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- fees that are not properly disclosed.
- fees that are not established or authorized by applicable law and are not reasonable.

The next sections provide guidance regarding certain types of fees for specific fiduciary services that have historically led to questions.

### **Fees for Tax Preparation and for Account Termination Services**

The OCC has historically viewed tax preparation fees and account termination fees as appropriate supplemental fees provided the fees are properly authorized and disclosed. If not set or determined by applicable law, supplemental fees must be reasonable for the services performed and in relation to any bundled fees charged to the account.

In setting the amount of termination fees, bank fiduciaries should note that in some cases courts have ruled that established termination fees were unreasonable for the services performed by certain bank fiduciaries and have instructed these banks to charge reasonable fees.

### **Sweep Fees**

Automated cash management arrangements whereby a bank “sweeps” fiduciary funds into short-term vehicles, such as money market mutual funds, short-term CIFs, interest-bearing deposit accounts, or repurchase agreements, on a daily basis have become a standard and expected practice for bank fiduciaries. This capability enables banks to obtain, as required under 12 CFR 9.10(a) for banks and 12 CFR 156.299 for FAs, a reasonable rate of return for discretionary fiduciary funds awaiting investment or distribution.

Whether charging “sweep fees” for such arrangement is permissible has been the subject of extensive litigation, including class action lawsuits. Banks must adhere to applicable laws that prohibit or limit sweep fees, including those that require specific authorization in the governing instrument or in a valid court order, or that require full disclosure to, and valid consent from, all beneficiaries. Banks considering the imposition of sweep fees should obtain an opinion of counsel as to the permissibility of the practice under applicable law.

As a safe and sound banking practice, even if not expressly required by applicable law banks that impose sweep fees should disclose such fees in fee schedules and in periodic statements sent to parties in interest. Such statements should provide a separate line item that states the total amount of sweep fees charged or attributed to the account for the statement period.

<sup>58</sup> This guidance is not intended to prohibit a bank from adopting a reasonable unbundled fees schedule. Rather, this guidance is intended to prohibit a bank from charging a bundled fee and an additional supplemental fee for services typically included in a bundled fee schedule. In determining whether an unbundled or supplemental fee is reasonable, banks should consider the aggregate bundled and unbundled fees charged for the services provided.





















