.14 Deposit of securities with state authorities.

9.15 Fiduciary compensation.

9.16 Receivership or voluntary liquidation of bank.

9.17 Surrender or revocation of fiduciary powers.

9.18 Collective investment funds.

9.20 Transfer agents.

Authority: 12 U.S.C. 24(Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q-1, and 78w.

§ 9.1 Authority, purpose, and scope.

(a) *Authority.* The OCC issues this part pursuant to its authority under 12 U.S.C. 24 (Seventh), 92a, and 93a, and 15 U.S.C. 78q, 78q-1, and 78w.

(b) *Purpose.* The purpose of this part is to set forth the standards that apply to the fiduciary activities of national banks.

(c) *Scope.* This part applies to all national banks that act in a fiduciary capacity, as defined in § 9.2(e).

§ 9.2 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Affiliate* has the same meaning as in 12 U.S.C. 221a(b).

(b) *Applicable law* means Federal law, state law governing a national bank's fiduciary relationships, the terms of the instrument governing a fiduciary relationship, or any court order pertaining to the relationship.

(c) *Custodian under a uniform gifts to minors act* means a fiduciary relationship established pursuant to a state law substantially similar to the Uniform Gifts to Minors Act as published by the American Law Institute.

(d) *Fiduciary account* means an account administered by a national bank acting in a fiduciary capacity.

(e) *Fiduciary capacity means:* acting as trustee, executor, administrator, registrar of stocks and bonds (including transfer agent), guardian, assignee, receiver, or custodian under a uniform gifts to minors act; any capacity involving investment discretion on behalf of another; or any other similar capacity that the OCC authorizes pursuant to 12 U.S.C. 92a.

(f) *Fiduciary officers and employees* means all officers and employees of a national bank to whom the board of directors or its designees has assigned

functions involving the exercise of the bank's fiduciary powers.

(g) *Fiduciary records* means all written or otherwise recorded information that a national bank creates or receives relating to a fiduciary account or the fiduciary activities of the bank.

(h) *Fiduciary powers* means the authority the OCC grants to a national bank to act in a fiduciary capacity pursuant to 12 U.S.C. 92a.

(i) *Guardian* means the guardian or committee, by whatever name employed by state law, of the estate of an infant, an incompetent person, an absent person, or a person over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.

(j) *Investment discretion* means, with respect to an account, the authority to determine what securities or other assets to purchase or sell on behalf of the account.

§ 9.3 Approval requirements.

(a) A national bank may not exercise fiduciary powers unless it obtains prior approval from the OCC to the extent required under 12 CFR 5.26.

(b) A person seeking approval to organize a special-purpose national bank limited to fiduciary powers shall file an application with the OCC pursuant to 12 CFR 5.20.

§ 9.4 Administration of fiduciary powers.

(a) *Responsibilities of the board of directors.* A national bank's fiduciary activities shall be managed by or under the direction of its board of directors. In discharging its responsibilities, the board may assign any function related to the exercise of fiduciary powers to any director, officer, employee, or committee thereof.

(b) *Use of other personnel.* The national bank may use any qualified personnel and facilities of the bank to perform services related to the exercise of its fiduciary powers, and any department of the bank may use fiduciary officers and employees and facilities to perform services unrelated to the exercise of fiduciary powers, to the extent not prohibited by applicable law.

(c) *Agency agreements.* A national bank exercising fiduciary powers may perform services related to the exercise of fiduciary powers for another bank or other entity, and may purchase services related to the exercise of fiduciary powers from another bank or other entity, pursuant to a written agreement.

(d) *Bond requirement.* A national bank shall ensure that all fiduciary officers and employees are adequately bonded.